

Attachment 6

135142DEC-6-1-1--
sarabiam

WHEN RECORDED, RETURN TO:

City of Phoenix
Neighborhood Services Department
200 West Washington Street, 4th Floor
Phoenix, Arizona 85003
Attn.: Truly Sielaff, Project Manager

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135142-DEC-0

DECLARATION OF AFFIRMATIVE LAND USE RESTRICTIVE COVENANTS

City of Phoenix
Energize Phoenix Rental Program

THIS DECLARATION OF AFFIRMATIVE LAND USE RESTRICTIVE COVENANTS ("Declaration") dated this **11th day of December, 2012** by **DuroMax, LLC, whose address is P.O. Box 65884, Phoenix, Arizona 85082-5884**, ("Owner"), and the **CITY OF PHOENIX, ARIZONA**, a Municipal Corporation organized and existing under the laws of the State of Arizona, whose address is 200 West Washington Street, Phoenix, Arizona 85003 (the "City").

RECITALS

A. Owner is making energy efficiency improvements to certain residential property located at **2223 E. Roosevelt Street, Units 1-3**, within the City of Phoenix, County of Maricopa, and State of Arizona, the legal description of which is more particularly set forth in **Exhibit A-Legal Description** attached hereto and incorporated herein (the "Property");

B. In connection with Owner's energy efficiency improvements to the Property, the City made a loan to the Owner in the original principal amount of **\$17,000.00** (the "City Loan"), which City Loan is evidenced by that certain Promissory Note dated **December 11, 2012** made by the Owner to the City (the "City Note") and secured by that certain Deed of Trust dated **December 11, 2012** and recorded in the records of Maricopa County, Arizona ("Deed of Trust"), and any other documents or instruments executed in connection with the City Loan (collectively, the "City Loan Documents"). The City Loan was used by the Owner for the purpose of paying the Contractor, selected by City, for the completion of the Scope of Work as described in Attachment 2 of Loan Agreement ("Agreement");

Declaration

C. The City Loan funds ("Funds") are being extended to Owner as a result of funds received by the City pursuant to the American Recovery and Reinvestment Act (ARRA) - U.S. Department of Energy BetterBuildings Neighborhood Program, Energy Efficiency and Conservation EECBG Competitive grant for the purpose of saving energy, creating jobs and transforming a diverse array of neighborhoods along a 10-mile stretch of the light rail line, with certain restrictions and limitations under the City's Energize Phoenix Rental Program ("Program"). Owner has applied for the Program and has met all of the eligibility requirements to receive said Funds.

D. It is necessary for the Owner and the City to enter into an agreement regarding certain deed restrictions and covenants running with the land with respect to the ownership, occupancy and use of the Property as a condition for the receipt of the City Loan.

AGREEMENT

NOW, THEREFORE, the parties, for and in consideration of the receipt of the proceeds of the City Loan from the City, and such other covenants and conditions herein contained, do hereby agree for themselves, their heirs, executors, administrators, successors, and assigns, as follows:

1. Incorporation of Recitals. The recitals are incorporated by reference into and made a part of this Declaration.

2. Funding. Owner hereby acknowledges that the Property is receiving energy efficiency improvements with funds received pursuant to the American Recovery and Reinvestment Act (ARRA) - U.S. Department of Energy BetterBuildings Neighborhood Program, Energy Efficiency and Conservation EECBG Competitive grant for the purpose of saving energy, creating jobs and transforming a diverse array of neighborhoods along a 10-mile stretch of the light rail line, with certain restrictions and limitations under the City's Energize Phoenix Rental Program ("Program").

