



Contract Number: CT-CD. 14 # 234 - 01
Effective Date: 8-1-13
Term Date: 9-14-2039
Cost: ✓
Revenue: ✓
Total: NTE:
Action:
Renewal By: 6-1-2039
Term: 9-14-2039
Reviewed by:

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: January 07, 2014

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Authorization of contract CT-CD 14000000000000000234 between Sunnyside Pointe Development, L.L.C. and Pima County Community Development and Neighborhood Conservation Department (CDNC) to assign any and all obligations, rights and responsibilities under the agreement specifically held by Tucson Urban League, as a member of Developer, are hereby assigned to La Frontera Partners.

CONTRACT NUMBER (If applicable):

STAFF RECOMMENDATION(S):

Staff recommends approval by the Board of Supervisors

CORPORATE HEADQUARTERS: Tucson, Arizona

Page 1 of 2

10: CoB. 12.24.13
Agenda 1-7-14
(2)

RECEIVED 12/24/2013

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: 0.00 and/or REVENUE TO PIMA COUNTY:\$

FUNDING SOURCE(S): 2004 GO BONDS

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

		YES	X	NO
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Board of Supervisors District:

1		2		3		4		5	X	All	
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IMPACT:

IF APPROVED:

County shall authorize the contract CT-CD 1400000000000000234 between Sunnyside Pointe Development, L.L.C. and Pima County Community Development and Neighborhood Conservation Department (CDNC) to assign any and all obligations, rights and responsibilities under the agreement specifically held by Tucson Urban League, as a member of Developer, are hereby assigned to La Frontera Partners.

IF DENIED:

County shall not authorize contract CT-CD 1400000000000000234 between Sunnyside Pointe Development, L.L.C. and Pima County Community Development and Neighborhood Conservation Department (CDNC) to assign any and all obligations, rights and responsibilities under the agreement specifically held by Tucson Urban League, as a member of Developer, are hereby assigned to La Frontera Partners.

DEPARTMENT NAME: Community Development and Neighborhood Conservation

CONTACT PERSON: Betty Villegas TELEPHONE NO.: 624-2947

**PIMA COUNTY DEPT. OF COMMUNITY DEVELOPMENT AND
NEIGHBORHOOD CONSERVATION**

PROJECT NAME: Sunnyside Pointe Phase I

CONTRACTOR: Sunnyside Pointe Development,
L.L.C.

CONTRACT NO.: 03-70-S-142397-090

CONTRACT AMENDMENT NO.: One (1)

CONTRACT

NO. *CT-CD-140000000000000000 234*

AMENDMENT NO. 01

This number must appear on all
invoices, correspondence and
documents pertaining to this
contract.

ORIG CONTRACT TERM: September 15, 2009

ORIG CONTRACT AMOUNT: \$1,464,218.00

TERMINATION DATE PRIOR AMENDS: n/a

AMOUNT PRIOR AMENDS: -0-

TERMINATION THIS AGREEMENT: See body

AMOUNT THIS AMENDMENT: -0-

REV CONTRACT AMOUNT: \$1,464,218.00

This Amendment is entered into by and between Pima County, a political subdivision of the State of Arizona ("County") and Sunnyside Pointe Development, L.L.C., and Arizona limited liability company ("Developer").

RECITALS

- A. On September 15, 2009, County and Developer entered into Pima County Contract No. 03-70-S-142397-0909 ("the Agreement") for the allocation of 2004 General Obligation Bond Funds for the development of Sunnyside Pointe, a residential subdivision offering affordable housing to low-income households.
- B. At the time the Agreement was executed, Developer was made up of La Frontera Center, Inc., an Arizona nonprofit corporation ("La Frontera Center"), The Tucson Urban League Incorporated, an Arizona nonprofit corporation ("TUL"), and Old Pueblo Community Services, an Arizona nonprofit corporation ("Old Pueblo"). The rights and obligations of La Frontera Center were subsequently assigned to La Frontera Partners, Inc., an Arizona nonprofit corporation ("La Frontera Partners"). La Frontera Partners and Old Pueblo are currently the sole members of Developer.
- C. At the time the Agreement was executed, TUL held beneficial title to lots 50 lots in Phase I of Sunnyside Pointe, more specifically described as lots 22 through 31, 62 through 65, 100 through 114, 141 through 144 and 186 through 202.
- D. TUL is no longer a member of Developer, having transferred its membership in Developer and having conveyed, transferred and assigned its interests in the parcels described above to La Frontera Partners.

