

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2024-17

AN ORDINANCE OF THE CITY COMMISSION AMENDING ORDINANCE NO. 2022-32 WHICH APPROVED A PLANNED AREA DEVELOPMENT FOR A PROJECT KNOWN 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 1-4, BLOCK 15, CORAL GABLES CRAFTS SECTION (290, 272, 250, 244 VALENCIA AVENUE, 247, 297 ALMERIA AVENUE, and 2701 SALZEDO STREET), CORAL GABLES, FLORIDA TO ALLOW FOR THE ART IN PUBLIC PLACES CONTRIBUTION TO BE MADE PURSUANT TO AN ESCROW AGREEMENT.

WHEREAS, pursuant to Ordinance No. 2022-32, the City approved a multi-family, mixed use project known as Regency Parc (the “Project”) own by Regency Parc, LLC (“Regency Parc”); and

WHEREAS, pursuant to Section 4(b) of the Conditions of Approval attached as Attachment “A” to Ordinance No. 2022-32, 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 Ordinance No. 2022-32 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;

NOW, THEREFORE, BE IT ORDAINED 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 Ordinance upon adoption the 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 Ordinance No. 2022-32 is amended to allow for the Art in Public Places Obligation set forth in Section 4(b) of the Conditions of Approval attached as Attachment "A" to be satisfied pursuant to the terms of the Escrow Agreement. All other provisions of Ordinance No. 2022-32 remain unchanged and in full force and effect.

SECTION 4. 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 Ordinance, if necessary.

SECTION 5. All Ordinances or parts of ordinances that are inconsistent or in conflict with the provisions of this Ordinance are repealed.

SECTION 6. If any section, clause, sentence or phrase of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, then said holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 7. That this Ordinance shall become effective immediately upon its passage and adoption herein.

PASSED AND ADOPTED THIS SEVENTH DAY OF MAY, A.D., 2024.

(Moved: Menendez / Seconded: Fernandez)

(Yea: Castro, Fernandez, Menendez, Anderson, Lago)

(Unanimous: 5-0 Vote)

(Agenda Item: E-5)

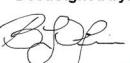
APPROVED:

DocuSigned by:

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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. SUAREZ
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 the Escrow Funds' disposition, the Escrow Agent shall not take any action, but instead shall await the disposition of any proceeding relating to the Escrow Funds or, at the Escrow Agent's option, the Escrow Agent may interplead all parties and deposit the Escrow Funds with a court of competent jurisdiction in which event the Escrow Agent may recover all of its court costs and reasonable attorneys' fees. Unless a court decides otherwise, Developer shall be obligated to pay such costs and fees of the Escrow Agent. The court may also assess against the non-prevailing party the reasonable attorneys' fees of the prevailing party in accordance with the other provisions of the Purchase Agreement.

11. Liability of Escrow Agent. The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and that the Escrow Agent shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for its willful misconduct and grossly negligent acts and for any loss, cost or expense incurred by Developer or City resulting from the Escrow Agent's mistake of law respecting the Escrow Agent's scope or nature of its duties. Developer and City shall jointly and severally indemnify and hold the Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or made by the Escrow Agent in bad faith, in disregard of this Agreement or involving willful misconduct or gross negligence on the part of the Escrow Agent. In the event the Escrow Agent is directed to invest the Escrow Funds, the Escrow Agent shall not be held responsible for any loss of principal or interest which may be incurred as a result of making the directed investments or redeeming said investments at the direction of the parties hereto.

12. Escrow Fee. Except as expressly provided herein to the contrary, the escrow fee, if any, charged by the Escrow Agent for holding the Escrow Funds and making the disbursements required hereunder shall be paid by Developer.

13. Notice. Any notice, report, demand, or instruction, required or permitted under this Escrow Agreement shall be made in writing and shall be deemed to have been sufficiently transmitted, delivered, given or served for all purposes to the Party to whom such notice, report, demand, or instruction, is addressed, if delivered by nationally recognized overnight courier service, which provides a receipt, to such Party at its address indicated below or at such other address as a Party may subsequently designate by written notice as provided in this Section 10. The effective date of delivery or transmittal of a notice, report, demand, or instruction, shall be the actual date that delivery is effected.

To Developer: Codina Partners
Attn: Rick Moreno, CFO
2020 Salzedo Street, 5th Floor
Coral Gables, FL, 33134

With copy to: JMZ Group
Attn: Joe Jimenez
2020 Salzedo Street, Suite 102
Coral Gables, FL 331334

To City: City of Coral Gables
Attention: Cristina M. Suárez, Esq., City Attorney

405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134

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: _____