3. Nondiscrimination. Owner will not illegally or unconstitutionally discriminate or segregate against any person or group of persons on account of sex, marital status, race, age, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property herein conveyed, nor will the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

4. Period of Affordability. As required under the Program, during the first Ten (10) years after Project Completion (the "Period of Affordability"), the Owner agrees to rent a minimum of 67% **(2 of the 3 assisted units)** to persons with incomes, at the commencement of their leases, at or below 0% to 400% of Federal Poverty Level based on Federal Health and Human Services Department Income Guidelines, adjusted for family size. Property shall remain available for a period of ten (10) years without regard to the term of any mortgage or the transfer of ownership, with the exception of an event of foreclosure as described in Article 9(b) of

Agreement. At the end of the Period of Availability, City shall execute and record appropriate documentation terminating the availability requirements.

5. Use of Property as Multi-family Dwelling Units. The Property's use must remain as multi-family dwelling units for occupancy by tenants whose income meets the definition of low to moderate income **in at least 2 of the 3 units** according to Attachment 3 ("Income Schedule") of Agreement, which may be modified annually.

6. Covenants Run with the Land; Successor Bound Thereby.

(a) Owner intends, declares and covenants, on behalf of herself, her heirs, successors and assigns and all future owners and operators of the Property that, during the term of this Declaration, all of the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Property (i) shall be and are covenants running with the Property, encumbering the Property, and are binding upon the Owner's successors in title and all subsequent owners and operators of the Property, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner and her heirs, successors and assigns during the term of this Declaration. Owner hereby agrees that any and all requirements of the laws of the State of Arizona to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements for privity of estate or title are intended to be satisfied hereby, or in the alternative, that an equitable servitude has been created to ensure that these restrictions will run with the land. For the term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Property or any portion thereof shall expressly provide that such conveyance is subject to this Declaration; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Property or any portion thereof provides that such conveyance is subject to this Declaration.

(b) Owner covenants and agrees for herself, her heirs, successors and assigns and every successor in interest to devote the Property only to the uses specified herein, and further that regardless of the uses which would otherwise be allowed pursuant to the applicable zoning classification, the Property will be devoted only to affordable rental housing for low income and very low income families as required under this Declaration.

7. Amendment. Except as otherwise provided herein, no amendment to this Declaration may be made without the prior written approval of the Owner and the City.

8. Notices. All notices, demands or other writings in this Declaration provided to be given, made or sent by any party to other parties will be deemed to have been fully given, made or sent when made in writing and hand-delivered or three (3) days after being deposited in the United States mail, postage paid, registered or certified and addressed as follows:

**To Owner: DuroMax, LLC
P.O. Box 65884
Phoenix, Arizona 85082-5884**

**To City: Truly Sielaff, Project Manager
City of Phoenix Neighborhood Services Department
200 West Washington Street, 4th Floor
Phoenix, Arizona 85003**

The address to which any notice, demand or other writing may be given, made or sent to any party may be changed by written notice given by such party as provided above.

9. Governing Law. This Declaration shall be governed by the laws of the State of Arizona and, where applicable, the laws of the United States of America.

[signature page follows]

IN WITNESS WHEREOF, the foregoing instrument was executed by the parties hereto effective as of the date first above written.

Owner(s): DuroMax, LLC

[Signature]

Duro Musa, Member

Printed Name: DURO MUSA

CITY OF PHOENIX, ARIZONA, a Municipal Corporation
David Cavazos, City Manager

By: [Signature]

Chris Hallett, Director
Neighborhood Services Department

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ATTEST:

[Signature]

ACTING City Clerk

APPROVED AS TO FORM:

[Signature]

Acting City Attorney



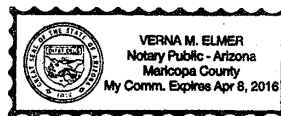
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2012 DEC 20 PM 4:14

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Declaration, plus an attached Exhibit A, was acknowledged before me this 11 day of December, 2012, by DuroMax, LLC, (Trustor).

By: [Signature]
Notary Public

My Commission Expires: April 8, 2016



Declaration

Exhibit A
Legal Description

Parcel

2223 E. Roosevelt Street, Units 1-3

APN: 116-03-013

Description

Lot 1, Block 2, BUMBALOW HEIGHTS, according to Book 27, of Maps, Page 17, records of Maricopa County, Arizona.

Declaration