

CITY OF BENSON

TRUST ASSURANCE AGREEMENT FOR THE COMPLETION OF SUBDIVISION IMPROVEMENTS (Third-Party Trust)

THIS TRUST ASSURANCE AGREEMENT FOR COMPLETION OF SUBDIVISION IMPROVEMENTS (this "Agreement") is entered into and dated for reference purposes as of _____, 200__, by and between, _____, Inc., an Arizona corporation, as Trustee under Trust No. _____, (herein referred to as "Trustee"), _____, _____, an _____ as Beneficiary of Trust No. _____, (hereinafter referred to as "Beneficiary") and the CITY OF BENSON, ARIZONA, an Arizona body politic, (herein referred to as the "City of Benson").

RECITALS

- A. Trustee is owner of a certain parcel of real property (the "Property") located in the City of Benson, Arizona, and described in Exhibit "A" attached hereto. The property is the subject of a subdivision plat identified as: _____, recorded in the Office of the Cochise County Recorder, State of Arizona, in Book _____ of Maps and Plats, Pages _____ (hereinafter referred to as the "Subdivision"); and
- B. Beneficiary has established Trust No. _____ for the purpose of developing a subdivision of the City of Benson and has conveyed legal title to the Property to Trustee; and
- C. The parties hereto wish to establish specific terms, conditions and guidelines for compliance with the provisions of A.R.S. § 9-463.01 and the City of Benson Subdivision Regulations.

AGREEMENT

In consideration of the City of Benson approving a final plat for the Property which is the subject matter of this Agreement, and in order to comply with A.R.S. § 9-463.01, the parties mutually agree that:

1. Property. The Property which is the subject matter of this Agreement is described in Exhibit "A" attached hereto.
2. Assurances. This Agreement is submitted as a means of assuring the completion of the subdivision improvements required by A.R.S. § 9-463.01 (c)(8), City of Benson Subdivision Regulations, all Plans and Specifications approved and on file with the City

of Benson, and any special conditions, if applicable, on Exhibit “B” attached hereto and made a part hereof. These subdivision improvements include but are not limited to, streets, alleys, sidewalks, curbs and gutters, sanitary sewer systems, water supply, lot staking and monuments, traffic and street signs, and drainage and flood control improvements, if applicable.

3. Existing Utilities. Any relocation or modification of existing utilities or public improvements necessary to construct the improvements shall be done at no expense to the City. Beneficiary’s performance of this requirement shall be considered in determining whether to release assurances under Sections 12 and 13 hereinafter.

4. Conveyances and Transfers of Title. Trustee shall not transfer title to, consummate contracts for sale of Property, lease, or in any way convey, in whole or in part, any of the Property without obtaining prior written approval from the City of Benson, except as authorized in this Agreement. A Release of Assurances and authorization to convey the Property shall be given by the City of Benson upon satisfactory completion, or partial completion, as applicable, in accordance with the City of Benson Subdivision Ordinances and any applicable Annexation Development Agreement between the City of Benson and the Beneficiary.

5. Bulk Sales. Notwithstanding Section 4, Trustee may sell or convey all of the Property described in Section 1 in one (1) or more bulk transactions, provided that such successor, prior to the conveyance, shall have assumed all of Beneficiaries rights and obligations under this Agreement by entering into an appropriate substitute Trust Assurance Agreement with the City of Benson to assure completion of the improvements.

6. Conveyance Out of Trust for the Purpose of Encumbrance: Condition on Other Interests. Notwithstanding Section 4, Trustee may convey the Property to Beneficiary for the limited purposes of encumbering the Property or allowing any obligations secured by the Trust, other than those which are the subject of this Agreement with the City of Benson, to be subordinated to loans for the purpose of constructing on-site or off-site improvements for the benefit of the Property or to create a security interest in the Property for loans for the purchase of the Property or the construction of such on-site or off-site improvements. In such event, the Property shall immediately thereafter be re-conveyed to Trustee. This Agreement shall be deemed to be a condition on and restriction on the rights and interests of any third party whose interest in the Property arises after the date of this Agreement, however such interest is created, the same as if such party were included as a signatory of this Agreement.

