



Tucson Metropolitan Housing Commission  
Creating the Pima County Community  
Land Trust

Report

**September 12, 2008**



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# 1. Introduction

The City of Tucson Metropolitan Housing Commission is interested in developing a community land trust (CLT) to provide a stock of permanently affordable housing alternatives for low-income residents in Tucson. Accordingly, the City contracted with Burlington Associates (Phase I) to educate the Commission and community stakeholders about community land trusts and to assist the Commission in assessing local housing needs and community support for a community land trust in Tucson and the surrounding area. A report was issued on July 15, 2008.

Following the successful completion of Phase I, the City of Tucson approached the U.S. Department of Housing and Urban Development and ICF International to assist the Commission in assessing the feasibility of a community land trust in Tucson and determining basic recommendations regarding the structure and operation of a Tucson CLT. ICF subcontracted with Burlington Associates in Community Development to make recommendations on the feasibility and CLT operations, while it develops recommendations on using HOME funds for CLT activities.

The purpose of this memo is to report on the process followed and the outcomes that resulted in Phase II and to summarize the general recommendations to be presented by the Metropolitan Housing Commission to Mayor and City Council for approval and authorization to proceed in October 2008.

## 2. Critical Community Land Trust Feasibility Decisions

Any community considering the feasibility of creating and administering a local community land trust must consider very seriously a number of strategic issues before proceeding. These critical issues for the City of Tucson include:

### 2.1. Political Considerations

- Is there probable demand for affordably priced, resale-restricted homes on leased land in Tucson and in Pima County?
- What is the level of support that can be expected from local municipalities? Will the City of Tucson and Pima County be interested in creating a single, countywide CLT that has distinct activities within municipal boundaries? Or is each of the municipalities interested in creating its own separate, independent community land trust to operate exclusively within its respective municipal boundaries?
- Will the City (and the County, if it decides to support CLT activities) make permanent housing affordability an *eligible* use of public resources? Will permanent housing affordability be a *preferred* use of these resources? Will permanent housing affordability be a *requirement* of any housing developing accessing municipal resources?
- Will there be support from the local nonprofit housing development and advocacy sector? Will this support include the willingness of nonprofit developers to 'place' the affordable units they create into a CLT (if created) to protect their long-term affordability?
- Will there be support from the local real estate/development community? Will, for example, local housing lenders be willing to provide leasehold mortgage financing for eligible, qualified buyers of CLT homes? Will there be support (or resistance) from the local for-profit development community, from realtors, from appraiser and title companies and others professionally involved in the Tucson/Pima County Housing market?

## 2.2. Affordability Considerations

- Who will be eligible to live in the CLT's housing, if one were to be established?
- What *type* and *tenure* of housing does this target population need?
- How much can households in the target population afford to pay for this housing?
- How much subsidy is needed to bridge the affordability gap between what households in the target population can afford and how much the housing they need actually costs?
- Where will these subsidy resources come from?
- In what quantity can this subsidy be raised? And, as a result, how many affordably priced home can be created and brought into the CLT's portfolio – beginning when and over what timeline?

## 2.3. Organizational Considerations

- What will be the service area of the CLT – at least initially? The municipal boundaries of the City of Tucson? All of Pima County? One CLT serving both jurisdictions? Or will there be two separate CLTs – one working within the city limits of Tucson and the other working within Pima County, outside the municipal boundaries of Tucson?
- What will be the corporate structure of the CLT? Will a new nonprofit organization be created to operate a community land trust? Or will the CLT be structured as a program – or as a subsidiary entity – to an existing organization, including, perhaps, the City?
- How will the CLT be governed? Will the CLT's board of directors, be comprised of three equal parts, with one-third of the seats reserved for persons living on CLT-owned land? Will there be any “reserved” seats? How will these directors be elected – by an open membership or by the board of directors itself?
- What role(s) will the CLT play in the development of the housing to be brought into its portfolio? Will the CLT act in the primary developer role or will it instead act primarily as the steward of the affordability developed by the nonprofit and for-profit sector and/or through municipal intervention?

## 2.4. Financial Considerations

- What kind of organizational capacity will need to be developed to manage the anticipated portfolio? Specifically, what kind of staffing will be needed?
- What will the organizational operating budget be for the organization – for its initial years of operations? What will be the revenue sources for sustaining this operating budget?
- At what point might the CLT become financially self-sustaining, at least insofar as its basic stewardship functions are concerned?
- What are the reasonable assumptions on which a business plan for the CLT can be developed and implemented?

# 3. Phase I: Assessing Need and Support for a Community Land Trust in Tucson

In March 2008, the City of Tucson contracted with Burlington Associates to provide basic information about community land trusts and to assist the Metropolitan Housing Commission in its efforts to assess local housing and community development needs that could be addressed by a community land trust as well as the level of community support for a Tucson-area CLT. Michael Brown, Partner in Burlington Associates, served as the lead technical assistance

provider to the City of Tucson under this contractual agreement. In June 2008, Michael visited Tucson and met with the Metropolitan Housing Commission and various community stakeholder groups. During this time he provided an overview of the community land trust model and how it works and why it is becoming a preferred vehicle for affordable housing and community development initiatives in municipalities across the country. He also facilitated discussions on local need and support for a possible Tucson CLT. As a result, two very significant facts were discerned about the feasibility of a community land trust in Tucson:

There is clearly a need for a community land trust in Tucson and the surrounding area:

- A needs assessment conducted by the Tucson Metropolitan Housing Commission identifies a substantial affordability gap in the Tucson/Pima County housing market for households earning less than 80% AMI – particularly due to the run-up in housing values taking place between 2003-2006. While this gap has been reduced somewhat by the slump in housing values in the past year or so, the simple fact is that homeownership is far beyond the reach of an alarming number of local households in Tucson and surrounding communities. Some of these households could significantly benefit from homeownership opportunities provided through a Community Land Trust model.
- Like many communities across the country, Tucson and Pima County are beset with a significant foreclosure problem. This situation creates both a crisis and an opportunity: While an estimated 9,000 households are slated to lose their homes through scheduled foreclosures, there is an opportunity for a community land trust to become involved in efforts to acquire foreclosed properties at reduced costs to bring into its permanently affordable portfolio.
- Tucson has a number of challenged neighborhoods in need of revitalization, requiring substantial efforts and significant investments to save the neighborhoods and the households living in them. The community land trust creates a mechanism to structure neighborhood revitalization initiatives without fueling the displacement of lower-income households that all too typically is the result of successful revitalization efforts.

There is political support for permanent housing affordability, in general – and a community land trust, in particular – in Tucson and the surrounding area:

- The City of Tucson and the Metropolitan Housing Commission want permanent housing affordability and are prepared to proceed with creating a community land trust – as evidenced by its willingness to fund the initial CLT feasibility assessment work.
- There is willingness on the part of City and County staff to consider a CLT's permanently affordable housing units an eligible and appropriate use of public subsidy resources. Additional work would be undertaken in the process of establish a CLT to determine if permanent affordability can become a preferred – or perhaps even required – use of public resources.
- Pima County is also very interested in a community land trust to serve residents of the county – and may be willing to allocate some or all of a pool of General Obligation bond funding to a CLT.

- Informational meetings and strategic discussions held with local CHDOs and nonprofits about community land trusts and their potential to preserve the affordability of local housing stock indicated a general openness to CLTs and to permanent housing affordability. Additional work will be required to determine the extent to which there will be active participation in the CLT from the nonprofit development community.
- Developers, realtors and other housing professionals have been involved in a number of the meetings and discussions to date and, from those participating, there has been general receptivity. A key element of the process of establishing the community land trust will be to build awareness and support from this sector.

