

Denton County
Juli Luke
County Clerk
Denton, TX 76202



70 2015 00099727

Instrument Number: 2015-99727

Recorded On: August 28, 2015

As
Amendment

Parties: TOWN OF FLOWER MOUND

Billable Pages: 14

To

Number of Pages: 14

Comment:

(Parties listed above are for Clerks reference only)

**** THIS IS NOT A BILL ****

Amendment	78.00
Total Recording:	78.00

***** 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: 2015-99727
Receipt Number: 1332109
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Record and Return To:

TOWN OF FLOWER MOUND
ATTN: TOWN SECRETARY
2121 CROSS TIMBERS RD
FLOWER MOUND TX 75028

User / Station: J Robinson - Cash Station 1



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.

Juli Luke

County Clerk
Denton County, Texas

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT FOR LAKESIDE DFW

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT FOR LAKESIDE DFW ("the Second Amendment") is made and entered into this 20th day of JULY, 2015, by and between the Town of Flower Mound, Texas (the "Town"), and Sunset Legacy, LP, Lakeside DFW Land, Ltd., Elizabeth May Stewart Credit Shelter Trust and Peter P. Stewart Management Trust (collectively referred to as "Developer").

RECITALS

WHEREAS, the Lakeside DFW Project ("Lakeside" or "Project") encompasses approximately 149 acres of land ("the Property") being developed by Developer along the shores of Lake Grapevine; and

WHEREAS, on November 19, 2012, the Town and Developer entered into a Development Agreement ("the Development Agreement") that addresses various development issues related to the Project and provides for the payment of certain fees and the dedication of certain property, among other matters; and

WHEREAS, on April 21, 2014, the parties amended the Development Agreement by entering into the First Amendment to Development Agreement for Lakeside DFW ("the First Amendment") to reduce the amount of escrow payment required by Developer for Phase 2 wastewater improvements in the Project and provide for existing overhead utilities to be placed underground and to provide for consideration of alternate amenities to be installed by Developer within the Project; and

WHEREAS, Sunset Legacy, LP ("Sunset Legacy") is now the owner of that portion of the Property known as "The Peninsula", and represents Elizabeth May Stewart Credit Shelter Trust and Peter P. Stewart Management Trust; and

WHEREAS, the new ground-level views of the lake have been created by the clearing the vines, brush, and shrubs, which ground level views are so dramatic that the parties involved with the original planning agreed that there is a better alternative to the original Observation Deck amenity; and

WHEREAS, After approval of the Lakeside Amphitheater as an acceptable amenity, a larger and competing amphitheater was approved for the River Walk development, making the construction of the Lakeside Amphitheater unnecessary and unlikely to fulfill one of its purposes, specifically, its purpose of attracting restaurants and restaurant patrons; and

WHEREAS, the parties agree that having two amphitheaters in similar mixed-use developments competing for the same customers would cause unintended hardships for both developments; and

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Town of Flower Mound
Town Secretary's Office
2121 Cross Timbers Road
Flower Mound, Texas 75028

WHEREAS, the larger River Walk Amphitheater which is located in the heart of the Town's population and is within easy walking distance of its residential, medical, office, hotel and restaurants; and

WHEREAS, the parties now desire to further revise the provisions of the Development Agreement to change the terms and conditions relating to the construction of the Observation Deck and Amphitheater to be located on the Property to provide for alternative development options;

TERMS AND CONDITIONS

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. **Deletion of Section 10 of the Development Agreement.** Section 10 of the Development Agreement, as amended, is deleted in its entirety.

2. **Sunset Green.** Sunset Legacy or its assigns shall construct a "Sunset Green" on the lower southwest side of the Peninsula as approximately reflected on Exhibit A, incorporated by reference. The following conditions shall apply to the Sunset Green:

A. The Sunset Green shall be a minimum of ten thousand (10,000) square feet in size measured at natural grade. The Sunset Green shall be constructed on the natural slope with low impact design to ensure the most natural context and surface as well as consistency with current regulations of the Army Corps of Engineers for Lake Grapevine. Any necessary improvements such as low impact retaining walls shall be constructed of accent materials that provide durability for large numbers of visitors over time as well as flexibility of programming and activities. The design and construction shall comply with all applicable local, state and federal laws, rules and regulations.