7. Substitution of Assurances. Beneficiary may offer substitute assurances at any time during the term of this Agreement in accordance with the provisions of the City of Benson Subdivision Regulations. The Assurance shall be in a form and amount acceptable to the City of Benson, and shall to the extent applicable, partially or wholly replace the Assurances in this Agreement.

8. Completion of Improvements. The required improvements shall be completed by the Beneficiary within two (2) years from the date of this Agreement. This date for completion of improvements may be extended by separate agreement of the parties where Beneficiary is prevented from completing the improvements by act of God, strike or similar event or circumstances beyond its control, or at the discretion of the City of Benson. The improvements shall not be considered completed unless and until they have been constructed in accordance with all applicable plans, City, State, and Federal regulations, and inspected by City for compliance with said plans and regulations. Further, all utility improvements shall not be considered completed unless and until the City has received all necessary approvals for operation of the utility systems from the appropriate State and/or Federal regulatory agencies, if applicable.

9. Inspection and Approval of Improvements. The City of Benson shall provide for inspection of the improvements to ensure satisfactory completion. Until the improvements have been satisfactorily completed, the rights-of-way in which the improvements are located have been dedicated or conveyed to the City, and the City, by formal action, has accepted said dedication or conveyance of the improvements and rights-of-way in which they are located, the City of Benson will not release the Property subject to this Agreement. Once satisfactorily completed, the Property shall be released as provided in Sections 12 and 13 below. Release of the Property or any portion of the Property from this Agreement shall be deemed to constitute the City's acceptance of the dedication or conveyance of any improvements related to the portion of the Property released.

10. Warranty. Beneficiary warrants that the improvements will be free from defects for a period of one (1) year from the date City accepts the dedication or conveyance of the improvement from the Beneficiary.

11. Payment of Applicable Property Taxes. The City of Benson shall not release, in whole or in part, any of the Property described in Section 1 until all Property and taxes and assessments due and owing on the subject Property have been paid in full.

12. Partial Release of Assurances. The City of Benson, upon receipt of a written request from Beneficiary, shall give the Trustee a Release of Assurances for all or a portion of the lots created by the subdivision plat described in Section 1, provided that (a) all of the improvements required in connection with such lots have been satisfactorily completed and accepted; and (b) provided further that the lots released and improvements associated with such lots can function independently on a permanent basis in the event the remaining portion of the subdivision is never developed.

13. Release of Assurances. Upon completion of all improvements required under this Agreement, or upon receipt of acceptable substitute assurances replacing this Agreement, the City of Benson shall release the Assurances in this Agreement, and this Agreement shall be deemed cancelled.

14. Failure to Complete Improvements. Trustee and Beneficiary hereby agree that in the event the required improvements are not completed within the time period provided by Section 8, the City of Benson may re-plat that portion of the Property described in Section 1 for which a release of assurances has not been given. The purpose of the new plat will be to abandon the portion of the subdivision not completed, and return that portion of the Property to approximately the same boundary configurations of record as existed before the subdivision plat was recorded. Prior to the initiating any action to re-plat, the City of Benson shall provide Trustee and Beneficiary with thirty (30) days written notice of the intent to re-plat.

The City of Benson, by this Agreement, is expressly authorized to re-plat this Property after the required notice has been provided. All expenses by the City of Benson, including legal costs if applicable, in executing a re-plat shall be paid for by Beneficiary, and shall, if unpaid, become a lien on the Property.

The Trustee and Beneficiary agree that they will execute the re-plat returning the Property to approximately the same boundary configurations of record before recording of the present plat, excluding any dedications to the public deemed necessary to the City.

15. Effect on Trust Agreement. Trustee and Beneficiary agree that any provision of Trust No. _____ that is incompatible or inconsistent with this Agreement shall be null and void and not enforceable. The Trust shall not be revoked prior to a full Release of Assurances without prior written consent of the City of Benson. Nor shall any amendment which would alter this Assurance Agreement be effective until the City of Benson has approved such amendment.

