

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF BISBEE  
AND  
STEP UP BISBEE/NACO, INC**

This Memorandum of Understanding (MOU) establishes a joint partnership between The City of Bisbee (the “City”), a political subdivision of the State of Arizona, and Step Up Bisbee/Naco, Inc. (“Step Up”), a non-profit corporation, for the restoration of Parcel No. 102-20-034, commonly referred to as 121 Fort Huachuca Lane (the “Property”).

**I. RECITALS**

**WHEREAS**, the City lacks an adequate supply of affordable housing; and

**WHEREAS**, as a consequence, it is difficult for individuals and families to find housing within the city limits, which negatively influences long term growth of the economy; the City’s ability to attract and retain employees and employers; emergency response times by emergency personnel living outside the city; and reinvestment in the economy by community members who spend more on housing; and

**WHEREAS**, to this end, the City has acquired certain real property which it intends to sell, via restrictive trust deeds, to individuals or families making between 50 and 80 percent of the median family income; and

**WHEREAS**, the City intends to relinquish title to City-owned real property identified herein at no cost to Step Up for the restoration of owner-occupied, affordable housing units; and

**WHEREAS**, the City requires the skills, expertise and labor of Step Up to restore the Property title is transferred to a qualified buyer; and

**WHEREAS**, Step Up, is an ideal partner for the City in that the organization has a proven track record of restoring affordable, owner-occupied housing units in Cochise County; and

**WHEREAS**, Step Up further possesses the organizational capacity to perform all necessary due diligence and project management services, including but not limited to unit design and restoration; and

**WHEREAS**, Step Up oversees volunteer work crews and affords private contractors the opportunity to participate in the restoration of housing units according to a competitive bid process, such process being independent of State of Arizona public contracting procedures; and

**WHEREAS**, the restoration of the Property for a public purpose places an otherwise dilapidated lot back on the market for sale, which allows Step Up to recover its expenses through sale receipts; and

**WHEREAS**, the excess money from the sale of the Property shall be held in Trust for future rehabilitation projects; and

**WHEREAS**, the restoration of the Property for a public purpose places an otherwise dilapidated lot on the property tax rolls, which allows the City to recover its expenses through tax receipts over time; and

**WHEREAS**, Step Up's goal is to restore the property mentioned in this MOU over the 12-month term of this Agreement.

**IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES** above mentioned, for and in consideration of the mutual promise hereafter stated, as follows:

## **II. PURPOSE**

This MOU defines the relationship between the City and Step Up and the roles each Party is expected to play pursuant to restoring the Property. The goal of this partnership is to address the effects of declining neighborhoods created by foreclosures, blight and abandonment and their negative impact on the stability of the respective communities.

## **III. TERMS OF THIS AGREEMENT**

This Agreement shall be effective on the date that it is signed by all parties. Unless extended as provided in this Section 3 or terminated earlier pursuant to Section 10, with the exception of Step Up's continuing obligations, the term of this Agreement shall be for a period of twelve (12) months. This Agreement may be extended for a period of 6 months upon written mutual consent of all parties. Upon expiration or termination, this Agreement shall automatically be extended to govern Step Up's completion of any work previously initiated hereunder.

## **IV. AFFORDABLE HOUSING DEFINED**

For the purpose of this Agreement, the term "affordable housing" means housing acquired by the City, which is marketed and sold to an individual or family making between 50 and 80 percent of median family income and at least one household member employed within the corporate City limits or resides within the corporate City limits.

## **V. STEP UP RESPONSIBILITIES**

Step Up will assign staff and volunteers with knowledge and training in the development and restoration of affordable housing units to perform the following general duties:

- A. Administrative Services
  - 1. Coordinate projects;
  - 2. Coordinate with other contracts (e.g. accounting, legal, subcontractors);
  - 3. Develop and manage project budgets;
  - 4. Carry appropriate insurance policies;
  - 5. Conduct marketing efforts for the sale of each unit;
  - 6. Manage money held in Trust to be reinvested into future properties and rehabilitation projects; and
  - 7. Transfer the documents of conveyance recorded by the City to the qualified purchaser of real property.
  
- B. Real Estate Development Services
  - 1. Obtain land use and building permits required for site development in accordance with City Ordinances;
  - 2. Prepare all necessary contracting documents (RFP, contract, notices, etc.);
  - 3. Oversee the contractor selection and award process;
  - 4. Collect necessary documentation from selected contractor per contract terms;
  - 5. Manage restoration from design, site preparation to occupancy of the units;
  - 6. Perform routine progress meetings on site as required;
  - 7. Maintain submittals and project documents;
  - 8. Serve as single point of contact to the City, contractor, key stakeholders;
  - 9. Ensure that land use/building permit and contract terms are satisfied;
  - 10. Provide regular project updates to the City and general public; and
  - 11. Attain a certificate of occupancy from the City.

Additional duties will be performed as mutually agreed upon by Step Up and the City to carry out the objectives of this Agreement.

## **VI. CITY OF BISBEE RESPONSIBILITIES**

The City agrees to provide the following resources to Step Up to facilitate restoration of affordable housing:

1. Facilitate the permitting and inspection process by making them available to Step Up at no cost;
2. Coordinate with Step Up regarding the scope, materials required and final design necessary to restore the Property described in the Development Agreement attached to this MOU;
3. Provide or coordinate homebuyer training courses and manage the application process for prospective buyers;
4. For any portions of any real property containing public utilities and street improvements, the City will allocate staff time to assist Step Up in reconfiguring the property and/or putting easements in place to ensure that utilities and street improvements remain under public ownership and control;
5. Maintain ongoing affordability of the owner-occupied units by recording terms and conditions in documents of conveyance with resale restrictions against the Property that is subject to a build and by enforcing said terms and conditions to ensure that the resale restrictions are applied to each subsequent sale; and
6. Transfer documents of conveyance to Step Up at such time as Step Up obtains certificates of occupancy. Additional deed and sale terms beyond those required by this Agreement may be negotiated by the parties prior to transfer of the Property from the City to Step Up.

## **VII. TIMING OF DEVELOPMENT**

Step Up may initiate a project on the Property as soon as the parties agree to its development and restoration. Step Up shall have applied for and obtained a certificate of occupancy within twelve (12) months of the date a building permit was issued, unless an alternative timeline is authorized in writing by the City.

## **VIII. DISPOSITION OF TRANSFERRED PROPERTY**

Each City parcel shall be subject to a deed of restriction requiring that such property be used expressly for affordable housing from the date a certificate of occupancy is issued until the City repurposes the property. The deed restriction shall further include a reversionary interest in City, ensuring that ownership of the transferred property will return to City in the event that the use limitation, or any other term or condition, is violated.

## **IX. AFFORDABILITY ASSURANCE**

Once a certificate of occupancy is obtained for a unit, and the subject lot is transferred, the City agrees to record and enforce a trust deed against the lot that restricts resale to an amount attainable by an individual or family making between 50 and 80 percent of the median family income.

## **X. TERMINATION**

This Agreement may be terminated upon written mutual consent of all parties specifying the termination date, or by any party upon thirty (30) days' prior written notice.

## **XI. DISPUTE RESOLUTION**

If any disputes, disagreements, or controversies arise between City and Step Up pertaining to the interpretation, validity, or enforcement of this Agreement, upon the request of City or Step Up, the dispute shall be submitted to binding arbitration under the Arizona Revised Uniform Arbitration Act, A.R.S. § 12-3001 *et seq.* Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Cochise County Superior Court, upon the request of either party. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.

## **XII. INDEMNIFICATION**

A. Step Up shall hold harmless, indemnify, and defend the City from any and all liability, actions, claims, losses, damages, or other costs including attorney fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during, or in connection with the performance of its duties described in this Agreement, except liability arising out of the sole negligence of the other. If any aspect of this indemnification shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the indemnification provision.

B. The City shall hold harmless, indemnify, and defend Step Up from any and all liability, actions, claims, losses, damages, or other costs including attorney fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during, or in connection with the performance of its duties described in this Agreement, except liability arising out of the sole negligence of the other. If any aspect of this indemnification shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the indemnification provision.

### **XIII. COMPLIANCE WITH NON-DISCRIMINATION REQUIREMENTS**

Step Up will not unlawfully discriminate against any employee or person served in its performance of this agreement. Further, Step Up agrees to:

- A. Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) in regard to persons served; and
- B. Adhere to Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e) in regard to employees or applicants for employment; and
- C. Conform to the requirements of the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973; and
- D. Satisfy the requirements of the Americans with Disabilities Act; and
- E. Comply with any applicable State or local law that prohibit unlawful discrimination against any employee or person; and
- F. Prevent any funds from this agreement from being used to sponsor, promote, or otherwise to engage in political activities.

### **XIV. ASSIGNMENT**

Step Up may assign any of its responsibilities under this Agreement upon receipt of the City's prior written consent, which consent shall not be unreasonably withheld.

### **XV. AMENDMENTS**

No amendments to this Agreement shall be effective unless made in writing and signed by all parties. There are no understandings, agreements or representations, oral or written regarding this Agreement except as specified or referenced herein.

### **XVI. SEVERABILITY**

If any court of competent jurisdiction shall hold any provisions of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

### **XVII. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

**XVIII. EXECUTION**

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same agreement. The City shall provide each party with a set of all executed counterparts. By signature of their authorized representatives below, the parties to this agreement acknowledge that they have read this Agreement, understand it, and agree to be bound.

**XIX. NOTICE**

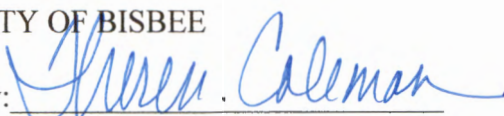
All notices required by this agreement must be in writing and delivered to the parties at the addresses set forth below.

Step Up Bisbee/Naco, Inc.  
President of the Board of Directors  
P.O Box 1554  
Bisbee, AZ 85603

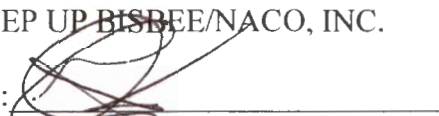
City of Bisbee  
City Manager  
915 S. Tovreaville Road  
Bisbee, AZ 85603

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum on the dates shown hereunder.

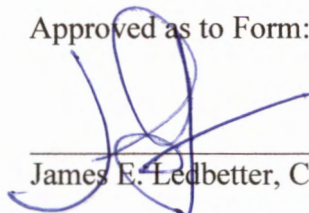
CITY OF BISBEE

By:   
Name: Theresa Coleman  
Title: City Manager  
Address: 915 S. Tovreaville Road  
Bisbee, AZ 85603

STEP UP BISBEE/NACO, INC.

By:   
Name: Grady Meadows  
Title: Chairman of the Board  
Address: P.O. Box 1554  
Bisbee, AZ 85603

Approved as to Form:

  
James E. Ledbetter, City Attorney