- E. At the time the Agreement was executed, Old Pueblo held beneficial title to lots 40 lots in Phase I Sunnyside Pointe, more specifically described as lots 66-99 and 115-120.
- F. La Frontera Partners and Old Pueblo entered into agreements to exchange ownership in lots 75 – 80 and 100 and 102.
- G. In accord with the terms and conditions of the Agreement, and other agreements, affordable homes were built and sold on 30 of the lots owned by La Frontera Partners and Old Pueblo.
- H. The beneficial interests in the unsold lots in Phase I of Sunnyside Pointe are as follows:
 - Old Pueblo: lots 62-66, 74, 83, 98, 100, 102 and 104 (11 lots)
 - La Frontera: lots 22-31, 75-80, 101, 103, 105-114, 141, 144 and 186-202 (49 lots)
- I. In response to input from the Federal Home Loan Savings Bank, the Federal Housing Administration, and the U.S. Department of Housing and Urban Development, Old Pueblo and La Frontera Partners have agreed to obtain, or have obtained, a right-of-first-refusal on all of the homes sold in Phase I of Sunnyside Pointe. Further, Old Pueblo and La Frontera Partners have agreed, in order to maintain affordability in compliance with the terms and conditions of the Agreement, and other agreements, to exercise this right-of-first-refusal on any home in Phase I home for which homeowner receives a bona fide offer from a non-qualified purchaser.
- J. Developer has completed the construction of the infrastructure contemplated under the Agreement, but has a continuing obligation under the Agreement to ensure that affordable housing is constructed and sold to qualified low-income households on all 90 lots in Phase I of Sunnyside Pointe.

AMENDMENT TO THE AGREEMENT

NOW, THEREFORE, County and Developer, pursuant to the above, agree to amend the Agreement as follows:

- I. Assignment. Any and all obligations, rights and responsibilities under the Agreement specifically held by TUL, as a member of Developer, are hereby assigned to La Frontera Partners.
- II. Article 1, Term and Extension/Renewal is deleted in its entirety and replaced with the following:

This Agreement shall be deemed to have commenced on September 15, 2009 (the “Commencement Date”), and shall remain in effect until homes have been constructed on all 90 Phase I Lots as required under Section 3.2 and sold to Qualified Low Income Buyers as required under Section 3.3, unless sooner terminated or further extended by the parties. Any modification or extension of the Agreement shall be made by a formal written amendment executed by the parties. Expiration of the Agreement will not affect the liabilities of the parties incurred prior to such expiration, nor will it affect the terms of this Agreement that, by their express terms or by clear implication, are intended to survive such expiration.
- III. Article 3, Project Construction. Section 3.3, Sale is amended to add the following:

Sales price shall not exceed the lesser of: the appraised value of the improved Lot or Developer's cost of acquiring the Phase I Lot and building the improvements on it.

IV. Article 5, Continuing Affordability is deleted in its entirety and replaced with the following:

Developer and County acknowledge that the purpose of the Project is to encourage home ownership that will in turn lead to a safer and more sustainable neighborhood, which is a substantial benefit to the public. In order to realize that goal, continuing, rather than merely initial, affordability is critical.