16. Purpose of Agreement. The purpose and intent of this Agreement is to prohibit the sale of individual subdivision lots to the public prior to the completion of the subdivision improvements that are associated with such lots. The sale or conveyance of such lots without the necessary improvements is harmful to the public and places excessive burdens on the City of Benson. The terms and conditions of this Agreement shall be construed and interpreted as broadly as necessary to accomplish this purpose.

17. Indemnification of Trustee. The Beneficiary agrees that it will fully pay, indemnify, protect, save and hold the Trustee harmless from and against all suits, claims, demands, judgments, liens, encumbrances, costs and expenses, including attorneys fees and other obligations and liabilities of every kind and nature that the Trustee may for any reason or at any time suffer, sustain, incur or expend by reason of or in connection with this Trust or the administration thereof otherwise than through its own misconduct, negligence or willful neglect. It is further agreed that the Trustee shall not be required to pay or attend to the payment of any claim, lien, or other encumbrance against the Property (including, but not limited to property taxes, special assessments and income, inheritance or estate taxes) other than from the proceeds received and available hereunder for such payment.

18. Trustee Rights.

(A) The Trustee shall have the right to include the Property in the Comprehensive General Liability Insurance policy carried by Trustee and the cost of the pro-rata portion of the policy premium applicable to the Property shall be paid by the Beneficiary.

(B) It is further understood and agreed that the Trustee shall not be required to commence or defend any suit in connection with this Agreement or the Property until there shall have been paid to the Trustee a sum of money sufficient in its judgment to pay all costs thereof including attorneys fees and a reasonable compensation to the Trustee for its services and for the time of its officers and employees in connection therewith.

(C) The Trustee shall not be obligated to warrant title to any of the Property sold or conveyed by it except as against the acts of the Trustee only. Any sales agreement or deeds executed by the Trustee shall be made subject to any taxes, assessments, liabilities or obligations against the property.

(D) It is understood and agreed by and between the parties hereto that all funds arising and accruing from the lease, sale or other disposition of any of the Property shall be paid to the Trustee and thereafter disbursed by the Trustee as follows:

(I) To the payment of the costs, fees, expenses, charges, damages, and advances, if any of the Trustee; and

(II) To the payment of the taxes and assessments levied and assessed against the Property, including assessments and charges of any special district or association; and

(III) All disbursements may be made by the check of the Trustee.

(E) The accounting records of the Trustee which relate to this Trust shall at all reasonable times be open to the inspection of the Beneficiary hereunder.

(F) All advertising shall clearly show that the Beneficiary is the author thereof, and the Trustee shall not be liable for any statements or representations made thereon. The Trustee's name shall not be used in any such advertising without its written consent.

(G) It is made one of the terms and conditions of this Agreement that any party dealing with the Trustee shall not be obligated to ascertain whether or not the Trustee has exceeded its powers in any act it may perform or cause to be performed incident to or in connection with the management, control, sale, disposal or otherwise handling said Property nor to see to the proper handling, application or disbursement by the Trustee of any funds paid to the Trustee.

(H) The Beneficiary further agrees to pay and discharge, when and as the same shall become due and payable, all liens to contractors, material men, mechanics, laborers and

others, which at any time may be imposed upon the Property, or any part thereof, through any act of the Beneficiary or its agents and further agrees to protect the Trustee and hold it harmless against any loss, claim, damage or expense on account of such liens, which it may incur by virtue of acting as Trustee under this Agreement and because of any sales agreements and conveyances made by the Trustee pursuant to the provisions hereof.

(I) No assignment or transfer or any interest of any party hereunder at any time shall be valid and binding upon the Trustee until an executed original of the assignment or other instrument evidencing the transfer has been filed with and accepted by the Trustee and the Trustee's assignment fee is paid, excepting only where such interest may pass or be transferred by decree or order of Court and then only upon satisfactory proof of the regularity and validity of the proceedings in such matter being presented to the Trustee, and the fees of the Trustee's attorney for passing thereon having been paid.

