

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2024-90

A RESOLUTION OF THE CITY COMMISSION AMENDING RESOLUTION NO. 2022-170 WHICH APPROVED A MIXED-USE SITE PLAN FOR THE PROJECT REFERRED TO AS “REGENCY PARC” ON THE PROPERTY LEGALLY DESCRIBED AS LOTS 1-12 AND LOTS 35-46, INCLUDING THE PUBLIC ALLEYWAY LYING IN BETWEEN, BLOCK 10, AND LOTS 103, BLOCK 15, CORAL GABLES, CRAFTS SECTION (290, 272, 250, 244, VALENCIA AVENUE, 247, 297 ALMERIA AVENUE, AND 2701 SALZEDO STREET) CORAL GABLE, FLORIDA TO ALLOW FOR THE ART IN PUBLIC PLACES CONTRIBUTION TO BE MADE PURSUANT TO AN ESCROW AGREEMENT.

WHEREAS, pursuant to Resolution No. 2022-170, the City Commission approved a mixed-use site plan for the project known as Regency Parc (the “Project”) owned by Regency Parc, LLC (“Regency Parc”); and

WHEREAS, pursuant to Section 2(4)(b) of Resolution No. 2022-170, prior to issuance of the Building Permit, Developer “shall provide a complete and notarized copy of the Project Value Application to the City. Prior to the issuance of the first Building Permit, applicant must make the required contribution to the appropriate Art in Public Places (“AIPP”) fund or receive approval for a waiver in accordance with the requirements of Article 9,” of the City of Coral Gables Zoning Code (the “Art in Public Places Obligation”); and

WHEREAS, Regency Parc has requested that the City Commission amend Resolution No. 2022-170 to allow for the Art in Public Places Obligation to be satisfied pursuant to the terms of an Escrow Agreement in substantially the form attached as Exhibit A.

WHEREAS, the City Commission has reviewed and considered the request and finds that given the uniqueness of the situation, the request to amend Resolution No. 2022-170 is reasonable;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing “**WHEREAS**” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

SECTION 2. That the City Commission approves and authorizes the City Manager to execute the Escrow Agreement in substantially the form attached as Exhibit A, with such modifications approved by the City Manager and the City Attorney consistent with the Commission’s intent.

SECTION 3. That Resolution No. 2022-170 is amended to allow for the Art in Public Places Obligation set forth in Section 2(4)(b) to be satisfied pursuant to the terms of the Escrow Agreement. All other provisions of Resolution No. 2022-170 remain unchanged and in full force and effect.

SECTION 3. That the City Commission authorizes the City Manager and the City Attorney to approve an amended restrictive covenant consistent with the amended conditions approved in this resolution, if necessary.

SECTION 4. That this Resolution shall become effective upon the date of its passage and adoption herein.

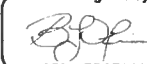
PASSED AND ADOPTED THIS SEVENTH DAY OF MAY, A.D., 2024.
(Moved: Fernandez / Seconded: Castro)
(Yeas: Fernandez, Menendez, Anderson, Castro, Lago)
(Unanimous: 5-0 Vote)
(Agenda Item: E-13)

APPROVED:

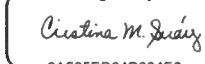
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VINCE LAGO
MAYOR

ATTEST:

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BILLY Y. URQUIA
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

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CRISTINA M. SUÁREZ
CITY ATTORNEY

ESCROW AGREEMENT

This Escrow Agreement (this “*Agreement*”) is made as of _____, 2024 by and among **REGENCY PARC, LLC**, a Florida limited liability company (“*Regency*”) and **CITY OF CORAL GABLES** (“*City*”), a Florida municipal corporation and FIDELITY NATIONAL TITLE INSURANCE COMPANY (“*Escrow Agent*”).

Recitals

- A. The City approved Developer’s multi-family, mixed use project known as Regency Parc (the “Project”) in June, 2022 pursuant to Ordinance No. 2022-32 (the “Ordinance”) and Resolution No. 2022-170 (the “Resolution”).
- B. Pursuant to Section 4(b) of the Conditions of Approval attached as Attachment “A” to the Ordinance, and Section 2(4)(b) of the Resolution, prior to issuance of the Building Permit, Developer “shall provide a complete and notarized copy of the Project Value Application to the City. Prior to the issuance of the first Building Permit, applicant must make the required contribution to the appropriate Art in Public Places (“AIPP”) fund or receive approval for a waiver in accordance with the requirements of Article 9,” of the City of Coral Gables Zoning Code (the “Art in Public Places Obligation”).
- C. Developer has requested amendments to the Ordinance and Resolution to allow for the Art in Public Places Obligation to be satisfied pursuant to the terms of this Agreement, and the proposed amendments to the Ordinance and Resolution are scheduled for final consideration by the City Commission on May 7, 2024. Developer has requested, and the City has agreed, to otherwise issue the Building Permit (provided all other requirements, including but not limited to, all requirements under the Florida Building Code and all other conditions of approval under the Ordinance and Resolution have been satisfied), subject to City Commission approval of the amendments to the Ordinance and Resolution.
- D. Developer has agreed to place the amount otherwise required as the contribution to the AIPP fund into escrow with Escrow Agent.

