

FOURTH AMENDMENT TO REAL ESTATE PURCHASE CONTRACT

STATE OF TEXAS §
 §
COUNTY OF DENTON §

THIS FOURTH AMENDMENT TO REAL ESTATE PURCHASE CONTRACT (“Fourth Amendment”) is made by and between **SHADDOCK DEVELOPERS, LTD.**, a Texas limited partnership, of 2400 Dallas Parkway, Suite 560, Plano, Texas 75093, Attn: William C. Shaddock (“Seller”), and the **CITY OF FRISCO, TEXAS**, a Texas home-rule municipality, of 6101 Frisco Square Blvd., Frisco, Texas 75034, Attn: George Purefoy, City Manager (“Purchaser”), upon the terms and conditions set forth herein.

WHEREAS, Seller and Purchaser entered into that certain Real Estate Purchase Contract dated May 31, 2013, as amended by that certain Amendment to Real Estate Purchase Contract dated August 19, 2013, as further amended by that certain Second Amendment to Real Estate Purchase Contract dated November 15, 2013, and as further amended by that certain Third Amendment to Real Estate Purchase Contract dated August 4, 2015 (as amended, the “Contract”), whereby Seller agreed to, among other things, convey Property (as defined in the Contract) to Purchaser, and as a condition of Purchaser closing the transaction, Seller was required to obtain Purchaser’s Final Acceptance (as defined in the Contract) of the Phase 6B Improvements and the Park Improvements (as defined in the Contract) by the Improvements Deadline (as defined in the Contract), said Contract being incorporated herein by reference for all purposes; and

WHEREAS, Seller desires to amend the terms of the Contract by extending the Improvements Deadline to provide additional time for Seller to obtain Final Acceptance of the

Phase 6B Improvements and the Park Improvements, and Purchaser has agreed to such amendment as set forth in this Fourth Amendment; and

WHEREAS, Seller further desires to amend the terms of the Contract to address the reimbursement of the Breach Repair Costs (hereafter defined), and Purchaser has agreed to such amendment as set forth in this Fourth Amendment.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Fourth Amendment, Seller and Purchaser agree as follows:

ARTICLE I RECITALS INCORPORATED

1.01. The representations, covenants and recitations set forth in the foregoing recitals of this Fourth Amendment are true and correct and are incorporated into the body of this Fourth Amendment as if set forth verbatim and adopted as findings of Frisco and the authorized representative of Developer.

ARTICLE II AMENDMENT TO CONTRACT, SECTION 2.02

2.01. Section 2.02 of the Contract is hereby amended as follows:

“Payment of Purchase Price

2.02. The Purchase Price shall be paid by Purchaser as follows:

(a) ...

(b) At Closing, the Escrow Deposit (hereafter defined), constituting a total sum equal to the remainder of the Purchase Price, being the sum of \$1,421,037.00, shall be applied toward the Purchase Price payable by Purchaser, and after adjustments for any closing costs and prorations, shall be paid by the

Title Company to the Seller. At Closing, an additional sum, in an amount not to exceed \$752,000.00, shall be paid by Purchaser to Seller as reimbursement of the actual costs directly incurred and paid by Seller, as evidenced by Affidavits of Payment/Affidavits as to Debts and Liens and any other evidence reasonably required by Purchaser, for the following improvements and repairs (collectively, the “Breach Repair Costs”): (i) improvements and repairs necessary to remedy the breach of Lake No. 1 and Lake No. 2 on the Property, including but not limited to, all earthwork, demolition, haul-off, regrading and the installation of gabion baskets, anchor-reinforced vegetative systems or other equivalent system approved by Purchaser, seeding, plant establishment, dewatering and/or any other work or items necessary to stabilize slopes and banks; (ii) improvements and repairs necessary to remedy the anticipated breaches of Lake No. 3 and Lake No. 4 on the Property, including but not limited to, all earthwork, demolition, haul-off, regrading and the installation of gabion baskets, anchor-reinforced vegetative systems or other equivalent system approved by Purchaser, seeding, plant establishment, dewatering and/or any other work or items necessary to stabilize slopes and banks; (iii) improvements and repairs necessary to stabilize Stream Bank Area Nos. 1, 2, 3, 4, 5 and 6, including but not limited to, all earthwork, demolition, haul-off, regrading and the installation of gabion baskets, anchor-reinforced vegetative systems or other equivalent system approved by Purchaser, seeding, plant establishment, dewatering and/or any other work or items necessary to stabilize slopes and banks; (iv) the repairs to Lake No. 1 made the subject of

change order no. 3 with FCS Construction, in the amount of \$248,545.00 and dated October 26, 2015 (collectively, the “Breach Repairs”); and (v) additional costs resulting from City requested changes to the original concept plan. Purchaser’s obligation to pay the Breach Repair Costs hereunder is strictly contingent on Seller obtaining Purchaser’s prior written approval of the construction plans for the Breach Repairs and on Seller obtaining Final Acceptance (hereafter defined) of the Breach Repairs on or before the Improvements Deadline (hereafter defined). In no event shall Purchaser’s obligation to pay the Breach Repair Costs hereunder exceed the amount of \$752,000.00.”

ARTICLE III
AMENDMENT TO CONTRACT, SECTION 3.08

3.01 Section 3.08 of the Contract is hereby amended as follows:

“Completion of Phase 6B, the Park Improvements and Phase 6B Improvements

3.08. Purchaser’s obligation to close is also strictly contingent on Seller obtaining Final Acceptance (hereinafter defined) of the following on or before December 31, 2016 (“Improvements Deadline”): (i) the construction and development of Shaddock Estates Phase 6B (“Phase 6B”), as more particularly described in **Exhibit “B”**, attached hereto, to a state where building permits may be issued by the City of Frisco for residential construction within Phase 6B, including but not limited to, the public improvements contained within Phase 6B (“Phase 6B Improvements”); and (ii) the construction and completion of the park

improvements on the Property set forth below (“Park Improvements”). The Park Improvements are as follows:

...”

ARTICLE IV MISCELLANEOUS

Defined Terms

(a) Any term not defined herein shall be deemed to have the same meaning ascribed to it under the Contract.

Ratification

(b) Seller and Purchaser hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Contract and acknowledge and agree that the Contract remains in full force and effect except as amended hereby.

Controlling Agreement

(c) To the extent that any provision contained in this Fourth Amendment conflicts with the Contract, the provision contained in this Fourth Amendment shall supersede such conflicting provisions contained in the Contract.

Legal Construction

(d) In case any one or more of the provisions contained in this Fourth Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Fourth Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Integration

(e) The Contract and this Fourth Amendment constitute the sole and only agreement of the parties hereto and supersede any prior understanding or written or oral agreements between the parties respecting the within subject matter. The Contract and this Fourth Amendment cannot be modified or changed except by the written consent of all of the parties.

Execution

(f) To facilitate execution, this Fourth Amendment may be executed in as many counterparts as may be required; and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Fourth Amendment to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. A facsimile, telecopy, or other reproduction of this Fourth Amendment may be executed by one or more parties hereto and an executed copy of this Fourth Amendment may be delivered by facsimile and such execution and delivery shall be considered valid, binding, and effective for all purposes.

[Signature page follows.]

Executed on the dates set forth at the signatures of the parties hereto.

SELLER:
SHADDOCK DEVELOPERS, LTD.,
a Texas limited partnership

By: SHADDOCK DEVELOPMENT COMPANY,
a Texas corporation
Its: General Partner

By: _____
William C. Shaddock, President

Date of Execution: _____

PURCHASER:
CITY OF FRISCO, TEXAS,
a Texas home rule municipality

By: _____
George Purefoy, City Manager

Date of Execution: _____