

AUG 27 2009

(e) Although Developer timely completed the construction of the off-site street and utility improvements, which have been dedicated to the City and accepted by the City for maintenance, Developer has only completed thirty-seven (37) of the town homes included in the Phase I Site Plan and currently is in default of the Agreement, as amended.

(f) Developer has requested that the City enter into this Amendment 3 for the purposes of extending the Completion Deadline as defined in the Agreement, as amended, because of economic conditions and the decline of the residential housing market.

(g) The City, in recognition of existing market conditions, and in furtherance of requiring Developer to complete Phase I in lieu of having an uncompleted residential project in its downtown redevelopment area, is willing to extend the Completion Deadline for fifteen (15) months from July 1, 2009, in accordance with this Amendment 3.

4. Amendment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer amend the Agreement, as previously amended by Amendment 1 and Amendment 2, as follows:

(a) Section 3.3 shall be amended to provide that the Completion Deadline shall be October 1, 2010.

(b) Notwithstanding anything in the Agreement, as amended, to the contrary, any public improvements or related infrastructure required to be constructed on Tract BB shall be removed from the requirements of the Agreement, as amended, and shall be deemed to be a requirement of a redevelopment agreement (if any) entered into by Developer with the City with respect to Phase II.

5. No Other Changes. Any term used in this Amendment 3 that is not otherwise defined shall have the meaning attributed to it in the Agreement, as amended. Except as expressly amended by this Amendment 3, the Agreement, as amended by Amendment 1 and Amendment 2, shall continue in full force and effect. Nothing in this Amendment 3 shall (or shall be deemed to) amend, modify or extend the rights or the obligations of the Parties in any other agreement or instrument in which they or their affiliates are parties.

49

AUG 27 2009



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM

Downtown Redevelopment - Memo DT10-004

DATE: AUGUST 26, 2009

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER RD
RICH DLUGAS, ASSISTANT CITY MANAGER RD
MARY WADE, CITY ATTORNEY ^{MW}

FROM: TERI KILLGORE, DOWNTOWN REDEVELOPMENT MANAGER ^{TPK}

SUBJECT: APPROVAL OF RESOLUTION NO. 4336 AUTHORIZING THE ADOPTION OF AMENDMENT NO. 3 TO PHASE I AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR SAN MARCOS COMMONS

RECOMMENDATION: Staff recommend that City Council adopt Resolution No. 4336 to approve the proposed Amendment No. 3 to the Phase I Amended and Restated Redevelopment Agreement as amended for San Marcos Commons.

BACKGROUND: Council approved the Amended and Restated Phase I Redevelopment Agreement for San Marcos Commons with the developer Desert Viking in 2006 and subsequently approved two further amendments to the Agreement. The Amended and Restated Agreement as amended outlines responsibilities for the Desert Viking, and the City. All items have been completed under this agreement except for the completion of forty-two of the seventy-nine townhomes. Given the current economic conditions, sales estimates, and therefore development assumptions, the deadline of completion of the townhomes has not been realized. In the interest of providing additional time for the Developer to complete the townhomes and bringing the First Amended and Restated Development Agreement into compliance, Staff proposed extending the deadline from July 1, 2009 by fifteen (15) months to October 1, 2010. This should give the Developer sufficient time to secure further financing and finish construction. This is the only proposed change in the proposed Amendment No. 3.

FINANCIAL IMPLICATIONS : This amendments creates no additional financial commitments for the City.

PROPOSED MOTION: Move to approve Resolution No. 4336 adopting Amendment No. 3 to the First Amended and Restated Development Agreement as amended for San Marcos Commons.

**AMENDMENT NO. 3
TO FIRST AMENDED AND RESTATED
PHASE I DEVELOPMENT AGREEMENT
UNDER CITY OF CHANDLER MASTER
DEVELOPER AGREEMENT**

1. Date. The date of this Amendment No. 3 to First Amended and Restated Phase I Development Agreement Under the City of Chandler Master Developer Agreement (the "Amendment 3") is August ___, 2009.

2. Parties. The parties to this Amendment 3 are the City of Chandler, an Arizona municipal corporation ("City"), and Desert Viking DV Town Homes LLC, an Arizona limited liability company ("Developer"). City and Developer may each be referred to as a "Party," or collectively as the "Parties."

3. Recitals. As background to this Amendment 3, the Parties recite and acknowledge the following, each of which is a material term and provision of this Second Amendment:

(a) The City and Developer entered into that First Amended and Restated Phase I Development Agreement under City of Chandler Master Developer Agreement on or about August 28, 2006, pursuant to the City's Resolution No. 3975 ("Agreement").

(b) Thereafter, the City and Developer entered into Amendment No. 1 to the Agreement on or about March 4, 2008 ("Amendment 1").

(c) Thereafter, the City and Developer entered into Amendment No. 2 to the Agreement on or about July 1, 2008 ("Amendment 2").

(d) The Agreement, as amended, required Developer to have completed the construction of the street and utility improvements (including utility relocations) and the constructions of all seventy-nine (79) town homes included in the Phase I Site Plan, by July 1, 2009.

(e) Although Developer timely completed the construction of the off-site street and utility improvements, which have been dedicated to the City and accepted by the City for maintenance, Developer has only completed thirty-nine (39) of the town homes included in the Phase I Site Plan and currently is in default of the Agreement, as amended.

(f) Developer has requested that the City enter into this Amendment 3 for the purposes of extending the Completion Deadline as defined in the Agreement, as amended, because of economic conditions and the decline of the residential housing market.

(g) The City, in recognition of existing market conditions, and in furtherance of requiring Developer to complete Phase I in lieu of having an uncompleted residential project in its downtown redevelopment area, is willing to extend the Completion Deadline for fifteen (15) months from July 1, 2009, in accordance with this Amendment 3.