B. The Sunset Green shall be designed and constructed with direct access to the Boardwalk either by extension of the Boardwalk or through other connections such as trails or sidewalks at the election of Sunset Legacy or its assigns. The Sunset Green shall be accessible under the same conditions as the existing Boardwalk for public use and shall be available for private events. The Sunset Green shall be maintained under the same agreement and by the same entity as those applicable to the existing Boardwalk. Sunset Legacy or Sunset Legacy's assigns, at its own election submitted in writing to the Town of Flower Mound, may facilitate maintenance through an alternative entity and approach as long as the quality of the maintenance equals or exceeds that of the current standards.

C. The Sunset Green shall be required to be constructed when an sit-down restaurant is constructed adjacent to the location so that its adjacency to the Sunset

Green is complementary in terms of contemporaneous design, experience and function. Temporary restaurants and retail establishments under three thousand (3000) square feet such as, but not limited to, food trucks, outdoor equipment rentals, to-go beverage facilities, etc., shall be exempt from the definition of "adjacent sit-down restaurant." The date for completion of construction of the Sunset Green shall be on or before the date of occupancy authorized for the adjacent sit-down restaurant. Notwithstanding the foregoing, the Sunset Green shall be completed by December 31, 2018 regardless of whether or not an adjacent sit-down restaurant is constructed or issued a certificate of occupancy prior to that date. Upon completion of the Sunset Green, the funds held in escrow by the Town of Flower Mound in the Escrow for Specific Amenities for the previously required Amphitheater shall be utilized for reimbursement of costs of the Sunset Green. If the Sunset Green is not constructed by the required date, those funds held in escrow by the Town of Flower in the Escrow for Specific Amenities for the previously required Amphitheater shall be forfeited to the Town of Flower Mound and no other requirements or penalties will be applied and upon such forfeiture, the obligation to construct the Sunset Green shall be deemed to have been fulfilled.

3. **Community Lawn.** Sunset Legacy or it's assigns shall construct a Community Lawn on the lower south end of the Peninsula as approximately reflected on Exhibit A, incorporated by reference. The following conditions shall apply to the Community Lawn:

A. The Community Lawn shall be a minimum of five thousand (5,000) square feet in size measured at natural grade. The Community Lawn shall be constructed on the natural grade with low impact design to ensure the most natural context and surface as well as consistency with current regulations of the Army Corps of Engineers for Lake Grapevine. Any necessary improvements such as low impact retaining walls shall be constructed of accent materials that provide durability for large numbers of visitors over time as well as flexibility of programming and activities. The design and construction shall comply with all applicable local, state and federal laws, rules and regulations.

B. The Community Lawn shall be designed and constructed with direct access to the Boardwalk either by extension of the Boardwalk or through other connections such as trails or sidewalks at the election of Sunset Legacy or its assigns. The Community Lawn shall be accessible under the same conditions as the existing Boardwalk for public use and shall be available for private events. The Community Lawn shall be maintained under the same agreement and by the same entity as those applicable to the existing Boardwalk. Sunset Legacy or its assigns, at its own election submitted in writing to the Town of Flower Mound, may facilitate maintenance through an alternative entity and approach as long as the quality of the maintenance equals or exceeds that of the current standards.

C. The Community Lawn shall be required to be constructed only when the Sunset Green is required to be constructed. When the Community Lawn is constructed, the completion date for the construction of the Community Lawn shall be the same date as the completion date for the Sunset Green. Upon completion of the Community

Lawn, the funds held in escrow by the Town of Flower Mound in the Escrow for Specific Amenities for the previously required Amphitheater shall be utilized for reimbursement of costs of the Community Lawn. If the Community Lawn is not constructed by the required date, those funds held in escrow by the Town of Flower Mound in the Escrow for Specific Amenities (including any funds placed in escrow to secure construction of the previously required Amphitheater) shall be forfeited to the Town of Flower Mound and no other requirements or penalties will be applied and thereby fulfilling the obligation to construct the Community Lawn.