(J) The Trustee may at any time resign by sending by ordinary mail, postage prepaid, a notice of its intention so to do to the Beneficiary hereunder at their address last known to the Trustee. Such resignation shall become effective ten (10) days after the mailing of such notice by the Trustee. In the event of such resignation, a successor or successors may be appointed by the person or persons then entitled to direct the Trustee in the disposition of the Property, and the Trustee shall thereupon convey the Property to such successor or successors in trust. In event that no successor Trustee is named as above provided within ten (10) days after the mailing of such notice by the Trustee, then the Trustee may convey the Property to the Beneficiary in accordance with their interest hereunder, or the Trustee may, at its option, file a bill for appropriate relief in any court of competent jurisdiction. The Trustee, notwithstanding such resignation, shall continue to have a first lien on the Property for its costs, expenses and attorneys fees and for its reasonable compensation. Every successor Trustee or Trustees appointed hereunder shall become fully vested with all the estate, properties, rights, powers, trusts, duties and obligations of its, his or their predecessor.

19. Agreement Exempt from Act. This Agreement shall be exempt from the provisions and operation of the Uniform Principal and Income Act of Arizona.

20. Trustee Fee. The Beneficiary agrees to pay to the Trustee its standard fees for administering Trust Assurance Agreements, less all developer discounts.

21. Recitals. The above recitals are incorporated herein by this reference.

22. Notice of Right to Terminate Contract. Pursuant to A.R.S. § 38-511, the City of Benson reserves the right to cancel this Agreement, within three years after the effective date of this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Benson is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of Trustee or Beneficiary in any capacity or a consultant to Trustee or Beneficiary with respect to the subject matter of this Agreement. Cancellation under this section by the City of Benson shall be effective

when written notice from the City Manager is received by the other parties. The City of Benson may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Benson from Trustee or Beneficiary arising as the result of the contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown following their respective names below.

“CITY OF BENSON”

Approved as to Content:

City of Benson, Arizona

By _____
Bradley Hamilton
City Engineer

By _____
Glenn Nichols
City Manager

Approved as to Form:

By _____
Michael Masee
City Attorney

“TRUSTEE”

_____, Inc., an Arizona corporation, as Trustee under Trust No. _____ only and not any other capacity.

By _____
, Its Trust Officer

Date _____

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

On this the ____ day of _____, _____, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the Trust Officer of _____, Inc., an Arizona corporation, and that he as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

EXHIBIT "A"

LEGAL DESCRIPTION

Lot Number(s) _____ and Common Area(s) _____

According to the plat of records in the office of the county Recorder of Cochise County, Arizona, recorded in Book _____ at page _____, being more specifically described as follows:

(must insert full legal description here)

EXHIBIT "B"

Subdivision Name _____

Case No. _____ SA12 _____

Trust No. _____

The following improvements and conditions are made a part of the attached Assurance Agreement:

1. Obtaining all necessary Governmental permits.
2. Preservation of native plants as identified on approved salvage plans
3. Grading.
 - a. Rough grading, including building sites.
 - b. Structures in contract.
 - c. Utility trenching in contract.
 - d. Any other included items.
4. Sanitary sewers/septic systems.
5. Water distribution system.
6. Other utility installations.
7. Any off-site installations required.
8. Any drainage not included in the grading or paving contracts.
9. Paving contract:
 - a. Subgrade, if required;
 - b. Base;
 - c. Paving;
 - d. Curb and gutter;
 - e. Storm drainage not covered elsewhere;
 - f. Handicap ramps; and,
 - g. All public sidewalks.
10. Installation of all signs and paving markings.
11. Landscaping in the public right-of-way.
12. Other construction items (guardrails, etc.).
13. Placement of all lot corners, standard monuments and bench marks and records thereof.
14. Field engineering: staking, surveillance, inspections, testing, reports, as-built mylars.