

RESOLUTION NO. 31
PRONGHORN RANCH COMMUNITY FACILITIES DISTRICT

A RESOLUTION OF THE DISTRICT BOARD OF THE PRONGHORN RANCH COMMUNITY FACILITIES DISTRICT, A COMMUNITY FACILITIES DISTRICT OF ARIZONA, PROVIDING (IN ACCORDANCE WITH SUBSECTIONS 6.01(B), 7.01(B), 9.01(2) AND 9.01(5) OF THE SERIES 2002 AND 2004 INDENTURE OF TRUST AND SECURITY AGREEMENT BETWEEN THE DISTRICT AS “ISSUER” AND WELLS FARGO BANK ARIZONA, N.A. AS “TRUSTEE”) THAT, NOTWITHSTANDING SUBSECTION 1.12 IN THE (A) SERIES 2002 STANDBY CONTRIBUTION AGREEMENT, (B) COMBINED FIRST AMENDMENT TO DISTRICT DEVELOPMENT, FINANCING PARTICIPATION AND INTERGOVERNMENTAL AGREEMENT AND SERIES 2004 STANDBY CONTRIBUTION AGREEMENT, (C) SERIES 2002 PAYMENT AGREEMENT, (D) SERIES 2004 PAYMENT AGREEMENT, (E) SERIES 2002 DEPOSITORY AGREEMENT, AND (F) SERIES 2004 DEPOSITORY AGREEMENT, SAID AGREEMENTS AND THE OBLIGATIONS THEREIN SHALL NOT CEASE UNTIL THE PAYMENTS OF ANY REFUNDING BONDS OF THE DISTRICT GENERAL OBLIGATION BONDS SERIES 2002 AND 2004 HAVE BEEN MADE IN FULL; NOR SHALL THE SUCCESSOR-IN-INTEREST STANDBY CONTRIBUTION CHARGE (SISCC) ADOPTED BY DISTRICT RESOLUTION NO. 28 (RELATED TO SAID AGREEMENTS AND THE OBLIGATIONS THEREIN) CEASE UNTIL THE PAYMENTS OF ANY SUCH REFUNDING BONDS HAVE BEEN MADE IN FULL; AND PROVIDING THAT THIS RESOLUTION SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, on May 11, 2000 the Town Council (“Council”) of the Town of Prescott Valley (“Town”) adopted Resolution No. 963 approving an “Amended & Restated Development Agreement” (“Development Agreement”) with Antelope Village, LLC (“Antelope Village”) for a term until May 25, 2015 relating to development of 640 acres in Sections 23 and 26, T15N, R1W, G&SRB&M (Exhibit A attached hereto, “Pronghorn Ranch”); and

WHEREAS, said Development Agreement provided (among other things) conditions for formation by the Town of a community facilities district under ARS §48-701 et seq. (“CFD Article”) to issue bonds to finance certain infrastructure for Pronghorn Ranch; and

WHEREAS, in accordance with the Development Agreement, on January 24, 2002 the Town Council adopted Resolution No. 1067 forming the Pronghorn Ranch Community Facilities District (“PRCFD”) in accordance with the CFD Article; and

WHEREAS, that same day the District Board (“Board”) of PRCFD adopted Resolution No. 1 which (among other things) approved a “District Development, Financing Participation and Intergovernmental Agreement” dated January 1, 2002 (“Financing Agreement”) with First American Title Insurance Agency of Yavapai, Inc., trustee under Trust No. 4751 (“First American”), Brown Family Communities (“Brown Family”), Western Communities Corporation (“Western Communities”), Antelope Village, Coyote Springs LLC (“Coyote Springs”), and Prescott Valley VII LLC (“PV VII”). In turn, the Financing Agreement provided (among other things) that debt service on bonds to be issued by PRCFD to finance construction of certain infrastructure for

Pronghorn Ranch would be paid from annual ad valorem tax revenues received by PRCFD from future property owners; and