4. **Deletion of Section 12 of the Development Agreement.** Section 12 of the Development Agreement, as amended, is deleted in its entirety.

5. **Observation Plaza.** Sunset Legacy or its assigns shall construct an Observation Plaza south of the Hines Property along Grapevine Lake, as reflected on Exhibit A, incorporated by reference. The following conditions shall apply to the Observation Plaza:

A. The Observation Plaza shall be a minimum of six thousand (6,000) square feet in size measured at grade. It shall be constructed at approximately current grade with direct views of Lake Grapevine. It shall be constructed of materials that provide durability for large numbers of visitors over time as well as flexibility of programming and activities. The design and construction shall comply with all applicable local, state and federal laws, rules and regulations.

B. The Observation Plaza shall be designed and constructed with direct access to the existing Boardwalk by extension of the Boardwalk or through other connections such as trails or sidewalks at the election of Sunset Legacy or its. The Observation Plaza shall be accessible under the same conditions as the existing Boardwalk for public use and shall be available for private events. The Observation Plaza shall be maintained under the same agreement and by the same entity as those applicable to the existing Boardwalk. Sunset Legacy or its assigns, at its election submitted in writing to the Town of Flower Mound, may facilitate maintenance through an alternative entity and approach as long as the Town staff determines that the quality of the maintenance equals or exceeds that of the current standards.

C. The Observation Plaza shall begin construction on or before July 1, 2016. If it is constructed contemporaneously with an adjacent hotel, the completion date shall be on or before the date of occupancy permitted for the hotel. If it is constructed without an adjacent hotel under construction, the construction completion date shall be on or before 180 days after construction of the Observation Plaza commences. If the Observation Plaza is constructed, the funds held in escrow by the Town of Flower Mound in the Escrow for Specific Amenities for the previously required Observation Deck shall be utilized for reimbursement of costs of this improvement upon completion of the Observation Plaza. If the Observation Plaza is not constructed by the required date, \$205,325.00 of those funds held in escrow by the Town of Flower Mound in the Escrow for Specific Amenities for the previously required Observation Deck shall be

forfeited to the Town of Flower Mound and no other requirements or penalties will be applied, and upon such forfeiture the obligation to construct the Observation Plaza will be deemed fulfilled.

6. **Deletion of Section 3 of the First Amendment.** Section 3 of the First Amendment is deleted in its entirety.

7. **Escrow Funds for Specific Project Amenities.** Under the terms of the Development Agreement, there is the obligation to construct a Sunset Green, a Community Lawn and an Observation Plaza. There has been previously escrowed with the Town (collectively, the "Escrow for Specific Amenities") (i) \$205,325 to guaranty the construction of the of the previously required Observation Deck, which is now escrowed to guaranty the construction of the Observation Plaza and (ii) \$310,005 to guaranty the construction of the previously required Amphitheater, which is now escrowed to guaranty the construction of the Community Lawn and the Sunset Green.

8. **Development Agreement.** The Town and Developer agree that, except to the extent amended herein, the provisions and terms contained in the Development Agreement, as amended by the First Amendment, remain in full force and effect and shall continue to be applicable to the development of Lakeside and shall be binding on all signatories hereto. If there is a conflict between the terms of the Development Agreement and this Agreement, the terms of this Agreement shall control.

9. **Attorneys Fees.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorneys fees (including its reasonable costs and attorneys fees on any appeal). Nothing herein shall constitute a waiver of any claim or defense that could be asserted in any litigation related to this Agreement, and the parties agree that this Agreement is not subject to Subchapter I of Chapter 271 of the Texas Local Government Code.

10. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this Agreement 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.

