



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/28/2011		
Department:		City Manager		
Department Head		Frank F. Turner		
Agenda Coordinator (include phone #): Sherry Jackson - Ext. 7122				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Second Amendment to a Development Agreement by and between RH 15th Condos One, Ltd. and the City of Plano for the development of 15th Street Village; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS: This item has no fiscal impact.				
STRATEGIC PLAN GOAL: A Second Amendment to a Development Agreement relates to the City's goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
Second amendment to development agreement between the City of Plano, TX and RH 15 th Condos One, LTD for the development of 15 th Street Village.				
List of Supporting Documents: Exhibit "A" - Second Amendment			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Second Amendment to a Development Agreement by and between RH 15th Condos One, Ltd. and the City of Plano for the development of 15th Street Village; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Second Amendment to the Development Agreement Between the City of Plano, Texas and RH 15th Condos One, Ltd., to extend the time for commencement of construction of the project, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Second Amendment"); and,

WHEREAS, upon full review and consideration of the Second Amendment, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Second Amendment, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Second Amendment and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Second Amendment.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 28th day of November, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**SECOND AMENDMENT TO
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLANO,
TEXAS AND RH 15TH CONDOS ONE, LTD. FOR THE
DEVELOPMENT OF 15TH STREET VILLAGE**

THIS AMENDMENT ("Second Amendment") is entered into by and between the CITY OF PLANO, a Texas municipal corporation of Collin County, Texas (the "City"), and RH 15th Condos One, Ltd., a Texas limited partnership (the "Developer");

RECITALS:

WHEREAS, the Plano City Council on June 22, 2009 approved that certain agreement titled "DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS AND RH 15TH CONDOS ONE, LTD FOR THE DEVELOPMENT OF 15TH STREET VILLAGE" (the "Agreement"), and authorizing the City Manager to execute same; and

WHEREAS, the Plano City Council on December 14, 2009, approved a First Amendment to the Agreement to extend the time for commencement of construction of the project; and

WHEREAS, the City and the Developer executed the Agreement and the First Amendment; and

WHEREAS, City and Developer have agreed to amend the Agreement to further extend the time for commencement of construction of the projects hereinafter set forth.

NOW THEREFORE, the Agreement is incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the Agreement shall remain unchanged and shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Second Amendment and the Agreement, priority of interpretation shall be in the following order: Second Amendment, First Amendment, Agreement. In consideration of the foregoing, and for other good and valuable consideration, the parties hereto agree as follows:

1. SECTION 1 B of the Agreement is amended in its entirety to read as follows:

B. Developer will commence development of the Property in accordance with the Plan as shown on Exhibit "B" no later than July 1, 2012 and complete construction of at least one building in accordance with the Plan no later than January 1, 2014. The Plan shall consist of four (4) residential buildings, including the existing building as shown on Exhibit "B". Each building will have not less than three (3) residential floors and not less than 20 residential units. The quality of construction and the cost of construction per square foot of occupiable space shall be comparable or superior to that of the existing building. The property may not be developed for any other purpose than specified by the approved Plan, or an amended Plan approved by the City.

2. The second full paragraph of SECTION 8 is amended in its entirety to read as follows:

If a default shall occur and continue, after thirty (30) days' written notice to cure default, City may, at its option, terminate this Agreement or pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon Developer; provided, however, that if Developer shall within such thirty (30) day period commence action to cure such default but is unable, by reason of the nature of the performance required, to cure the default within such period, and if Developer

continues such action thereafter diligently and without unnecessary delays, Developer shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such failure, provided further, however, that in any event Developer shall be in default hereunder if such failure is not cured on or before ninety (90) days after receipt by Developer of the above-described written notice of default and demand for performance. In the event of any termination of this Agreement due to any such default, Developer will remain entitled to recover from the City any funds for Public Improvements earned through the date of termination.

Notwithstanding the above, in the event Developer does not commence construction of the development identified in **Exhibit "B"** by July 1, 2012, the City shall have the right, for a period of 180 days, to repurchase the Property at Developer's original purchase price, which remedy the City shall be entitled to exercise by written notice to Developer. In the event of repurchase, all costs of closing shall be the responsibility of Developer. Notwithstanding the foregoing provisions of this Section 8, with the exception of the right to repurchase, City agrees to cooperate with the Developer's lender(s) and to execute and deliver to such lender(s), an agreement providing for the subordination of the City's option to the lien of the Developer's lender(s) on the Property, if such subordination is required by the Developer's lender(s). The terms and conditions of such agreement shall be mutually satisfactory to the City, Developer and Developer's lender(s).

EXECUTED on the ____ day of _____, 2011, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. _____ (R) approved by the City Council on November 28, 2011, and by Developer, signing by and through its authorized representative.

CITY OF PLANO:

Bruce D. Glasscock, City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

RH 15th CONDOS ONE, LTD, a Texas limited liability partnership

Todd Etter
Partner