




MEMORANDUM

Date: October 15, 2018

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Additional Material for Board of Supervisors October 16, 2018 Addendum Item 4 -
First Amendment to Star Valley Settlement Agreement and Development Agreement**

On August 2, 2016, the Board of Supervisors approved a settlement agreement to a lawsuit involving adherence to requirements of the Star Valley Specific Plan. The settlement of Stewart Title & Trust of Tucson et al. v. Pima County Board of Supervisors et al. (Case Number C20144304) outlined the timing, financing and repayment for key infrastructure requirements. Since approval of the agreement, there has been little development in the Star Valley community with the exception of a small plat on Block 14, which was approved by the Board of Supervisors. Recently, County Administration and Development Services leadership met with the Star Valley developer representatives and new potential owners to discuss a sale of the property.

The new developer group, consisting of Phoenix-area developers Michael Geddes and Richard Andreen, have ties to Tucson and appears to have the development experience and financial means to implement the balance of the residential development of Star Valley Specific Plan. The new developers will enter into new Assurance Agreements and must meet all the conditions and stipulations in the settlement and development agreement as the successor developer. Some of the key conditions include:

1. Fulfillment of the Transportation Reimbursement Plan to repay Pima County for the traffic signal at Wade Road and Valencia Road, and the construction of Camino Verde from the property boundary north to Valencia Road. Repayment includes the principal amount of \$1,425,703.15, plus accrued interest until fully repaid. Accrued interest as of September 30, 2018, totaled \$167,952.87.
2. Phased road improvements, as needed, based on updated transportation impact studies.
3. A phased plan for curb and sidewalk improvements by block groups.

The Honorable Chairman and Members, Pima County Board of Supervisors

Re: **Additional Material for Board of Supervisors October 16, 2018 Addendum Item 4 - First Amendment to Star Valley Settlement Agreement and Development Agreement**

October 15, 2018

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As a condition of sale to the new group, a release from the agreement is needed by the primary original developers, USH/SVA Star Valley, LLC, which includes Broadway Realty and Trust and Lennar. Approval of the First Amendment to Star Valley Settlement Agreement and Development Agreement will signify Pima County's consent to the transfer to the new developer group, who will assume the outstanding obligations of the Settlement and Development Agreement.

Attached is a clean and redlined version of clarifications made to the First Amendment to Star Valley Settlement Agreement and Development Agreement since its original posting to the Addendum to further reflect that the original developer is not released from their obligations until such time that a successor accepts the obligations via a recorded assignment and assumption. This version replaces the one previously submitted.

CHH/lab

Attachments

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Julie Castañeda, Clerk of the Board of Supervisors

When recorded, please return to:

County Attorney's Office
Attn: Lesley Lukach
32 N. Stone, Suite 2100
Tucson AZ 85701

FIRST AMENDMENT TO STAR VALLEY SETTLEMENT AGREEMENT AND DEVELOPMENT AGREEMENT

THIS AMENDMENT TO STAR VALLEY SETTLEMENT AGREEMENT AND DEVELOPMENT AGREEMENT ("**Amendment**") is made and entered into on October _____, 2018 ("**Effective Date**"), by **STEWART TITLE & TRUST OF TUCSON**, an Arizona corporation, **AS TRUSTEE UNDER TRUST NO. 3701** ("**Stewart Trust 3701**"), Stewart Trust 3701's sole beneficiary, **USH/SVA STAR VALLEY, LLC**, an Arizona liability company ("**Developer**"), **STEWART TITLE & TRUST OF TUCSON**, an Arizona corporation, as **TRUSTEE UNDER TRUST NO. 3697** ("**Stewart Trust 3697**"), and Pima County, a political subdivision of the State of Arizona ("**County**"). Collectively, Stewart Trust 3701 and Stewart Trust 3697 are jointly referred to as "**Owner**".

RECITALS

A. Stewart Trust 3701, Developer, Stewart Trust 3697 and County (collectively, the "**Parties**") previously entered into that certain Star Valley Settlement Agreement and Development Agreement recorded on August 9, 2016 at Sequence 20162220420 of the Official Records of the Pima County Recorder's office (the "**S&D Agreement**").

B. The S&D Agreement encumbers Blocks 1, 3, 4, 7, 8, 9, 19, 21 and 25 of Star Valley as reflected in Book 56 of Maps and Plats, page 55, of the Official Records of the Pima County Recorder's office (the "**Stewart Trust 3701 Blocks**"), legal title to which Blocks is owned by Stewart Trust 3701. The S&D Agreement also encumbers Blocks 11, 12, 16 and 17 of Star Valley as reflected in Book 56 of Maps and Plats, page 55, of the Official Records of the Pima County Recorder's office (the "**Stewart Trust 3697 Blocks**"), legal title to which Blocks is owned by Stewart Trust 3697.

C. The Parties desire to clarify the current status of the S&D Agreement and to supplement and amend the terms of the S&D Agreement, including without limitation by clarifying the succession of Owner's obligations to Owner's successors in interest and Owner's assigns ("**Successors**") and the effect on Owner and Developer of such assignment to, and assumption by, Successors.

NOW, THEREFORE, in consideration of the covenants set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

IN WITNESS WHEREOF, the Parties have executed this Amendment to Star Valley Settlement Agreement and Development Agreement as of the Effective Date set forth at the top of page 1 of this Amendment.

1. Recitals. The recitals to this Amendment are incorporated by reference into this Amendment as covenants, and the Parties acknowledge and confirm that such recitals are accurate and correct.

2. No Default. County represents and warrants that although all obligations of Owner and Developer in the S&D Agreement may not have been performed in strict accordance with the time frames set forth in the S&D Agreement, all such obligations have been cured or otherwise satisfied and as of the Effective Date, neither Owner nor Developer are in breach or default of the S&D Agreement. Owner and Developer represent and warrant that County is not in breach or default of the S&D Agreement as of the Effective Date.

3. Release Upon Sale of Blocks.

a. Sale of Stewart Trust 3701 Blocks. Upon the conveyance by Stewart Trust 3701 of portions of the Stewart Trust 3701 Blocks to a Successor and the recordation of an assignment and assumption by the Successor as described in Paragraph 4 below, both Stewart Trust 3701 and Developer are fully released from all obligations under the S&D Agreement assigned to and assumed by such Successor in said assignment and assumption agreement. At such time as Stewart Trust 3701 has conveyed the last remaining portion of the Stewart Trust 3701 Blocks still held by Stewart Trust 3701 to a Successor and upon the recordation of an assignment and assumption by such transferee of all remaining obligations of Developer under the S&D Agreement, Stewart Trust 3701 and Developer have no further duty, liability or responsibility under the S&D Agreement.

b. Sale of Stewart Trust 3697 Blocks. Upon the conveyance by Stewart Trust 3697 of portions of the Stewart Trust 3697 Blocks to a Successor and the recordation of an assignment and assumption by the Successor as described in Paragraph 4 below, Stewart Trust 3697 is fully released from all obligations under the S&D Agreement assigned to and assumed by such Successor in said assignment and assumption agreement. At such time as Stewart Trust 3697 has conveyed the last remaining portion of the Stewart Trust 3697 Blocks still held by Stewart Trust 3697 to a Successor and upon the recordation of an assignment and assumption by such transferee of all remaining obligations of Stewart Trust 3697 under the S&D Agreement, Stewart Trust 3697 has no further duty, liability or responsibility under the S&D Agreement.

4. Recorded Assignment and Assumption. If, in connection with any conveyance of title to all or portions of the Stewart Trust 3701 Blocks or the Stewart Trust 3697 Blocks, the transferor and the

transferee (or if such transferor or transferee is a subdivision assurance trust, the beneficiaries of such trust with a consent and joinder by the trustee of such trust) execute and record in the Official Records of the Pima County Recorder's office an assignment and assumption of all obligations under the S&D Agreement (the "**Assignment and Assumption Agreement**"), then, automatically upon the execution and recordation of such Assignment and Assumption Agreement, the transferor (and, if the transferor is a subdivision assurance trust, such transferor's beneficiary) shall have no further or future duty, liability or responsibility to County under the S&D Agreement.

5. Authority. By execution of this Amendment below, each individual signatory represents and warrants that it has authority to execute this Amendment, and by such execution, bind the entity for whom he or she signs.

6. Miscellaneous. This Amendment has been executed in the State of Arizona, and the substantive laws of the State of Arizona (but not its conflicts of law principles) shall govern all matters arising out of or relating to, this Amendment. This Amendment shall be construed according to its plain meaning and shall not be strictly construed either for or against any party hereto. This Amendment may be executed in counterparts, and each such counterpart shall, when combined with all other such counterparts, constitute one agreement binding on the parties hereto. Any of the parties hereto are authorized to remove signature page(s) from identical counterparts and attach such signature page(s) to another signed counterpart hereof so that one copy of this Amendment containing all signature pages may be recorded. The parties hereto agree to execute such additional documents and to perform such additional acts as may be reasonably necessary to effect the purpose and intent of this document. The use of any gender shall be deemed to refer to the appropriate gender, whether masculine, feminine or neuter, and the singular shall be deemed to refer to the plural where appropriate, and vice versa. Except as specifically provided in this (amendment), the (original document) continues in full force and effect. Capitalized terms not defined in this Amendment, but defined in the S&D Agreement shall have the meaning set forth in the S&D Agreement, unless manifestly inappropriate.

See Following Pages for Signatures

Signature Page to First Amendment to S&D Agreement

DEVELOPER:

USH/SVA STAR VALLEY, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY

S.V.A. CORPORATION, MEMBER

U.S. HOME CORPORATION, MEMBER

By: _____

By: _____

Its: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of October, 2018, by _____, the _____ of **S.V.A. Corporation**, an Arizona corporation, on behalf of the company.

Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of October, 2018, by _____, the _____ of **U.S. Home Corporation**, a Delaware corporation, on behalf of the company.

Notary Public

Signature Page to First Amendment to S&D Agreement

OWNERS:

**STEWART TITLE & TRUST OF TUCSON, AN
ARIZONA CORPORATION, AS TRUSTEE OF ITS TRUST
No. 3701**

By: _____
Its: _____

**Stewart Title & Trust of Tucson, an Arizona
corporation, as Trustee of its Trust No. 3697**

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of October, 2018, by
_____, the _____ of **Stewart Title & Trust of Tucson**, an
Arizona corporation, as **Trustee under Trust No. 3701**, on behalf of the company.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of October, 2018, by
_____, the _____ of **Stewart Title & Trust of Tucson**, an
Arizona corporation, as **Trustee under Trust No. 3697**, on behalf of the company.

Notary Public

My Commission Expires:

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PIMA COUNTY, a political subdivision
of the State of Arizona

Chair, Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM:



Deputy Pima County Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of October, 2018, by _____, Chair of the Pima County board of Supervisors, an Arizona political subdivision, on behalf of Pima County.

Notary Public

My Commission Expires:

When recorded, please return to:

County Attorney's Office
Attn: Lesley Lukach
32 N. Stone, Suite 2100
Tucson AZ 85701

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RECITALS

A. Stewart Trust 3701, Developer, Stewart Trust 3697 and County (collectively, the "**Parties**") previously entered into that certain Star Valley Settlement Agreement and Development Agreement recorded on August 9, 2016 at Sequence 20162220420 of the Official Records of the Pima County Recorder's office (the "**S&D Agreement**").

B. The S&D Agreement encumbers Blocks 1, 3, 4, 7, 8, 9, 19, 21 and 25 of Star Valley as reflected in Book 56 of Maps and Plats, page 55, of the Official Records of the Pima County Recorder's office (the "**Stewart Trust 3701 Blocks**"), legal title to which Blocks is owned by Stewart Trust 3701. The S&D Agreement also encumbers Blocks 11, 12, 16 and 17 of Star Valley as reflected in Book 56 of Maps and Plats, page 55, of the Official Records of the Pima County Recorder's office (the "**Stewart Trust 3697 Blocks**"), legal title to which Blocks is owned by Stewart Trust 3697.

C. The Parties desire to clarify the current status of the S&D Agreement and to supplement and amend the terms of the S&D Agreement, including without limitation by clarifying the succession of Owner's obligations to Owner's successors in interest and Owner's assigns ("**Successors**") and the effect on Owner and Developer of such assignment to, and assumption by, Successors.

NOW, THEREFORE, in consideration of the covenants set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

IN WITNESS WHEREOF, the Parties have executed this Amendment to Star Valley Settlement Agreement and Development Agreement as of the Effective Date set forth at the top of page 1 of this Amendment.

1. Recitals. The recitals to this Amendment are incorporated by reference into this Amendment as covenants, and the Parties acknowledge and confirm that such recitals are accurate and correct.
2. No Default. County represents and warrants that although all obligations of Owner and Developer in the S&D Agreement may not have been performed in strict accordance with the time frames set forth in the S&D Agreement, all such obligations have been cured or otherwise satisfied and as of the Effective Date, neither Owner nor Developer are in breach or default of the S&D Agreement. Owner and Developer represent and warrant that County is not in breach or default of the S&D Agreement as of the Effective Date.
3. Release Upon Sale of Blocks.
 - a. Sale of Stewart Trust 3701 Blocks. Upon the conveyance by Stewart Trust 3701 of portions of the Stewart Trust 3701 Blocks to a Successor and the recordation of an assignment and assumption by the Successor as described in Paragraph 4 below, both Stewart Trust 3701 and Developer are fully released from all obligations under the S&D Agreement ~~pertaining to such conveyed portion(s) of the Stewart Trust 3701 Blocks.~~ assigned to and assumed by such Successor in said assignment and assumption agreement. At such time as Stewart Trust 3701 has conveyed the last remaining portion of the Stewart Trust 3701 Blocks still held by Stewart Trust 3701 to a Successor and upon the recordation of an assignment and assumption by such transferee ~~as described in Paragraph 4 below~~ of all remaining obligations of Developer under the S&D Agreement, Stewart Trust 3701 and Developer have no further duty, liability or responsibility under the S&D Agreement.
 - b. Sale of Stewart Trust 3697 Blocks. Upon the conveyance by Stewart Trust 3697 of portions of the Stewart Trust 3697 Blocks to a Successor and the recordation of an assignment and assumption by the ~~transferee thereof~~ Successor as described in Paragraph 4 below, Stewart Trust 3697 is fully released from all obligations under the S&D Agreement ~~pertaining to such conveyed portion(s) of the Stewart Trust 3697 Blocks~~ assigned to and assumed by such Successor in said assignment and assumption agreement. At such time as Stewart Trust 3697 has conveyed the last remaining portion of the Stewart Trust 3697 Blocks still held by Stewart Trust 3697 to a ~~transferee~~ Successor and upon the recordation of an assignment and assumption by such transferee ~~as described in Paragraph 4 below~~ of all remaining obligations of Stewart Trust 3697 under the S&D Agreement, Stewart Trust 3697 has no further duty, liability or responsibility under the S&D Agreement.

~~c. — No Developer Liability for Stewart Trust 3697 Blocks. County acknowledges and confirms that Developer is not a beneficiary of Stewart Trust 3697 and neither Developer nor any successor or assign of Developer (including, without limitation, any beneficiary of a subdivision assurance trust which is a successor fee title owner of the Stewart Trust 3701 Blocks) shall have any further duty, liability or responsibility under the S&D Agreement relating to the Stewart Trust 3697 Blocks.—~~

~~d. — Notwithstanding anything to the contrary contained in this Paragraph 3, Developer is not hereby released from any responsibility under the S&D Agreement to construct curbs and sidewalks in Block Group 2 as defined in the S&D Agreement.~~

4. Recorded Assignment and Assumption. If, in connection with any conveyance of title to all or portions of the Stewart Trust 3701 Blocks or the Stewart Trust 3697 Blocks, the transferor and the transferee (or if such transferor or transferee is a subdivision assurance trust, the beneficiaries of such trust with a consent and joinder by the trustee of such trust) execute and record in the Official Records of the Pima County Recorder's office an assignment and assumption of all obligations under the S&D Agreement (the "**Assignment and Assumption Agreement**"), then, automatically upon the execution and recordation of such Assignment and Assumption Agreement, the transferor (and, if the transferor is a subdivision assurance trust, such transferor's beneficiary) shall have no further or future duty, liability or responsibility to County under the S&D Agreement.

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USH/SVA STAR VALLEY, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY

S.V.A. CORPORATION, MEMBER

U.S. HOME CORPORATION, MEMBER

By: _____

By: _____

Its: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of October, 2018, by _____, the _____ of **S.V.A. Corporation**, an Arizona corporation, on behalf of the company.

Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of October, 2018, by _____, the _____ of **U.S. Home Corporation**, a Delaware corporation, on behalf of the company.

Notary Public

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**STEWART TITLE & TRUST OF TUCSON, AN
ARIZONA CORPORATION, AS TRUSTEE OF ITS
TRUST NO. 3701**

By: _____

Its: _____

Stewart Title & Trust of Tucson, an Arizona
corporation, as **Trustee of its Trust No. 3697**

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

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Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

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Notary Public

My Commission Expires:

Signature Page to First Amendment to S&D Agreement

PIMA COUNTY, a political subdivision
of the State of Arizona

Chair, Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

Clerk of the Board of Supervisors

Deputy Pima County Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of October, 2018, by _____, Chair of the Pima County board of Supervisors, an Arizona political subdivision, on behalf of Pima County.

Notary Public

My Commission Expires:
