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JUN 26 2008



**MEMORANDUM**

**Downtown Redevelopment – Council Memo DT08-39**

**DATE:** June 10, 2008

**TO:** Mayor and City Council

**THRU:** W. Mark Pentz, City Manager  
Rich Dlugas, Assistant City Manager *RD*

**FROM:** Teri Killgore, Downtown Redevelopment Manager *TPK*

**SUBJECT:** Approval of Resolution No. 4197 authorizing the adoption of the Second Amendment to the First Amended and Restated Development Agreement for San Marcos Commons

RECOMMENDATION: Staff recommends that City Council adopt Resolution No. 4197 to adopt the proposed Second Amendment to the First Amended and Restate Development Agreement for San Marcos Commons.

BACKGROUND/DISCUSSION:

In August 2004, Council approved a Phase I Development Agreement with Desert Viking for the development of San Marcos Commons. At that time, Phase I included 60 townhomes with the City contributing \$1.6 million towards infrastructure improvements. In August 2006, the Phase I Development Agreement was amended and restates there would now be 79 townhomes. At this time the City also agreed to increase its contribution to the infrastructure improvements to \$2.1 million due to higher construction costs than originally anticipated by the Developer.

Over the last several months, Desert Viking has indicated they are again encountering significant cost overruns on the infrastructure portion of the project due to unexpected utilities and unusual weather during paving. Staff directed them to compile a list of costs related to the offsites. In early May, Desert Viking presented staff with the final summary list of cost overruns, as well as supporting documentation. The City Engineer has reviewed the costs and staff has determined that \$840,801 of the costs submitted were appropriate for the City to share in financially. A 50/50 split of costs was negotiated with Desert Viking. Additionally, the City had paid one of the invoices for joint trenching

work for the project totaling \$53,272, so half that amount (\$26,636) was netted out of the amount to be paid to Desert Viking. The total amount staff is proposing to contribute to the offsite costs is \$393,765, as shown in Table 1.

*Table 1*

\$ 840,801	Total Approved Additional Offsite Costs
\$420,401	50% City Share
\$(26,636)	Less City Paid Trench Costs
<b>\$393,765</b>	<b>Proposed City Contribution</b>

It is staff's expectation that this represents the final amount of offsite contributions for this project, with the exception of a possible participation agreement for the City-requested upsizing of a water line across the property.

FINANCIAL IMPLICATIONS: Sufficient funding exists in the Downtown Redevelopment funds for this additional cost in account number 101.1290.6110.5DT405.

PROPOSED MOTION: Move to approve Resolution No. 4197 adopting the Second Amendment to the First Amended and Restated Development Agreement for San Marcos Commons.

RESOLUTION NO. 4197

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA APPROVING AMENDMENT NO. 2 TO FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT UNDER CITY OF CHANDLER MASTER DEVELOPMENT AGREEMENT PROVIDING AN ADDITIONAL \$393,765.00 OF UTILITY INFRASTRUCTURE COST REIMBURSEMENTS TO DESERT VIKING DV TOWN HOMES, L.L.C.

WHEREAS, the City Council of the City of Chandler passed and adopted Resolution No. 3975 approving a phase 1 development agreement in concept and authorizing the Mayor to execute such an agreement in a form consistent with the parameters set forth in Resolution No. 3975 and approved by the City Attorney;

WHEREAS, the Mayor subsequently executed a phase 1 development agreement in a form consistent with the parameters set forth in Resolution No. 3975 and approved by the City Attorney;

WHEREAS, the Mayor later executed Amendment No. 1 to First Amended and Restated Phase 1 Development Agreement under City of Chandler Master Developer Agreement (collectively, the Phase 1 Agreement) in a form consistent with the parameters set forth in Resolution No. 3975 and approved by the City Attorney;

WHEREAS, the City of Chandler was to reimburse Desert Viking DV Town Homes, L.L.C. ("Developer") for up to \$2.1 million of the costs incurred by Developer to complete certain infrastructure improvements pursuant to the Phase 1 Agreement;

WHEREAS, the actual cost of completing those infrastructure improvements was significantly greater than the cost contemplated at the time that Resolution No. 3975 was passed and adopted; and

WHEREAS, City Staff has recommended that the City of Chandler's contribution toward completion of infrastructure improvements set forth in Resolution No. 3975 and the Phase 1 Agreement be increased by \$393,765.00 to cover a portion of the approximately \$840,000.00 in unexpected additional infrastructure costs incurred by Developer.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, that Amendment No. 2 to the First Amended and Restated Development Agreement Under City of Chandler Master Development Agreement ("Amendment 2"), in the form attached hereto, is hereby approved and the Mayor is hereby authorized to execute Amendment 2 on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4197 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, and that a quorum was present thereat.

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

AMENDMENT NO. 2  
TO FIRST AMENDED AND RESTATED  
PHASE 1 DEVELOPMENT AGREEMENT  
UNDER CITY OF CHANDLER MASTER  
DEVELOPER AGREEMENT

This Amendment No. 2 (“Amendment 2”) to the First Amended and Restated Phase 1 Development Agreement Under the City of Chandler Master Developer Agreement is entered into by and between the City of Chandler, an Arizona municipal corporation (the “City”), and Desert Viking DV Town Homes LLC, an Arizona limited liability company (“Developer”), as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

RECITALS:

WHEREAS, the City Council passed and adopted Resolution No. 3975 approving a phase 1 development agreement in concept and authorizing the Mayor to execute such an agreement in a form consistent with the parameters set forth in Resolution No. 3975 and approved by the City Attorney;

WHEREAS, the Mayor subsequently executed a phase 1 development agreement in a form consistent with the parameters set forth in Resolution No. 3975 and approved by the City Attorney;

WHEREAS, the Mayor later executed Amendment No. 1 to First Amended and Restated Phase 1 Development Agreement under City of Chandler Master Developer Agreement (collectively, the Phase 1 Agreement) in a form consistent with the parameters set forth in Resolution No. 3975 and approved by the City Attorney;

WHEREAS, the City was to reimburse Developer for up to \$2.1 million of the costs incurred by Developer to complete certain infrastructure improvements pursuant to the Phase 1 Agreement;

WHEREAS, the actual cost of completing those infrastructure improvements was significantly greater than the cost contemplated at the time that Resolution No. 3975 was passed and adopted; and

WHEREAS, City Staff has recommended that the City contribution toward completion of infrastructure improvements set forth in Resolution No. 3975 and the Phase 1 Agreement be increased by \$393,765.00 to cover a portion of the approximately \$840,000.00 in unexpected additional infrastructure costs incurred by Developer.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained in this Amendment 2 and other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

1. Section 6.5 of the Phase 1 Agreement is hereby amended by substituting the amount "Two Million Four Hundred Ninety-Three Thousand Seven Hundred Sixty-Five Dollars (\$2,493,765.00)" in the third line thereof for the amount "Two Million One Hundred Thousand Dollars (\$2,100,000.00)."

2. The terms used and capitalized in this Amendment 2 shall have the respective meanings set forth in the Phase I Agreement, unless the context clearly requires otherwise.

3. Except as specifically amended by this Amendment 2, the terms of the Phase I Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this Amendment 2 to be executed as of the day and year first above written.

ATTEST:

CITY OF CHANDLER, an Arizona  
municipal corporation

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

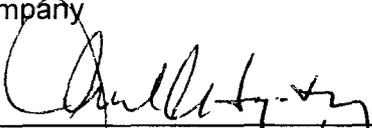
  
\_\_\_\_\_  
City Attorney

Desert Viking DV Town Homes,  
L.L.C., an Arizona limited liability  
company

By   
Name MICHAEL W. HOGARTY  
Title MGR, DESERT VIKING PROPERTIES, LLC  
ITS MANAGER

Agreed and Consented to by:

Desert Viking Downtown Ventures,  
LLC, an Arizona limited liability  
company

By   
Name MICHAEL W. HOGARTY  
Title MGR, DESERT VIKING PROPERTIES, LLC  
ITS MANAGER

San Marcos Town Homes, Inc., an  
Arizona corporation

By [Signature]  
Name NIELS KREIPEKE  
Title PRESIDENT

State of Arizona )  
 )ss  
County of Maricopa )

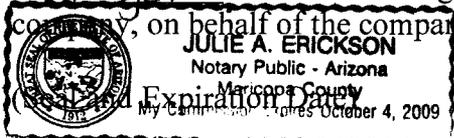
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Chandler, an Arizona municipal corporation, on behalf of the corporation.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

State of Arizona )  
 )ss  
County of Maricopa )

The foregoing instrument was acknowledged before me this 3rd day of June, 2008, by Michael Hogarty, the Manager of Desert Viking DV Town Homes, L.L.C., an Arizona limited liability company, on behalf of the company.

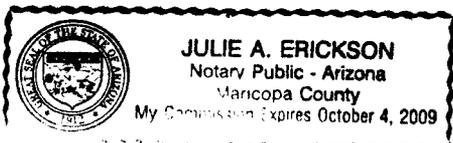


Julie A. Erickson  
Notary Public

State of Arizona )  
 )ss  
County of Maricopa )

The foregoing instrument was acknowledged before me this 3rd day of June, 2008, by Michael Hogarty, the Manager of Desert Viking Downtown Ventures LLC, an Arizona limited liability company, on behalf of the company.

(Seal and Expiration Date)



Julie A. Erickson  
Notary Public

State of Arizona     )  
                                  )ss  
County of Maricopa )

The foregoing instrument was acknowledged before me this 3rd day of June, 2008 by Niels Kreipke, the President of San Marcos Town Homes, Inc., an Arizona corporation, on behalf of the corporation.

(Seal and Expiration Date)

Julie A. Erickson  
Notary Public

