
**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Second Amendment to Developer Agreement with the Center for Affordable Housing, Inc. for Holly Homes

DEPARTMENT: Community Services

DIVISION: Community Assistance

AUTHORIZED BY: Michele Saunders

CONTACT: Buddy Balagia

EXT: 2389

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute the Second Amendment to the Community Housing Development Organization Affordable Housing Development Agreement (Program Years 2005-2006 & 2006-2007).

District 5 Brenda Carey

Buddy Balagia

BACKGROUND:

On September 6, 2007 (as per the August 28, 2007 Board meeting) the Board executed an Affordable Housing Development Agreement (with HOME Program Community Housing Development Organization set-aside funding) with the Center for Affordable Housing to construct and sell fifteen (15) townhomes for ownership by very low and low income households. The town homes are now fully constructed and awaiting issuance of Certificates of Occupancy.

The Agreement was amended on December 11, 2008 to extend the completion date to September 30, 2009, due to delays brought about by changes to the stormwater drainage system required by St. Johns River Water Management District.

Due to the drastic reduction of appraised market housing values caused by the housing market slump, and to the increasing availability of foreclosed units at very affordable prices, it has become increasingly difficult to market the townhomes to very low and low income homebuyers who can purchase housing elsewhere at extremely affordable prices. Accordingly, in order to repay the construction loan, the Center for Affordable Housing (Center) has to market the three-bedroom units at \$125,000 (interior units) to \$130,000 (end units).

In addition to the above sales prices, in order to repay the construction loan, an additional (up to) \$274,875 in funding is needed for the Center to "break even." Staff is proposing that that funding be provided from existing HOME Program funding in order to prevent foreclosure by the lender. The Center will still be required to sell three (3) of the units to very low income homebuyers and the remaining twelve (12) to low income homebuyers. The Second Amendment (attached) also allows for a one (1) year extension through September 30, 2010.

The Second Amendment also allow the County to purchase unsold units, if necessary. The actual amount of HOME funding necessary will be determined as units are sold, and will not

exceed \$274,875 (this funding increases the subsidy per unit to maximum allowable by HOME regulations).

STAFF RECOMMENDATION:

Staff recommends that the Board approve and authorize Chairman to execute the Second Amendment to the Community Housing Development Organization Affordable Housing Development Agreement (Program Years 2005-2006 & 2006-2007).

ATTACHMENTS:

1. Agreement

Additionally Reviewed By:

County Attorney Review (Arnold Schneider)

SECOND AMENDMENT TO AGREEMENT
SEMINOLE COUNTY/THE CENTER FOR AFFORDABLE HOUSING, INC.
HOME PROGRAM - COMMUNITY HOUSING DEVELOPMENT ORGANIZATION
AFFORDABLE HOUSING DEVELOPMENT AGREEMENT
PROGRAM YEARS 2005-2006 AND 2006-2007

THIS SECOND AMENDMENT TO AGREEMENT, entered into this _____ day of _____, 2009, by and between SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY", and THE CENTER FOR AFFORDABLE HOUSING, INC., a non-profit Florida corporation, whose address is 2524 South Park Drive, Sanford, Florida 32771, hereinafter referred to as "CENTER".

WHEREAS, COUNTY and CENTER heretofore entered into that certain Seminole County/The Center For Affordable Housing, Inc. HOME Program - Community Housing Development Organization Affordable Housing Development Agreement, Program Years 2005-2006 and 2006-2007, dated September 6, 2007 as amended by that certain First Amendment to said Agreement dated December 11, 2008 (collectively, the "Agreement"); and

WHEREAS, the Agreement is for the purpose of financing the development of fifteen (15) housing units in a development known as Holly Avenue Townhomes serving Very Low Income and Low Income households in Seminole County utilizing ONE MILLION ONE HUNDRED FIFTY-FIVE THOUSAND AND NO/100 DOLLARS (\$1,155,000.00) of COUNTY'S HUD HOME Program funds; and

WHEREAS, delays in the permitting of the Project brought about by required changes to the storm water management system imposed by the St.

Johns Water Management District, a regulatory agency not under the control of either party resulted in delays in Project completion necessitating an extension of the term of the Agreement by the First Amendment thereto; and

WHEREAS, the aforementioned delays also subjected the Project housing units to reductions in their appraised market values, significantly complicating the marketing of the units at prices and terms necessary to effectively retire the outstanding Project construction loan incurred by CENTER: and

WHEREAS, the parties have determined that an extension of the Agreement's term by formal amendment is necessary to allow sufficient time for the completion of the marketing phase of the Project and development of a plan and commitment of adequate resources to best assure a successful completion of the Project,

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Recitals. The above recitals are true and form a material part of this First Amendment and of the Agreement as hereby amended, upon which the parties have relied.

