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Elaina Cano
San Luis Obispo - County Clerk-Recorder
09/21/2023 09:19 AM

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City of San Luis Obispo
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990 Palm Street
San Luis Obispo, CA 93401

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**THIRD ADMINISTRATIVE AMENDMENT
TO DEVELOPMENT AGREEMENT**

THIS THIRD ADMINISTRATIVE AMENDMENT TO DEVELOPMENT AGREEMENT (the "Third Administrative Amendment") is made in San Luis Obispo County, California as of September 13, 2023, by and between the City of San Luis Obispo, a California general law city ("City"), and MI San Luis Ranch LLC ("SLR"). The City and SLR may be referred to herein as a "Party" or, collectively, as the "Parties."

RECITALS

A. The City and SLR entered into that certain Development Agreement dated as of on or about September 18, 2018 (the "Development Agreement"), which was recorded against certain real property located within the City as described in the Development Agreement (the "Property") as Instrument No. 2018039139 in the San Luis Obispo Recorder's Office. All terms not specifically defined in this Third Administrative Amendment shall have the meanings ascribed to them in the Development Agreement.

B. Section 9.04 of the Development Agreement provides that minor modifications to any Project Approval may be approved by the Planning Director through an Administrative Amendment where such amendments or modifications are both minor and substantially conform to the material terms of the Development Agreement.

C. In addition, Section 9.03 of the Development Agreement provides that because the implementation of the Project require a close degree of cooperation between the Parties certain refinements and clarifications may be appropriate to facilitate the proposed development and that when the Parties agree that such clarifications are necessary or appropriate, they may effect such clarifications through operating memoranda approved by the Parties. The Parties have entered into two prior Operating Memoranda and two Administrative Amendments setting forth clarifications to the Project Approvals. The First Administrative Amendment to Development Agreement was recorded as Instrument No. 2021014110 in the San Luis Obispo Recorder's Office on February 23, 2021, and the Second Administrative Amendment to Development Agreement was recorded as Instrument No. 2021073927 in the San Luis Obispo Recorder's Office on November 3, 2021.

D. The Parties desire to enter into this Third Administrative Amendment to set forth the Parties' understanding and agreement regarding certain changes related to the affordability of Workforce Housing Units in the Project, which changes the Community Development Director has determined are minor and substantially conform to the material terms of the Development Agreement and the Applicable Law and are appropriate to be memorialized in an Administrative Amendment.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into the operative provisions of this Third Administrative Amendment by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

Section 1. Workforce Housing Income Threshold:

(a) SLR and the City caused that certain Affordable and Workforce Housing Agreement and Declaration of Restrictive Covenants (the "Affordable Housing Agreement") to be recorded as Instrument No. 2020049556 in the San Luis Obispo Recorder's Office on September 14, 2020.

(b) Workforce Housing Units. Section E of the Affordable Housing Agreement states that Workforce Housing Units shall be sold or rented "to households with income levels of 121 to 160% of the Area Median Income." SLR and the City have determined that the lower income threshold for rental applicants is not necessary to meet the intent of the City's affordable housing policies as it is overly restrictive. In lieu of the minimum 121% income threshold, the qualification for the Workforce rental units shall be modified to require a minimum income that allows a maximum 30% rent to income ratio for applicants. This change will only apply to the rental Workforce Housing Units; for sale Workforce Housing Units shall remain under existing income guidelines for Workforce Housing. As such, the reference to "households with income levels of 121 to 160% of the Area Median Income" shall be revised to refer to "households with income levels of 121 to 160% of the Area Median Income for sale of Workforce Housing Units, and households with income levels of up to 160% of the Area Median Income and a minimum income that allows a maximum 30% rent to income ratio for the applicant for rental Workforce Housing Units."

In recognition of the financial hardship posed by a substantial rent increase, SLR and its successors in interest shall not, over the course of any 12-month period, increase the gross rental rate for a Workforce Housing Unit more than 10 percent of the lowest gross rental rate charged for that unit at any time during the 12 months prior to the effective date of the increase. Nothing stated herein should be construed to permit rent increases which would cause the rental price of the unit to exceed the maximum monthly rent established by the City's Workforce Housing Standards for San Luis Ranch in effect at the time of the rent increase.

Section 2. Miscellaneous Provisions.

(a) Entire Agreement. Except for the Development Agreement which this Third Administrative Amendment amends, the prior Operating Memoranda, and the prior Administrative Amendments to Development Agreement, this Third Administrative Amendment represents the

entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the Parties with respect to the matters contained in this Third Administrative Amendment.

(b) Section Headings. The section headings contained in this Third Administrative Amendment are for convenience and identification only and may not be deemed to limit or define the contents to which they relate.

(c) Counterparts. This Third Administrative Amendment may be executed in any number of counterparts, each of which will have the same force and effect as if executed in the form of an original single document.

(d) Waiver. No waiver of any provision of this Third Administrative Amendment will be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought.

(e) Severability. If any term, covenant, condition or provision of this Third Administrative Amendment, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Third Administrative Amendment, or the application thereof to any person or circumstance, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not adversely affect the benefits accruing to, or the obligations imposed upon, any Party to this Third Administrative Amendment of the Development Agreement.

(f) No Reliance on Other Parties. All Parties to this Third Administrative Amendment declare that, prior to the execution of this Third Administrative Amendment, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection, and have sought and obtained legal counsel, in order that they might intelligently exercise their own judgment in evaluating the contents of this Third Administrative Amendment and making the decision to execute it. The Parties each represent and acknowledge that in executing this Third Administrative Amendment, they do not rely and have not relied upon any representation or statement not set forth herein made by any other Party to this Third Administrative Amendment or their respective legal counsel with regard to the subject matter, basis or effect of this Third Administrative Amendment.

(g) Construction. The provisions of this Third Administrative Amendment will be liberally construed to effectuate its purpose. The language of this Third Administrative Amendment will be construed according to its plain meaning and may not be construed for or against any Party, as each Party has participated in the drafting of this Third Administrative Amendment and has had its legal counsel review it. Whenever the context and construction so require, all words used in the singular will be deemed to be used in the plural and vice versa.

(h) Successors and Assigns. This Third Administrative Amendment and the Development Agreement that it amends are binding on and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

(i) Governing Law. The validity and interpretation of this Third Administrative Amendment is governed by the laws of the State of California without giving effect to the principles of conflict of laws.

(j) Authorizations. Each Party certifies and warrants that all individuals executing this Third Administrative Amendment and other related documents on its behalf have the capacity and have been duly authorized to do so.


(m) Impact of Third Administrative Amendment on Development Agreement. Unless otherwise specifically amended by this Third Administrative Amendment, all provisions of the Development Agreement, the Operating Memoranda and all previous Administrative Amendments are hereby ratified and remain in full force.

IN WITNESS WHEREOF, the Parties to this Third Administrative Amendment have each executed this Third Administrative Amendment as of the date first written above.

CITY:

CITY OF SAN LUIS OBISPO,
a municipal corporation of the State of California

By:


Timothea Tway
Community Development Director

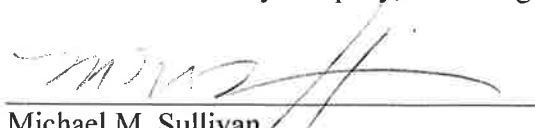
DEVELOPER:

MI SAN LUIS RANCH LLC
a Delaware limited liability company

By: MI ENTITLEMENT IV, LLC
a Delaware limited liability company
Its: Sole Member and Manager

By: Presidio Merced Land IV Passive, LLC
a Delaware limited liability company, its Manager

By:


Michael M. Sullivan
Its: Authorized Representative

ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ~~California~~ Minnesota
County of ~~San Luis Obispo~~ Hennepin

On September 18, 2023, before me, Amy Sundell, notary public,
Date Name and Title of the Officer
personally appeared Michael M. Sullivan
Name of Signer(s)

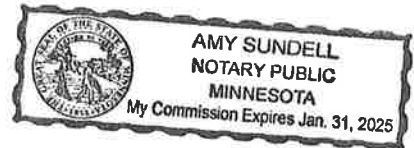
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she /they executed the same in his/her/their authorized capacity(ies), and that by his/her/ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

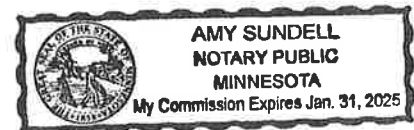
WITNESS my hand and official seal.

Signature


Signature of Notary Public



Place Notary Seal Above



ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of San Luis Obispo }

On September 21, 2023, before me, Megan Wilbanks, notary public,
Date Name and Title of the Officer
personally appeared Timothea Tway
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she /they executed the same in his/her/their authorized capacity(ies), and that by his/her/ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Megan Wilbanks
Signature of Notary Public



Place Notary Seal Above