



## **BOARD OF SUPERVISORS AGENDA ITEM REPORT**

**Requested Board Meeting Date:** October 16, 2018

**Title:** First Amendment to Star Valley Settlement Agreement and Development Agreement

### **Introduction/Background:**

The Star Valley Settlement Agreement and Development Agreement was approved by the Board of Supervisors August 2, 2016. The agreements clarified infrastructure financing and timing by the developer pursuant to the Star Valley Master Plan community. The original developer will be selling blocks of land to a successor developer. This amendment acknowledges that transfer and releases the original developer from any further obligation under the agreement.

### **Discussion:**

This amendment will have no impact on the future compliance or obligations outlined in the Star Valley Settlement Agreement and Development Agreement, it merely releases the current developer from the agreement at time of sale of the property. It acknowledges that the current developer is in compliance with the Settlement and Development Agreement as of the date of this amendment. The successor developer will be obligated for remaining infrastructure improvements and the repayment provisions for improvements constructed by Pima County.

### **Conclusion:**

If approved, this amendment will signify Pima County's consent to the transfer of ownership of Star Valley blocks and that the successor developer is assuming the remaining obligations of the Settlement and Development Agreement.

### **Recommendation:**

Recommend approval of the First Amendment of Star Valley Settlement Agreement and Development Agreement

### **Fiscal Impact:**

None

### **Board of Supervisor District:**

☐ 1      ☐ 2      ☒ 3      ☐ 4      ☐ 5      ☐ All

Department: Development Services

Telephone: \_\_\_\_\_

Contact: Carla Blackwell, Director

Telephone: 724-9516

Department Director Signature/Date: \_\_\_\_\_

*Carla Blackwell* 10/1/18

Deputy County Administrator Signature/Date: \_\_\_\_\_

*[Signature]* 10/3/18

County Administrator Signature/Date: \_\_\_\_\_

*C. Delaney* 10/3/18

When recorded, please return to:

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

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**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 pertaining to such conveyed portion(s) of the Stewart Trust 3701 Blocks. 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, 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 and the recordation of an assignment and assumption by the transferee thereof 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. 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 and the recordation of an assignment and assumption by such transferee as described in Paragraph 4 below, 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.

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 pertaining to the transferred property (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 with respect to such transferred property.

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**

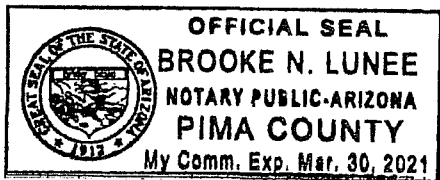
By: [Signature]  
Its: V.P.

**U.S. HOME CORPORATION, MEMBER**

By: [Signature]  
Its: V.P.

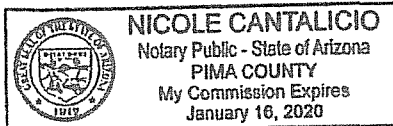
STATE OF ARIZONA     )  
                                  ) ss.  
COUNTY OF PIMA     )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of October, 2018, by Joseph R. Cesare, the Vice President of S.V.A. Corporation, an Arizona corporation, on behalf of the company.



[Signature]  
Notary Public

STATE OF ARIZONA     )  
                                  ) ss.  
COUNTY OF PIMA     )



The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of October, 2018, by Kevin Taibay, the Vice President of U.S. Home Corporation, a Delaware corporation, on behalf of the company.

[Signature]  
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**

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

By: APPROVED FOR EXECUTION

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Its: \_\_\_\_\_  
By: Joseph R. Cesare 15 Oct 2018

APPROVED FOR EXECUTION  
By: Joseph R. Cesare 15 Oct 2018

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:  
\_\_\_\_\_



*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: *Doris J. Clark*  
Its: Trust Officer

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

By: *Doris J. Clark*  
Its: Trust Officer

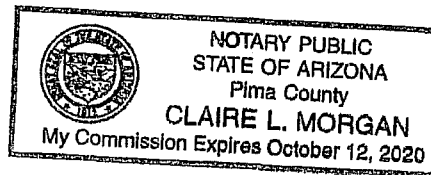
STATE OF ARIZONA       )  
                                      ) ss.  
COUNTY OF PIMA       )

The foregoing instrument was acknowledged before me this 16 day of October, 2018, by Doris J. Clark, the Trust Officer of **Stewart Title & Trust of Tucson**, an Arizona corporation, as **Trustee under Trust No. 3701**, on behalf of the company.

*Claire L. Morgan*  
Notary Public

My Commission Expires:

Oct. 12, 2020



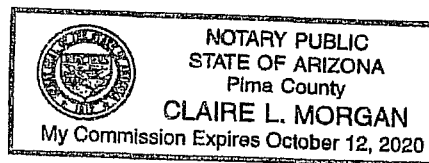
STATE OF ARIZONA       )  
                                      ) ss.  
COUNTY OF PIMA       )

The foregoing instrument was acknowledged before me this 16 day of October, 2018, by Doris J. Clark, the Trust Officer of **Stewart Title & Trust of Tucson**, an Arizona corporation, as **Trustee under Trust No. 3697**, on behalf of the company.

*Claire L. Morgan*  
Notary Public

My Commission Expires:

Oct. 12, 2020



*Signature Page to First Amendment to S&D Agreement*

**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:

 10/9/18

\_\_\_\_\_  
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:

\_\_\_\_\_