Section 2. Amendment to Section 4 of the Agreement. Section 4 of the Agreement is hereby amended to extend the Project completion date and term of the Agreement as follows:

"SECTION 4. TERM. This Agreement shall be effective upon its execution by all parties. CENTER shall complete all Project services required by this Agreement on or before September 30, ~~2009~~ 2010. This Agreement shall terminate on September 30, ~~2009~~ 2010, unless otherwise mutually extended by written amendment hereto. The foregoing notwithstanding, Sections 10, 11, 13, 18(b), and 23 shall survive the termination date hereof. Regardless of the termination or expiration of this Agreement, all completed Project units whose development and construction are financed under this Agreement shall continue to comply with the applicable Affordability Period."

Section 3. Amendments and Additions to Section 5 of the Agreement.

(a) Section 5(g) of the Agreement is hereby amended to extend the final Project invoicing and  reporting dates, consistent with the amended term of the Agreement. Section 5(g) shall henceforth read as follows:

"(g) On or before September 30, ~~2009~~ 2010, CENTER shall render a final and complete statement to COUNTY of all costs for goods and services not previously invoiced. COUNTY shall not be obligated to pay any charges, claims or demands of CENTER not properly invoiced and received by COUNTY on or before September 30, ~~2009~~ 2010."

(b) Section 5 of the Agreement is hereby further amended by the addition of a new subsection 5(h) which shall read as follows:

"(h) COUNTY reserves the right to determine if additional HOME and/or SHIP program subsidies beyond the maximum stated in subparagraphs (c) and (d) of this Section 5 are necessary in order to best assure the success of the Project. Any additional HOME Program subsidy, when, as and if provided, shall not exceed TWO HUNDRED SEVENTY FOUR THOUSAND EIGHT HUNDRED SEVENTY-FIVE AND NO/100 DOLLARS (\$274,875.00). The amount(s) of any such additional financial support may be in the form of enhanced down payment assistance mortgage financing to income qualified buyers, an additional grant to CENTER and may, at COUNTY's sole discretion be paid directly to CENTER'S lender for retirement of the Project construction and development loan or a combination of both alternatives. In lieu of those options, COUNTY shall also have the right to purchase some portion or all of the Project units at a price or prices necessary to achieve the Project's stated affordable housing objectives. Determination of the final amount, program sources, form and terms of such additional financial support shall be the sole prerogative of the COUNTY. CENTER agrees to expeditiously execute any and all such additional financing documents and subsequent amendment(s) to this Agreement as are necessary to achieve the purposes of this subsection."

Section 4. Amendment of Exhibit "A" to the Agreement. Exhibit "A" to the Agreement (General Scope of Services), including Attachment A-1 thereto ("Project Development Timeline") are hereby deemed amended to require a Project completion deadline of September 30, 2010. Such amendment and application thereof shall be of particular emphasis with

respect to the "marketing, sale and closing of the completed units" phase of the Scope of Services for which CENTER agrees to use its enhanced, best efforts to accomplish as expeditiously as possible and in close cooperation and coordination with COUNTY.

Section 5. Effect of Second Amendment on Agreement. The remaining portions of the Agreement as well as the Exhibits/Attachments thereto not expressly amended by this instrument shall remain in full force and effect as originally agreed upon; however, the entire amended Agreement shall be interpreted and applied as a harmonious whole to give full effect to the purposes of this Second Amendment. The severability clause in Section 28 of the Agreement shall be deemed applicable to this Second Amendment.

Section 6. Conditions Precedent and Authority for Execution. The parties hereto each represent to the other that they have done all things necessary as conditions precedent to the execution hereof and the persons whose signatures appear below have the authority to sign this instrument and bind their respective parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed:

(SIGNATURES AND ATTESTATIONS ON FOLLOWING PAGE)

ATTEST:

THE CENTER FOR AFFORDABLE HOUSING, INC.

GABRIELLA COULTER, Secretary

By: _____
STEPHEN COLD, President

[CORPORATE SEAL]

Date: _____

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
BOB DALLARI, Chairman


Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution
by the Board of County Commissioners
at their _____, 20____
regular meeting.

Approved as to form and
legal sufficiency.

County Attorney

P:\Users\aschneider\HUD-CDBG\2nd Amend - CFAH Holly Ave. Project (CHDO HOME).doc