

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is made and entered into as of the date set forth below, by and between the CITY AND COUNTY OF DENVER, a political subdivision and municipal corporation of the State of Colorado (the "City"); HC DEVELOPMENT & MANAGEMENT SERVICES, INC., a Colorado corporation (the "Developer"); and TOWN CENTER METROPOLITAN DISTRICT, a political subdivision of the State of Colorado ("Town Center"). The City, Developer and Town Center are sometimes referred to hereinafter collectively as the "Parties."

RECITALS:

A. The City, Developer and Town Center are parties to that certain "Development Agreement Green Valley Ranch North" dated as of February 20, 2003 (the "Original Development Agreement"), also made with C&H Ranch Company, LLC, Oakwood Commercial Ventures, LLC, and OC 2001, LLC, Ebert Metropolitan District, and School District No. 1 in the City and County of Denver, State of Colorado, and recorded in the real property records for the City and County of Denver, State of Colorado, on February 28, 2003, at Reception No. 2003032407, as modified by an Amendment to Development Agreement dated May 25, 2007 (the "Tower Bridge Amendment"), and by a Modification of Development Agreement Amendment dated November 4, 2008, both being made among the parties to this Amendment (collectively the "Development Agreement"). Initially capitalized terms used but not defined in this Amendment shall have the meanings ascribed thereto in the Development Agreement.

B. The parties hereto have determined that it will be in their mutual best interests to effect an interim reallocation of certain funds presently appropriated by the City under the City Funding Plan (presently constituted by Exhibit A to the Tower Bridge Amendment) in order to complete certain right-of-way improvements that are not within the scope of the City Funding Plan, but that nonetheless will furnish significant benefits for the development and occupancy of G.V.R. Those alternative improvements consist of the northerly two-lane section of the Green Valley Ranch Boulevard right-of-way running westerly from but excluding its intersection with Telluride Street to the point immediately south of the westerly boundary of the adjoining parcel owned by the State of Colorado, acting through its Board of Land Commissioners, together with complementary or related right-of-way improvements (e.g., curb, gutter and drainage, sidewalk, and street lighting). Said improvements are sometimes referred to hereinafter as the "GVR Boulevard Reallocation Improvements." The funds to be so reallocated (the "GVR Boulevard Reallocation Funds") are presently appropriated for certain of the Department of Public Works' road projects set forth in the City Funding Plan (the "Public Works Projects").

C. It is anticipated that the GVR Boulevard Reallocation Funds will ultimately be repaid to the City Funding Plan by (i) Gateway Regional Metropolitan District ("GRMD") by virtue of obligations undertaken pursuant to the Amended and Restated Regional Facilities Agreement dated as of January 14, 2008, and made between the City and GRMD and on file in City Clerk File No. 98-135-G, as those obligations may be supplemented by further GRMD commitments, and (ii) the Denver High Point at DIA Metropolitan District ("High Point") and its

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taxing districts pursuant to the City Intergovernmental Agreement dated September 2, 2008, and made between the City and High Point.

D. The parties hereto have mutually determined to make this Amendment, as an amendment to the Development Agreement, (i) to govern the interim reallocation of the GVR Boulevard Reallocation Funds to the design, engineering, and planning for and construction and completion of the GVR Boulevard Reallocation Improvements, which are being undertaken in conjunction with the same functions for the further extension of Green Valley Ranch Boulevard westerly through the Peña Boulevard transportation corridor to its intersection with Airport Way (the “Peña Improvements”; provided, that the Peña Improvements as budgeted are not being funded from the GVR Boulevard Reallocation Funds); and (ii) to confirm certain other acknowledgments and agreements regarding the remaining disposition of the City Funding Plan.

E. This Amendment does not affect the interests of the parties to the Development Agreement that are not named parties to this Amendment, and the parties hereto are proceeding to make this Amendment without the joinder of those other parties.

NOW THEREFORE, in consideration of the above premises, and the mutual covenants and agreements set forth herein, the City, Developer and Town Center covenant and agree as follows:

1. Planning. The parties mutually acknowledge that Town Center has completed right-of-way design, engineering and planning for the GVR Boulevard Reallocation Improvements and the Peña Improvements. The resulting final construction plans for the GVR Boulevard Reallocation Improvements and Peña Improvements are identified on the index attached hereto as Exhibit A and incorporated herein by this reference.

2. Reallocation of Funds.

(a) The parties agree that the GVR Boulevard Reallocation Funds shall be in the amount of \$430,348.97 for the GVR Boulevard Reallocation Improvements and \$57,750 for related Xcel street lighting costs for a total of \$488,098.97 (subject to any increases instituted with City approval pursuant to the road development intergovernmental agreement referenced in paragraph 2(b) below), and will be reallocated from the City Funding Plan to the design, engineering and planning for and construction and completion of the GVR Boulevard Reallocation Improvements and related Xcel street lighting facilities (the “Reallocation Lighting”) and as otherwise provided under said road development agreement.