11. **Filing in Denton County Deed Records; Covenant Running with the Land.** This Agreement or a memorandum thereof shall be filed in the deed records of Denton County and Tarrant County, Texas. Upon any sale or other transfer of any ownership rights in Lakeside, Developer shall notify the Town in writing of such sale or transfer within thirty (30) days of such sale or transfer. This Agreement shall be deemed a covenant that runs with the land and is binding on all heirs, successors, assigns, grantees, vendors, trustees, representatives of Developer and all others holding any interest now or in the future, and it is the intent of this Agreement, and the parties so acknowledge, that all phases of the development of Lakeside shall be subject

to this Section of this Agreement.

12. **Binding Obligation.** Upon execution of this Agreement by all signatories hereto, the Development Agreement, as amended hereby, shall become a binding obligation on the signatories. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Developer warrants and represents that the individuals executing this Agreement on its behalf have full authority to execute this Agreement and bind Developer to same. Further, this Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

13. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation.

14. **Roughly Proportionate Determination under Texas Law.** Developer has been represented by legal counsel in the negotiation of this Agreement and been advised, or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town in this Agreement, if any, are roughly proportionate to the Project's anticipated impact. Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs under this Agreement in accordance with § 212.904 of the Texas Local Government Code and acknowledges that the time line for commencing such appeal commences upon execution of this Agreement. Notwithstanding the foregoing, Developer hereby waives and releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure improvements required by this Agreement.

15. **Rough Proportionality Determination under Federal Law.** Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Texas Local Government Code in regard to this Agreement. Both Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements in this Agreement, if any, mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement. Developer further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims.

THIS STAMP IS FOR SEARCHING
PURPOSES ONLY.

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PURPOSES ONLY.

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

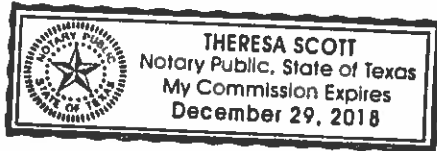
THE TOWN OF FLOWER MOUND, TEXAS

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



STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on this the 23 day of July, 2015 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

DEVELOPER:

SUNSET LEGACY, LP
A Texas Limited Partnership

By: SSL Management, LLC, its general partner

By: *Alan G Stewart*
Name: ALAN G STEWART
Title: PRESIDENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this the 31st day of July, 2015 by ALAN STEWART, the PRESIDENT of SSL Management, LLC, the general partner of Sunset Legacy, LP, a Texas limited partnership, on behalf of said limited partnership.

Alan Stewart
Notary Public, State of Texas

LAKESIDE DFW LAND, LTD.
a Texas Limited Partnership


By Lakeside DFW, Inc., its General Partner

By: 
Peter B. Stewart, its President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this the 5th day of AUGUST, 2015 by Peter B. Stewart, President of Lakeside DFW Land, Inc., the general partner of Lakeside DFW Land, Ltd., a Texas limited partnership, on behalf of said limited partnership.




Notary Public, State of Texas

ELIZABETH MAY STEWART CREDIT SHELTER TRUST

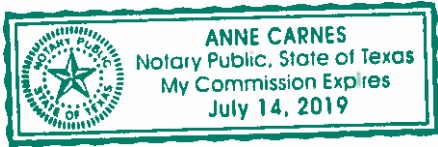
By: *Kathy K. Stewart, Trustee*
Kathy K. Stewart, Trustee

STATE OF TEXAS §

§

COUNTY OF DALLAS §

This instrument was acknowledged before me on this the 31st day of July, 2015 by Kathy K. Stewart, Trustee of the Elizabeth May Stewart Credit Shelter Trust, on behalf of said trust.



Anne Carnes
Notary Public, State of Texas

PETER P. STEWART MANAGEMENT TRUST

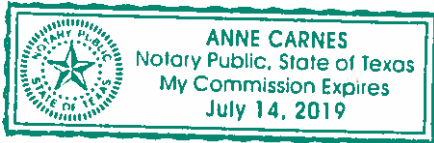
By: *Kathy K. Stewart, Trustee*
Kathy K. Stewart, Trustee

STATE OF TEXAS §

§

COUNTY OF DALLAS §

This instrument was acknowledged before me on this the 31st day of July, 2015 by Kathy K. Stewart, Trustee of the Peter P. Stewart Management Trust, on behalf of said trust.



Anne Carnes
Notary Public, State of Texas

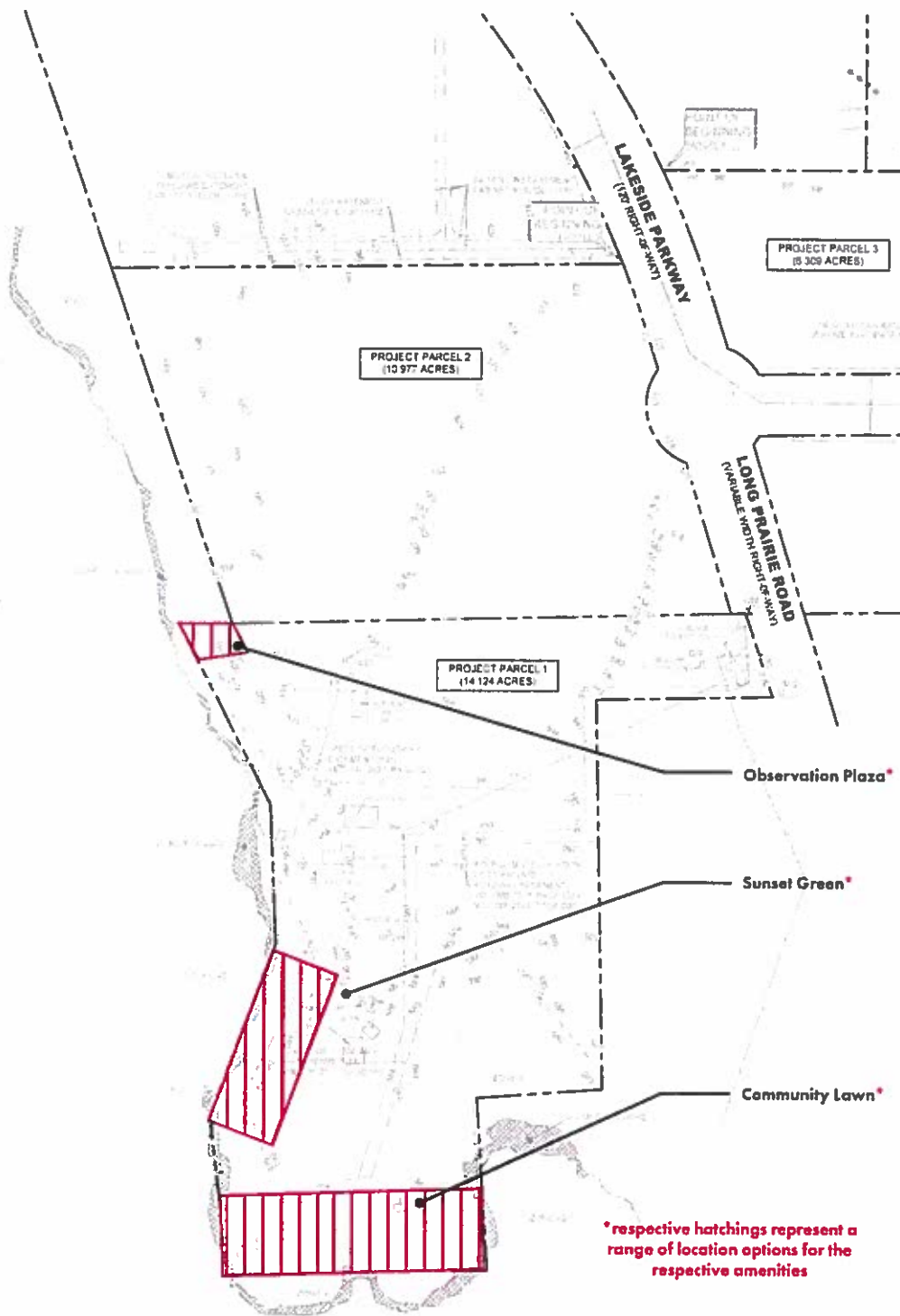


Exhibit A