## 4. Phase II: Designing the Structure of a Community Land Trust in Tucson

Under the work plan approved by ICF for Phase II, Burlington Associates was tasked to follow up on the work completed in Phase This work included:

1. Outline the critical issues to be addressed in determining the feasibility of a community land trust in Tucson;
2. Provide the City with general options and recommendations regarding the structure and operations of a community land trust in Tucson; and
3. Facilitate a decision-making process with City staff and the Metropolitan Housing Commission to develop specific recommendations for approval by the Mayor and City Council in October 2008.

From August 11-13, 2008, Michael Brown visited Tucson and facilitated a series of meetings with City staff and with the Metropolitan Housing Commission's CLT subcommittee, in which specific recommendations were developed for the proposed structure and operations of a community land trust to serve residents of the City of Tucson. He also met with representatives of the County and the broader community, as well as with local CHDOs and assisted City staff in outlining these preliminary recommendations and soliciting reactions and feedback, to broaden the base of awareness and support from throughout the housing and community development sector and the broader community at large. The recommendations developed through this process – recommendations that will form the framework of a policy recommendation to be presented to the Mayor and City Council of the City of Tucson in October 2008 for approval – can be grouped into two major areas, organization structure and mission/work plan.

### 4.1. Organizational Framework

#### 4.1.1. *Geographic Service Area*

*Issue: What will be the geographic service area of the CLT? Will the CLT to be created serve only neighborhoods within the City of Tucson? Or will the CLT (either from the outset or eventually) include communities throughout Pima County?*

The plan envisioned through the Phase II process is to create, over the course of the next 2-3 years, a community land trust that will serve all of Pima County, including the municipalities of Tucson, South Tucson, Oro Valley, Marana, Sahuarita and unincorporated areas of Pima County. The CLT will be structured as a nonprofit corporation and will qualify for tax-exempt designation as a “charitable” organization, likely under Section 501(c)(3) of the Internal Revenue Code. This corporation will also be structured as Community Housing Development Organization (CHDO) – either as an existing CHDO or as a newly incorporated nonprofit.

### **4.1.2. Organizational Structure**

*Issue: How best to structure the new community land trust to assure long-term viability of the organization and its operations? Options include:*

- a. *Should a new CHDO be created to operate as the CLT?*
- b. *Should the CLT be ‘nested’, at least temporarily, within an existing CHDO?*

*Should the City administer the CLT with specific services contracted out to local CHDO(s)? Should an interim arrangement be worked out for administration of the CLT, in order to seize current market opportunities, while a more strategic, long-term structure is developed?*

While the plan is to develop a countywide community land trust, the City recognizes that the process for doing so – incorporating the organization, developing bylaws, seating and orienting an initial board of directors, applying for and receiving tax-exempt designation from the IRS, developing a business plan for the organization, crafting the critical partnerships and collaborations needed – could easily take 2-3 years. In the meantime, the urgency of local needs and the imminent availability of some yet-to-be-determined portion of the recently authorized \$3.92 billion in Neighborhood Stabilization funding both call for a timely response. For these reasons, the Metropolitan Housing Commission and the Community Services Department of the City plan to recommend to the Mayor and City Council an interim arrangement in which the City begins managing and operating a community land trust program either within the City structure or through a wholly-controlled nonprofit subsidiary entity – until such time as a viable, adequately funded, independent community-based CLT is operational.

Very preliminary projections indicate that the City may need to allocate 2 FTE positions to operate the CLT and manage its anticipated portfolio over the course of the next 2-3 years. Potential funding sources to cover the increased costs to the City include the Arizona Department of Housing, the City of Tucson’s Housing Trust Fund and possible administrative funding to be allocated as part of the Neighborhood Stabilization program.

### **4.1.3. Board of Directors**

*Issue: How will the board of directors of the CLT be comprised and selected? How will the CLT be governed? Will the CLT’s board of directors, be comprised of three equal parts, with one-third of the seats reserved for persons living on CLT-owned land? Will there be any “reserved” seats? How will these directors be elected – by an open membership or by the board of directors itself?*

There is consensus on the Housing Commission, its CLT subcommittee, city staff and others involved in the process to date that once operational, the board of directors that governs the CLT’s operations will most likely be structured in the tripartite composition found in the majority

of CLTs across the country. The initial thinking is that the actual composition will be composed as follows: 1/3 of the seats will be reserved for *leaseholders* (and until the CLT has leaseholders, these seats will be filled by those who can reasonably represent the interests of the target population); 1/3 of the seats to be reserved for *community* representatives (in a composition still to be determined); and the remaining 1/3 of the director seats will be reserved for *public* representatives (likely to be filled by governmental and institutional representatives). If the CLT becomes a CHDO, it must meet all legal status, organizational structure, and capacity and experience requirements stipulated for Community Housing Development organizations as explained in Section 7.2 of this memo below.

The work to determine the exact composition of this board – and how board members will be selected – will be worked out in the implementation phase, once decisions that will potentially affect the board requirements are made.

#### **4.1.4. Development Strategy**

*Issue: What development strategies will be used to bring housing into the CLT's portfolio – e.g., intervening in pre-foreclosure situations; acquiring foreclosed REO properties for rehab and resale; acquiring vacant homes and rehabbing for resale; acquiring scattered site vacant land and developing new for-sale housing; acquiring contiguous sites and developing new for-sale (perhaps mixed-income) housing?*

It is anticipated that the primary focus of the CLT's activities within the first 2-3 years of its operations will be on the acquisition (and possible rehabilitation) and resale of foreclosed single-family homes, spurred by the current foreclosure crisis in Tucson and Pima County and by the pending availability of federal Neighborhood Stabilization funding to be used for this purpose. At the same time, this focus does not preclude the possibility of the City-operated CLT program acquiring additional properties and developing new for-sale or rental housing, as opportunities present themselves during this timeframe. The actual strategies for the long-term build-up of the CLT's portfolio will be deliberated and articulated in the business plan to be developed once City approval is secured for moving forward.

#### **4.1.5. Role in Housing Development Activities**

*Issue: What role(s) will the CLT play in the development of housing to be brought into its portfolio?*

During the interim period during which the City is managing and operating the CLT program, it is anticipated that the City will coordinate the acquisition and rehab of foreclosed properties, perhaps in concert with one or more of its development and real estate partners, as well as the resale of these homes to eligible, qualified households. The long-term plan identifying development goals and the specific roles the CLT will likely play in the development process for this housing will also be deliberated and articulated in the to-be-developed business plan.

## **4.2. Mission and Workplan**

### **4.2.1. Target Population**

*Issue: Who will the CLT serve? In addition to specific income restrictions imposed by particular funding programs (e.g., HOME) who will be eligible to live in the CLT's housing?*

With the exception of Primavera Foundation, most Tucson CHDOs that provide affordable homeownership housing using public funding are serving households with incomes above 75% of area median income. This leaves an under-met gap for affordable homeownership between 65-75% AMI – a gap that the City feels can best and most appropriately be met by the CLT. This targeting is consistent with federal HOME requirements and with the income targeting specified in the Neighborhood Stabilization funding, as well as with a number of other public (e.g., Arizona Department of Housing; City of Tucson IDA) and private (e.g., Federal Home Loan Bank) sources. Specific eligibility criteria for the CLT's housing will be developed as the CLT is implemented.

