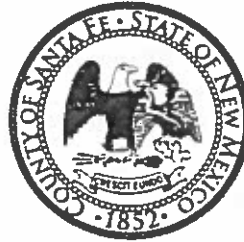


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Date: October 11, 2016

To: Santa Fe Board of County Commissioners

From: Robert Griego, Planning Manager *RG*
Rosemary Bailey, Housing Specialist *RB*

Via: Penny Ellis-Green, Growth Management Director
Katherine Miller, County Manager

Re: **REQUEST AUTHORIZATION TO ENTER INTO SANTA FE COUNTY
AFFORDABLE HOUSING AGREEMENT WITH RCS-TURQUOISE TRAIL
SOUTH I, LLC FOR TURQUOISE TRAIL NORTH PHASE**

SUMMARY:

Santa Fe County Affordable Housing Agreement for Turquoise Trail North Phase between RCS-Turquoise Trail South I, LLC and Santa Fe County.

BACKGROUND:

On August 18, 2016, the Planning Commission Case No. S-16-5090, recommended approval for the Conceptual Plan which consists of 268 Residential lots. The Affordable Housing Agreement must be reviewed; and approved by the Board of County Commissioners. The proposed agreement is attached as Exhibit A. Staff has met with developer and the County Attorney's Office to draft the agreement. The main provisions of the Agreement are summarized herein.

- Turquoise Trail North Phase Affordable Housing obligation, (15%) which is applied to two hundred sixty eight (268) lots in project resulting in forty point two (40.2) Affordable Units. Applicant agrees to cause to be built and sold ten (10) Affordable Unit for Income Range 1, ten (10) Affordable Unit for Income Range 2, ten (10) Affordable Unit for Income Range 3, and eleven (11) units an additional Affordable Unit for Income Range 4 to cover residual fee of point two. The Affordable Unit shall be sold to Eligible Buyers, who shall pay no more than the Maximum Target Housing Prices in accordance with in the Regulations.
- Periodic Adjustment of Maximum Target Housing Prices. The Maximum Target Housing Prices set forth in the Regulations may be adjusted annually and the Applicant agrees to be subject to the adjusted prices.
- Adjustment of Maximum Target Housing Prices Due to Homeowners Association ("HOA") fees. In the event that the HOA fees applicable to an Affordable Unit exceeds \$100 per month (regardless of the billing cycle), the Maximum Target

Housing Price for each Affordable Unit shall be reduced by the Applicant so that the buyer's monthly mortgage payment is reduced by the amount that the monthly fee exceeds \$100. Applicant must disclose all applicable HOA fees to the County and make any required adjustment to the Maximum Target Housing Price in order for the Affordable Unit sale to be certified as a Qualified Transaction.

- **Development Schedule.** Applicant shall cause to build and sold at least 1 Affordable Unit for every approximately 6 market rate units until all 41 Affordable Units are sold through Qualified Transactions.

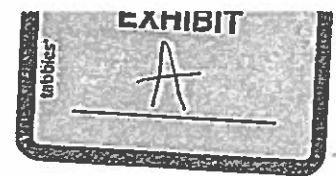
Staff Recommendation:

Staff recommends that approval of the Santa Fe County Affordable Housing Agreement for Turquoise North Phase.

Attachments:

Exhibit A: Santa Fe County Affordable Housing Agreement with RCS-Turquoise Trail South I, LLC for Turquoise Trail North Phase.

SANTA FE COUNTY
AFFORDABLE HOUSING AGREEMENT
TURQUOISE TRAIL NORTH SUBDIVISION



This Affordable Housing Agreement ("Agreement") for the Turquoise Trail North Subdivision ("Project") is between RCS - Turquoise Trail South I, LLC ("Applicant"), a Colorado limited liability company whose address is 371 Centennial Parkway, Suite 200, Louisville, Colorado, and Santa Fe County ("County"), a political subdivision of the State of New Mexico.

