

RESOLUTION NO. 12945-16

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN SECOND AMENDMENT TO PROJECT DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND TRI-CITY MANAGEMENT, INC., DATED THE 9TH DAY OF AUGUST, 2016.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Second Amendment to Project Development Agreement by and between the City of Newport News, Virginia, and Tri-City Management, Inc., dated the 9th day of August, 2016.

2. That a copy of the said Second Amendment to Project Development Agreement is attached hereto and made a part hereof.

3. That this resolution shall be in effect on and after the date of its adoption, August 9, 2016.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON AUGUST 9, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

**SECOND AMENDMENT TO
PROJECT DEVELOPMENT AGREEMENT**

This SECOND AMENDMENT TO PROJECT DEVELOPMENT AGREEMENT is dated the 9th day of August, 2016, and is made by and between the **CITY OF NEWPORT NEWS, VIRGINIA** (the “City”), a municipal corporation organized and existing under the laws of the Commonwealth of Virginia, and **TRI-CITY MANAGEMENT, INC.** (“TCM”), a Virginia corporation.

RECITALS:

I. In a “Project Development Agreement” dated April 12, 2005 (“the Agreement”), the City and TCM documented their understandings and agreements with respect to the development of certain property owned by TCM. The Project Development Agreement was amended by an agreement dated February 26, 2008 (the “Amendment”).

II. Section 7.3 of the Agreement provides in part that the Agreement may be modified by a written instrument executed by the City and TCM.

III. For business reasons and to resolve disputes with some of the owners of the condominium units, TCM, with the consent of the Windy Knolls Condominium Association, Inc., desire to make certain changes to the Agreement. The City is willing to agree to such changes subject to certain conditions.

IV. In accordance with Section 7.3 of the Agreement, the City and TCM desire to document their further agreement as to the terms and conditions by which the Agreement will be modified and henceforth applied.

AGREEMENT

In consideration of the matters described above, and of the mutual benefits and obligations contained in this Second Amendment to Project Development Agreement and Amendment, the City and TCM agree as follows:

A. Except as expressly modified or added to herein, all terms and conditions contained in the Agreement and the Amendment shall remain in full force and effect. As henceforth used in the Agreement and as used in this Second Amendment, “the Project” means the proposed condominium development which was the subject of the Agreement as revised by the Amendment and this Second Amendment to permit a mixed residential condominium and apartment project. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

B. Section 1.2.1 of the Agreement is modified to read as follows:

“1.2.1 TCM shall construct a mixed residential condominium and apartment project containing no fewer than 52 individual for sale condominium units (now completed and occupied) and no more than 258 luxury apartments for lease (168 completed luxury apartments, 42 condominiums to become luxury apartments upon contraction of the condominium and 48 luxury apartments to be constructed on formerly designated expandable land). TCM agrees that neither it nor its successors in title and interest or assigns will seek building permits for more than

a total of 310 dwelling units for the real property on which this Project is to be built and that this provision will be incorporated into any and all condominium documents that are required by state law”.

C. Section 1.2.1.3.2. The portion of the Project containing condominiums shall be subject to all State laws. Documents previously submitted in connection with the Project’s registration with the Virginia Common Interest Community Board pursuant to the Virginia Condominium Act shall be revised as necessary to effectuate the terms of this Second Amendment and shall be submitted to and filed with the Board.

D. The following sentence is deleted from Section 1.2.1.3.2 “Said documents shall also include satisfactory measures that ensure that at any given time no more than 40 condominium units are occupied pursuant to lease agreements”.

E. The Provision 1.3.4 has been previously satisfied and is hereby deleted.

F. Section 7.1 of the Agreement as Amended is modified as follows by adding at the end of said 7.1 the following language:

“HPWD, LLC purchased 42 units from TCM which are to become luxury apartments and withdrawn from the condominium with the consent of the Condominium Association. HPWD, LLC obtained a loan from Branch Banking and Trust Company which is secured by a Deed of Trust on the units. City agrees to allow HPWD, LLC to continue its ownership subject to the Deed of Trust upon

the land which formerly comprised Phases 4 and 5 of the
Condominium”.

WITNESS the following signatures and seals:

TRI-CITY MANAGEMENT, INC.,
a Virginia corporation

By: _____
Eric G. Olson, President

WINDY KNOLLS, L.L.C.,
a Virginia limited liability company

By: _____
Eric G. Olson, Manager

HPWD, L.L.C.,
a Virginia limited liability company

By: _____
Eric G. Olson, Manager

**WINDY KNOLLS CONDOMINIUM
ASSOCIATION, INC.,**
a Virginia non-stock corporation

By: _____
Its: _____

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

sdm14557