#### **4.2.2. Subsidy Needs**

*Issue: How much can the CLT's target market afford to pay for housing? How large are the affordability gaps? Where will these subsidies come from – in addition to HOME funding, if needed – and in what quantity?*

According to discussions with the City, it is estimated that households in the Tucson/Pima County market earning 65% AMI are able to afford a mortgage ranging from \$100,000 to \$110,000. Based on estimates of the cost to create CLT housing opportunities, subsidies in the range of \$40,000-\$50,000 per unit will be required to help households between 65-75% AMI into homeownership in the region. More specific research will be required to determine the number of households with incomes in this range that could be served by the CLT, once established. Accordingly, the CLT will – in its business planning process – respond to information available from any available market studies. It is anticipated that potential subsidy sources to meet these gaps will include: the City/County HOME Consortium; the City of Tucson's Housing Trust Fund; the City of Tucson's Industrial Development Authority; the pending Neighborhood Stabilization program; the Arizona Department of Housing; the Federal Home Loan Bank of San Francisco's Affordable Housing Program; local employers and area institutions; and private donors.

#### **4.2.3. Distinction from Other Community Housing Programs**

*Issue: How to stratify the CLT's limited-equity housing for other affordably priced housing?*

In order for any community land trust to be successful in creating and preserving a stock of permanently affordable housing, it is imperative to make sure that the CLT is not forced to compete with other similar affordable housing initiatives that do not carry long-term restrictions on land ownership and use, occupancy and resale of the improvements. Targeting at least the initial activities of the CLT towards households with incomes between 65-75% of area media income reduces the potential for conflict and competition between the CLT and other local CHDOs, particularly those providing affordable fee simple homeownership.

#### **4.2.4. Use of HOME Funds**

*Issue: How will HOME funds be utilized most effectively in the creation and preservation of the CLT's permanently affordable housing?*

Precise details about the most effective and most appropriate use of HOME funds by the community land trust, once operational, are detailed in section 2 [below]. However, the City indicated that it is reasonable to expect that \$400,000 in HOME funding would be approved, for use by the CLT to ensure housing affordability, each year by the City/County HOME Consortium, beginning as early as 2009. Structured as affordability gap subsidies, this allocation

could assist a projected 8-10 households (between 65-75% AMI) into permanently affordable homeownership each year. HOME funds allocated for CLT housing affordability will, of course, be used only in ways that are allowable through HOME regulations.

#### **4.2.5. Portfolio Development**

*Issue: How many affordably priced home can be created and brought into the CLT's portfolio – beginning when and over what timeline? What kind of staffing will be required – and in what quantity – to manage this portfolio?*

Accurate projections regarding the size of the CLT's portfolio and how quickly it will grow over the initial years of the CLT's operations will be a major component of the business plan that will be developed for the CLT during the implementation phase (i.e., Phase III).

As mentioned above, it is anticipated that \$400,000 in HOME funding can be approved for CLT housing affordability by the City/County HOME Consortium each year, beginning in 2009. Additionally, the City's Industrial Development Association (IDA) has indicated a willingness to leverage these funds on a 1:1 basis, bringing the total of locally generated funds to an estimated \$800,000 annually – enough to create 16-20 permanently affordable homeownership units each year. Subsidy capital is also to be solicited from other sources, including the City's Housing Trust Fund, the Arizona Department of Housing, local employers and other public and private sourced. Additionally, the pace and scale at which the CLT's portfolio could grow will likely be impacted significantly by the amount of funding to be allocated to the Tucson market through the recently authorized Neighborhood Stabilization program – an amount that will be known by the end of October.

## **5. Role of HOME Funds in the Pima County Community Land Trust**

Given that the Pima County Community Land Trust (CLT) will be formed with the intention of using HOME funds to subsidize a significant number of its activities, ICF has explored the role that HOME funds would play in the activities the CLT pursues and the management structure that it puts into place. As described earlier, the Pima County CLT plans, at least in its initial stages, to acquire foreclosed properties, rehab the home if necessary, and sell the improvements on the land to low-income households in conjunction with a long-term land lease for the land on which the improvements are located. For homebuyers that require assistance, additional subsidy would be made available in the form of down payment assistance. HOME funds could be used in any and all of these activities. Additionally, the City is considering the possibility of renting the properties in the interim, while the market recovers and enough demand is generated for the sale of the improvements. Since rental housing is not generally done as a part of a Community Land Trust – and because it is treated very differently than homeownership in the HOME Program, it presents some very specific issues, which we have outlined in this memo.

The Tucson Metropolitan Housing Commission plans for the CLT to eventually be managed by a CHDO organization so that it may receive HOME CHDO set-aside funds. In the initial phases however, it expects that the City will administer the CLT until an existing or new CHDO is prepared for the responsibility; at which point the CLT can be transferred into the CHDO's

possession. The use of HOME funds will differ slightly depending on who is acting as the administering entity.

This memo describes the possibilities that Tucson should consider in all of these circumstances.

## 6. HOME's Role in the Community Land Trust Activities

Below are descriptions of HOME requirements, specific to each of the range of activities that Tucson has identified as possible within the CLT. In addition to these activity specific requirements, the HOME program additionally requires several guidelines be met for any type of homeowner project, regardless of the activity being pursued. These requirements have been included as a checklist in Appendix A: Homebuyer Written Agreement (Owner, Developer, Sponsor) and Appendix B: Homebuyer Written Agreement (Down payment Assistance).

### 6.1. Acquisition Only

**Timing:** Within the HOME program, funds can only be used for the four eligible activities stated by the program, those being:

- Homeowner rehabilitation
- Homebuyer Projects
- Rental Projects
- TBRA

Because of this, land can only be acquired for the purpose of one of these activities-in this case a homebuyer project. For this reason, until the home is sold and an eligible household is occupying the unit, the HOME Program objective has not been met. When the CLT uses HOME funds to acquire a property, the property title must be transferred to the CLT within six months from the date that the owner of the property and the CLT execute a legally binding contract for sale of the property. Once the property is owned by the CLT, it must complete the HOME activity by either selling it to an eligible household or rehabilitating the property so that it may be sold to an eligible household. In the case that no rehabilitation is necessary, title must then be transferred to an eligible purchaser within 6 months of acquisition by the CLT. By using HOME funds, the CLT is obliged to sell the property to an income eligible household for no more than 95% of the median sales price for that type of housing in the community.

**Property Standards:** If no rehabilitation or construction is planned before the property is occupied, the CLT must ensure that the property meets all state and local building codes and housing quality requirements, and if none exist, that it meets Section 8 Housing Quality Standards. In addition the unit must be visually inspected for lead. All HOME assisted housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 where applicable. In acquisition only activities of existing single family homes, this means discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and handicap is prohibited and that the CLT ensures information regarding the availability of accessible units reaches eligible individuals.

### 6.2. Acquisition and Rehabilitation

**Property Standards:** If the CLT uses HOME funds to acquire a property in foreclosure that does not meet state and local building codes (or Housing Quality Standards if local and state

codes do not exist), it must rehabilitate the property. In some circumstances the CLT may wish to initiate rehabilitation of a home even if it *does* already meet local building codes and housing quality standards (i.e. to install energy efficient measures in homes).

Whenever rehabilitation occurs however, before HOME funds are invested, the PJ must determine that the *after rehabilitation value* of the property will not exceed 95% median sales price for housing of that type in the community. Once this has been determined, HOME funds may be used to acquire and/or rehabilitate the property.

Any rehabilitation activities in a project receiving HOME investment must follow the PJ's written rehabilitation guidelines and upon completion of rehabilitation, the entire unit must additionally meet the state and local building codes and standards. If no such codes exist, the unit must meet the following configuration of model codes:

One of three model codes:

- Uniform Building Code (ICBO)
- National Building Code (BOCA)
- Standard Building Code (SBCCI)

**OR**

- Council of American Building Officials one- or two-family code (CABO)

**OR**

- Minimum Property Standards\* at 24 CFR 200.925 or 200.926 (FHA)

All HOME assisted housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 where applicable. In activities which involve rehabilitation, this means that in addition to prohibiting discrimination as described in the Acquisition only section, all units should be made readily accessible to and usable by handicapped individuals to the maximum extent feasible. The defining standard is that accessibility is not required in a rehabilitation project if it would pose an undue financial or administrative burden on the developer.

Additionally, projects involving the rehabilitation of housing for sale to eligible homebuyers must be made accessible if requested by prospective purchasers with a disabled household member. Marketing materials must state that accessible floor plans and improvements are available on request to qualified households.

**Timing:** If HOME funds are committed to a property that requires rehabilitation to bring it up to code, any health and safety issues must be resolved before the home is occupied and within 6 months of the title being transferred and the building must meet the requirements for rehabilitation within 24 months of the home being occupied. At the time HOME funds are committed to any project in which rehabilitation is planned, (through the execution of a written agreement), there must be a reasonable expectation that rehabilitation will begin within 12 months.

### 6.3. Down Payment Assistance

In addition to subsidies offered to the CLT for the purpose of acquisition and or rehabilitation, HOME funds can be given as a direct subsidy to a homebuyer in the form of down payment assistance. In this instance, the following HOME program requirements would apply.

**Property Standards:** Down payment assistance is considered an acquisition activity and thus the property standards in the Acquisition Only section apply, unless, or until, the CLT used HOME funds to rehabilitate the property.

**Timing:** Until the CLT commits HOME funds to a specific address for an eligible HOME activity, it does not need to adhere to HOME requirements for transferring the title and occupying the home. If the CLT does not receive any HOME funds for acquisition and / or rehabilitation activities, and instead passes HOME funds directly to an eligible homebuyer as down payment assistance, it does not have a time limit on how long it may hold the property from the time it acquired it to the time at which it puts it on the market for sale, unless required by one of the other funding sources it uses. However, once the CLT has committed (through the execution of a written agreement with the homebuyer) to providing down payment assistance, it must do so within 6 months and transfer the title to the improvement and the long term land lease to the homebuyer's name.

**Resale:** When HOME funds are provided as a direct subsidy to a low-income house hold, the PJ must describe in the program design whether recapture or resale will be used to recover the HOME subsidy if the homebuyer sells the home within the affordability period. Because the Community Land Trust model preserves affordability of the home through every sale, the only real choice for assistance to families purchasing within a CLT model is resale. When using resale, the affordability period will be based on the sum of all HOME assistance directed to that address whether it was in the form of acquisition funding, development subsidy, or homebuyer assistance. Because of the CLT purpose to preserve affordability indefinitely, it is assumed that the CLT would outlast the affordability period required by the HOME program, and that improvements will be sold to eligible households at affordable prices well after the affordability period is complete. However, resale also requires that the homeowner receive a fair return on their investment and the CLT must establish from the beginning, how "fair return on investment" will be defined, how eligible households will be identified in the event a homeowner decides to sell within the affordability period, and that the housing will remain affordable for purchase by eligible households (through either legal mechanisms or reasonable presumption as described by the HOME Rule).

Additionally, the CLT must maintain records for any unit receiving HOME funds in the event that the CLT dissolves before the affordability period is met. Should this event occur, the unit must continue to operate under the resale requirements until the affordability period is fulfilled.

### 6.4. Other HOME Requirements

HOME has several requirements that the CLT should be aware of in its operations, but because of its structure are unlikely to affect it. HOME has very specific income eligibility requirements for households assisted with HOME funds. The objective of the CLT is to provide long-term affordable home ownership opportunities to low-income families. As such, the CLT will establish income eligibility requirements for families to purchase improvements. For units assisted with

HOME funds, the CLT should ensure that income eligibility requirements, meet or exceed those established by the HOME program.

Likewise, HOME requires that the sales price, or in activities involving rehabilitation activities, the after rehabilitation value; of an assisted home not exceed 95% of the median purchase price for comparable housing in the area (established by the National Housing Act's Single Family Mortgage Limits in Section 203 (b)). However, within the Community Land Trust model, only the improvement will be sold while the owner of the improvement will have at least a 50-year leasehold interest in the property (per HOME requirements). Within a Community Land Trust model, the sales price is always subsidized to be affordable to its target population; often by reducing the cost of purchase by the value of the lot. If using HOME funds, the Pima County CLT should ensure that the subsidy provided through the CLT brings the price of the home to below the maximum property value amount.

Additionally, based on the amount of subsidy in a project, it must adhere to a period of time within which, it remains affordable. For homeowner projects the maximum amount of time is 15 years. However, in the Community Land Trust model the affordability is ensured indefinitely, until the CLT is dissolved. The Pima County CLT must only ensure that its definition of affordability and eligible households meet HOME's definition in units that have HOME funds in them and that in the event the CLT is dissolved, that HOME's affordability periods have been met before the homes are sold to ineligible households.

## 6.5. Interim Rental

Because of the housing market crisis that recently affected the U.S., and particularly the Arizona housing market, many foreclosed properties are available for purchase by the CLT. Assuming adequate amounts of funding, the Pima County CLT may be in the position to purchase more properties to add to its portfolio than its target consumer market could currently support. Because of this, stakeholders in the CLT have discussed strategies to purchase those properties to add to the CLT portfolio, thereby ensuring their preserved availability for low-income households; but using them to create other types of affordable housing opportunities in the interim before there is sufficient demand for actually purchasing the CLT improvements. One of the suggested strategies is to rent the properties in the short term to low income households until there is sufficient demand by eligible buyers to purchase them. While some CLT portfolios include the purchase of multifamily projects in an effort to preserve the affordability of rental units over the long term, for the present the Pima County CLT plans to purchase single family homes with the purpose of selling the improvements to homebuyers. Rental would only be an interim activity to keep the homes from lying vacant and not an end activity with the CLT mission.

Although renting as an interim activity might be necessary, there is a risk that if the CLT purchases more units than the market can stand and must rent them, that the market for buying those units will not grow and they will continue to be rental units into perpetuity. Because of this, the CLT should ensure that it plans its purchases with full understanding of the current market and how it is likely to behave into the future. Using this information, the CLT can realistically predict the amount of demand to expect for its units. The CLT should not purchase units that exceed this expectation. Because the CLT is planned as an umbrella organization with other community CHDOs and non-profit organizations contributing units that they acquire or develop, it might be an option for the CLT to only acquire a limited number of properties with the sole intent to sell them. For units that the community feels should be preserved as affordable, other

non-CLT entities can acquire them and preserve their affordability into the future but rent them outside the CLT structure until the time when there is sufficient demand to transfer them into the possession of the CLT so that they may be sold within the CLT framework.

### **6.5.1. Considerations When Using HOME Funds**

If the CLT determines that it is within its mission and best interest to itself acquire properties that it will rent for a period of time before selling, another layer of consideration should be given to properties that have HOME funds contributing to their acquisition and/or rehabilitation. The HOME program considers rental projects to be a completely different activity than homeowner projects with different program requirements, considerations, and possibly different affordability periods. Because of this, using HOME funds to acquire properties that will be leased to households for an interim period and then sold to other households, would be a very complicated process and generally not advisable for units receiving HOME subsidy. Should the CLT determine that renting units in the interim is necessary, some options exist to pursue this strategy while avoiding a great deal of complication.

Because the CLT would only pursue renting properties as an interim activity if they receive sufficient funding to purchase a large enough number of units to have a surplus, it could ensure that it only allows those properties that it acquired with funding sources other than HOME to be rented. Because the amount of HOME funds anticipated to contribute to the CLT activities is only sufficient to acquire a small number of units, these units can be put on the market for sale immediately while units acquired with other funding sources can be rented to families until the HOME units are sold and there is sufficient demand to allow them to be sold. In implementing this plan, it is unknown what sources of funding would be used, but the CLT should be aware that if federal funds are used at any point in the project, the Relocation Act applies and households displaced by the units converting to homebuyer housing, will require relocation. If HOME funds are used in a project that will be occupied by a renter, the project will either need to be a lease-purchase activity in a homeownership project or initiated as a rental project.