RECITALS

- A. The Project will occupy 101.49 acres of land within Tract 2A1 and 3A ("Property"), as identified on the Turquoise Trail Subdivision South Phase, filed in the records of the County Clerk as Instrument No. 1428730.
- B. On August 18, 2016, the Planning Commission in Case No. S-16-5090, recommended approval of the Conceptual Plan for the Project, which consists of 268 residential lots, including one 23-unit multi-family lot, to be developed in eight phases. The Board of County Commissioners approved the Conceptual Plan for the Project and the preliminary and final plats for Phase 1 on _____.
- C. County Ordinance No. 2006-02, as amended ("Affordable Housing Ordinance"), which the Board has been incorporated into the County Sustainable Land Development Code ("SLDC"), requires Applicant to provide a certain percentage of Affordable Housing Units ("Affordable Units") within the Project or comply with the Ordinance through approved alternative means.
- D. In County Resolution No. 2010-189, the Board adopted the County Affordable Housing Regulations ("Regulations") to further implement the Ordinance.
- E. Pursuant to the Ordinance and Regulations, Applicant submitted an Affordable Housing Plan, attached hereto as Exhibit A, which has been approved by the County.
- F. The Affordable Housing Plan describes the general location, total number of units, a description of the type and design of those units, the general pricing structure, and the proposed phasing for Affordable Housing within the Project.
- G. The Ordinance and Regulations require that at or before recordation of the final plat for Phase 1 of the Project, Applicant and the County must enter into and record an enforceable Affordable Housing Agreement that among other things, incorporates the Affordable Housing Plan, specifies any approved alternative means of compliance, and identifies the lots on which Affordable Units will be constructed in the Project.
- H. The purpose of this Agreement is to fulfill the requirements of the Ordinance and Regulations.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the County and Applicant agree as follows:

1. **Definitions.** Except as to those terms defined in this Agreement, capitalized terms shall be defined as provided in the Ordinance and the Regulations.
2. **Controlling Affordable Housing Ordinance and Regulations; Required Number of Affordable Units.** The Ordinance and the Regulations shall apply to this Project and shall govern the Applicant's performance of all obligations under this Agreement, unless otherwise stated herein. The applicable affordable housing percentage for the Project is percent 15%, which requires Applicant to cause to be built and sold 40.2 Affordable Units within the Project. Applicant agrees to build an additional Affordable Unit, bringing the total to 41 Units, in lieu of paying a residual fee under Section 3.1 of the Regulations.
3. **Distribution of Affordable Units Within Income Ranges; Maximum Target Housing Price; Contract Price; Home Standards.** The Affordable Units within the Project shall be distributed among the four Income Ranges as follows: 10 Units in Income Range 1; 10 Units in Income Range 2; 10 Units in Income Range 3; and 11 Units in Income Range 4. The Affordable Units shall be sold to Eligible Buyers or Entry Market Buyers (collectively, "Eligible Buyers"), as applicable, who shall pay no more than the latest Maximum Target Housing Prices adopted by the County. The Maximum Target Housing Prices represent the maximum amount to be paid by the Eligible Buyer after applying the amount subject to the County Affordability Mortgage or Lien (collectively, "Affordability Lien"). However, the contract sales prices, as set forth in the HUD-1 settlement statement, for all Affordable Units shall be set at 95% of a unit's appraised market value. Affordable Units shall be designed and built in conformance with the Ordinance, Regulations, Affordable Housing Plan (which is incorporated in this Agreement by reference), and this Agreement. The Units shall meet minimum structural requirements, minimum bedrooms and bathrooms, minimum heated floor area, energy efficiency requirements and other requirements set forth in the Ordinance and the Regulations, and architectural and landscaping features of Affordable Units and market rate units shall be similar in appearance.
4. **Adjustment of Maximum Target Housing Prices Due to Homeowner's Association ("HOA") Fees.** In the event that the HOA fees applicable to an Affordable Unit exceeds \$100 per month (regardless of billing cycle), the Maximum Target Housing Price for each Affordable Unit shall be reduced so that the buyer's monthly mortgage payment is reduced by the amount that the monthly HOA fee exceeds \$100. Applicant must disclose all applicable HOA fees to the County and the buyer and make any required adjustment to the Maximum Target Housing Price in order for the Affordable Unit sale to be certified as a Qualified Transaction.
5. **Alternate Means of Compliance in Lieu of Construction.** Applicant has not proposed and the County has not accepted any Alternative Means of Compliance under Section 13.7 of the SLDC.