WHEREAS, said Financing Agreement further provided that, to regulate the tax rate levied to pay debt service on each series of bonds (and as a condition to PRCFD issuing bonds), Brown Family, Antelope Village and PV VII would enter into a (a) Standby Contribution Agreement (“Contribution Agreement”) with PRCFD by which Brown Family, Antelope Village and PV VII would be jointly and severally liable to pay to PRCFD amounts needed to maintain the annual tax rate at no more than \$3.00 per \$100.00 of secondary assessed valuation (“Standby Contributions”), and (b) a Payment Agreement (“Payment Agreement”) with PRCFD whereby Antelope Village would deposit in the name of PRCFD (with the bond trustee under a Depository Agreement (“Depository Agreement”)) an amount equal to 10% of any bond principal (“Deposit”); and

WHEREAS, said Financing Agreement also provided that the Depository Agreement would provide that the Deposit be applied towards bond debt service payments if adequate Standby Contributions were not made under the Contribution Agreement. The Payment Agreement would provide that any balances in the Deposit would eventually be paid to Antelope Village at the end of any bond term or when a formula indicated sufficient ad valorem tax revenues were being collected to make bond debt service payments; and

WHEREAS, said Financing Agreement provided that PRCFD would annually levy an additional ad valorem tax on property within Pronghorn Ranch to pay PRCFD expenses to operate and maintain the infrastructure financed through bond revenues (“O&M Tax”) and, to the extent the revenues of the O&M Tax were insufficient to pay said expenses, Brown Family, Western Communities, Antelope Village and PV VII would be jointly and severally liable to pay on July 1 of each fiscal year the amount of any shortfall indicated in the PRCFD budget (not to exceed \$16,200.00 each year until the earlier of July 1, 2017 or the July 1 after the building permit for the 1000th density unit in Pronghorn Ranch was issued by the Town) (“O&M Contribution”); and

WHEREAS, said Financing Agreement is effective until January 1, 2052 and provided at Subsection 7.3 that its obligations would be applicable to any successors and assigns of Brown Family, Western Communities, Antelope Village and PV VII; and

WHEREAS, in accordance with the CFD Article a special election was held on February 26, 2002 whereby the qualified elector voted to authorize (a) issuance of \$7,000,000.00 aggregate principal amount of PRCFD general obligation bonds for infrastructure purposes (payable from annual ad valorem taxes levied within Pronghorn Ranch), and (b) levy and collection of an O&M Tax at a rate not to exceed \$0.30 per \$100.00 secondary assessed valuation; and

WHEREAS, on February 28, 2002, the PRCFD Board adopted Resolution No. 3 which (among other things) authorized issuance of \$7,000,000.00 in general obligation bonds (“2002 Bonds”) and approved a Feasibility Report which identified infrastructure to be financed by the 2002 Bonds (“2002 Feasibility Report”); and

WHEREAS, Resolution No. 3 further approved a (a) Contribution Agreement dated April 1, 2002 (“2002 Contribution Agreement”) with Wells Fargo Bank Arizona, N.A. (“Trustee”), Brown Family, Western Communities, Antelope Village and PV VII, (b) Payment Agreement dated April 1, 2002 (“2002 Payment Agreement”) with Brown Family, Western Communities, Antelope Village and PV VII, and (c) Depository Agreement dated April 1, 2002 (“2002 Depository Agreement”) with the Trustee; and

WHEREAS, on April 1, 2002, PRCFD issued just \$3,000,000.00 of the \$7,000,000.00 authorized 2002 Bonds (resulting in a payment of \$300,000.00 toward the Deposit by Antelope Village under the 2002 Payment Agreement), with a payment term until July 15, 2027; and

WHEREAS, on February 13, 2003, the PRCFD Board approved an intergovernmental agreement with the Town in accordance with ARS §11-951 et seq. (“IGA”) for an initial term through June 30, 2008 (and automatically renewing for subsequent five-year terms unless timely canceled by either party) which (among other things) retained the Town as agent on behalf of PRCFD and authorized the Town to provide all administration and legal services needed to administer PRCFD (consistent with and subject to the powers vested in PRCFD under the CFD Article). Said services included conducting day-to-day PRCFD operations such as administration, finance, reimbursement, credit, collection, and contract administration, and establishing and administering accounting procedures and controls (in accordance with sound industry practice); and