(b) The undertaking and construction of the GVR Boulevard Reallocation Improvements and the Peña Improvements are to be governed by a road development intergovernmental agreement being made between Town Center and the City (the “Construction IGA”) and the final construction plans identified on Exhibit A, as they may be further modified pursuant to the Construction IGA. The Construction IGA will also address the completion of the Reallocation Lighting and street lighting and traffic signal improvements associated with the Peña Improvements. The Construction IGA is anticipated to be approved by Ordinance of the Denver City Council contemporaneously and in conjunction with its approval of this Amendment also by Ordinance, and this Amendment shall take effect when the Construction

IGA has been approved by City Council and mutually executed. As applicable to the GVR Boulevard Reallocation Improvements, the Construction IGA is being made pursuant to Section 3.1.3 of the Development Agreement (which is hereby made applicable to the GVR Boulevard Reallocation Improvements). Based on costs incurred under the Construction IGA, GRMD and High Point, pursuant to agreements between each entity and the City, will be required to reimburse the City for the GVR Boulevard Reallocation Funds or the portions thereof expended for the GVR Boulevard Reallocation Improvements and Reallocation Lighting (those amounts to be reimbursed being sometimes referred to hereinafter as the "Construction Reimbursements").

3. Construction Reimbursements. As and when the Construction Reimbursements are paid, those funds shall be deposited into the City's capital improvement account (referenced by the City internally as Fund Org. No. 31000-5011102), and will be credited to and re-appropriated by the City under the City Funding Plan for the Public Works projects set forth therein that remain outstanding (which are identified by the City for its internal purposes as "GVR Road Infrastructure, Project No. PZ084"). The City represents and confirms that funds appropriated in this capital improvement account need not be re-appropriated in subsequent years if they are not fully expended in a given budget year. To the extent any portion of the GVR Boulevard Reallocation Funds is not used for completion of the GVR Boulevard Reallocation Improvements or Reallocation Lighting or otherwise expended in accordance with the Construction IGA, that remainder will also be returned to the City Funding Plan and credited to and appropriated for the Public Works Projects in accordance with the foregoing. The City confirms that the re-appropriation to the City Funding Plan under the Tower Bridge Amendment has been completed. The Developer Credit shall not be reduced by the reallocation of funds from the City Funding Plan pursuant to this Amendment.

4. Implementation of City Funding Plan. The continuing intent of the parties is that the City Funding Plan shall be for purposes of completing the public projects identified in the Development Agreement and the City Funding Plan, and that subject only to the interim reallocation of the GVR Boulevard Reallocation Funds pursuant to this Amendment, the monies under the City Funding Plan (including, without limitation, the future Construction Reimbursements contemplated hereunder) will otherwise continue to be applied under the Development Agreement to those public projects.

5. Effect on Development Agreement. Except as modified hereby, the Development Agreement shall remain in full force and effect in accordance with its stated provisions. In the event there arises any conflict or inconsistency between the provisions of this Amendment and the provisions of the Development Agreement, the provisions of this Amendment shall be controlling.

6. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same agreement.

7. City Funding Limitation. It is expressly understood and agreed that the obligation of the City for all or any part of its payment obligation hereunder, whether direct or indirect, shall extend only to the payment of funds duly and lawfully appropriated by the City Council and

encumbered and paid into the Treasury of the City for the purposes of this Agreement, and paid into the Treasury of the City. The City reconfirms and represents that the requisite appropriation and funding for the GVR Boulevard Reallocation Funds have been completed and remain outstanding.

8. Electronic Signatures and Electronic Records. The Parties to this Agreement consent to the use of electronic signatures by the City for the execution of this Agreement. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner determined by the City, and such electronic signature(s) will be binding on the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number:

PWADM-XC34006-02

Contractor Name:

Town Center Metropolitan District

HC DEVELOPMENT & MANAGEMENT
SERVICES, INC., a Colorado corporation

By: 

Name: ROBERT J SANDERMAN
(please print)

Title: EVP + CFO
(please print)

Attest: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number: PWADM-XC34006-02

Contractor Name: Town Center Metropolitan District

By: _____

Name: Charles P. Leder
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A

CONSTRUCTION PLANS INDEX

1. Construction Plans for “Green Valley Ranch Boulevard Improvements – Airport Way to Walden St.,” comprised of 44 sheets, as prepared by Engineering Partners Inc., dated 8/22/2011.
2. Bid Addenda #1 and #2 dated 9/9/2011 and 9/13/2011 (respectively) for “Green Valley Ranch Boulevard Improvements” as issued by Engineering Partners Inc.