- 5.1 At the closing of the initial sale of each Phase I Lot to a Qualified Low-Income Buyer, Developer shall cause to be recorded a covenant as to such Lot, in the form of the attached Exhibit E, which will have a term of thirty (30) years from the date of sale, will run with the land, and will restrict the re-sale of the Lot to Qualified Low Income Buyers (the "Affordability Restriction"). The Affordability Restriction will give the County a lien on the Lot that will:
 - 5.1.1 Be in an amount equal to the difference between the appraised value and the amount of the purchase money mortgage;
 - 5.1.2 Provide that, should the Buyer/Owner choose to sell the home during the term of the Affordability Restriction, the sale must be to a purchaser with a household income no more than 80% AMI;
 - 5.1.3 Provide that in the event that Buyer/Owner receives a bona fide offer from a purchaser with a household income in excess of 80% AMI at any time during the 30 year period, Developer shall be notified and shall have a right to purchase the home under the same terms and conditions as the bona fide offer;
 - 5.1.4 Provide that, in the event Developer fails to purchase the home during the 30 year period, under the same terms and conditions as the bona fide offer, seller must, at closing of sale, pay to County the amount set forth in the lien;
 - 5.1.5 Be superior to all monetary liens and encumbrances, other than the deed of trust granted by the Qualified Low Income Buyer to the buyer's purchase money lender, to which lien the Affordability Restriction will, by its own terms, be automatically subordinate; and
 - 5.1.6 Be, and for all purposes shall be deemed to be, a continuation of the lien of the Performance Deed of Trust, so that the County's priority of interest is preserved.
- 5.2 Developer shall exercise, or shall cause Old Pueblo or La Frontera Partners to exercise, the right of first refusal on and shall purchase, or shall cause Old Pueblo or La Frontera Partners to purchase, any Phase I home in Sunnyside Pointe for which buyer/owner receives a bona fide offer from a purchaser with a household income in excess of 80% AMI.
- 5.3 Upon purchase of the NSP2 home through the exercise of the right, Developer shall retain, or shall ensure retention of, all affordability restrictions associated with the

property and shall affirmatively and actively market the property to Qualified Low Income Buyers.

5.4 Failure of Developer to exercise, or cause Old Pueblo or La Frontera Partners to exercise, the right of first refusal, for whatever reason, shall be considered an act of default. Such default shall be deemed to occur on the date of closing of escrow to a non-income qualified purchaser. In the event of such default, Developer shall remit to County 1/90 of the funds provided under this Agreement (\$16,269.00), together with interest from the date of expenditure to the date paid, at the rate of 8% per annum. Payment must be made no later than sixty (60) days after date default occurs.

5.5 In the event of such default, Seller must, at closing of the sale, pay to County a sum equal to the amount of the lien. Upon payment of this sum, County will release the Affordability Restriction.

V. Exhibit B, PERFORMANCE DEED OF TRUST. The Performance Deed of Trust, with TUL as Trustor and Pima County as Beneficiary, recorded in the Office of the Pima County Recorder on November 3, 2009, in Docket 13677 at Page 1710, shall be assigned to and assumed by La Frontera Partners through an Assignment of Deed of Trust in form mutually agreed upon, and such assignment shall be recorded in the Office of the Pima County Recorder.

VI. Exhibit E, AFFORDABLE HOUSING RESTRICTION AND LIEN AGREEMENT is replaced with the amended Exhibit E attached hereto.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

VII. Exhibit F, ALLOCATION FORMULA FOR AFFORDABILITY RESTRICTION is deleted.

The effective date of this Amendment shall be August 1, 2013.

All other provisions of this Agreement, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this Amendment on the dates written below.

PIMA COUNTY

SUNNYSIDE POINTE DEVELOPMENT, L.L.C.

By: La Frontera Partners, Inc., an Arizona
nonprofit corporation, Manager and Administrator

Chair, Pima County Board of Supervisors

Date: _____

ATTEST:

Daniel J. Ranieri, President and CEO

Date: _____

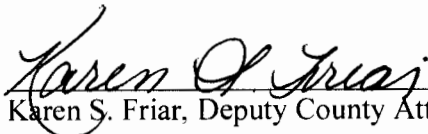
Clerk of the Board

APPROVED AS TO CONTENT:



Margaret Kish, Director
Community Development & Neighborhood
Conservation

APPROVED AS TO FORM:



Karen S. Friar, Deputy County Attorney

VII. Exhibit F, ALLOCATION FORMULA FOR AFFORDABILITY RESTRICTION is deleted.

The effective date of this Amendment shall be **August 1, 2013**.

All other provisions of this Agreement, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this Amendment on the dates written below.

PIMA COUNTY


SUNNYSIDE POINTE DEVELOPMENT, L.L.C.