WHEREAS, the PRCFD Board adopted Resolution No. 11 on August 12, 2004 which (among other things) authorized issuance of the remaining \$4,000,000.00 aggregate principal amount of general obligation bonds (“2004 Bonds”); and

WHEREAS, Resolution No. 11 further approved a (a) Combined First Amendment to District Development, Financing Participation and Intergovernmental Agreement and Series 2004 Standby Contribution Agreement dated September 1, 2004 (“2004 Financing & Contribution Agreement”) with Trustee, Brown Family, Western Communities, Coyote Springs, PV VII, First American and Antelope Village, (b) Payment Agreement dated September 1, 2004 (“2004 Payment Agreement”) with Brown Family, Western Communities, and Antelope Village, and (c) Depository Agreement dated September 1, 2004 (“2004 Depository Agreement”) with the Trustee; and

WHEREAS, on September 1, 2004, PRCFD issued \$4,000,000.00 of 2004 Bonds (resulting in a payment of an additional \$400,000.00 into the Deposit by Antelope Village under the 2004 Payment Agreement), with a payment term until July 15, 2029; and

WHEREAS, after considerable initial success Pronghorn Ranch began to suffer the ill effects of the worldwide recession; and

WHEREAS, on December 19, 2008 Brown Family’s interests in all property in Pronghorn Ranch were assigned to First American (as trustee) for Am Trust Bank (formerly Ohio Savings Bank) as beneficiary; and

WHEREAS, at the beginning of 2009 PRCFD/Town staff were informed that no bankruptcy was planned by Brown Family but foreclosure by one or more banks against Brown Family was expected; and

WHEREAS, on June 12, 2009 a trustee's sale was held on Am Trust Bank's collateral and a subsequent deed listed IOTA Brown LLC (an entity created by Am Trust Bank) as purchaser for \$6,500,000.00; and

WHEREAS, on July 15, 2009 the bond Trustee found it necessary to make an unscheduled draw of \$93,558.91 from the \$700,000.00 in the Deposit in order to make the bond debt service payment due that day (no Standby Contribution having been paid by Brown Family, Western Communities, Antelope Village or PV VII); and

WHEREAS, sufficient ad valorem tax revenues were collected to make the January 15, 2010 bond debt service payment (removing the need for any Standby Contribution or draw from the Deposit); and

WHEREAS, on July 15, 2010 the bond Trustee found it necessary to make an unscheduled draw of \$46,211.81 from the Deposit in order to make the bond debt service payment due that day (no Standby Contribution having been made by Brown Family, Western Communities, Antelope Village or PV VII); and

WHEREAS, sufficient ad valorem tax revenues were collected to make the January 15, 2011 bond debt service payment (removing the need for any Standby Contribution or draw from the Deposit); and

WHEREAS, on June 22, 2011, in response to precipitous drops in secondary assessed valuations of real and personal property in Pronghorn Ranch, the PRCFD Board adopted Resolution No. 25 setting a tax rate of approximately \$3.90 per \$100.00 secondary assessed valuation as part of its FY 2011-2012 budget process; and

WHEREAS, on July 15, 2011 the bond Trustee found it necessary to make an unscheduled draw of \$117,302.08 from the Deposit in order to make the bond debt service payment due that day (no Standby Contribution having been made by Brown Family, Western Communities, Antelope Village or PV VII); and

WHEREAS, sufficient ad valorem tax revenues were collected to make the January 15, 2012 bond debt service payment (removing the need for any Standby Contribution or draw from the Deposit); and

WHEREAS, on July 12, 2012, in response to continuing drops in secondary assessed valuations of real and personal property in Pronghorn Ranch, the PRCFD Board adopted Resolution No. 27 setting a tax rate of approximately \$4.80 per \$100.00 secondary assessed valuation as part of its FY 2012-2013 budget process; and

WHEREAS, on July 15, 2012 the bond Trustee found it necessary to make an unscheduled draw of \$192,459.06 from the Deposit (leaving a balance of \$250,470.37) in order to make the bond debt service payment due that day (no Standby Contribution having been made by Brown Family, Western Communities, Antelope Village or PV VII); and