6. **Affordable Housing Development Schedule.** Applicant shall cause to be built and sold at least 1 Affordable Unit for every approximately 6 market rate units until all 41 Affordable Units are sold through Qualified Transactions; *provided*, however, that Applicant shall cause to be built and sold all 41 Affordable Units to Eligible Buyers in accordance with this Agreement within 7 years from the effective date of this Agreement, which time shall be extended an amount of time consistent with any extensions of the preliminary plat for each phase of the Project pursuant to SLDC section 5.7.11 or as otherwise approved by the County.

7. **Integration of Affordable Units and Affordable Lots in the Project.** As shown on Exhibit B attached to this Agreement, Affordable Units shall be distributed throughout the Project and located on lots 2, 6, 17, 26, 30, 38, 45, 48, 57, 59, 70, 79, 83, 90, 98, 104, 107, 113, 116, 124, 131, 138, 140, 148, 154, 174, 176, 180, 192, 199, 202, 210, 215, 220, 221, 227, 232, 252, 262, 260, and 266.

8. **Final Plat; Recordation Requirements.** This Agreement shall be filed in the property records of the County Clerk before or along with the final plat for Phase 1 of the Project. The final plats for the Project shall not identify the Affordable Lots but the plat for each phase shall reference this recorded Agreement by Instrument Number, Book and Page. This Agreement shall apply to all phases of the Project. Recordation of the final plat for Phase 1 prior to recordation of this Agreement shall be ineffective and shall constitute a breach of this Agreement and a violation of the Ordinance.

9. **Marketing Plan.** Applicant agrees to market the Affordable Units through print advertising, fliers and other promotional media, notice to the County, notice to affordable housing agencies whose mission it is to promote affordable housing and first time homebuyers, and notice to real estate brokers.

10. **Closing of Qualified Transactions.** All Qualified Transactions shall be closed in accordance with the procedures in this Section.

A. **Notice of Closing; Appraisal.** The Applicant shall give the County at least 10-days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:

1. The name of the Eligible Buyer as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent;
4. An appraisal of the Affordable Unit being sold, which appraisal shall be:
(i) prepared by a properly licensed, certified real estate appraiser; (ii) paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible Buyer; and (iii) prepared within the previous six (6) months.

B. Affordability Lien. The Ordinance's goals of having Affordable Units owner-occupied by Eligible Buyers and maintaining long term affordability shall be achieved through the execution at closing of a County Affordability Lien pursuant to Section 13.9 of the SLDC, which "shall create a ... lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale, as determined by an appraisal approved by the County." As provided in Section 13.9 of the SLDC, the Affordability Lien shall also include a right of first refusal as set forth in the Ordinance and the Regulations. At least 2 business days prior to the date of the scheduled closing on an Affordable Unit, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer), the Affordability Lien. Any cost associated with the recording and returning of the Affordability Lien shall be borne by Applicant.

C. Settlement Statement. Applicant shall cause the title company to transmit, within 10 days of the closing of a Qualified Transaction, a copy to the County of the Settlement Statement (HUD-1) for the Qualified Transaction, signed by the seller and purchaser.

D. Certificate of Compliance. Upon receipt and review by the County of the closing statement from the title company or Applicant, the County shall issue a Certificate of Compliance for the Qualified Transaction.

11. **Incentives.** In consideration of Applicant's obligations hereunder and in accordance with the Ordinance, as to all Affordable Units required under this Agreement, Applicant shall not be required to transfer water rights for Affordable Units (SLDC § 13.5), Applicant shall be relieved of the obligation to pay development fees (SLDC § 13.6.3), and Applicant shall be relieved of the obligation to pay additional water connection fees (excluding the costs of create a line extension) other than the cost of a water meter (SLDC § 13.6.4).

12. **Assignment.**

A. Applicant shall not assign this Agreement, in whole or in part, except upon the express written consent of the County Land Use Administrator ("Administrator"), which consent shall not be unreasonably withheld. Applicant shall submit a written request to assign this Agreement to the Administrator at least 10 days prior to the proposed closing date, including the name and address of the proposed assignee and a copy of the proposed instrument of assignment. The assignment shall acknowledge this Agreement, affirmatively state that the assignee shall be bound by this Agreement to the same extent as the Applicant, and include such other terms as the Administrator may reasonably require to assure performance of this Agreement.

B. The sale of an Affordable Lot to any person other than an Eligible Buyer shall constitute a partial assignment of this Agreement requiring the County's prior written consent pursuant to Section 11(A) above. The sale of all Affordable Lots in a single transaction shall constitute an assignment of this entire Agreement requiring the Administrator's prior written consent pursuant to Section 11(A) above.

C. The sale of a single Affordable Housing Unit to an Eligible Buyer in a Qualified Transaction pursuant to this Agreement shall not constitute an assignment of this Agreement.

13. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of Applicant's heirs, successors and assigns.

14. **Default; Remedies.**

A. Applicant shall be in default of this Agreement if Applicant fails to cause to be built and sold Affordable Units in accordance with this Agreement. Events of default include but are not limited to the following: (1) Applicant assigns an Affordable Lot without the County's prior written consent; (2) Applicant sells an Affordable Unit to anyone other than an Eligible Buyer; (3) Applicant fails to comply with the Affordable Housing Development Schedule; or (4) Applicant fails to substantially comply Sections 3, 7, 8, and 10 of this Agreement. In the event of default, the County shall provide Applicant written notice of default and Applicant shall thereafter have 30 days to cure or such additional time as the County specifies in its notice.

B. The Applicant agrees that, in the event of Applicant's uncured default under this Agreement, the County will have no practical means of measuring its damages or other adequate remedy at law. Therefore, in the event of an uncured default, the County shall be entitled to the following remedies, in any combination, in addition to any other remedies that may be available to it:

1. For each Affordable Unit that is not timely constructed and sold in accordance with this Agreement, Applicant shall be deemed to have selected cash payment as an alternative means of compliance pursuant to Section 8.2.1 of the Regulations. For each such Unit, Applicant shall pay the County the applicable Maximum Target Home Price of the Affordable Unit that would have otherwise been constructed under this Agreement.

2. The County shall be entitled to injunctive relief to require Applicant to specifically perform this Agreement.

3. If Applicant received a density bonus, the County may require amendment of the final plat to comply with density requirements without the bonus or, if the Project is within a receiving area, require Applicant to obtain transferrable development rights to support the density.

4. For each Affordable Unit that is not timely constructed and sold to an Eligible Buyer, Applicant shall pay whatever fees and costs may have been waived under this Agreement.

5. The County may refuse to grant any further development approvals required for the Project or related future phases until Applicant performs this Agreement or makes all required remedial payments.

C. The County may seek a combination of cash payments and injunctive relief, as the County deems appropriate, but shall not be entitled to double recovery.

D. If the County substantially prevails in a judicial action to enforce this Agreement, the County shall be entitled to its reasonable attorney's fees.

15. Termination. This Agreement shall terminate upon the County issuing a certificate of compliance with the Agreement in accordance with Section 7.5 of the Regulations. In the event of Applicant's default under this Agreement, the County may seek all remedies provided under Section 14, in which case this Agreement shall terminate upon Applicant's cash payment or specific performance as to each Affordable Unit required under this Agreement and payment of all required fees and costs.

16. Miscellaneous Provisions.

A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

B. This Agreement shall be construed and enforced in accordance with the laws of the State of New Mexico. In the event of a dispute between the parties concerning this Agreement, the exclusive venue shall be the First Judicial District State Court, Santa Fe County, New Mexico.

C. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

D. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

E. Within 15 days of the County's written request, Applicant shall provide the County with such documentation the County reasonably deems relevant to establish Applicant's compliance with this Agreement. If Applicant fails to provide the information, the County may assume Applicant's non-compliance and mail Applicant a notice of default pursuant to Section 14.

Turquoise Trail –North Phase
Affordable Housing Agreement
Page 7 of 8

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

The foregoing was acknowledged before me this ____ day of _____,
2016, by _____ (name), _____ (title) of
RCS-Turquoise Trail South I, LLC, on behalf of said company.

Notary Public

My commission expires:
