

Declaration of Covenants, Conditions and Restrictions

This Declaration of Covenants, Conditions and Restrictions dated this _____ day of _____, 2012, is made by and between the Town of Miami (hereinafter referred to as the "Owner") and Gila County Arizona acting pursuant to A.R.S. §11-251 and §11-254 (hereinafter referred to as "County").

RECITALS

WHEREAS, County is willing to provide Owner an economic development grant in order for Town to purchase County property to provide identified services on a continuous basis as set forth in the application for the grant; and

WHEREAS, Owner agrees to abide by certain occupancy restrictions as set forth below, and the public filing of this Declaration of Covenants, Conditions and Restrictions to evidence Owner's agreement to comply with such restrictions;

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby do hereby agree as follows:

Part I: Definitions

- (1) **Agreement:** means this Declaration of Covenants, Conditions and Restrictions, as it may from time to time be amended. This Declaration of Covenants, Conditions and Restrictions includes and incorporates by reference the application for Gila County Economic Development Grant submitted by Owner.
- (2) **Owner:** means the Town of Miami, as set forth in the beginning of the Agreement.
- (3) **Maintaining the Integrity of the Premises:** means that to the maximum extent practicable with reasonable allowance to consider safety improvements in the building technology and necessary structural repairs to maintain the structural integrity of the premises.
- (4) **Property** means the CVCT Building, located at 506 West Sullivan Street, Miami, Arizona.

Part II Covenants, Conditions and Restrictions

During the period of time commencing upon purchase of property and continuing for a period of twenty (20) years the following restrictions apply to the building known as the CVCT Building located at 506 West Sullivan Street, Miami, Arizona, and the property legally described in the Warranty Deed attached to this Agreement as Exhibit A:

1. **Use of Property.** Owner shall use and make available the Property primarily for governmental purposes.

2. **Property Standards.** Owner shall maintain the Property in accordance with all applicable federal, state, and local codes, zoning and ordinances.
3. **Monitoring.** Owner will allow the County access to the Property to conduct on-site inspections of the Property to determine compliance with these use covenants, conditions, and restrictions, upon 24-hour advance written notice by the County.
4. **Record Retention.** Owner shall retain all pertinent documents, books, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, and other records relating to the project and Property for five (5) years following expiration of this Agreement. Notwithstanding the foregoing, if any litigation, claim, negotiation, audit, or other action has been started before the expiration of the period of availability specified herein, the records must be retained for five (5) years following the completion of the action and resolution of all issues which arise from it, or for five (5) years following the end of the period of availability, whichever is later. Said records may be maintained electronically.
5. **Inspection and/or Audit of Records.** Owner shall make available at all reasonable times, for inspection, transcription, excerpting, examination, copying, and audit by the State, County, the State Auditor General, or of their representatives and designees, all pertinent books, documents, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, and other records (hereinafter referred to as "Records") relating to the Property specified herein. Upon request by such inspecting or auditing entity, a legible copy of all such Records shall be produced by the Owner at the specified Office of the County, the State, the State Auditor General, or at any other reasonable location. The original for all such Records shall also be available and produced for inspection, copying, and audit when needed to verify the authenticity of a copy.

Part III: Remedies

1. **Remedies of the County.** If Owner breaches any covenant, condition or restriction set forth herein as to using the Property primarily for governmental purposes, and if such breach remains incurred or a period of sixty (60) days after notice thereof shall have been given by the County the County shall be entitled to any or all of the following remedies: transfer of title of the property to the County; resort to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the property in accordance with the terms of this Agreement, or such other relief as may be appropriate, it being acknowledged by Owner that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's breach of this Agreement. The County shall be entitled to reimbursement of reasonable attorney's fees and all costs incurred in any such judicial action in which the County shall prevail.
2. **Remedies are Cumulative.** Each right, power and remedy of the County provided for in this Agreement, now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy

provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the County of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County of any or all such other rights, powers, or remedies.

Part IV: Representations and Warranties of Owner

1. **Valid Execution.** Owner represents and warrants that Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement, and (iii) to assume responsibility for compliance with all applicable federal and state rules and regulations.
2. **No Conflict or Contractual Violation.** To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:
 - a. Will not violate any contractual covenants or restrictions between Owner and any third party or any such covenants or restrictions affecting the property.
 - b. Will not conflict with any of the instruments that create or establish Owner's authority;
 - c. Will not conflict with any applicable public or private restrictions;
 - d. Do not require any consent or approval of any public or private authority which has not already been obtained; and
 - e. Are not threatened with invalidity or unenforceability to any action, proceeding or investigation pending or threatened, by or against (i) Owner, without regard to capacity, (ii) any person with whom Owner may be jointly or severally liable, or (iii) the property or any part thereof.
3. **No Litigation.** No litigation or proceedings are pending, or to the best of the Owner's knowledge, threatened against Owner which if adversely determined could be individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.
4. **No Bankruptcy.** There is no pending or, to the best of Owner's knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, or regulation relating to bankruptcy, insolvency or relief for debtors.

5. **No Encumbrance or Attachment.** Owner shall not allow the property to be attached in any manner, include any liens to other encumbrances or any mortgages or other security interest during the extended use period without the prior written consent to the County.

Part V: Miscellaneous

1. **Term of this Agreement:** This Agreement shall be in effect beginning on the date of the close of escrow and transfer of ownership of the Property from the County to the Town and until twenty (20) years subsequent to that transfer of ownership. Upon mutual agreement in writing by the County and Town, the term of this Agreement may be modified.
2. **Binding Effect: Covenants Running with the Land for the Term of This Agreement.** This Agreement and the covenants, conditions and restrictions, contained herein shall be deemed to be covenants running with the land until the termination of this Agreement for the benefit of the County and their successors, and shall pass to and be binding upon Owner's heirs, assigns, and successors in title to the property, this Agreement and the covenants, conditions and restrictions shall bind the property only during the term of this Agreement and shall pass to and be binding upon all heirs, assigns and successors to such interests. Each and every contract, deed, or other instrument executed during the term of this Agreement covering or conveying the property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the property are conveyed, all of such covenants, conditions and restrictions shall run to each portion of the property, but only until the expiration of this Agreement. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or re-filed in such places and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the County to enforce this Agreement.
3. **Amendments.** This Agreement shall not be amended or modified except by written instrument signed by each party hereto and recorded or filed as this Agreement was recorded and/or filed.
4. **Notices.** All notices required or permitted to be given pursuant to this Agreement must be in writing and will be deemed to have been duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses;

If to Owner:
Town of Miami
500 West Sullivan Street
Miami, Arizona 85539

To County:
Gila County
1400 East Ash Street
Globe, Arizona 85501

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this section.

5. **Entire Agreement.** This Agreement, together with the other documents executed in conjunction with this Agreement, contains the entire understanding between the parties hereto with respect to the subject matter thereof.
6. **Governing Law.** This Agreement, as it may affect the rights, remedies and obligations of the County shall be governed by and construed in accordance with the laws of the State of Arizona.
7. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rule and regulations. If any provision of this Agreement or the application thereof to any person or circumstances shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
8. **Indemnification.** To the extent permitted by law, each party will indemnify and save the other party harmless, including any of the parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the indemnifying party of any of the provisions of this Agreement. Each party, in all instances, shall be indemnified against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or non-performance of this Agreement by the other party, except such injury or damage as shall have been occasioned by the negligence of that other party. The damages incurred by the other party, their department, agencies, officers, employees, elected officers or agents shall include in the event of any action, court costs, expenses for litigation and reasonable attorneys' fees.
9. **Section Titles.** Section titles are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.
10. **Compliance with Laws; Permits and Certification.** Owner shall comply with all federal, state and local laws, codes, ordinances, rules and regulations, conditions and assurances and shall keep and maintain in effect at all times any and all licenses, permits, notices, and certifications which may be required in regard to the property.
11. **Owner Agreement to Record.** Owner agrees that this Agreement will be recorded in the public records of the County where the property described above is located.

GILA COUNTY

Tommie C. Martin, Chairman, Board of Supervisors

Date: _____

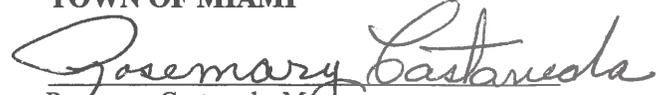
ATTEST:

Marian Sheppard, Chief Deputy Clerk of the Board

APPROVED AS TO FORM:

Bryan B. Chambers, Chief Deputy County Attorney
for Daisy Flores, County Attorney

TOWN OF MIAMI


Rosemary Castaneda, Mayor

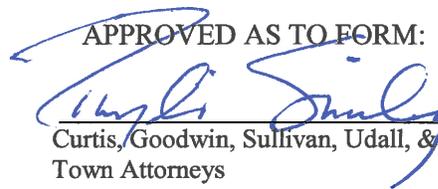
Date: 5-31-12

ATTEST:



Karen Norris, Town Clerk

APPROVED AS TO FORM:



Curtis, Goodwin, Sullivan, Udall, & Schwab, PLC,
Town Attorneys
By: Phyllis L.N. Smiley