WHEREAS, sufficient ad valorem tax revenues were collected to make the January 15, 2013 bond debt service payment (removing the need for any Standby Contribution or draw from the Deposit); and

WHEREAS, on August 14, 2012 (in response to a query from the PRCFD Manager), the PRCFD Treasurer reported that total draws from the Deposit as of that date were \$449,529.63 and total non-payments of the O&M Contributions (not including FY2012-13) were \$48,600.00, for a total of \$498,129.63 (or \$1,872.67 per undeveloped platted lot); and

WHEREAS, on January 24, 2013 (in an effort to meet its obligations with regard to the 2002 and 2004 Bonds and take steps to provide for Standby Contributions to reduce the need for future draws on the Deposit and keep actual PRCFD ad valorem tax collections at a reasonable level), the PRCFD Board adopted Resolution No. 28 requiring that owner(s) of currently-platted (or subsequently-platted) lots in Pronghorn Ranch for which building or other development permits issued by the Town have not been applied for as of the date of the Resolution (said owner(s) being successors-in-interest to Brown Family, Western Communities, Antelope Village, and/or PV VII) pay to PRCFD (upon application to the Town for required permits) a Successor-in-Interest Standby-Contribution Charge ("SISCC") of \$1,872.67 per lot (or, in the case of multi-family housing, per dwelling unit), subject to future modification in amount as set forth therein; and

WHEREAS, on July 11, 2013, in response to stabilizing of secondary assessed valuations of real and personal property in Pronghorn Ranch, the PRCFD Board adopted Resolution No. 30 leaving the tax rate at approximately \$4.80 per \$100.00 secondary assessed valuation as part of its FY 2013-2014 budget process; and

WHEREAS, on July 15, 2013 the bond Trustee found it necessary to make an unscheduled draw of \$57,276.00 from the Deposit (leaving a balance of \$193,194.37) in order to make the bond debt service payment due that day (no Standby Contribution having been made by Brown Family, Western Communities, Antelope Village or PV VII but \$24,344.71 having been collected in SISCCs); and

WHEREAS, PRCFD staff has been exploring with the Series 2002 and 2004 Bond underwriters the potential for refinancing these Bonds through the issuance of 2013 Refunding Bonds; and

WHEREAS, Subsection 1.12 in the 2002 Contribution Agreement, 2004 Financing & Contribution Agreement, 2002 Payment Agreement, 2004 Payment Agreement, 2002 Depository Agreement, and 2004 Depository Agreement provides that said Agreements would generally terminate upon full payment of any bonds issued thereunder (and upon written approval of the PRCFD Board); but

WHEREAS, Subsection 7.01(B) of the 2002 and 2004 Indentures also provides that PRCFD as Issuer has an obligation to cause performance of the obligations in the 2002 Contribution Agreement, 2004 Financing & Contribution Agreement, 2002 Payment Agreement, 2004 Payment Agreement, 2002 Depository Agreement, and 2004 Depository Agreement; and

WHEREAS, Standby Contributions have no longer been made under these Agreements by Brown Family, Western Communities, Antelope Village, PV VII or any successors-in-interest since 2009; and

WHEREAS, Subsection 6.01(B) of the 2002 and 2004 Indentures further provides that the Issuer may limit (based on an Issuer Request to the Trustee) the result of the payment of all Outstanding Secured Bonds so that, in some or all respects, said Indentures would remain operative even though the 2002 and 2004 Bonds have been paid through refinancing; and

WHEREAS, Subsection 9.01(2) of the 2002 and 2004 Indentures also provides that the Issuer (by Board Resolution), along with the Trustee, may amend the 2002 Contribution Agreement, 2004 Financing & Contribution Agreement, 2002 Payment Agreement, 2004 Payment Agreement, 2002 Depository Agreement, and 2004 Depository Agreement to add to the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of the 2002 and 2004 Bonds; and

WHEREAS, Subsection 9.01(5) of the 2002 and 2004 Indentures further provides that the Issuer (by Board Resolution), along with the Trustee, may amend the 2002 Contribution Agreement, 2004 Financing & Contribution Agreement, 2002 Payment Agreement, 2004 Payment Agreement, 2002 Depository Agreement, and 2004 Depository Agreement to cure any ambiguity and to correct or supplement any provision in said Agreements so long as such amendments are not inconsistent with the provisions therein and do not adversely affect the interests of bondholders; and