Terms and Conditions

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged the parties hereto agree as follows:

- 1. Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.
- 2. Effective Date, Execution Date and Terminology. The term “Effective Date” shall mean the date that this Escrow Agreement becomes effective and binding on the Parties, which is the date that this Escrow Agreement is signed by the last Party to sign it (as indicated by the date below such Party’s signature).
- 3. Escrow Funds. No later than five (5) days after the Effective Date, Developer shall deposit with Escrow Agent the amount of \$1,226,788.24¹ (the “*Escrow Funds*”).

¹ Amount equal to 1% of Aggregate Project Value as defined in Section 9-106 of the City of Coral Gables Code of Ordinances.

4. Investment and Use of Escrow Funds. The Escrow Agent shall maintain the Escrow Funds in a federally insured interest-bearing account in a national banking association or such other account and/or institution as City and Developer may approve. All interest accruing on the Escrow Funds shall not be added to nor become a part of the Escrow Funds. Developer shall provide Escrow Agent with tax identification numbers and other information reasonably required by Escrow Agent in order for the Escrow Agent to comply with reporting obligations. Any interest accrued shall be disbursed to the Developer at the time of disbursement to either party.

5. Art in Public Places Obligation. Developer covenants and agrees it shall diligently take all actions necessary (and perform whatever work is required) in order obtain a waiver of the AIPP contribution by the date that is One Hundred Eighty (180) days after the Effective Date (the "Waiver Approval Deadline"). The City Manager may grant Developer extensions of the Waiver Approval Deadline if Developer demonstrates, to the City Manager's satisfaction, that it is working diligently and in good faith to obtain the waiver. However, for avoidance of doubt, in no event shall a Temporary Certificate of Occupancy be issued for the Project prior to Developer's satisfaction of the Art in Public Places Obligation.

6. Developer and the City covenant and agree that should the City Commission not approve the amendments to the Ordinance and Resolution on May 7, 2024, then the Escrow Funds shall be immediately due to the City and the Escrow Funds shall be disbursed to the City in conformance with Section 9 of this Agreement upon the City providing notice to Escrow Agent that the amendments were not approved.

7. Developer and the City covenant and agree that upon obtaining a waiver of the AIPP contribution by the Waiver Approval Deadline, Developer may make a demand for the disbursement of the Escrow Funds from the Escrow Agent. Developer shall be deemed to have received a waiver of the AIPP contribution upon City Commission approval of a resolution approving the waiver. Such disbursements shall be in conformance with Section 9 of this Agreement.

8. In the event Developer fails to obtain the required waiver by the Waiver Approval Deadline, then the Escrow Funds shall be due to the City, and the City may make a demand for the disbursement of the Escrow Funds from the Escrow Agent. If the Developer obtains the waiver within the required time, including any duly granted extensions, it. Such disbursements shall be in conformance with Section 9 of this Agreement.

9. Disbursement of Escrow Funds. Escrow Agent shall disburse the Escrow Funds in accordance with the terms of the Agreement. If either party makes a demand upon Escrow Agent for delivery of the Escrow Funds or any portion thereof, whether in connection with an alleged default and/or a termination of the contract or otherwise, Escrow Agent shall give notice to the other party of such demand. If a notice of objection to the proposed payment is not received from the other party within five (5) Business Days after the giving of notice by Escrow Agent, Escrow Agent is hereby authorized to deliver the Escrow Funds to the party who made the demand. If Escrow Agent receives a notice of objection within said period, then Escrow Agent shall continue to hold the Escrow Funds and thereafter pay it to the party entitled when Escrow Agent receives (a) notice from the objecting party withdrawing the objection, or (b) a notice signed by both parties directing disposition of the Escrow Funds, or (c) a judgment or order of a court of competent jurisdiction. Notwithstanding any of the foregoing, if Escrow Agent receives notice from the City in accordance with Section 6 of this Agreement, that the City Commission did not approve the amendments to the Ordinance and Resolution, then Escrow Agent is hereby authorized to deliver the Escrow Funds to the City.

10. Interpleader. Developer and City mutually agree that in the event of any controversy regarding the Escrow Funds, unless mutual written instructions are received by the Escrow Agent directing

To Escrow Agent: Mary E. Cornelius, AVP
Commercial Closing Services South Florida
FNF Family of Companies
13800 NW 14th Street, Suite 190
Sunrise, FL 33323

14. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

15. Governing Law. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law, of the State of Florida.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs and devisees of the parties.

[signatures are on the following page]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as of the day and year first set forth above.

DEVELOPER:

REGENCY PARC, LLC, a Florida limited liability company

By: CODINA MANAGER, LLC, a Florida limited liability company, its Manager

By: _____
Name: Federico Moreno
Title: Authorized Signatory

CITY:

City of Coral Gables, a municipal corporation of the State of Florida

By: _____
Name: _____
Title: _____

Approved as to form and legal sufficiency:

Cristina M. Suárez, City Attorney, City of Coral Gables
Stephanie M. Throckmorton, Deputy City Attorney
Gustavo J. Ceballos, Assistant City Attorney

ESCROW AGENT:

By: _____
Name: _____
Title: _____