#### **Lease-purchase program**

One way for the CLT to reach households that might not be in the position to purchase a home outright, could be to designate some of the units it acquires with HOME funds as lease-purchase activities in which a down payment is not immediately necessary but the rent payments that the household makes over time count towards the eventual purchase of the unit.

**Timing:** If the CLT designates one or more units as lease-purchase units, the unit must be leased to an eligible low-income household by executing a lease purchase agreement. *The homebuyer must only qualify as a low-income family at the time the lease-purchase agreement is signed.* Ownership of the HOME-assisted unit must be conveyed to that household within 36 months of signing the lease-purchase agreement, or within 42 months of project completion, whichever is earlier. If at the end of the 36-month period, the household occupying the lease-purchase unit is not eligible or able to purchase the unit, the PJ has an additional six months to identify an eligible homebuyer to purchase the unit. In all cases, if a homebuyer does not purchase the unit by the end of the 42-month period, it must turn into a HOME rental unit. If the tenant of that unit wanted to later purchase that unit, it would be possible as described in the rental section below, but barring this situation, the unit must remain a rental unit until the affordability period is fulfilled.

**Affordability Period:** The affordability period begins at the time that the household puts down the down payment on the home and ownership is transferred to the homebuyer and project is closed out in IDIS - *not at the execution of the lease purchase agreement.*

## Rental

If lease-purchase is decided to be infeasible, the only way units can be made available to renters in the HOME Program is if they are established as rental units. If the CLT uses HOME funds to create rental units and later wants to convert them into affordable housing, this may be done by selling, donating, or otherwise conveying those units to the existing tenants. In this conversion, HOME funds may be used to provide homebuyer assistance to those residents without triggering double dipping.

**Affordability Period:** In the conversion of a rental property to homeownership as described above, if additional HOME funds are used to help existing tenants become homeowners, the minimum period of affordability is the affordability period required by the amount of direct homeownership assistance provided. If no additional HOME funds are used, the homeownership units are subject to resale provisions and to a minimum period of affordability equal to the remaining affordability period that would apply if the units continued as rental units.

## 7. HOME's Role in the Community Land Trust Administration Entity

### 7.1. City Administered

Although the staff of the City of Tucson is planning to administer the CLT in its initial phase, it has not yet been determined whether the CLT will be incorporated as a separate legal entity or if it will be added as one of the City's programs until a CHDO is ready to take ownership. ICF strongly recommends the former option of staffing the CLT as a separate legal entity that pursues HOME activities as a HOME subrecipient, developer, or owner. In this situation, the City of Tucson (and any other consortium member who chooses to) can provide HOME assistance to the CLT from its allocation from the Pima County Consortium as it provides any other entity with HOME funding. City staff will have to be very rigorous in documenting their time spent working on CLT activities as opposed to other HOME activities that the City undertakes and must ensure that time does not overlap. City staff and overhead costs directly related to carrying out the HOME eligible projects pursued by the CLT, such as work specifications preparation, inspections, loan processing and other services related to acquisition, rehab, or assisting potential owners, tenants, and homebuyers, may be charged to project costs. As with all HOME project costs, the cost must be tied to a physical address that receives HOME funding. In the case of costs associated with assisting potential homebuyers, the cost may only be charged to a project if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project. Unless the City of Tucson names the CLT a subrecipient and allocates a portion of administrative costs to the CLT, administrative funds may not be used as the CLT is separate from the City.

If the CLT works in communities outside the Tucson city limits, other consortia members may contribute a portion of their HOME funds to support those projects as they would any other developer implementing HOME eligible activities in their communities. It is important to

remember that the 221(d) 3 limits apply to the maximum amount of HOME funding per unit, and that maximum amount of HOME dollars is from all contributors of HOME funds.

If the City chooses instead to run the CLT as one of its own programs it complicates the land acquisition process, and opens the City to increased legal liability. If using HOME funds to acquire land, the City should keep in mind that it may not then sell that land. If the CLT later transfers to CHDO management, the City will need to donate the land. Before pursuing this option, the City should consult its attorneys.

## 7.2. CHDO Administered

Once the CLT is transferred to ownership by a new or existing CHDO organization, some aspects of its structure and operations will necessarily change as a product of being administered by a CHDO, and thus eligible to receive CHDO set aside funding, CHDO proceeds, and CHDO operating support as well as project specific TA, site control and seed money loans. To receive CHDO funds to produce HOME-assisted housing, the CLT must meet the same legal status, organizational structure, and capacity and experience requirements as any other non-profit organization seeking CHDO status with a few exceptions.

**Organizational Structure:** The CHDO governing board must be composed as follows:

- At least one-third of the board must be residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations. Under the HOME program, for urban areas, the term "community" is defined as one or several neighborhoods, or a city, county, or metropolitan area.
- No more than one third of the board may be representatives of the public sector (e.g. elected/public officials, employees of the PJ, appointed to CHDO Board by public official)

The CHDO must also provide a formal process for low-income program beneficiaries to advise the CHDO on development and management of affordable housing. The process must be described in writing, and must be included in the organization's by-laws or in a board resolution. CHDOs should also establish systems for community involvement in their service areas where housing will be developed, but which are not represented on their boards. Community involvement systems might include special committees of neighbors of a proposed development site, neighborhood advisory councils, or open town meetings.

**Capacity and Experience Requirements:** HOME regulations require CHDOs to have financial accountability standards that conform to 24 CFR 84.21, "Standards for Financial Management Systems."

Typically, CHDOs must also demonstrate that they have at least one year of experience serving the community where it intends to develop the HOME-assisted housing, and that the CHDO's key staff has the capacity to carry out the HOME-assisted activities they are planning. However, Section 233(f) of the National Affordable Housing Act of 1990 exempts CLTs from these two experience and capacity requirements.

**CHDO Eligible Activities:** It is important to note that as the CLT transfers from City management to CHDO management; it may need to distinguish between its HOME subsidized activities. If the CLT is pursuing acquisition, rehabilitation, and down payment assistance with

HOME funds, only some of these are eligible CHDO activities. The CLT may continue to receive HOME subsidy for any and all of these activities. However, the CLT will only be able to receive CHDO set aside funds for the acquisition and acquisition and rehabilitation of projects in which it is acting as the owner, developer, or sponsor. If the CLT provides down payment assistance to home buyers, it must do this as a subrecipient activity unless the assistance is provided to home buyers purchasing HOME subsidized improvements AND the Consortium has agreed to consider this a CHDO eligible activity in its written agreement with the CHDO for the use of those funds. If the Consortium does not allow this to be a CHDO activity or if the down payment assistance is given to homebuyers of non-HOME subsidized improvements it must always be considered a subrecipient activity pursued with general HOME funds.

### ***7.2.1. Supporting a CHDO as a CLT***

The City of Tucson does not yet know whether the CHDO taking over the management of the CLT will be an existing CHDO taking on the CLT activities in addition to its current activities or if it will be a new CHDO created specifically to administer the CLT. In either situation, the CHDO is likely to need support in order to expand its capacity to take on this task. Because of this, the City of Tucson, and any other HOME consortia member that wants to bring Community land trust activities to its community should think strategically about how to ensure the CHDO has the degree of support it needs to successfully carry out its activities. In addition to initially funding the CHDO operated CLT with a technical assistance loan to carry out market studies to ensure that it has a full understanding of the market demand for the housing it offers, the City should strongly consider giving CHDO operating to allow the organization to build its capacity as well as allowing it to retain at least a portion of proceeds as CHDO proceeds.

**Project Specific Technical Assistance Loans.** Up to 10% of the PJ's CHDO set-aside funds may be used for project-specific technical assistance and site control loans. Technical assistance and site control loans are used to determine the feasibility of projects in the early stages of site development. These loans do not require environmental clearance prior to funds commitment. Technical assistance and site control loans may be used only to pay the costs of:

- Consulting, legal, engineering, and/or architectural fees;
- Preliminary financial applications;
- Initial feasibility studies;
- Engaging a development team;
- Site control and title clearance for the project(s); and
- Option to acquire property.

**Operating Expenses.** A maximum of 5% of the PJ's annual allocation can be provided for CHDO operating expenses. Operating expenses are not an eligible cost for CHDO set-aside funds. HOME funds expended for CHDO operating expenses do not have to be matched by the PJ. For any fiscal year, a CHDO may not receive HOME funded support in an amount that provides more than 50% of the organization's total operating budget in the fiscal year or \$50,000 annually, whichever is greater. A CHDO may receive operating support whenever it is pursuing a CHDO eligible activity within the HOME Program. A CHDO may additionally be provided with CHDO operating funds even in the event that it is not implementing a CHDO project, if it is expected that it will be receiving CHDO project set-aside funds within 24 months of receiving funds for operating expenses. When building the capacity of a current or new CHDO to take on the management of the CLT, the City of Tucson should consider taking advantage of the flexibility of these operating funds.

Note the maximum and minimum percentages for CHDO set-aside funds, project specific loans, and operating expenses apply to the Pima County Consortium's annual HOME allocation and not to the City of Tucson's HOME allocation. For example, the City of Tucson could provide more than five percent of its annual HOME funds to the CLT for operating expenses, as long as that amount does not exceed five percent of the Maricopa Consortium's total CHDO operating expenses commitments.

**CHDO Proceeds.** In addition, the Pima County Consortium may authorize the CLT to retain some or all of the proceeds generated from a HOME subsidized development activity, including acquisition and rehabilitation, once the CLT has been transferred into a CHDO management structure. CHDO proceeds are not considered program income and are not subject to HOME Program requirements. Eligible uses for CHDO proceeds are HOME-eligible activities, or other low-income housing activities, which may include operational support of the CLT. Once used once, HOME requirements no longer apply to the proceeds from the use of CHDO proceeds. These funds are completely unrestricted.

Proceeds would include any interest on HOME loans or payment to the CLT upon the sale of one of the improvements in its portfolio that received HOME funding. (CPD Notice 97-9) Additionally, the Consortium may choose to consider the repayment of down payment assistance that the CLT provides to purchasers of its HOME subsidized improvements to be CHDO proceeds. (24CFR92.300 (a) (1)) This is only true of improvements that received HOME funding. Down payment assistance is not a CHDO eligible activity and providing such assistance to the purchasers of improvements that did not receive HOME subsidy is considered a subrecipient activity rather than a CHDO activity. Thus, any repayment of or return generated by HOME funds is considered program income.

In its written agreement with the CHDO, the Pima County Consortium must stipulate whether the CHDO will be allowed to retain proceeds and how the proceeds are to be used. The Consortium has the ability to limit CHDO proceeds to certain projects that the CHDO implements at its discretion. By allowing the CHDO to retain proceeds from its CLT activities, the Consortium is not obligated to allow other CHDOs to retain CHDO proceeds nor is it obligated to allow the CHDO managing the CLT to retain proceeds for other CHDO activities it undertakes. Each time the CLT receives HOME funds for a different project, a new Written Agreement is generated and the option to allow the CHDO to retain CHDO proceeds may be revisited.

## 8. Conclusion

### 8.1. Feasibility Assessment

It is Burlington Associates policy *never* to instruct how a community should design and establish the corporate structure of its CLT and its mission and operations. Nevertheless, it is the clear opinion of both Burlington Associates and ICF that the path chosen by the City of Tucson for its CLT – i.e., to establish a community land trust to serve households throughout Pima County; to proceed with establishing the CLT as a CHDO entity but to initially staff and operate the CLT entity with City staff until such time as the CHDO is incorporated and financially stable and has received its 501(c)(3) designation from the IRS – is the most appropriate way for the CLT to develop. In this way, the CLT can seize current market and funding opportunities without delaying the start of the CLT for a period of 24-36 months. Additionally HOME Funds can clearly

play a role in the Community Land Trust, and a particularly strategic role when the CLT transfers to CHDO ownership.

## 8.2. Next Steps

The next step in the process of establishing a viable community land trust organization to serve low-income households in the City of Tucson and the surrounding area is for the Metropolitan Housing Commission and city staff to initiate the protocol to secure approval by the Mayor and City Council of these preliminary recommendations. Once municipal approval is in place, ICF will work with HUD to arrange for funding for Phase III technical assistance, focused on creating and establishing the Pima County Community Land Trust.

Any plan for moving forward with creating a community land trust will involve further resolution of the critical feasibility issues, based on the progress outlined above. Some work will be required to further resolve a number of the feasibility issues described above on which there has been little progress.

To address these – and all – critical issues on which the community land trust, if authorized, will be founded is set forth in the anticipated Phase III, the implementation phase, of the Community Land Trust’s development. ICF and Burlington Associates outline the projected process for the design and implementation of the community land trust in the section entitled Phase III below.

For the City’s part, it will recruit a steering committee comprised of 5-8 community representatives that will work with the consultants facilitating the process of establishing the CLT and that will ultimately implement and staff the CLT. The steering committee’s role will be to deliberate and determine the issues critical to the formation and initial operation of the CLT. This committee should be comprised of community leaders who not only bring the perspective needed to grapple with these key decisions and would be committed to the process until the CLT is formed, but who expect to be able, and are committed, to continuing on as members of the CLT’s initial board of directors, once it is incorporated. If this Steering Committee is expected to contribute largely to the initial Board of Directors of the CLT, it should be comprised of members that meet CHDO board requirements of the HOME Program to the greatest extent possible.

During Phase III we project that Burlington Associates will help to guide this steering committee through the critical deliberation and decision-making process needed to form the CLT and its initial operations. This process would focus on making the decisions required to transform the CLT from a concept in the planning stages to an operationalized entity.

## 8.3. Phase III

Based on this work, ICF and Burlington Associates envision Phase III as having the following components:

### ***8.3.1. Develop Basic CLT Structure***

Develop articles of incorporation, bylaws, and application for tax-exempt status.

### ***8.3.2. Build CLT Organizational Capacity***

Develop a preliminary business plan for this new CLT initiative, identifying:

- Determine development strategies for CLT housing
- Foreclosure properties (pre-foreclosure intervention; post-foreclosure acquisition)
- Rehab of existing homes (acquisition/rehab of vacant properties; acquisition/rehab of owner-occupied homes)
- New construction (scattered sites; contiguous site; mixed-income; mixed-use)
- Determine subsidy requirements – on a per/home basis and likely number of potential subsidy allocations
- Determine projected number of homes to be brought into CLT's portfolio over specified timeline.
- Identify partnerships and strategic alliances to be developed in order to meet production goals.
- Identify resources needed from public sector (city, county and state) and private sector (e.g., Federal Home Loan Bank, philanthropic sector, faith-based community, corporate and employer sector) needed to meet production goals.
- Develop staffing plan needed to assure successful operation of CLT program in all phases (pre-development, development, pre-purchase, post-purchase and resale).
- Project multi-year operating budget requirements for successful operation of CLT program.

