

ANNEXATION AGREEMENT

FIRST AMENDMENT TO ANNEXATION AND INCLUSION AGREEMENT
(Third Creek West)

THIS FIRST AMENDMENT TO ANNEXATION AND INCLUSION AGREEMENT ("Amendment") is made and entered into this _____, 2021, by and between SMT Investors Limited Partnership, CCT Investors, LLC, SCM-Carrier OKC, LLLP, SCM-Blaylock OKC, LLLP, SCM-Cagle OKC, LLLP, SCM-Donnelly, LLLP, SCM-Friedman OKC, LLLP, SCM-GRP Third Creek, LLLP, SCM-Hess Myers, LLLP, SCM-King, LLLP, SCM-Moore, LLLP, SCM-Morris Withey, LLLP, SCM-Neal, LLLP, SCM-POG, LLLP, SCM-Remondino OKC, LLLP, SCM-Schoenhals OKC, LLLP, SCM-Stephan, LLLP, SCM-Tibbs OKC, LLLP, AZ Third Creek, LLC, DLJ Third Creek, LLC, Far Marel, LLC, Forever 7, LLC, Go West Too Defined Benefit Pension Plan dated January 1, 2001, Harvard C.G. Properties II, LLC, Mt. Olympus Investments, LLC and Neal Management, LLC (collectively, "Owner") and the City of Commerce City, Colorado, a municipal corporation organized and existing under and by virtue of the laws of the state of Colorado ("City"); and Commerce City E-470 Commercial Area General Improvement District, a body corporate ("ECAGID") and Commerce City E-470 Residential Area General Improvement District, a body corporate ("ERAGID").

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree that the Annexation and Inclusion Agreement dated November 4, 2019 and recorded with the Adams County Clerk and Recorder at reception number 2020000002753 on January 9, 2020, in annexation cases AN-19-253 and AN-19-254 and inclusion cases ECAGID-012-19 and ERAGID-002-19 ("Agreement") is amended as follows:

1. Article 3 is deleted and replaced with the following italicized language:

ARTICLE 3. REIMBURSEMENT AGREEMENTS AND REGIONAL IMPROVEMENTS

The Project, as currently proposed, includes significant public improvements that will serve other properties, not just the Project with such regional infrastructure construction advancing certain objectives of the ERAGID and ERAGID. Without using any City general funds, the GIDs will contribute to the Regional Improvements as follows subject to the terms and conditions of this Agreement:

- *The ERAGID will provide Owner will advance \$6.8 million (the "ERAGID Funds Advance"), which may be paid on the ERAGID's behalf by the ECAGID pursuant to an intergovernmental agreement established for such purpose to be reimbursed upon completion of the Regional Improvements, or at such earlier timer as the ERAGID determines, by the ERAGID, through a bond issuance or other funding mechanism, to the District that will design construct the Regional Improvements with an annual interest rate at four percent (4%); and*
- *The ECAGID will provide issue bonds with \$7 million in net proceeds (the "ECAGID Funds Net Bond Proceeds"),*

with such ERAGID Funds and ECAGID Funds Advance and Net Bond Proceeds being provided to the applicable District that will design and construct the Regional Improvements. All issuance of debt by a GID shall be subject to all requirements of law and existing agreements and policies of the GIDs, including without limitation the November 4, 2014, Agreement for Inclusion into the Commerce City E-470 Residential Area General Improvement District and the Commerce City E-470 Commercial Area General Improvement District (the "2013 Inclusion Agreement"). Unless otherwise agreed to by the ECAGID or the ERAGID in the future, neither the City or the GID will be responsible for costs of any Regional Improvements exceeding the amount of the Advance and the ERAGID Funds and the ECAGID Funds (the "Overages") and neither GID will

be responsible for payment of the funds of the other GID except as agreed to by the GIDs. This article shall not apply if the Owner, or a District, as defined in Article 5, below, within the Property does not construct the Regional Improvements.

2. Remainder of Agreement in Full Force and Effect. Except as otherwise provided by this Amendment, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect and shall apply to this Amendment. All defined terms used herein shall have the same meanings as ascribed to them in the Agreement.
3. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute one and the same instrument.

Signature pages follow

IN WITNESS WHEREOF, the City and the Owner have caused this Amendment, with the ECAGID and ERAGID as limited parties, to be duly executed as of the day first above written.

CITY OF COMMERCE CITY, COLORADO

By:

Roger Tinklenberg, Interim City Manager

ATTEST:

Dylan A. Gibson, City Clerk

Approved as to form:

City Attorney

STATE OF COLORADO)
)
) SS.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Roger Tinklenberg, as Interim City Manager of the City of Commerce City, Colorado.

Witness my hand and official seal. Notary Public:

(SEAL)

Notary Public: _____

Address:

| | | | |
|--------------------|------|-------|----------|
| Street Number/Name | City | State | Zip Code |
|--------------------|------|-------|----------|

My Commission Expires:

**COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT
DISTRICT, a body corporate**

By: _____
Roger Tinklenberg, Interim Executive Director

ATTEST:

Dylan A. Gibson, Secretary

Approved as to form:

General Counsel

STATE OF COLORADO)
) SS.
 COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by Roger Tinklenberg, as Interim Executive Director of the Commerce City E-470 Commercial Area General Improvement District, a body corporate.

Witness my hand and official seal. Notary Public:

Address:

(SEAL) Street Number/Name City State
Zip Code

My Commission Expires: _____

**COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT
DISTRICT, a body corporate**

By:

Roger Tinklenberg, Interim Executive Director

ATTEST:

Dylan A. Gibson, Secretary

Approved as to form:

General Counsel

STATE OF COLORADO)
) SS.
 COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Roger Tinklenberg, as Interim Executive Director of Commerce City E-470 Residential Area General Improvement District, a body corporate.

Witness my hand and official seal.

Notary Public:

Address:

(SEAL)

Street Number/Name City State Zip Code

City

State

Zip Code

My Commission Expires:

OWNER:

COWLEY MANAGEMENT, LLC, an Arizona limited liability company, as Manager of the Property per that certain Tenants-in-Common Agreement, dated March 16, 2006, executed by all owners of the Property

By: Michael T. Cowley, Manager

STATE OF ARIZONA)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Michael T. Cowley, as Manager of COWLEY MANAGEMENT, LLC, an Arizona limited liability company.

Witness my hand and official seal. Notary Public:

(SEAL) Address: _____ Street Number/Name _____ City _____ State _____ Zip Code _____

My Commission Expires: