

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 3C
Amend No. _____

Date Prepared: **April 29, 2010** Council Meeting Date: **June 15, 2010**

TO: Carl Swenson, City Manager
THROUGH: Susan J. Daluddung, Deputy City Manager (DCM)
FROM: Andrew Granger, P.E., City Engineer
SUBJECT: Land donation to Habitat for Humanity Central Arizona, two City owned residential lots.

RECOMMENDATION:

Discussion and possible action to adopt a Resolution authorizing the City Manager to execute Quit Claim Deeds to Habitat for Humanity Central Arizona for two City owned residential lots, one is located in Country Meadows at the northwest corner of Northern and 103rd Avenues, the other is located in Varney Tract on 80th Drive just north of Cholla.

SUMMARY:

In November of 2009 the question of what the City should do with these two vacant lots came up as Community Services was working towards reducing ongoing maintenance costs associated with vacant City owned properties. Both of these properties were obtained by the City in the distant past for utility related operations.

The first lot can be identified as Assessor Parcel #142-06-010; it is located on the west side of 80th Drive just north of Cholla (Varney Tract). This parcel has residential multi-family (RM-1) zoning but the lot size is more suitable to a single family residence. It was acquired by the City through the Chamber of Commerce for a well site in 1961; the well has since been closed and abandoned.

The second lot can be identified as Parcel #142-61-749; it is located at the northwest corner of 103rd and Northern Avenues and has single family residential (R1-7) zoning.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # 2010-41
LCON# 06410 LIC. # _____
Action Date: _____

This parcel was acquired by the City in 1991 from the Sunny Boy Water Company and is no longer needed for utility operations.

Internal discussions with staff indicated that there are no current or future needs for these residential parcels. The parcels are well suited for residential development but there are no funds available to conduct the due diligence necessary to dispose of the parcels to the public. The costs associated with the due diligence to sell these parcels to the public would be as much as \$5,000 or more each with no guarantee that there would be a sale. An alternative solution is to offer the properties to non-profit organizations that could build affordable housing at no cost to the City.

In early March Materials Management solicited a Statement of Interest and Qualifications for each of the properties; Solicitation Numbers P10-0047 and P10-0050 were advertised to the public during March. There was considerable interest in the solicitations although only one response was received for each solicitation. The sole respondent was Habitat for Humanity Central Arizona (Habitat).

An internal selection committee reviewed and scored the responses for each of the solicitations resulting in a recommendation that the City quit claim the parcels to Habitat. The City will enter into a purchase agreement with Habitat that will outline the criteria for the transfer. Terms will include language indicating that the City will expend no funds in the development process and that Habitat will have a single family residence built on each site within 24 months of the execution of the agreement. The residences will conform to both neighborhoods and will meet LEED energy efficiency standards. The Deeds will contain a reversionary clause that will re-vest the title to the City if Habitat fails to perform as set forth in the agreement.

FISCAL NOTE: (if applicable)

There are no costs associated with the granting of these parcels to Habitat.

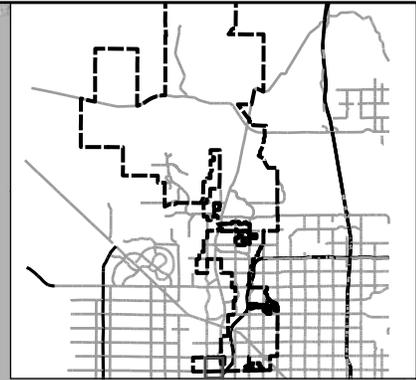
ATTACHMENT: (if applicable)

1. Vicinity Maps
2. Resolution

CONTACT: Kris Luna, SR/WA, Sr. Real Property Administrator, (623) 773-7199



NOT TO SCALE



LOMA LN

103RD DR

103RD AVE

NORTHERN AVE

GLEN HARBOR BLVD

Legend

 142-61-749



City of Peoria
Parcel 142-61-749



NOT TO SCALE

ROOSEVELT ST



81ST AVE

80TH DR

80TH AVE

CHOLLA ST

Legend



142-06-010



City of Peoria

Parcel 142-06-010



RESOLUTION NO. 2010-41

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA, AUTHORIZING THE EXECUTION OF QUIT CLAIM DEEDS FOR TWO VACANT CITY OWNED PROPERTIES TO HABITAT FOR HUMANITY CENTRAL ARIZONA.

WHEREAS, The City owns two vacant parcels of residential land no longer necessary for the operation of City facilities; and

WHEREAS, The City advertised a Request for Statement of Interest and Qualifications to non-profit organizations that would build affordable housing on these parcels, subject to specific criteria set forth in the request and subsequently offer this affordable housing to the public; and

WHEREAS, Pursuant to Article I, Section III of the Peoria City Charter, the City Council may convey any right, title or interest in any real property in such terms as the City Council determines to be appropriate and necessary; and

WHEREAS, Pursuant to the Peoria City Charter and in accordance with the findings set forth above, the Mayor and Council of the City of Peoria consent to the conveyance of the two residential lots described in "Exhibit A" to Habitat for Humanity Central Arizona, and authorize the City Manager to execute the documents; and

THEREFORE, BE IT RESOLVED that the Mayor and Council of the City of Peoria, Arizona authorize the conveyance of the two residential lots described in "Exhibit A" to Habitat for Humanity Central Arizona, and authorize the City Manager to execute the documents.

Resolution No. 2010-41
Habitat for Humanity
June 15, 2010
Page 2

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria,
Arizona this 15th day of June 2010.

Bob Barrett, Mayor

ATTEST:

Mary Jo Waddell, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

ATTACHMENTS:

1. Exhibit A – Legal Descriptions
2. Purchase Agreement including Quit Claim Deeds

Exhibit A – Description of 2 Lots

PARCEL 1

The north half of the east half of Lot Five (5), in VARNEY TRACT, according to the plat thereof of record in the office of the County Recorder of Maricopa County, Arizona, in Book 30 of Maps, at page 11 thereof.

PARCEL 2

Lot 712, of COUNTRY MEADOWS UNIT FOUR, according to the plat of record in the office of the County Recorder of Maricopa County, recorded in Book 195 of Maps, Page 47.

Return to:

**City of Peoria
Engineering Department
9875 N. 85th Avenue
Peoria, AZ 85345**

PURCHASE AGREEMENT

SELLER: CITY OF PEORIA, an Arizona municipal corporation

BUYER: Habitat for Humanity Central Arizona

LOCATION: Lot 712 of Country Meadows Unit Four and a Portion of Lot 5 of Varney Tract

1. Binding Agreement. Upon the execution of this purchase agreement it shall constitute a binding contract between Seller and Buyer for the transfer of the real property legally described on Exhibit A attached hereto. This agreement will be executed by the City Manager upon approval of the transfer by the City of Peoria City Council.

2. Acceptance. The offer represented by this Agreement shall be deemed accepted upon Buyer's execution and delivery of a counterpart of this Agreement to the City's Real Property Administrator by May 12, 2010.

3. Conveyance of Title. The Real Property, including all rights and privileges appurtenant to or arising from the Real Property, shall be conveyed by Seller to Buyer upon the recording of a Quit Claim Deed. The property shall transfer to the buyer subject to all matters of record and reservations in patents from the United States or the State of Arizona.

4. Possession. Upon recordation of the deed Seller shall deliver possession to Buyer, and all risk of loss of, or damage to, the Real Property from any source shall, at that time, pass to and become the sole responsibility of Buyer.

5. Payment of Purchase Price. The Purchase Price for the Real Property interests shall be \$1.00 and other valuable consideration.

6. [Intentionally Left Blank.]

7. Closing; Fees, Costs.

(a) The Seller will record the Quit Claim Deed and deliver the original to the Buyer.

(b) The recording fees with respect to the Quit Claim Deed shall be paid by the Seller.

8. Information; Limitation on Liability. Buyer acknowledges that Seller has limited information on the Real Property being conveyed. Buyer shall make its own verification of the accuracy of any relevant or material facts about the property prior to finalizing this transaction. Buyer agrees that it shall not attempt to assert any liability against Seller by reason of Seller's not having furnished information. Buyer does hereby covenant and agree to defend, pay, indemnify, and hold Seller harmless from and against any and all such claims of liability by any person or entity.

9. No Warranties. Buyer agrees that the Real Property shall be purchased in an "as-is" condition, with no representation or warranty of any type or nature being made by Seller. Seller makes no warranty as to the sufficiency of the Real Property for Buyer's purposes or any purpose whatsoever, the physical condition of the Real Property or any work or improvements which might be required for any reason whatsoever, the square footage or acreage contained within the Real Property, the sufficiency or completeness of any plans for the Real Property, plats, zoning, or other development items relating to the Real Property, or as to any improvements on the Real Property, except as expressly set forth elsewhere in this

Agreement.

10. Seller's Warranties.

(a) Seller's Authority. Seller has full power and authority to enter into and perform under this Agreement in accordance with its terms. Upon execution of this Agreement this Agreement shall be binding and enforceable on Seller.

(b) Other Leases or Agreements. To Seller's knowledge and without due inquiry, there are no unrecorded leases or other agreements which may affect Buyer's ability to take title to or possession of the Real Property.

11. Water Rights. Upon recordation of Deed, Seller shall, without further act, be deemed to have assigned, transferred, conveyed, and set over unto Buyer, without warranty of any kind, all of the grandfathered water rights, if any, with respect to the Real Property.

12. Buyer's Representations and Warranties. Buyer warrants, represents, and covenants (with the understanding that Seller is relying on said warranties, representations, and covenants) that:

(a) Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms.

(b) Buyer acknowledges that consummation of this transaction shall constitute its acknowledgment that it has independently inspected and investigated the Real Property and has made and entered into this Agreement based upon such inspection and investigation of the condition of the Real Property, and Seller is hereby released from all responsibility regarding the condition of the Real Property. Buyer agrees to accept the Real Property in its present condition "AS IS", subject only to the specific warranties, if any, set forth in this Agreement.

(c) Buyer acknowledges that the Real Property is vacant and unimproved land, and represents and warrants to Seller that Buyer has inspected the Property and has entered into this contract based upon Buyer's inspection and that Seller made no representations or warranties regarding the condition of the Real Property.

13. Brokerage. Seller and Buyer agree as follows:

(a) Mutual Warranties. Seller warrants that it has not dealt with any finder, broker or realtor in connection with the transaction embodied by this Purchase Agreement.

(b) Indemnity and Hold Harmless. If any person shall assert a claim to a finder's fee or brokerage commission on account of alleged employment as a finder or broker in connection with the Real Property, the party under whom the finder or broker is claiming shall defend, protest, indemnify and hold the other party harmless from and against any such claim and all costs, expenses and liabilities incurred in connection with such claim or action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claims.

14. Survival of Representations All representations and contained in this Agreement are true on and as of the date so made, will be true in all material respects on and as of the Closing Date, and will survive the execution, delivery, and recordation of the Deed. In the event that any representation or warranty by a party is untrue, the other party shall have all rights and remedies available at law, in equity, or as provided in this Agreement.

15. No Assumption of Seller's Liabilities. Buyer is acquiring only the Real Property from Seller and is not the successor of Seller. Buyer does not assume, agree to pay, or indemnify Seller or any other person against any liability, obligation, or expense of Seller or relating in any way to the Real Property.

16. Condemnation; Risk of Loss. In the event of the condemnation (or sale in lieu of condemnation) of any part of the Real Property prior to Close of Escrow, Buyer shall have the right to cancel this Agreement by written notice to Seller and Escrow Agent in which event there shall be returned to Buyer the Earnest Money and all interest thereon, all documents shall be returned to the party who deposited them and thereafter this Agreement shall be of no further force or effect whatsoever.

17. Indemnification and Liabilities. Subject to the limitations and other provisions contained in this Agreement, Seller shall, and it hereby does, indemnify and agree to pay, defend, and hold harmless Buyer from any liability, obligation, action, suit, judgment, fine, award, loss, claim, demand, or expense (including attorneys' fees) arising from any act or omission of Seller pertaining in any manner to the Real Property for the period of time prior to the Close of Escrow. Buyer does not agree to assume any liability, encumbrance, or obligation of any kind or character whatsoever relating in any manner to all or any part of the Real Property: (i) except as specifically provided herein; and (ii) except that Buyer agrees to pay, defend, indemnify, and hold harmless Seller from any liability, obligation, action, suit, judgment, fine, award, loss, claim, demand, or expense (including attorneys' fees) arising from any act or omission of Buyer, Buyer's agents and employees.

18. Remedies.

(a) In the event of default by Buyer, Seller's sole remedy shall be to cancel this Agreement. Seller and Buyer agree that it would be impractical or extremely difficult to fix actual damages in case of the Buyer's default.

(b) In the event of default by Seller, Buyer may cancel this Agreement by written notice to Seller and Escrow Agent together with all other documents Buyer has deposited with Escrow Agent in connection with this escrow, in which case Buyer and Seller shall have no other rights or obligations under this Agreement.

19. Notices. Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Buyer	Habitat for Humanity Central Arizona 9133 W. Grand Avenue, Suite 1 Peoria, AZ 85345 Attention: Roger Schwierjohn
To Seller	Kristine Luna Real Property Administrator City of Peoria 8401 West Monroe Street Peoria, Arizona 85345
With a copy to Seller's counsel:	Stephen M. Kemp, City Attorney City of Peoria 8401 West Monroe Street Peoria, Arizona 85345

or at any other address designated by Buyer or Seller in writing.

20. Attorneys' Fees. In the event suit is brought or to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees and court costs.

21. Intended Agreement. This Agreement shall not be construed for or against either party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Agreement or any exhibits hereto.

22. Relationship. This Agreement shall not be construed as creating a joint venture, partnership, or any other joint arrangement between Buyer and Seller.

23. Further Instruments and Documents. Each party hereto shall, promptly upon the request of the other party acknowledge and deliver to the other party further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

24. Integration Clause; No Oral Modification. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified, or rescinded, except in writing, signed by all parties hereto.

25. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Arizona. Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa.

27. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

28. Waiver. Failure of any party to exercise any right, remedy, or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy, or option with respect to any subsequent or different breach, or the continuance of any existing breach.

29. Counterparts. This Agreement may be executed in any number of counterparts, all the counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original.

30. Intentionally deleted.

31. Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last party to sign this Agreement.

32. Time of Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

33. Construction/Interpretation. The captions and section headings used in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

34. Foreign Tax Withholdings. Seller shall provide to Buyer and Escrow Agent at Closing appropriate affidavits stating that it is not a foreign person and that no withholding is required pursuant to Internal Revenue Code § 1445. In the event such affidavits are not forthcoming or in the event either Escrow Agent or Buyer knows or has reason to know that they are false, Escrow Agent is hereby irrevocably authorized and directed to withhold 10% of Seller's proceeds of the purchase price pursuant to Code § 1445.

35. Conflict of Interest. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

36. Offer. Upon execution by Buyer and delivery to Seller, this Agreement shall constitute the offer of Buyer to purchase the Real Property on the terms and conditions set forth herein. This offer shall be open to acceptance by Seller on or before the close of business on May 12, 2010. In the event that this condition is not complied with on or before the close of business on the date specified, this offer shall terminate and shall be self-revoking without further action on behalf of Buyer. In addition, and without limiting the foregoing, Buyer reserves the right to revoke this offer, upon written notice to Seller, at any time before this offer is accepted by Seller.

37. Special Provisions. The Buyer agrees that upon acceptance of this

property from the Seller it will begin activities that will result in the construction of a residence on each of the two lots as outlined in "Habitat for Humanity Central Arizona's Response to: City of Peoria's Request for Statement of Interest and Qualifications – Solicitation #'s P10-0047 (Country Meadows) and P10-0050 (Varney Tract)". The Buyer also agrees that in the event that habitable structures are not built on the properties within 24 months of the execution of this agreement the property will revert to the Seller by virtue of a reversionary clause in the Quit Claim Deed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

SELLER:

CITY OF PEORIA,
An Arizona Municipal Corporation

DATE: _____

BY: _____
Carl Swenson
City Manager

ATTEST:

Mary Jo Waddell, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

ACKNOWLEDGEMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____ 2010 by Carl Swenson, City Manager, City of Peoria.