By: La Frontera Partners, Inc., an Arizona
nonprofit corporation, Manager and Administrator

Chair, Pima County Board of Supervisors

Date: _____

ATTEST:



Daniel J. Ranieri, President and CEO

Date: 11/29/13

Clerk of the Board

APPROVED AS TO CONTENT:

Margaret Kish, Director
Community Development & Neighborhood
Conservation

APPROVED AS TO FORM:

Karen S. Friar, Deputy County Attorney

EXHIBIT E

AFFORDABLE HOUSING RESTRICTION
AND LIEN AGREEMENT

When Recorded, Please Return To:

Pima County Community Development and Neighborhood Conservation
Affordable Housing Program
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

AFFORDABLE HOUSING RESTRICTION AND LIEN AGREEMENT

THIS AGREEMENT (as it may be amended and modified from time to time, the "Affordability Agreement") is made as of _____, by and between _____ with a mailing address of _____, Tucson, Arizona 85706 (referred to collectively (if more than one) in this document as "Owner"), and PIMA COUNTY, a political subdivision of the State of Arizona, with a mailing address as set forth in the heading above (referred to as "County").

RECITALS

- A. Owner is, simultaneously with entering into this Affordability Agreement, buying certain real property described as **Lot _____ of Sunnyside Pointe** (the "Property"), a residential subdivision as shown on the plat thereof recorded in Book 63, Page 89 of Maps and Plats in the office of the Pima County Recorder.
- B. In order to assist in making the Property affordable for Income-Qualified Persons, including Owner, the County has contributed public funding to the development of a portion of Sunnyside Pointe, including the Property. In order to secure the developer's obligation to sell the Property to Income-Qualified Persons, the County had a deed of trust on certain portions of Sunnyside Pointe, including the Property, recorded in Docket 13674 at Page 2681 in the records of the Pima County Recorder's Office (the "County DOT"). The County is, simultaneously with the recordation of this agreement, releasing the Property from the scope of the County DOT and entering into this Agreement with Owner in order to assure the continued affordability of the Property.

AGREEMENT

- 1. **Use Restrictions.** The Property shall be subject to the following covenants regulating and restricting the use and transfer of the Property, commencing on the date hereof. These restrictions shall be covenants running with the Property and shall bind Owner and Owner's successors and assigns for a period of thirty (30) years from the date set forth in the introductory sentence of this Agreement.
 - 1.1. **Residential Use.** Owner shall use, and shall cause all occupants to use, the Property only for residential purposes and any incidental activities related to residential use that are currently permitted by applicable state and local zoning laws. Owner shall occupy the Property for at least nine months of each full year during which Owner is the owner of the Property. Occupancy by children or other immediate family members or dependents of Owner shall be considered occupancy by Owner.

- 1.2. **Transfers.** Owner shall only convey the Property to an Income-Qualified Person except as otherwise specifically permitted herein. "Income-Qualified Person" shall mean a person or group of persons whose household income does not exceed eighty percent (80%) of the area median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor agency. A proposed buyer's status as an Income-Qualified Person shall be verified in writing by County or a local Community Housing Development Organization in good-standing with HUD or a HUD-certified homebuyer counseling agency.
2. **Transfer to Owner's Heirs.** Notwithstanding the provisions of Section 1 above, following the death of Owner, Owner's interest in the Property may be transferred to one or more of the following possible heirs of Owner: the spouse of Owner, any child or children of Owner, or members of Owner's household who have resided on the Property for at least one year immediately prior to Owner's death. This Affordability Agreement will survive such a transfer and will continue to bind the Property.
3. **Enforcement; Lien.**
 - 3.1. *Injunctive Relief.* County shall have the right to enforce this Affordability Agreement by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, which shall be in addition to, and not in limitation of, any other rights and remedies available to County.
 - 3.2. *Penalty.* In the event that the Property is transferred, whether voluntarily or involuntarily, by operation of law or otherwise, to anyone other than an Income-Qualified Person, during the term of this Agreement, Owner shall immediately pay to County the sum of \$ _____ (the "Affordability Penalty").
 - 3.3. *Lien.* Owner hereby grants to County a lien on the Property in the amount of the Affordability Penalty, to enforce Owner's obligations under this Agreement (the "County Lien"). The County Lien may be foreclosed by County in the same manner provided by law for the foreclosure of mortgages on real property.
 - 3.3.1. Upon payment of the Affordability Penalty to County, County will execute and record a document releasing the Property from this Agreement, and from the County Lien.
 - 3.3.2. The County Lien will be deemed for all purposes to be a continuation of the lien granted to the County by the County DOT, and shall be superior to all monetary liens and encumbrances other than a lien granted by Owner to a lender for the purpose of securing repayment of a loan obtained by Owner to purchase the Property (a "Purchase Money DOT"). This lien shall be automatically subordinated to a Purchase Money DOT, without the necessity of any further acknowledgement by County, but County will, if requested by Owner, execute a document, in a form reasonably acceptable to County, evidencing such subordination. The County Administrator or his/her designee shall have the authority to execute such a subordination agreement on behalf of the County.
 - 3.3.3. Notwithstanding any implication to the contrary, in the event of a foreclosure or deed in lieu of foreclosure of the Purchase Money DOT, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting Owner's ability to sell the Property shall have no effect on subsequent owners or purchasers of the

Property. Any person, including his or her successors or assigns (other than Owner or a related entity of Owner), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the Purchase Money DOT shall receive title to the Property free and clear from such restrictions. The obligation to repay the Affordability Penalty shall terminate after any such foreclosure or deed in lieu of foreclosure, except, however, that in the event the foreclosed property is sold at a trustee's sale or mortgage foreclosure for more than the amount of the balance due on the mortgage, any funds in excess of the amount to satisfy the Purchase Money DOT shall be distributed to County up to the amount of the lien established by the County Deed of Trust.

4. **Severability.** If any provision of this Affordability Agreement shall to any extent be held invalid, the remainder shall not be affected but will remain in effect and valid and enforceable by the parties by any legal or equitable means.
5. **Recordation of Documents.** The benefits of this Affordable Housing Restriction shall be in gross and shall be assignable by County to any successor institution or nonprofit affordable housing organization. County and Owner intend that the restrictions arising hereunder will take effect upon the date hereof. To the extent that the enforceability of this Agreement by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.
6. **Notice.** Any notice, request or other communication which any party hereto may be required or may desire to give to Grantor or Owner shall be made in writing, and shall be deemed to have been properly given if mailed by United States registered or certified mail, postage prepaid, return receipt requested, or hand delivered, and addressed as follows, or such other address as the applicable party may have furnished in writing to the party seeking to serve notice as a place for the service of notice, provided, however, that the Owner shall use reasonable business efforts to ascertain the mailing address of Grantor which is current as of the date of such notice:

County: Pima County Community Development and Neighborhood Conservation
Affordable Housing Program
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

Owner: Notice to Owner shall be provided at the address of the Property.

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7. **Restraint on Alienation.** If this Affordability Agreement is deemed unenforceable by virtue of its scope in terms of purpose or eligibility of Income-Qualified Persons but would be enforceable by reducing or increasing, as applicable, any part or all thereof, the same shall be enforced to the fullest extent permissible under the laws and public policies applied in the State of Arizona.

_____, Owner

_____, Owner

STATE OF ARIZONA)
) ss.
County of Pima)

This instrument was acknowledged before me this ____ day of March, 2012, by
_____ and _____.

My Commission Expires: _____

Notary Public

CONSENT TO SUBORDINATION

Pursuant to Section 3.3.2 of the foregoing Affordability Housing Restriction and Lien Agreement, PIMA COUNTY, a political subdivision of the State of Arizona, does hereby for all purposes consent and agree to the subordination of such Affordability Housing Restriction and Lien Agreement to the lien of the Purchase Money DOT, as defined therein, recorded contemporaneously herewith.

Dated this ____ day of _____, 20____.

PIMA COUNTY, a political subdivision of the State of Arizona

By:

Title: Director, Community Development and Neighborhood
Conservation Department

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing Consent to Subordination was acknowledged before me this ____ day of March, 2012, by Margaret Kish, Director of the Community Development and Neighborhood Conservation Department of PIMA COUNTY, a political subdivision of the State of Arizona.

Notary Public

My Commission Expires: