

RESOLUTION 2016-078

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; REAFFIRMING SETTLED POLICY GRANTING APPROVAL OF A MODIFICATION AGREEMENT AND ESTOPPEL CERTIFICATE RELATED TO THE CORONADO DEVELOPMENT LLC DEVELOPMENT AGREEMENT AND AMENDMENTS; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, pursuant to various policies and laws of the City of Sierra Vista an agreement was negotiated which assured the mutual benefit of the Owners and the City of Sierra Vista; and

WHEREAS, conditions have been placed on the property from a development agreement approved on July 26th, 2007, and as amended on June 24th, 2010 and July 14th, 2011; and,

WHEREAS, the Owners of the development are pursuing the refinancing of the property through the Housing and Urban Development (HUD); and,

WHEREAS, HUD does not want to assume any of the indemnity obligations as stated in the Agreement and the amendments; and,

WHEREAS, HUD wants to ensure that the development is consistent with the obligations of the Agreement and the amendments;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA AS FOLLOWS:

SECTION 1

The City Council of the City of Sierra Vista relating to Development Agreements, be, and hereby is affirmed.

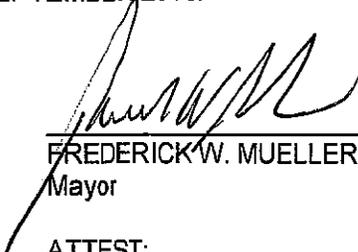
SECTION 2

The Modification Agreement and Estoppel Certificate related to the Coronado Development LLC Development Agreement and amendments be, and hereby is, approved.

SECTION 3

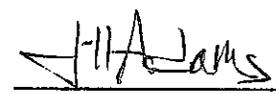
That the City Manager, City Clerk, City Attorney or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 22ND DAY OF SEPTEMBER, 2016.



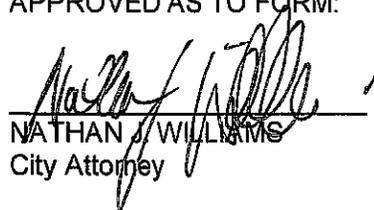
FREDERICK W. MUELLER
Mayor

ATTEST:



JILL ADAMS
City Clerk

APPROVED AS TO FORM:



NATHAN J. WILLIAMS
City Attorney

PREPARED BY:
Jeff Pregler
Senior Planner



Fox Rothschild LLP
ATTORNEYS AT LAW

Campbell Mithun Tower
222 South Ninth Street, Suite 2000
Minneapolis, MN 55402-3338
Tel 612.607.7000 Fax 612.607.7100
www.foxrothschild.com

SENDER'S NAME PAUL E. KISSELBURG
Sender's Direct Dial Number (612) 607-7315
Sender's Email and Direct Fax pkisselburg@foxrothschild.com

VIA E-MAIL

Jeff Pregler, AICP
Senior Planner
City of Sierra Vista
1011 N. Coronado Drive
Sierra Vista, Arizona 85635

Re: Galeria de Coronado Townhomes - Transaction under HUD Section 223(f)
HUD Project No. 123-11241
Borrower: GDC Townhomes, LLC, an Arizona limited liability company
Lender: KeyBank National Association
Premises: Galeria de Coronado Townhomes
1016 Sentinel Peak Road
Sierra Vista, Arizona 85635

Dear Mr. Pregler:

I represent KeyBank National Association on a proposed loan to GDC Townhomes, LLC. GDC owns (or soon will own) Galeria de Coronado Townhomes in Sierra Vista. The loan will be insured by HUD. HUD requires that, to the extent possible, all agreements that may impose financial obligations on the owner of a property be modified so as to ensure that such obligations do not become HUD's in the event of foreclosure. I asked Jeff Hursh and GDC to amend the Development Agreement to carve HUD out of two provisions that obligate the owner of the property to indemnify the City or pay certain legal expenses.

All federal employees are subject to the Anti-Deficiency Act (31 U.S. Code § 1341), which prohibits one from authorizing an expenditure or obligation exceeding an amount that has been appropriated by Congress for that expenditure or obligation. Therefore, HUD believes that it cannot allow this Development Agreement to remain without modification. HUD believes that

A Pennsylvania Limited Liability Partnership

California Colorado Connecticut Delaware District of Columbia Florida
Illinois Minnesota Nevada New Jersey New York Pennsylvania Texas



Fox Rothschild LLP
ATTORNEYS AT LAW

by accepting the Development Agreement, as it is currently, may cause the HUD attorney or attorneys who will review the file and approve the loan to violate the Act.

I suspect this prohibition on indemnification is not all that different for the City of Sierra Vista. The City may be unwilling or unable to obligate the taxpayers of Sierra Vista for payment of unknown expenses in the future.

I trust this letter helps explain why we are asking for these modifications.

Please call me to discuss if you wish.

Thank you very much.

Sincerely,

FOX ROTHSCHILD LLP

Paul E. Kisselburg

ACTIVE 42276516v1

THIS INSTRUMENT WAS DRAFTED BY:

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (“**Agreement**”) is made this 22nd day of September, 2016, by and between THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA (“**City**”) and GDC TOWNHOMES, LLC, an Arizona limited liability company (“**Owner**”).

A. Owner is the fee owner of certain real property located in Cochise County, Arizona and legally described on Exhibit A attached hereto (“the **Property**”).

B. The Property is subject to that certain Development Agreement dated July 26, 2007 by and between Coronado Development L.L.C., the developer of the Property (“**Developer**”), and the City, recorded on August 9, 2007 as Document No. 070826240, as amended by Amendment A, dated June 24, 2010, and recorded July 9, 2010 as Document No. 2010-15771 and Amendment B, dated July 14, 2011, and recorded July 26, 2011 as Document No. 2011-16040 (the **Development Agreement**”).

C. Owner is the successor to Developer and is subject to the terms and provisions of the Development Agreement.

D. City and Owner desire to memorialize certain amendments to the Development Agreement as set forth herein.

NOW, THEREFORE, in consideration of the above Recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and

Owner hereby declare as follows:

1. Provision 3 in Part II of the Development Agreement is hereby modified by adding the following sentence at the end thereof: “Notwithstanding anything in this Agreement to the contrary, any obligation of the Owner to indemnify, protect, defend, and hold harmless the City, its Council members, officers, employees and agents shall not apply to the United States Department of Housing and Urban Development (“HUD”) in the event HUD should come into possession or ownership of any real property subject to this Agreement.

2. Provision 6 of Part II is hereby modified by adding the following sentence at the end thereof: “Notwithstanding anything in this Agreement to the contrary, any obligation of the Owner to pay the expenses, costs, and fees of the City in the event City would be otherwise entitled to under this Provision 6 shall not apply to HUD in the event HUD should come into possession or ownership of any real property subject to this Agreement.

[Signature Pages To Follow]

THE CITY OF SIERRA VISTA

By: _____

Name: Frederick W. Mueller

Title: Mayor, City of Sierra Vista

STATE OF Arizona

COUNTY OF Cochise

This instrument was acknowledged before me this 22nd day of Sept., 2016, by Frederick W. Mueller the Mayor of THE CITY OF SIERRA VISTA.

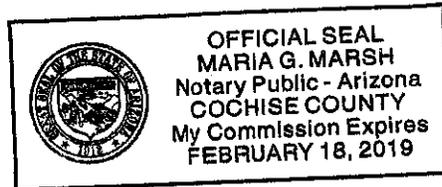
Maria G. Marsh

Notary Public

Printed Name: Maria G. Marsh

My Commission Expires:

02-18-19



GDC TOWNHOMES, LLC, an Arizona limited liability company

By: GALERIA DE CORONADO MANAGEMENT, LLC,
an Arizona limited liability company

By: CSM Management, LLC, an Arizona limited liability company, its Manager

By: Marcel Dabdoub
Name: Marcel Dabdoub
Its: Authorized Member

STATE OF ARIZONA

COUNTY OF PIMA

This instrument was acknowledged before me this 8th day of September, 2016, by Marcel Dabdoub, the Authorized Member of CSM Management, LLC, an Arizona limited liability company, the Manager of Galeria De Coronado Management, LLC, an Arizona limited liability company, the Manager of GDC Townhomes, LLC, an Arizona limited liability company, on behalf of the company.

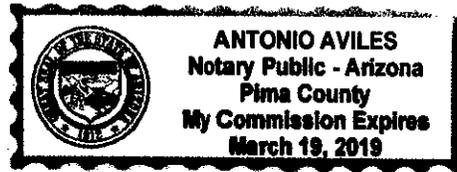
Antonio Aviles

Notary Public

Printed Name: Antonio Aviles

My Commission Expires:

March 19, 2019



ESTOPPEL CERTIFICATE

THIS ESTOPPEL CERTIFICATE ("**Certificate**") is made by THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA ("**City**") to KEYBANK NATIONAL ASSOCIATION, a national banking association ("**Lender**"), and the United States Department of Housing and Urban Development ("**HUD**") with respect to the property located in the County of Cochise, State of Arizona and more particularly described in Exhibit A attached hereto (the "**Property**").

1. The undersigned hereby attests, affirms and certifies that:

(a) The Property is subject to that certain Development Agreement dated July 26, 2007 by and between Coronado Development L.L.C., the developer of the Property, ("**Developer**") and the City, recorded on August 9, 2007 as Document No. 070826240, as amended by Amendment A, dated June 24, 2010, and recorded July 9, 2010 as Document No. 2010-15771 and by Amendment B, dated July 14, 2011, and recorded July 26, 2011 as Document 2011-16040 (the "**Development Agreement**").

(b) To the best of the City's knowledge, the Property was developed, and continues to exist, in satisfactory compliance with the terms and provisions of the Development Agreement.

(c) To the best of the City's knowledge, there are no defaults under any of the provisions or obligations of owner set forth in the Development Agreement.

2. The City makes the statements contained in this Certificate with the understanding that Lender and HUD intend to rely upon this Certificate and the undersigned agrees that they may so rely.

[Signature Page To Follow]

THE CITY OF SIERRA VISTA

By: 

Name: Frederick W. Mueller

Title: Mayor, City of Sierra Vista

STATE OF Arizona

COUNTY OF Cochise

This instrument was acknowledged before me this 22nd day of Sept, 2016, by Frederick W Mueller the Mayor of THE CITY OF SIERRA VISTA.



Notary Public

Printed Name: Maria G. Marsh

My Commission Expires:

02-18-19

