

Staff Summary Report



Council Meeting Date: 08/14/08

Agenda Item Number: 74

SUBJECT: Request approval of a resolution approving the First Amendment to the Development and Disposition Agreement with Cardinal Capital Management, Inc., to develop property located at 2428 E Apache Boulevard

DOCUMENT NAME: 20080814cdls02 COMMUNITY DEVELOPMENT /REDEVELOPMENT ADM (0403-01) RESOLUTION NO. 2008.75

SUPPORTING DOCS: Yes

COMMENTS: Amend the Development and Disposition Agreement to provide for a waiver of 50% of the Planning and Development Fees for the development.

PREPARED BY: Larry Schmalz, Principal Planner (Ext. 8924)

REVIEWED BY: Chris Salomone, Community Development Manager (Ext. 8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (Ext. 2187)

FISCAL NOTE: Estimated fee reduction of approximately \$60,000 for the first phase, similar reduction for phase two. Final fee reduction will be determined at the time of final plan approval and permit issuance.

RECOMMENDATION: Staff recommends approval of the First Amendment to Development and Disposition Agreement. C2008-29

ADDITIONAL INFO: On February 7, 2008 the City and Cardinal Capital Management, Inc., entered into a Development and Disposition Agreement for a mixed use project at 2428 East Apache. The development includes a low income housing tax credit project, low and moderate income For-Sale housing for Deaf Seniors, office and retail components. The Zoning and Development Code provides for a 50% waiver within the Apache Boulevard Redevelopment Area regarding For-Sale housing with a Letter of Support from the Apache Boulevard Project Area Committee (APAC) and a Development Agreement Approved by City Council. APAC submitted a letter of support for a 50% waiver for both Phase 1 (Low Income Tax Credit rental units) and Phase 2 (low and moderate For-Sale units). Due to the limited number of financial lenders available to purchase the tax credits in the current financial climate and the costs associated with developing quality low income housing, staff recommends a fee reduction for both Phase 1 and Phase 2 in an attempt to maintain the financial viability of the project.

RESOLUTION NO. 2008.75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO THE DEVELOPMENT AND DISPOSITION AGREEMENT (C2008-29) WITH CARDINAL CAPITAL MANAGEMENT, INC.

A. The City and Cardinal Capital Management, Inc., are parties to that certain Development and Disposition Agreement dated February 7, 2008 and recorded August 5, 2008 as Document No. 2008-0681782, Official Records of Maricopa County, Arizona (the "Development Agreement"), with respect to the development of certain real property owned by Cardinal Capital Management, Inc., and described in the Development and Disposition Agreement (the "Property").

B. The City and Cardinal Capital Management, Inc., now desire to amend the Development Agreement to modify a portion of the development fees applicable to the project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor is authorized to execute the First Amendment to Development and Disposition Agreement C2008-29, in substantially the form on file with the City Clerk's office.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

**FIRST AMENDMENT TO
DEVELOPMENT AND DISPOSITION AGREEMENT**
(Apache ASL Trails)
C2008-29

THIS FIRST AMENDMENT TO DEVELOPMENT and DISPOSITION AGREEMENT (this "First Amendment") is made and entered into as of the ____ day of August, 2008, by and between the CITY OF TEMPE, an Arizona municipal corporation ("City"), and Cardinal Capital Management, Inc., an Arizona Corporation ("Developer").

RECITALS

A. The City and Developer executed that certain Development and Disposition Agreement dated February 7, 2008 and recorded August 5, 2008 as Document No. 2008-0681782, Official Records of Maricopa County, Arizona (the "Development Agreement"), relating to the development of certain real property owned by Developer and described in the Development Agreement (the "Property").

B. In the Development Agreement, the Developer agreed to create a new mixed use project that would include affordable housing.

B. The City and Developer acknowledge that the project is being developed in two phases and covers two parcels, one that the developer previously owned and the one that the developer is purchasing from the City.

C. The City and Developer acknowledge that, as a result of certain inherent risks and the costs of developing new affordable housing at the income levels required for a Low Income Housing Tax Credit project, the economic incentives hereinafter set forth are necessary and appropriate for the economic viability of the project (Phase 1 and Phase 2) and to otherwise aid in the development of the property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the City hereby amend and modify the Development Agreement as follows:

AMENDMENT

1. Definitions. Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Development Agreement unless specifically and otherwise defined herein.

2. Fee Modifications. A new Section 8 is hereby added to the Development Agreement, as follows:

8. Fee Modifications The City and Developer acknowledge that, as a result of certain inherent risks and the costs of developing new affordable housing at the income levels required for a Low Income Housing Tax Credit project, the economic incentives hereinafter set forth are necessary and appropriate for the economic viability of the project (Phase 1 and Phase 2) and to otherwise aid in the development of the Property.

8.1 All Zoning and Development Fees (except Water and Sewer Development Fees). The City hereby agrees to waive fifty percent (50%) of all development processing fees, including without limitation, planning entitlement fees, building permit fees, inspection fees and other similar fees relating to the development and construction of the project (“Waived Permit Fees”), and agrees that neither the project nor the Developer, including any of its contractors, will be subject to payment of any such Waived Permit Fees with respect to the Project or any Phase therein.

3. No Further Modifications. Except as specifically modified or amended in this First Amendment, the terms and conditions of the Development Agreement shall remain in full force and effect, unmodified and unchanged in any way and are hereby ratified and affirmed by the parties.

SIGNATURE PAGES FOLLOW

WITNESSETH:

CITY OF TEMPE,
an Arizona municipal corporation

City Clerk

By _____
Name _____
Title _____

Approved as to form:

City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be _____ of the CITY OF TEMPE, an Arizona municipal corporation and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public