### ***8.3.3. Develop CLT Homeownership Program***

Develop an operable CLT homeownership program by doing the following:

- Develop a CLT ground lease, including resale formula, suitable for successful operation of CLT.
- Create a resale formula and set of related resale policies to govern the resale of the CLT homes and to assure that all HOME requirements will be met for properties in which HOME funds are utilized.
- Arrange for mortgage financing for CLT homebuyers.
- Develop orientation strategies and materials to educate potential homebuyers about benefits and responsibilities of buying, owning and selling a home through the CLT.
- Author homebuyer selection policies, that describe:
  - Income targeting for CLT homebuyers
  - Eligibility and selection criteria
  - Application and selection process
- Develop educational strategies to educate key constituencies, including:
  - Real estate and development sector (appraisers, assessors, realtors, title companies, developers, etc.)
  - General public

### ***8.3.4. Implement a CLT Homeownership Program***

In Phase III, as it is now foreseen, the City of Tucson would be responsible, for:

- Recruiting and staff a 5-8 person CLT steering committee
- Determining the policy issues regarding permanent housing affordability outlined above.
- Scheduling and convening all meetings of the steering committee and arranging for other meetings and presentations as required – and covering any costs related to these meetings (e.g., publicity, refreshments, photocopying, etc.)
- Arranging for funding to cover necessary legal work, including

- Review of legal documents developed by steering committee (articles of incorporation, bylaws, ground lease, homebuyer selection policies)
- Complete IRS Form 1023 requesting 501(c)(3) tax-exempt designation for CLT. (*Note: I can provide some assistance with this application form*).
- Develop closing documents for home purchase transaction closings.
- Provide general representation

It will be important throughout the design and implementation of this work to continue to ensure that all HOME requirements are met going forward, so that HOME funds remain a viable option for the CLT. Likewise, the Tucson Metropolitan Housing Commission and/or the CLT steering committee should monitor the guidelines that are released for the Neighborhood Revitalization Funds, so that the CLT will be able to use those funds as well.

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**Attachment A**  
**Checklist for Written Agreements**  
**between the PJ and the Owner, Developer, Sponsor**

**Homebuyer Projects**

A PJ can use this checklist to determine whether or not their written agreements with an owner, developer, or sponsor of for-sale housing includes all the provisions that are required or recommended by HUD to protect the PJ's HOME investment before disbursing funds.

\*Required items are denoted with an asterisk.

HOME Rule Requirements	Yes / No	Document Name and Section	NOTES
<b>*Provisions to Describe Use of HOME Funds</b>			
1. *Project description Single document/section that captures the description in agreement(s)			
2. *Project address			
3. *HOME unit(s) and unit size(s)			
4. Non-HOME unit(s) and unit size(s)			
5. *Number of accessible units, and/or special accessibility features, if any			
6. Are any of the following applicable/included in the checklist			
a. Land assembly and subdivision,			
b. Environmental remediation,			
c. Lead-based paint treatment,			
d. Demolition or other site preparation,			

e. Relocation, or			
f. Infrastructure development.			
7. Type of ownership			
8. Additional project elements			
9. *HOME activity to be undertaken			
10. *Tasks to be performed			
11. *Schedule for completing tasks			
12. Enforcement Procedure for completing tasks			
13. *Budget			
14. Sources and uses statement, including amount, form, use, and terms of HOME subsidy			
15. Sales Revenue addressed in Budget or Sources and Uses			
16. Amount and use of non-HOME funds			
17. *Maximum HOME subsidy amount (per unit, by unit type)			
18. *Actual HOME subsidy amount (per unit, by unit type)			
19. *Subsidy Layering			
a. Statement that funds invested are no more than necessary to provide affordable housing			
b. Requirement to disclose to PJ any changes in sources of funds within a specific time period from notice of such changes			

c. Ability of PJ to revise award amounts based on revised Sources and subsequent Subsidy Layering analysis			
<b>Provisions to Clarify Roles and Expectations</b>			
20. Roles and responsibilities of each party			
21. Performance goals and performance standards			
<b>*Provisions to Convey Affordability Restrictions of 92.254</b>			
22. *Statement that housing must meet affordability requirements of 92.254, as applicable			
a. *Requirement that housing be single-family housing			
b. * Requirement that housing be modest. Value of the property (after-rehab value for rehabilitation) and the property purchase price			
c. *Requirement that housing is sold to a certified eligible low-income household			
i. Applicable HOME income limits			
ii. Definition to be used when determining income			

iii. Format requirements for determining income			
iv. Targeting Requirements/ Affordability to Prospective Homebuyer			
1. Guidelines for affordable PITI			
2. Guidelines for acceptable lending ratios			
d. *Principal residency			
i. Requirement that housing be principal residence of household acquiring housing			
ii. Verification of principal residency			
iii. Party responsible for verification			
e. *Duration of affordability period (Start and end dates; if not known, indicate how PJ will determine these dates and notify the owner/ developer)			

23. *Statement that if affordability requirements are not met for the specified time period, the HOME funds must be repaid			
<b>*Resale or Recapture Provisions and Terms</b>			
24. *Explanation of what triggers resale or recapture provisions (sale or foreclosure)			
25. *Submission and approval requirements related to the sale and/or transfer of the property			
26. *If resale:			
a. Description of resale restrictions			
b. Definition of:			
i. Low-income buyer			
ii. Use of property as principal residence,			
iii. Affordable price, and			
iv. Fair return to owner			
c. Statement describing the presumption of affordability, if applicable			
27. *If recapture:			
a. Description of the recapture provisions			

b. Amount and definition of HOME assistance to the buyer, (development subsidy plus downpayment or closing costs)			
c. Definition of net proceeds			
d. Method of calculating the amount of funds			
e. Description of how PJ will determine the amount to be recaptured if the net proceeds are not sufficient to repay the HOME assistance			
28. Statement that the sale to the buyer is contingent on the execution of a written agreement between the PJ and the buyer, or that the PJ must be a third party signatory to developer/owner agreement with buyer)			
29. Homebuyer written agreement attached to grantee written agreement.			
30. *List/description of HOME requirements that must be conveyed to buyer in the agreement(s) between the owner/developer and the buyer (see Checklist: Written Agreements with Beneficiaries: Homebuyers)			
<b>Project Requirements</b>			

31. *Statement requiring compliance with project requirements in Subpart F			
32. *Maximum Per-unit Subsidy Amount and Subsidy Layering (if applicable)			
33. *Property Standards			
34. *Qualifications as Affordable Housing			
35. *Conditions for faith-based organizations:			
a. Organization directly receiving HOME funds may not engage in inherently religious activities			
b. Organization may not engage in inherently religious activities with HOME funds			
c. Organization will not discriminate against program beneficiaries for religious beliefs			
d. Structures funded with HOME funds will not be used for inherently religious purposes			
<b>Property Standards</b>			
36. *Applicable property standards at 92.251			

<p>a. *Housing must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion.</p>			
<p>i. PJ's Written rehabilitation standards required and referenced/attached</p>			
<p>ii. Requirement to meet current edition of Model Energy Code (now called the International Energy Conservation Code) published by the Council of American Building Officials.</p>			
<p>b. *In the absence of a local code for new construction or rehabilitation, housing must meet one of three model codes (ICBO, BOCA, SBCCI) or CABO one or two family code or MPS in 24 CFR 200.925 or 200.926.</p>			