Notary Public

My Commission Expires:

BUYER:

Habitat for Humanity Central Arizona

Date: 5/16/10

By 
Roger Schwierjohn
Its: President/CEO

ACKNOWLEDGEMENT

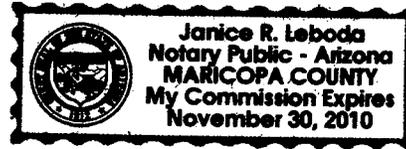
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 11 day of May, 2010 by Roger Schwierjohn, the President CEO of Habitat for Humanity Central Arizona.

Janice R. Lebeda
Notary Public

My Commission Expires:

Nov 30 2010



Exhibits:

- A. Description of Lots
- B. Quit Claim Deed

Exhibit A – Description of 2 Lots

PARCEL 1

The north half of the east half of Lot Five (5), in VARNEY TRACT, according to the plat thereof of record in the office of the County Recorder of Maricopa County, Arizona, in Book 30 of Maps, at page 11 thereof.

PARCEL 2

Lot 712, of COUNTRY MEADOWS UNIT FOUR, according to the plat of record in the office of the County Recorder of Maricopa County, recorded in Book 195 of Maps, Page 47.

Exhibit B – 2 Quit Claim Deeds with Reversionary Clauses

When Recorded/Executed Mail to:

City Clerk
City of Peoria
8401 West Monroe
Peoria, Arizona 85345

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That **City of Peoria, an Arizona municipal corporation**, (Grantor), the undersigned, for the consideration of One Dollar, and other valuable considerations, do hereby release, remise, and forever quit claim unto Habitat for Humanity Central Arizona, an Arizona non-profit organization (Grantee), all right, title and interest in that certain property situated in Maricopa County, State of Arizona (the "Subject Property"), and described as follows:

Lot 712, of COUNTRY MEADOWS UNIT FOUR, according to the plat of record in the office of the County Recorder of Maricopa County, recorded in Book 195 of Maps, Page 47

This property is being conveyed to a non-profit organization specifically for the purpose of the construction of affordable housing. In the event that Habitat for Humanity fails to construct a residence on the property conveyed by this deed within 24 months of the execution thereof, the title will revert to the Grantor.

EXEMPT FROM AFFIDAVIT AND FEES PURSUANT TO A.R.S. § 11-1134, A.3.

DATED this _____ day of June, 2010.

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Carl Swenson
Its City Manager

Quit Claim Deed
Country Meadows Unit 4
Page 2

Attest:

Mary Jo Waddell, City Clerk

Approved as to Form:

Stephen M. Kemp, City Attorney

ACKNOWLEDGEMENT

STATE OF ARIZONA)
County of Maricopa) ss.

The foregoing was subscribed and sworn to before me this _____ day of June, 2010, by Carl Swenson, City Manager of the City of Peoria, for the purposes contained therein.

Notary Public

My Commission Expires:

When Recorded/Executed Mail to:

City Clerk
City of Peoria
8401 West Monroe
Peoria, Arizona 85345

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That **City of Peoria, an Arizona municipal corporation**, (Grantor), the undersigned, for the consideration of One Dollar, and other valuable considerations, do hereby release, remise, and forever quit claim unto Habitat for Humanity Central Arizona, an Arizona non-profit organization (Grantee), all right, title and interest in that certain property situated in Maricopa County, State of Arizona (the "Subject Property"), and described as follows:

The north half of the east half of Lot Five (5), in VARNEY TRACT, according to the plat thereof of record in the office of the County Recorder of Maricopa County, Arizona, in Book 30 of Maps, at page 11 thereof.

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DATED this _____ day of June, 2010.

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Carl Swenson
Its City Manager

Quit Claim Deed
Varney Tract Parcel
Page 2

Attest:

Mary Jo Waddell, City Clerk

Approved as to Form:

Stephen M. Kemp, City Attorney

ACKNOWLEDGEMENT

STATE OF ARIZONA)

County of Maricopa) ss.
)

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Notary Public

My Commission Expires:
