

ORIGINAL
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ORDINANCE NO.: 2017-069

Authorizing the City Manager to execute an Amendment to the Air Rights Development Contract between the City of Columbia and Hallmark Homes International, Inc.

BE IT ORDAINED by the Mayor and Council this 21st day of November, 2017, that the City Manager is hereby authorized to execute the attached Amendment to the Air Rights Development Contract between Hallmark Homes International, Inc. and the City of Columbia, or on a form approved by the City Attorney.

Requested by:

Assistant City Manager Gentry



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 10/17/2017

Final Reading: 11/21/2017

AMENDMENT TO AIR RIGHTS DEVELOPMENT CONTRACT

This Amendment to Air Rights Development Contract (this "Amendment") is made and entered into by and between **CITY OF COLUMBIA**, a body politic and corporate and a political subdivision of the State of South Carolina ("City"), and **HALMARK HOMES INTERNATIONAL INC**, a South Carolina corporation, and its permitted assigns ("Developer").

WHEREAS, the City and Developer entered into an Air Rights Development Contract (the "Contract") dated June 8, 2015 for the development of the air rights above City-owned garages identified in the Contract; and,

WHEREAS, the City and Developer entered into a subsequent License Agreement specific to the Air Rights Development Contract above the Lady Street Garage for a residential apartment complex (the "Project") and the associated parking to support that Project; and,

WHEREAS, the Developer notified the City via a letter dated May 18, 2017 that it was no longer pursuing the Project above the Lady Street Garage; and,

WHEREAS, the Developer purchased the office space at the bottom of the Lady Street Garage and has requested the existing parking commitment in the Lady Street Garage be reduced to ensure that office space has adequate parking; and,

WHEREAS, the Developer made known their desire to pursue development opportunities at the Taylor Street Parking Garage Site; and,

WHEREAS, City and Developer have agreed to modify the terms of the Air Rights Development Contract.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars in hand to each party paid by the other, and in further consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto do agree to amend the Air Rights Development Contract as follows:

1. The terms of the Contract are terminated for all garages, including any garages the city may decide to construct in the future, except the Taylor Street Garage, which is located at 1600 Assembly Street.
2. The Developer's right of first refusal right of first offer on any Future Residential Garage is hereby terminated.
3. The Developer's exclusive right to develop the air space above the Parking Garages and any Future Residential Garage is hereby terminated, except as to the Taylor Street Garage.
4. Developer's rights of immediate access to the Parking Garages to conduct physical inspections, structural and soil engineering studies, and other engineering work on the Parking Garages, with the exception of the Taylor Street Garage, are hereby terminated.

5. The Air Rights Development Contract for the Taylor Street Garage shall be extended for a period of twelve (12) months from the date of this Amendment (the "Extension Period"), which can be automatically extended for another twelve (12) months by written consent of both parties based on satisfactory progress being made with regards to a redevelopment project, which satisfactory progress shall be determined solely by the City. During the Extension Period, Developer shall not cause the City to incur any costs related to Developer's exploration of a development opportunity, nor shall Developer obstruct, occupy or otherwise prevent the City's use of any parking spaces in the Taylor Garage without written approval to do so by the Parking Administrator or her designee.
6. The Developer's obligations of indemnity and insurance shall survive the termination of the Contract as to the Parking Garages for a period of two (2) years.
7. Developer shall retain responsibility for all obligations under Paragraphs IX, X, XI and XII of the Contract.
8. All provisions of the Contract not amended herein shall remain in full force and effect.
9. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute collectively one and the same instrument.

IN WITNESS WHEREOF, City and Developer have executed this Amendment to Lease Agreement to be effective as of the date of the last signature hereinbelow.

WITNESSES:

Carri David
St. Daniels

R. D. Mills
W. D. Meow

DEVELOPER:

Hallmark Homes International Inc.
 a South Carolina corporation

By: [Signature]
 Name: David Tuttle
 Its: President
 Date: 2/16/18

CITY OF COLUMBIA:

By: [Signature]
 Name: Teresa B. Wilson
 Title: City Manager
 Date: 11/30/2017

APPROVED AS TO FORM

[Signature] "1/28/17
 Legal Department City of Columbia, SC