<p>c. *The housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).</p>			
<p>d. *Covered multifamily dwellings, as defined at 24 CFR 100.201 must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 USC 3601-3619).</p>			
<p>e. All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.</p>			
<p>f. Construction of manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280.</p>			

g. PJs providing HOME assistance to install manufactured housing units must comply with applicable State or local laws/codes.			
h. In absence of State and local laws/codes for installation of manufactured housing units, PJ must comply with manufacturer's written instruction for installation.			
37. *Housing must meet the Lead-based paint requirements at Part 35 subparts A, B, J, K, M, and R			
<b>*Provisions Related to Other Federal Requirements</b>			
38. *Project must be carried out in compliance with applicable requirements of Subpart H, Other Federal Requirements, including:			
a. *Affirmative marketing and minority/women outreach requirements at 92.351 (for projects with five or more units)			
b. *Nondiscrimination provisions of 92.350			
c. *Displacement, relocation, and acquisition provisions at 92.353			

d. *Labor provisions of 92.354			
i. Davis Bacon (for projects with 12 or more units)			
ii. Contract Work hours and safety standards			
iii. Anti-kickback Act			
iv. Fair Labor Standards			
e. *Conflict of interest provisions prescribed in 92.356(f)			
f. Guidelines for marketing accessible units, if applicable			
g. Fair housing provisions			
<b>Funds Disbursement</b>			
39. *Statement that “developer may not request disbursement of funds until funds are needed for payment of eligible costs.”			
40. *Statement that “amount of disbursement request must be limited to the amount needed.”			
41. When and how HOME funds can be requested		•	•
42. Change order process and format requirements		•	•
43. Documentation needed to substantiate costs, including approvals for construction work, weekly payroll records, progress reports		•	•

44. Retainage that will be withheld and conditions under which the retainage is released		•	•
<b>CHDO Provisions if Applicable</b>			
1. *Requirement to maintain qualifications as a CHDO as defined in §92.2			
2. *Specify applicable provisions of 92.300 and 92.301, including:			
a. CHDO proceeds- whether the CHDO retains CHDO proceeds or returns them to the PJ			
b. If CHDO retains proceeds, how they can be used			
c. Whether any funds are for project-specific technical assistance or site control loans and if so, the amount and terms of those funds			
<b>Provisions for special circumstances</b>			
45. ADDI provisions, if ADDI funds are used			
a. Eligible homebuyers must be first-time homebuyers in addition to meeting HOME income eligibility requirements			
b. Resale of home is limited to first-time homebuyers only			

46. Lease-purchase provisions, if applicable			
a. Description of terms of the lease-purchase arrangement, include requirements that housing must be purchased by the buyer within 36 months of signing the lease-purchase agreement. 92.254(a)(6)			
47. Rental housing provisions, if applicable			
a. For projects with 2- to 4- units that are also HOME-assisted, convey HOME rental requirements to homebuyer.			
b. Specify if PJ chooses to impose the resale or recapture provisions on the rental units.			
<b>Reporting and Record-keeping Provisions</b>			
48. *What reports must be submitted to the PJ		•	•
49. How often must reports be submitted			
50. Reserve right to change reporting requirements, as needed			
51. *What records must be maintained by the owner/developer/sponsor			
52. Reserve right to review records and reports by PJ, HUD, IG, etc.			
53. How long must records be retained			

54. Additional reporting or record-keeping requirements imposed by the PJ on the project			
<b>*Enforcement Provisions</b>			
55. *Mechanism for securing affordability requirements (recorded deed or use restriction, or land covenant)		•	•
56. Definition of breach of the HOME requirements/agreement			
57. Requirements for the PJ to notify the owner/developer/sponsor of a default of the agreement, if any			
58. Remedies or penalties for noncompliance/breach of agreement			
<b>General Provisions</b>			
59. *Anti-lobbying language, as required by Consolidated Plan certifications, in accordance with 24 CFR 91.225			
60. *Duration of the agreement for at least until completion of the project and ownership by low-income family			
61. How agreement can be cancelled without cause			
62. Whether and how the owner/developer/sponsor can assign the agreement to another party		•	•
63. How the agreement can be modified or amended		•	•

64. Insurance requirements imposed by PJ, such as property insurance, workers compensation, employers' liability insurance, commercial general liability insurance, risk property damage insurance			
65. PJ requirements related to project publicity			
66. Indemnification			
67. PJ approval of subcontractors			
68. Whether agreement is binding to successors and assigns			
69. Form of notice, as it may be required in agreement			•

**Attachment B**  
**Checklist for Written Agreements**  
**between the PJ and a Beneficiary: Homebuyers**

The PJ must have a written legal relationship with a homebuyer when the PJ provides either direct downpayment or closing cost assistance to the homebuyer, or when the PJ provides funding to a developer and the homebuyer receives HOME assistance in the form of a development subsidy by purchasing a HOME-assisted unit:

- If any of the HOME assistance is provided directly to the homebuyer, the PJ must have a written agreement with the homebuyer before it provides assistance to the homebuyer;
- If all the HOME assistance is provided to the developer in the form of a development subsidy, and the homebuyer does not receive any direct assistance, then the PJ must either (1) execute a separate written agreement with the homebuyer, or (2) be a third party signatory with the developer and homebuyer to convey the HOME requirements to the buyer and provide the PJ with enforcement authority.

PJs can use this checklist to determine whether or not their written agreements with homebuyers include all the provisions that are required and/or recommended by HUD to protect the PJ’s HOME investment before disbursing funds.

\*Required items are denoted with an asterisk.

	Yes/No
<b>Provisions to Describe the Use of HOME Funds</b>	
1. *Amount and form of the HOME assistance (for each type of assistance to the buyer)	
2. *Use of HOME funds (i.e., downpayment, closing costs, development subsidy), including a description of all the assistance to the buyer	
3. *Time by which the housing must be acquired	
4. Duration of the agreement (same as duration of the affordability period)	
<b>Provisions to Convey Affordability Restrictions of 92.254</b>	
1. *Affordability period (start and end date)	
2. *Property value	
3. Purchase price	
4. *Principal residence requirement	
5. *Whether resale or recapture provisions that apply	
6. *Recapture provisions, if applicable <ul style="list-style-type: none"> <li>a. If buyer sells home, or if home is foreclosed, then the HOME assistance to the buyer will be recaptured by the PJ. <ul style="list-style-type: none"> <li>i. Define “assistance to the buyer,” the amount to be repaid to the PJ if the net proceeds are sufficient</li> <li>ii. Define net proceeds</li> </ul> </li> <li>b. Describe how the PJ will determine the amount to be</li> </ul>	

recaptured if the net proceeds are not sufficient to pay the HOME assistance	
<ul style="list-style-type: none"> <li>7. *Resale provisions, if applicable <ul style="list-style-type: none"> <li>a. If buyer sells home, or if home is foreclosed, then subsequent purchaser must be low-income and occupy unit as principal residence</li> <li>b. Sale price must provide original buyer a fair return on investment and be affordable to reasonable range of low-income buyers, unless presumption of affordability (see #4)</li> <li>c. Definition of terms, unless presumption of affordability (see #4) <ul style="list-style-type: none"> <li>i. Low-income buyer</li> <li>ii. Affordable price</li> <li>iii. Fair return to owner</li> </ul> </li> <li>d. Whether the PJ is using a presumption of affordability, if applicable</li> </ul> </li> </ul>	
<b>Special Types of Homebuyer Agreements</b>	
1. If property has 2 to 4 units that are also HOME-assisted	
2. Statement that rental units are subject to the HOME affordability rental requirements in accordance with 92.252.	
3. Whether the PJ chooses to impose the resale or recapture restrictions on all of the assisted units (including the rental unit). See 92.254(a)(6).	
4. *Lease purchase terms, if applicable	
5. Statement that housing must be purchased by the buyer within 36 months of signing the lease-purchase agreement	
<b>Enforcement Provisions</b>	
1. Definition of a breach of agreement	
2. PJ rights and responsibilities to enforce agreement	
3. What happens if job defaults?	