



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input checked="" type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		12/7/2010		
Department:		Development Business Center		
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 fourth amendment to the development agreement between the City of Plano, Texas, and Pinnacle AMS Development Company, LLC (now Southern/Pinnacle AMS Development Company, LLC), for development of Eastside Station – Plano; authorizing its execution by the City Manager or his 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:	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.				
SUMMARY OF ITEM				
List of Supporting Documents:			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 fourth amendment to the development agreement between the City of Plano, Texas, and Pinnacle AMS Development Company, LLC (now Southern/Pinnacle AMS Development Company, LLC), for development of Eastside Station – Plano; authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed fourth amendment to the development agreement for the development of Eastside Station - Plano, a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “Fourth Amendment”); and,

WHEREAS, upon full review and consideration of the Fourth 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 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 Fourth 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 designee is hereby authorized to execute the Fourth 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 Agreement.

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

DULY PASSED AND APPROVED this the 7th day of December 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

**FOURTH AMENDMENT TO THE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF PLANO, TEXAS AND
SOUTHERN/PINNACLE AMS DEVELOPMENT COMPANY, LLC FOR
DEVELOPMENT OF EASTSIDE STATION - PLANO**

THIS FOURTH AMENDMENT (“Amendment”) to the Development Agreement Between the City of Plano, Texas, and Southern/Pinnacle AMS Development Company, LLC for Development of Eastside Station – Plano ("Agreement") is entered into by and between the City of Plano, a Texas municipal corporation of Collin County, Texas (the "City"), acting by and through its duly authorized officers, and Southern/Pinnacle AMS Development Company, LLC, a Texas limited liability company (Southern) and together collectively referred to as the “Parties”;

RECITALS:

WHEREAS, the Parties have previously entered into three amendments to the Agreement; and

WHEREAS, the Parties desire to further amend the Agreement to allow additional time for Southern to perform its obligations as set forth in the Agreement as previously amended.

NOW THEREFORE, the parties agree that the following provisions of the Agreement are amended as follows:

1. Section I A 1. is amended to read:

1. Southern will acquire fee title to the real property located at 930 15th Street, Plano, Texas 75074 (“Eisenberg property”) by no later than January 1, 2012.

2. Section I B 3. is amended to read:

3. Southern will obtain all necessary permits from the City, which shall not be unreasonably withheld, conditioned or delayed by the City and begin construction of the Development no later than January 1, 2012. Construction shall be deemed to have begun when Southern actually commences site work (i.e., demolition, grading or clearing) on the Property;

3. Section 8 B is amended to read:

B. Notwithstanding the above, in the event Southern does not commence construction of the Development by January 1, 2012, the City's sole remedy shall be that the City grant of the Property shall become null and void and Southern shall execute any and all documents necessary to convey the Property to the City. All expenses associated with the conveyance of the Property back to the City, including reasonable attorney fees, shall be the responsibility of Southern.

4. Section 8 C is amended to read:

C. If Southern commences construction of the Development and Public Improvements identified in the Budget by January 1, 2012 but fails to complete the entire Development by August 1, 2013, subject to the cure provisions in Section 8 City may, as an alternative to, but not in addition to the remedies set forth in Section 8A above, be entitled to the remedy of payment from Southern, not as a penalty but as liquidated damages, an amount using the following formula: $A \times B = C$, where A is the amount of the Construction Allowance and payments made pursuant to Section 2.E. above actually advanced or paid to Southern by the City, B is the percentage of the Development not ready for occupancy as of August 1, 2013, and C is the amount of liquidated damages to which the City is entitled.

5. All other terms of the Agreement not amended by this Amendment remain in full force and effect.

EXECUTED on the _____ day of _____, 2010.

CITY OF PLANO, TEXAS, a home rule municipal corporation

By: _____
Thomas H. Muehlenbeck, City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

SOUTHERN/PINNACLE AMC DEVELOPMENT
COMPANY LLC, a Texas limited liability company

By: _____
Name: Kent Plemons
Title: Vice President - Development