

RESOLUTION NO. 2019 - 144

A RESOLUTION APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH THE POWDER SPRINGS DOWNTOWN DEVELOPMENT AUTHORITY AND THE DOUGLAS ASSETS COMPANY WITH REGARD TO A TOWNHOUSE PROJECT AND THE CONSTRUCTION AND DEDICATION OF A NEW PUBLIC ROAD; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Mayor and Council of the City of Powder Springs (hereinafter, "the City") did on September 12, 2018 approve a Development Agreement with the Powder Springs Downtown Development Authority (hereinafter, "PSDDA") and the Douglas Assets Company with regard to the development of a 60-unit residential townhome community and the construction of a new road; and

WHEREAS, because of changed circumstances, the City and the PSDDA did subsequently amend the agreement on October 10, 2018, January 22, 2019, May 6, 2019 and August 19, 2019; and

WHEREAS, the Mayor and Council of the City of Powder Springs desire to enter into an Amendment to Development Agreement of form and content substantially similar to that which is attached hereto setting forth the respective rights and obligations of the City, the PSDDA, and The Douglas Assets Company.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Mayor and Council of the City of Powder Springs that a 5th Amendment to Development Agreement with the PSDDA and The Douglas Assets Company in form and content substantially similar to that which is attached hereto is approved and the Mayor is authorized to execute same after review and approval by the City Attorney. This resolution shall become effective immediately upon adoption.

SO RESOLVED this 21st day of October, 2019..



Albert Thurman, Mayor


Patrick Bordelon, Council Member


Doris Dawkins, Council Member

[signatures on following page]

RESOLUTION NO. 2019 – 144


Patricia Wisdom, Council Member


Henry Lust, Council Member


Thelma C. Farmer, Council Member

ATTEST: 
Kelly Axt, City Clerk

5th AMENDMENT TO DEVELOPMENT, PURCHASE AND SALE AGREEMENT

The Development, Purchase and Sale Agreement by and among The Douglas Assets Company ("Purchaser" or "Developer"), Powder Springs Downtown Development Authority ("Seller") and the City of Powder Springs, GA ("City") entered into in August, 2018 ("Agreement") was amended on or about October 8, 2018, January 22, 2019, May 6, 2019, August 29, 2019 and is now hereby amended to extend the Closing as agreed in the previous agreements.

WHEREAS, the parties entered into a First, Amendment, Second Amendment, Third Amendment and Fourth Amendment to the Agreement whereby the commencement of Phase I Construction and Closing Date were extended;

WHEREAS, the terms and conditions of the Agreement cannot be met by the Closing Date, and Purchaser/Developer request an extension of the Closing Date in order to comply with the terms described in the Agreement;

WHEREAS, the Purchaser, Seller and the City remain interested in proceeding with the transaction as contemplated in the Agreement, as amended herein;

For and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, Purchaser, Seller and the City hereby agree to the following amendments:

1. This Fifth Amendment to the Development, Purchase and Sale Agreement ("Fifth Amendment") constitutes an integral part of the existing Agreement, the First Amendment entered into on or about October 8, 2018, ("First Amendment"), Second Amendment to Agreement entered into on or about January 22, 2019 ("Second Amendment"), the Third Amendment to Agreement entered into on or about May 6, 2019 ("Third Amendment"), and the Fourth Amendment entered into on or about August 29, 2019 ("Fourth Amendment") except as modified herein, all terms, conditions, provisions and warranties contained in said Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment are hereby ratified and affirmed and are incorporated herein by this reference.

2. The Closing Date referenced in Paragraph Two of the Fourth Amendment, which extended the Closing Date referenced in Article 9 of the Agreement (originally October 15, 2019) to no later than October 22, 2019, (which was previously amended in the First Amendment, Second Amendment, Third Amendment and Fourth Amendment) shall be amended and replaced with the Closing Date of no later than _____, **2019**. Nothing

herein shall obligate the City to accept the Street for dedication unless and until the City is satisfied that such Street meets the City's standards and conditions of closing as required by the Agreement.

3. Section 8.1 of the Agreement shall be amended as follows: The one year maintenance bond condition referenced in 8.1(a) of the Agreement shall be amended to instead have Seller provide purchaser a two year cash bond. The date for Purchaser to complete the project shall be extended to _____, **2020**, instead of March 15, 2020. In addition, all terms and conditions of Closing in Section 8.1 of the Agreement as described in Section 8.1 shall remain in full force and effect and shall survive the closing of the property.

4. This Fifth Amendment may be executed in duplicate parts and electronic copies together shall be treated as an original.

5. In the event of a conflict between the terms of this Fifth Amendment and the terms of the Agreement and/or the First Amendment, Second Amendment, Third Amendment, or Fourth Amendment, then the terms of the Fifth Amendment shall control.

SELLER: POWDER SPRINGS DOWNTOWN DEVELOPMENT AUTHORITY

Albert Thurman, Chairman

Date: _____

Fred Bentley, Attorney – Approved as to Form

Date: _____

Shelly Hendry, Treasurer/Secretary

Date: _____

PURCHASER: THE DOUGLAS ASSETS COMPANY

Jeff Xie, Managing Member

Date: _____

CITY: CITY OF POWDER SPRINGS

Albert Thurman, Mayor

Date: _____

Kelly Axt, Clerk

Date: _____

David Hammock City Attorney – Approved as to Form

Date: _____