WHEREAS, it is the strong position of the PRCFD Board that it must ensure that the obligation of Brown Family, Western Communities, Antelope Village, PV VII or any successors-in-interest to make Standby Contributions under the 2002 Contribution Agreement, 2004 Financing & Contribution Agreement, 2002 Payment Agreement, 2004 Payment Agreement, 2002 Depository Agreement, and 2004 Depository Agreement remain in place until payment in full of any refunding bonds, notwithstanding any language Subsection 1.12 of those Agreements (since it clearly was the intention for such obligations not to be lost simply because ad valorem tax payments by residents of Pronghorn Ranch might be sufficient for refinancing of the 2002 and 2004 Bonds); and

WHEREAS, it is also the strong position of the PRCFD Board that the SISCC which was created by Resolution No. 28 continue to be applicable to owner(s) of currently-platted (or subsequently-platted) lots in Pronghorn Ranch for which building or other development permits issued by the Town have not been applied for as of the date of the Resolution (said owner(s) being successors-in-interest to Brown Family, Western Communities, Antelope Village, and/or

PV VII) until payment in full of any refunding bonds, notwithstanding any refinancing of the 2002 and 2004 Bonds; and

WHEREAS, it should be noted in this regard that Section 2 of Resolution No. 28 creating the SISCC specifically provided that the requirement to pay the SISCC would continue until the 2002 Bonds and 2004 Bonds (including any refinancing related thereto) are paid in full (unless the documents underlying any refunding bonds expressly provide that no SISCC is needed); and

WHEREAS, it should be further noted that Section 5 of Resolution No. 28 creating the SISCC specifically provided that the PRCFD Treasurer deposit any revenues from application of the SISCC into the Series 2002 and 2004 Tax Account (or into any related account in the case of refinancing), on a quarterly basis in order to reduce the amount (a) the Trustee may request as a Standby Contribution from Brown Family, Western Communities, Antelope Village, PV VII, or any of their respective successors-in-interest, (b) of any draw the Trustee may find it necessary to make on the Deposit, and/or (c) of ad valorem taxes required to be levied by the PRCFD Board on real and personal property in Pronghorn Ranch; and

WHEREAS, it should be further noted that Section 6 of Resolution No. 28 creating the SISCC specifically provided that, in the course of recommending ad valorem tax rates as part of the annual budget process, the PRCFD Treasurer shall ensure that a reasonable and fiscally-responsible amount remain in the Deposit over the term of the 2002 and 2004 Bonds (including the term of any refinancing), although nothing therein was intended to preclude using any remaining balance in the Deposit as part of the refinancing;

NOW, THEREFORE, BE IT RESOLVED BY THE DISTRICT BOARD OF THE PRONGHORN RANCH COMMUNITY FACILITIES DISTRICT, AS FOLLOWS:

1. In the event PRCFD issues 2013 Refunding Bonds or otherwise refinances the 2002 and 2004 Bonds, the PRCFD Board expressly does not give approval for the 2002 Contribution Agreement, 2004 Financing & Contribution Agreement, 2002 Payment Agreement, 2004 Payment Agreement, 2002 Depository Agreement, and 2004 Depository Agreement to terminate per Subsection 1.12 of said Agreements.

2. Notwithstanding, anything to the contrary in Subsection 1.12 in the 2002 Contribution Agreement, 2004 Financing & Contribution Agreement, 2002 Payment Agreement, 2004 Payment Agreement, 2002 Depository Agreement, and 2004 Depository Agreement, said Agreements shall not terminate upon full payment of the 2002 and 2004 Bonds through issuance of any 2013 Refunding Bonds (or any other refinancing of said 2002 and 2004 Bonds) because Standby Contributions have no longer been made under said Agreements by Brown Family, Western Communities, Antelope Village, PV VII or any successors-in-interest since 2009. As a result, in accordance with Subsection 6.01(B) of the 2002 and 2004 Indentures, PRCFD (as the Issuer under said Indentures) hereby limits the result of the payment of all Outstanding Secured Bonds in the 2002 and 2004 Bonds so that said Indentures shall remain operative solely to the extent of leaving in place said Agreements and the obligation thereunder to make Standby Contributions (until full payment of any 2013 Refunding Bonds or any other refinancing of the 2002 and 2004 Bonds).

3. In accordance with Subsections 9.01(2) and 9.01(5) of the 2002 and 2004 Indentures, PRCFD (as the Issuer under said Indentures) hereby declares that the 2002 Contribution Agreement, 2004 Financing & Contribution Agreement, 2002 Payment Agreement, 2004 Payment Agreement, 2002 Depository Agreement, and 2004 Depository Agreement are hereby amended to provide that each said Agreement will not terminate simply because the 2002 and 2004 Bonds have been refinanced through issuance of 2013 Refunding Bonds (or otherwise refinanced) but shall remain in effect until full payment of said 2013 Refunding Bonds (or other refinancing). This direction shall apply regardless of any written Issuer Request being delivered to the Trustee or the Trustee agreeing to such an amendment (given that any refinancing will otherwise have ended the application of the Indentures with regard to requiring such Issuer Requests or requiring approval by the Trustee). Because it never was the intention of the Standby Contribution obligations in said Agreements to be lost simply because ad valorem tax payments by residents of Pronghorn Ranch might be sufficient for refinancing of the 2002 and 2004 Bonds, it is hereby determined that these amendments are not inconsistent with the provisions of said Agreements. It is also understood that these amendments do not adversely affect the interests of holders of the 2002 and 2004 Bonds. Finally, nothing herein shall prohibit the sending of an Issuer Request by PRCFD if it so chooses or approval being provided by the Trustee if it so chooses.

4. Nothing herein is intended to be (nor is it) a settlement, compromise or satisfaction of any security, payment, or other obligation owed by Brown Family, Western Securities, Antelope Village, PV VII or any of their successors-in-interest to any person under the Financing Agreement, the 2002 Contribution Agreement, the 2004 Financing & Contribution Agreement, the 2002 Payment Agreement, the 2004 Payment Agreement, the 2002 Depository Agreement, the 2004 Depository Agreement, or the 2002 and 2004 Bonds. Such persons include (but are not limited to) the Trustee and the holders of the 2002 and 2004 Bonds.

Further, it should be understood that nothing herein is intended to constitute in any fashion an amendment to or rescission of the above-listed documents, the 2002 Indenture, the 2004 Indenture, PRCFD Resolution No. 3 or PRCFD Resolution No. 11.

Finally, nothing herein is intended to constitute in any fashion an amendment to or rescission of any other agreement or commitment by Brown Family, Western Communities, Antelope Village, PV VII, the Trustee or PRCFD with regard to the 2002 and 2004 Bonds. Specifically, nothing herein amends the covenants and commitments of PRCFD under Resolution No. 3 and Resolution No. 11. Rather, the provisions herein should be considered supplemental thereto.

5. With regard to the directions of the PRCFD Board herein, PRCFD does hereby agree to indemnify the Town to the same extent of the Town's indemnification obligation in Section 17 of the IGA (to the extent it may do so by law).

In accordance with Subsections 3(h) of Resolution No. 3 and Resolution No. 11 (respectively), nothing herein shall be construed as obligating the Town or as incurring a charge upon the general credit or any other credit or revenues of the Town, nor shall the

breach of any implied agreement by the Town herein impose any charge upon the general credit or any other credit or revenues of the Town.

6. This Resolution shall be effective after its passage and approval according to law.

RESOLVED by the District Board of the Pronghorn Ranch Community Facilities District this 25th day of July, 2013.

Harvey C. Skoog
Chairman, District Board,
Pronghorn Ranch Community Facilities District

ATTEST:

Diane Russell
District Clerk, Pronghorn Ranch
Community Facilities District

APPROVED AS TO FORM:

Ivan Legler
District Counsel, Pronghorn Ranch
Community Facilities District

EXHIBIT “A”

Pronghorn Ranch