

AMENDMENT TO PARAGRAPH NO. 6 OF THE 2008 DEVELOPMENT AGREEMENT

THIS AMENDMENT TO PARAGRAPH NO. 6 OF THE 2008 DEVELOPMENT AGREEMENT ("Amendment") is made and entered into this 19 day of August, 2013, by and between the Town of Flower Mound, Texas (referred to as the "Town"), and CADG Riverwalk, L.L.C., a Texas limited liability company (referred to as "Developer").

WITNESSETH:

WHEREAS, The River Walk at Central Park ("River Walk") is a master planned mixed use project to be constructed in central Flower Mound and is currently being developed by Developer; and

WHEREAS, on or about August 4, 2008, the Town and a previous developer entered into a Development Agreement ("2008 Agreement") which addressed various development issues related to the River Walk and provided for the payment of certain fees, the timing of certain construction and the dedication of certain property, among others; and

WHEREAS, on or about August 1, 2013, the property in question, consisting of 107.108 acres, more or less (which includes two smaller parcels) was sold to Developer, and both a description and depiction of the Property ("Property") are attached hereto as Exhibit A; and

WHEREAS, Developer has obtained a Section 404 permit from the United States Army Corps of Engineers and a Conditional Letter of Map Revision ("CLOMR") from the Federal Emergency Management Agency ("FEMA") and started work on the River Walk Amenity Area; and

WHEREAS, the 2008 Agreement establishes The River Walk Escrow Account that is funded by a portion of the park development fees and park dedication fees collected by the Town from 1,250 living units approved for the River Walk; and

WHEREAS, the funds collected in The River Walk Escrow Account are currently scheduled to be paid to Developer in one lump sum upon Developer's completion of the River Walk Amenity Area provided the Developer constructs the River Walk Amenity Area in accordance with Paragraph 6 of the 2008 Agreement and within seven (7) years of the date of execution of the 2008 Agreement; and

WHEREAS, Developer has requested that the Town make progress payments to Developer from The River Walk Escrow Account as the River Walk Amenity Area is constructed rather than waiting until completion and acceptance of the River Walk Amenity Area by the Town;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Town and Developer covenant and agree as follows:

1. Except as specifically amended herein, all provisions of the 2008 Agreement shall remain unchanged and in full force and effect and exist as if set forth herein in their entirety. A copy of the 2008 Agreement is attached hereto as Exhibit A and fully incorporated herein by reference.

2. By its execution of this Amendment Developer specifically agrees and confirms that Developer is subject to and assumes all of the obligations and responsibilities set out in the 2008 Agreement.

3. From and after the execution of this Amendment by the last of the parties to sign, Paragraph No. 6 of the 2008 Agreement is amended by deleting Subparagraph F. in its entirety and replacing said Subparagraph F. of Paragraph No. 6 with a new Subparagraph F. to read as follows:

"F. The Town and Developer agree to the Town's creation of an escrow account relative to park dedication and park development fees for the 1,250 living units for the River Walk, to be styled "The River Walk Escrow Account." The Town's books and records shall reflect the escrow amount and shall be available for inspection by the Developer upon reasonable notice. For the first six hundred thirty (630) residential living units for which building permits are issued by the Town, the persons to whom the building permits are issued shall pay to the Town \$1,388.00 per living unit for applicable park development fees and \$3,549.45 per living unit for applicable park dedication fees, for a total amount of \$4,937.45 per living unit. Of that amount (\$4,937.45), \$1,388.00 per living unit shall be retained by the Town for park development fees and \$3,549.45 per living unit for park dedication fees shall be deposited into the escrow account. Consequently, after the issuance of the first six hundred thirty (630) residential building permits by the Town, the Town shall have received \$874,440.00 in park development fees, and \$2,236,153.50 for park dedication fees will have been deposited into the escrow account. For the remaining six hundred twenty (620) residential living units for which building permits are issued by the Town, the persons to whom the building permits are issued shall pay to the Town \$1,388.00 per living unit for park development fees and \$3,549.45 per living unit for park dedication fees and both amounts shall be deposited into the escrow account. Consequently, after issuance of six hundred twenty (620) residential building permits by the Town, the escrow account shall have increased by \$860,560.00 for park development fees and by \$2,200,659.00 for park dedication fees.

At such time as Developer commences construction of the River Walk Amenity Area, the Developer may submit requests to Town no more frequently than one time per month for interim reimbursement from The River Walk Escrow Account based on the amount of any payment applications paid by Developer to Developer's contractor(s) performing work on the River Walk Amenity Area in accordance with this Paragraph No. 6. Developer's request for any such interim reimbursement amounts shall be accompanied by a certification that is signed and sealed by a licensed professional engineer ("Engineer") who is representing the Developer with regard to the construction of the River Walk Amenity Area.

The certification that is signed and sealed by the Engineer shall confirm that the work reported as being performed during the subject pay period has been performed in a good and workmanlike manner in accordance with the contract documents for the construction of the River Walk Amenity Area and the requirements of this Agreement ("Engineer's Certification"). The Engineer's Certification and the interim payment request shall include appropriate documentation reflecting that all outstanding invoices have been paid, that the River Walk Amenity Area improvements for which payment is sought have been constructed in accordance with all Town ordinances, regulations, plans and specifications, and that no outstanding items or issues remain relative to the interim reimbursement request.

It is specifically understood and agreed that the Town is not the owner of the River Walk Amenity Area construction project and that the Town owes no duty to any third-party to pay or otherwise withhold or direct or redirect payment of any interim reimbursement amount to or for the benefit of any third-party. The Town shall have the right, but no corresponding obligation, to independently review Developer's request for reimbursement and confirm work on the River Walk Amenity Area has been performed in a good and workmanlike manner in accordance with the requirements of the contract documents for the construction of the River Walk Amenity Area and the requirements of this Agreement.

Within thirty (30) days following receipt of any interim reimbursement request, the Town Manager or his designee shall either (1) approve the reimbursement request and

forward it to the appropriate Town department for payment, or (2) provide Developer with written notification of disapproval of all or part of a reimbursement request, specifying the basis for any such disapproval. Any dispute as to the appropriateness of payment of all or a portion of the reimbursement request may be appealed, within ten (10) calendar days of denial of reimbursement, to the Town Council, which shall endeavor to hear such appeal within thirty (30) days. Denial of the reimbursement request by the Town Council shall be resolved by mediation between the parties in the event an agreement is not otherwise reached by the parties.

In the event The River Walk Escrow Account contains insufficient funds to make a full interim reimbursement as requested by Developer, Town shall have no obligation or responsibility to supplement or subsidize the amounts contained in The River Walk Escrow Account from the Town's share of the park dedication and park development fees or any other source of funds available to Town. Any reimbursement made to Developer shall be limited to the funds then available in The River Walk Escrow Account. Notwithstanding the Developer's exhaustion of all funds in The River Walk Escrow Account, Developer shall remain responsible for the final completion of the River Walk Amenity Area.

In the event Developer constructs the River Walk Amenity Area (i) in accordance with Paragraph 6 herein (ii) within seven (7) years of the date of execution of this Agreement, then all amounts then on deposit or thereafter deposited in The River Walk Escrow Account, including accrued interest, shall be immediately paid to Developer. In the event of (i) a Park Trigger Event, and/or (ii) Developer's failure to fully construct the River Walk Amenity Area in accordance with Paragraph 6 herein within seven (7) years of the date of execution of this Agreement, Developer shall forfeit any and all monies in The River Walk Escrow Account and said monies shall become the property of the Town and shall satisfy the park dedication and park development fees for the residential living units for which the fees were paid.

It is specifically agreed and understood by and between Town and Developer that Town's payment of interim reimbursement requests to Developer from The River Walk Escrow Account shall not constitute a waiver or release of Developer from the obligation to fully construct and

maintain the River Walk Amenity and fully perform pursuant to this Paragraph No. 6 and this Agreement.”

4. This Amendment shall become a binding obligation of the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Amendment on behalf of the Town has full authority to execute this Amended Agreement and bind the Town to the same. Developer warrants and represents that the individual executing this Amendment on its behalf has full authority to execute this Amendment and bind it to the same.

5. The Town Council shall authorize the Mayor of the Town to execute this Amendment on behalf of the Town.

6. In the event any provision of this Amendment shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Amendment shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

7. This Amendment shall be filed in the deed records of Denton County, Texas. The provisions of this Amendment shall be deemed to run with the Property and shall be binding on heirs, successors and assigns of Developer.

8. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: The Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028
Attn: Town Manager's Office

If to Centurion: CADG Riverwalk, L.L.C.
1221 N. IH-35-E, Suite 200
Carrollton, Texas 75006
Attn: Mr. Mehrdad Moayedi, President

9. This Amendment may not be amended except in a writing specifically referring to this Amendment and signed by the Town and Developer. A right created under this Amendment may not be waived except in a writing specifically referring to this Amendment and signed by the party waiving the right.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date first above written.



THE TOWN OF FLOWER MOUND, TEXAS

By: Thomas E Hayden
Name: Thomas E. Hayden
Title: Mayor, Town of Flower Mound

STATE OF TEXAS)
)
COUNTY OF DENTON)

This instrument was acknowledged before me on the 16 day of ^{Sept.}~~August~~, 2013, by Thomas E. Hayden, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.



Theresa Scott
Notary Public, State of Texas

My Commission Expires:
12/29/14

CADG RIVERWALK, L.L.C.

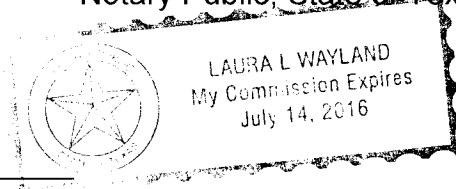
By: *Mehrdad Moayed*
Mehrdad Moayed, President

STATE OF TEXAS)
 Dallas)
COUNTY OF DENTON)

This instrument was acknowledged before me on the 24 day of Sept August, 2013, by Mehrdad Moayed in his capacity as President of CADG Riverwalk, L.L.C., known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of CADG Riverwalk, L.L.C.

Laura L Wayland
Notary Public, State of Texas

My Commission Expires:



Denton County
Cynthia Mitchell
County Clerk
Denton, TX 76202



70 2013 001 22692

Instrument Number: 2013-122692

Recorded On: October 03, 2013

As
Amendment

Parties: THE TOWN OF FLOWER MOUND

Billable Pages: 8

To
(RIVER WALK)

Number of Pages: 8

Comment: Amendment to Paragraph 6
of 2008 Development Agreement (Parties listed above are for Clerks reference only)

** Examined and Charged as Follows: **

Amendment	54.00
Total Recording:	54.00

***** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2013-122692
Receipt Number: 1096041
Recorded Date/Time: October 03, 2013 10:27:00A
User / Station: C Robinson - Cash Station 1

Record and Return To:

TOWN OF FLOWER MOUND
2121 CROSS TIMBERS RD
TOWN SECRETARY OFFICE
FLOWER MOUND TX 75028



THE STATE OF TEXAS }
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

C. Mitchell

County Clerk
Denton County, Texas