4. Amendment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer amend the Agreement, as previously amended by Amendment 1 and Amendment 2, as follows:

(a) Section 3.3 shall be amended to provide that the Completion Deadline shall be October 1, 2010.

(b) Notwithstanding anything in the Agreement, as amended, to the contrary, any public improvements or related infrastructure required to be constructed on Tract BB shall be removed from the requirements of the Agreement, as amended, and shall be deemed to be a requirement of a redevelopment agreement (if any) entered into by Developer with the City with respect to Phase II.

5. No Other Changes. Any term used in this Amendment 3 that is not otherwise defined shall have the meaning attributed to it in the Agreement, as amended. Except as expressly amended by this Amendment 3, the Agreement, as amended by Amendment 1 and Amendment 2, shall continue in full force and effect. Nothing in this Amendment 3 shall (or shall be deemed to) amend, modify or extend the rights or the obligations of the Parties in any other agreement or instrument in which they or their affiliates are parties.

6. Signature. The City has caused this Amendment 3 to be duly executed in its name on behalf of its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has signed and sealed the same, on this ___ day of August, 2009.

Attest: _____

City of Chandler, Arizona, an Arizona
municipal corporation

City Clerk

By: _____

Boyd W. Dunn

Approved as to form:

Its Mayor

City Attorney

Desert Viking DV Townhomes, LLC, an
Arizona limited liability company

By: Desert Viking Properties, LLC, an
Arizona limited liability company, Manager

By: _____

Michael W. Hogarty, Manager

Agreed and Consented to by:

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

By: Desert Viking Properties, LLC, Manager

By: _____

Michael W. Hogarty, Manager

San Marcos Townhomes, Inc., an Arizona
corporation

By: _____

Niels E. Kreipke, President

STATE OF ARIZONA)

) ss:

COUNTY OF MARICOPA)

The foregoing Amendment 3 was acknowledged before me this ___ day of August, 2009 by Boyd W. Dunn, the Mayor of the City of Chandler, an Arizona municipal corporation, on behalf of the City of Chandler, who acknowledged that he signed the foregoing instrument on behalf of the City.

Notary Public

STATE OF ARIZONA)

) ss:

COUNTY OF MARICOPA)

The foregoing Amendment 3 was acknowledged before me this ___ day of August, 2009 by Michael W. Hogarty, Manager of Desert Viking Properties, LLC, an Arizona limited liability company, who acknowledged that he signed the foregoing instrument on behalf of Desert Viking Properties, LLC.

Notary Public

STATE OF ARIZONA)

) ss:

COUNTY OF MARICOPA)

The foregoing Amendment 3 was acknowledged before me this ___ day of August, 2009 by Michael W. Hogarty, Manager of Desert Viking DV Townhomes, LLC, an Arizona limited liability company, who acknowledged that he signed the foregoing instrument on behalf of Desert Viking DV Townhomes, LLC.

Notary Public

STATE OF ARIZONA)

) ss:

COUNTY OF MARICOPA)

The foregoing Amendment 3 was acknowledged before me this ___ day of August, 2009 by Michael W. Hogarty, Manager of Desert Viking Downtown Ventures, LLC, an Arizona limited liability company, who acknowledged that he signed the foregoing instrument on behalf of Desert Viking Downtown Ventures, LLC.

Notary Public

STATE OF ARIZONA)

) ss:

COUNTY OF MARICOPA)

The foregoing Amendment 3 was acknowledged before me this ___ day of August, 2009 by Niels E. Kreipke, President of San Marcos Townhomes, Inc., an Arizona corporation, who acknowledged that he signed the foregoing instrument on behalf of San Marcos Townhomes, Inc.

Notary Public

RESOLUTION NO. 4336

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AMENDMENT NO. 3 TO THE FIRST AMENDED AND RESTATED PHASE I DEVELOPMENT AGREEMENT WITH DESERT VIKING DV TOWN HOMES, L.L.C. UNDER THE CITY OF CHANDLER MASTER DEVELOPER AGREEMENT.

WHEREAS, the City of Chandler and Desert Viking Downtown Ventures, L.L.C. entered into a Master Developer Agreement for a three-block area in downtown Chandler on June 2, 2003, which was amended on or about September 26, 2003; and

WHEREAS, the City Council passed and adopted Resolution No. 3777 authorizing a Phase I Development Agreement between the City of Chandler and Desert Viking DV Town Homes, L.L.C.; and

WHEREAS, the City Council passed and adopted Resolution No. 3975 approving a First Amended and Restated Phase I Development Agreement; and

WHEREAS, the City approved Amendment No. 1 on or about March 4, 2008 to the First Amended and Restated Phase I Development Agreement; and

WHEREAS, the City Council passed and adopted Resolution No. 4197 approving Amendment No. 2 to the First Amended and Restated Phase I Development Agreement; and

WHEREAS, the First Amended and Restated Phase I Development Agreement required Developer to complete the construction of seventy-nine (79) town homes by a July 1, 2009 Completion Date; and

WHEREAS, Developer has only completed the construction of thirty-nine (39) town homes, and the Completion Date has passed; and

WHEREAS, the City in recognition of existing market conditions, and in furtherance of requiring Developer to complete Phase I in lieu of having an uncompleted residential project in its downtown redevelopment area, is willing to extend the Completion Deadline for fifteen (15) months from July 1, 2009, in accordance with Amendment No. 3.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona that Amendment No. 3 to the First Amended and Restated Development Agreement as Amended, in the form attached hereto, is hereby approved and the Mayor is hereby authorized to execute Amendment No. 3 on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2009.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4336 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2009, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

