

**OPERATING MEMORANDUM NUMBER TWO  
BETWEEN  
THE CITY OF SAN LUIS OBISPO  
AND MI SAN LUIS RANCH, LLC**

The Development Agreement by and among the City of San Luis Obispo (the “City”) and MI San Luis Ranch LLC (“SLR”) dated as of on or about September 18, 2018, and which became effective on October 18, 2018 (the “Development Agreement”), provides in Section 9.03 of the Development Agreement that compliance with the requirements of the San Luis Ranch Specific Plan (the “Specific Plan”), the Conditions of Approval (the “Conditions of Approval”) for the San Luis Ranch Project (the “Project”), the conditions of approval for Vesting Tentative Tract Map No. 3096 (the “VTTM”), and provisions of the Development Agreement (collectively, the Specific Plan, the Conditions of Approval, the VTTM, and the Development Agreement may be referred to collectively as the “Project Approvals”) require a close degree of cooperation between the City and SLR and refinements and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance. The Development Agreement further provides that if and when City and SLR agree that such clarifications are necessary or appropriate, they may effect such clarifications through operating memoranda approved by the City and SLR.

With this Operating Memorandum, City and SLR wish to clarify certain conditions in the Project Approvals in order to carry out the intent of the City and SLR with respect to the design and development of the Project. Capitalized terms used in this Operating Memorandum shall carry the same definitions as those set forth in the Development Agreement.

**A. PURPOSE:**

The purpose of this Operating Memorandum is to identify a basic framework between the City and SLR, for allowing SLR to proceed with the recording of a Final Map with respect to the VTTM and to facilitate the construction of the improvements as contemplated under the terms of the Development Agreement. This Operating Memorandum will reduce certain uncertainties associated with the orderly development of the Project, provide for the effective and efficient development of public facilities, infrastructure and services, a wide range of housing types, densities and affordable housing options, and provide significant public benefits to the City and its residents.

The City and SLR previously entered into Operating Memorandum No. 1, which addressed certain issues listed below. This Operating Memorandum No. 2 is intended to provide further clarity on these points.

The City anticipates that the City Council will consider a Resolution regarding the CEQA Addendum and updated traffic study discussed herein at its August 18, 2020 meeting and the City Manager will also update the Council on Clarifications agreed to in this Operating Memorandum by the City Manager as provided in the Development Agreement.

**B. CLARIFICATIONS:**

**1) Future Dedication of Large Billboard Location:** SLR shall dedicate Lots 303, 307, 308, 309, and 311 required for the Prado Interchange/Southbound ramp in accordance with the express provisions of Section 6.02.3(a) of the Development Agreement. SLR shall retain

Lot 310, which includes the Large Billboard. SLR shall place a covenant in favor of the City against Lot 310 prohibiting the construction of any new structures on Lot 310, except as expressly permitted under the City's nonconforming structures ordinance. In the event that CalTrans ever requires Lot 310 or any portion thereof for construction of the Prado Interchange/Southbound ramp, then SLR shall dedicate Lot 310 to CalTrans in its then current condition.

**2) Roundabout Right of Way:** SLR has engaged in direct conversations, both in conjunction with the City and separately, with the owner of the Embassy Suites property (the "Embassy Suites Owner") for acquisition of additional public right of way necessary for the roundabout required by the City (the "Roundabout Right of Way"). SLR has presented both market appraisals and offers to the Embassy Suites Owner that exceed the value of the area for the Roundabout Right of Way shown on the appraisals, but the Embassy Suites Owner has declined such offers. The City acknowledges that SLR has used and is continuing to use reasonable good faith efforts to secure such necessary Roundabout Right of Way. Upon notification from SLR that SLR has exhausted all reasonable good faith efforts to secure such necessary Roundabout Right of Way together with documentation regarding such efforts, the City shall, within thirty (30) days of the date of such submission, make a determination of how to proceed with regard to the Roundabout Right of Way in accordance with Section 6.03.1(b) of the Development Agreement.

**3) Higuera and Tank Farm Road:** Under the original EIR, the SLR Project was responsible for 5% of the need for additional traffic improvements at the intersection of Higuera and Tank Farm Road. The original conditions of approval contemplated that SLR would fund and construct improvements to extend the northbound right-turn pocket length, subject to reimbursements for costs exceeding the Project's fair share obligation. Subsequent changes to the SLR Project land use plan have reduced the total amount of traffic anticipated to be generated by the SLR Project. An updated traffic study prepared by a qualified transportation engineering professional has concluded that with these changes to the SLR Project, the northbound right-turn pocket improvements are no longer warranted at this time. Notwithstanding this reduction, SLR has agreed to continue to fund future improvements at this intersection in the amount of Forty-two Thousand Five Hundred Dollars (\$42,500), which reflects SLR's prior fair share obligation as identified on Table 3 of the San Luis Ranch Financing Plan. This fee will be paid at the time of recordation of the final map for Tract 3096. Upon payment of such fee, all conditions and mitigation measures related to this intersection shall be deemed satisfied in full, as outlined in the accompanying CEQA addendum. Either the City or another entity selected by the City will undertake such improvements at a time in the future to be determined by the City in its sole discretion. The City shall use its best efforts to consider and adopt a resolution to remove any conditions of approval inconsistent with this paragraph.

**4) Cost Reimbursement Issues:** Since the execution of the Development Agreement, the public infrastructure costs being allocated to the SLR Project have increased over Ten Million Dollars (\$10,000,000) beyond what was contemplated in the Development Agreement. In addition, pursuant to the Development Agreement, the City was to reimburse SLR for oversized or excess public infrastructure being installed by SLR beyond SLR's fair share in the amount of Two Million Dollars (\$2,000,000).

(a) The Parties have agreed that SLR's payment toward the Prado Interchange shall be reduced by Two Million Dollars (\$2,000,000) in lieu and in full satisfaction of the City's Two Million Dollar (\$2,000,000) reimbursement obligation described above.

(b) The City and SLR will agree to work in good faith to negotiate a private reimbursement agreement with other benefitted properties in amount equal to about 50% of the cost of 24" sewer line identified as item #24 on Table 3 of the San Luis Ranch Financing Plan.

(c) Other than the reimbursements set forth in items (a) and (b) above, SLR agrees to not seek any additional reimbursements notwithstanding anything to the contrary in the Development Agreement.

#### **5) Affordable Housing Development:**

As provided in Operating Memorandum No. 1, SLR is continuing to pursue the relocation of the Project's affordable housing units originally contemplated for NG-30 (Tract 3150) to VTTM Lot 7 for inclusion in a mixed use project on Lot 7. In order to facilitate potential grant funding to assist in construction of the Prado Interchange, SLR has submitted an application to the City to increase the total number of affordable units to be constructed on VTTM Lot 7 from 34 to between 64 and 77 units. The City shall reasonably consider and diligently process an application to facilitate such proposal.

SLR agrees that it will transfer the portion of VTTM Lot 7 identified for the affordable housing development (currently identified as Lot 11) (the "Affordable Lot") to Peoples' Self Help Housing (the "Affordable Developer"), subject to a deed restriction that requires the Affordable Developer to build a minimum of 64 affordable housing units with a mix of affordability at both the low and very low income levels. Per Planning Commission Resolution No. PC-1006-20, the Community Development Director is authorized to modify the base inclusionary housing requirement to allow the transfer of 26 very-low income units from the NG-30 site (Tract 3150) to the VTTM Lot 7 if the City Council approves the transfer as part of its action on the VTTM Lot 7 project. The timing and other development requirements shall be as set forth in an Affordable Housing Regulatory Agreement, which the parties shall negotiate in good faith in conjunction with the transfer of the Affordable Lot to the Affordable Developer.

SLR will consider converting 25 units on Lots 3 and 4 of Tract 3150 (the loft efficiency units) to moderate affordable units, which would bring the total number of affordable units to 15% of the Project's total units.

The City anticipates that it may receive grant funds of up to approximately Seven Million Dollars (\$7,000,000) due to these changes to the SLR Project. In the event that the City secures such grant funding prior to January 15, 2021, the City agrees to allocate up to a total amount of Two Million Dollars (\$2,000,000) (the "Affordable Subsidy") at the rate of \$80,000 per unit, to SLR to partially offset the costs associated with the development of moderate income units on Lots 3 and 4 of Tract 3150, described above. Alternatively, the City may fund the Affordable Subsidy from other affordable housing fees previously collected by the City. The Affordable Subsidy shall be remitted to SLR no later than February 28, 2021. In the event that the City does not remit the Affordable Subsidy by such date, the units on Lots 3 and 4 of Tract 3150 may be offered as market rate units.

The timing of construction and/or completion of the affordable units on Lots 3 and 4 of Tract 3150 shall not be a condition precedent to issuance of building permits or certificates of occupancy, as applicable, for the other Lots in Tract 3150, including the town home lots (Lots 5, 6, and 7), the condominium lots (Lots 1 and 2), the clubhouse lot (Lot 8), or the common-area improvements (Lots 9 and 10).

In the event that SLR in its sole judgment determines that such proposal is infeasible, or if the City does not approve SLR's application, then the terms of Operating Memorandum No. 1 shall control.

**6) Extension of 101 Southbound Off-ramp at LOVR:** As a supplement to the provisions of Operating Memorandum No. 1 related to this intersection, SLR, the City, and CalTrans have discussed implementing the original design submitted by SLR consistent with the original mitigation measure and approvals as well as interconnecting the existing traffic signals at the 101 off-ramp/LOVR and the LOVR/Calle Joaquin intersections to provide CalTrans with the ability to coordinate the timing of these signals to reduce potential back-up onto US 101. SLR will fund such interconnectivity up to Ten Thousand Dollars (\$10,000), payable at final map recordation.

**7) Prado and South Higuera Road Intersection Improvements:** Under the original EIR, the SLR Project was responsible for 10% of the need for additional traffic improvements at the intersection of Prado and South Higuera Road. The original conditions of approval provided that SLR would install the contemplated improvements, subject to reimbursements. Subsequent changes to the SLR Project land use plan have reduced the total amount of traffic anticipated to be generated by the SLR Project. An updated traffic study prepared by a qualified transportation engineering professional has concluded that with these changes to the SLR Project, the intersection improvements are no longer warranted at this time. Changes to the SLR Project have reduced the need for such improvements to a level of less than significance. Notwithstanding this reduction, SLR has agreed to continue to fund future improvements at this intersection in the amount of Seventy-five Thousand Dollars (\$75,000), which reflects SLR's prior fair share obligation as identified on Table 3 of the San Luis Ranch Financing Plan. This fee will be paid at the time of recordation of the final map for Tract 3096. Upon payment of such fee, all conditions and mitigation measures related to this intersection shall be deemed satisfied in full, as outlined in the accompanying CEQA addendum. Either the City or another entity selected by the City will undertake such improvements at a time in the future to be determined by the City in its sole discretion. The City shall use its best efforts to consider and adopt a resolution to remove any conditions of approval inconsistent with this paragraph.

**8) CFD Bonding Issues.** In reviewing the issuance of bonds for the SLR Project's CFD, the City will allow a bond sale or sales in an amount not to exceed the amount stated in the Rate & Method of Apportionment (RMA) dated April 2, 2019, provided that the total special tax rate will not exceed that stated in the RMA. All funds generated by the bond issuance for the CFD shall be used to support the development of the public infrastructure required by the SLR Project as set forth in the RMA and the Development Agreement. To the extent that unspent funds accrue from Special Tax revenue (referred to as "Paygo Funds" meaning the use of special tax revenue to directly fund the cost of acquisition, construction, and improvement of authorized facilities not financed by bonds, as part of an acquisition agreement with the City), any such Paygo Funds shall be allocated on a 50-50 split between costs attributable to SLR and costs attributable to the City.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below.

FOR City:

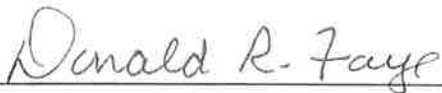
Date: 8-7-2020

  
\_\_\_\_\_  
Derek Johnson, City Manager

FOR SLR:

MI SAN LUIS RANCH, LLC,  
a Delaware limited liability company

Date: 8-7-2020

By:   
\_\_\_\_\_  
Donald R. Faye, Authorized Agent

**ACTION BY UNANIMOUS WRITTEN CONSENT  
OF  
THE MANAGEMENT COMMITTEE  
OF  
MI ENTITLEMENT IV, LLC**

*- Authority to Act*

THE UNDERSIGNED, being the sole representative of the Management Committee of MI Entitlement IV, LLC, a Delaware limited liability company (the “Company”), acting pursuant to the provisions of the Limited Liability Company Agreement of the Company dated February 11, 2014, as amended by that certain First Amendment to Limited Liability Company Agreement of the Company dated as of February 11, 2014; as further amended by that certain Second Amendment to Limited Liability Company Agreement of the Company dated as of April 22, 2015; and as assigned pursuant to that certain Assignment and Assumption of Membership Interest (MI Entitlement IV, LLC) dated as of February 12, 2020 (“Assignment Agreement”) (collectively, the “Operating Agreement”), hereby adopts the following actions by written consent:

WHEREAS, pursuant to the Assignment Agreement, all right, title and interest in the Company and its entire membership interest and voting rights therein were assigned by GGCCB, LLC, a California limited liability company, to Presidio Merced Land IV Passive, LLC, a Delaware limited liability company (“PML4P”), leaving PML4P as the sole member and manager of the Company.

WHEREAS, pursuant to Section 5.5 and Sections 5.6.9 and 5.6.27 of the Operating Agreement, the Management Committee of the Company has the right to approve all Major Decisions concerning the business and affairs of the Company, including the approval of any document that is to be recorded against any property owned by any Subsidiary LLC and any matter which under the terms of a Subsidiary LLC agreement requires the approval of the Company or of the manager of a Subsidiary LLC;

WHEREAS, the Company, acting as Manager of MI SAN LUIS RANCH, LLC, a Delaware limited liability company, (“SLR”) believes it to be in the best interests of SLR to authorize Donald R. Faye to executed certain documents as more specifically set forth in the Action by Unanimous Written Consent of the Manager of MI San Luis Ranch, LLC, attached hereto as Exhibit “A” (the “Manager Consent”);

WHEREAS, SLR is a Subsidiary of the Company;

WHEREAS, the Company, acting as Manager of SLR, believes it to be in the best interests of SLR, to acknowledge and accept Donald R. Faye as an authorized agent of the Company, on behalf of SLR as more specifically set forth in the Manager Consent; and

WHEREAS, the Management Committee finds it to be in the best interests of the Company to approve the acts of the Company set forth in the Manager Consent.

NOW THEREFORE BE IT RESOLVED that the attached Manager Consent is approved, and the Company, as Manager of SLR, a Subsidiary LLC of the Company, is authorized to execute that certain Manager Consent attached hereto as Exhibit "A".

IN WITNESS WHEREOF, the undersigned has executed this Action by Unanimous Written Consent effective as of July 22, 2020.

**MANAGEMENT COMMITTEE:**

  
DONALD R. FAYE

EXHIBIT "A"  
"MANAGER CONSENT"



**ACTION BY UNANIMOUS WRITTEN CONSENT  
OF  
THE MANAGER  
OF  
MI SAN LUIS RANCH, LLC**

*- Acknowledgement of Authority for Donald R. Faye to Sign*

THE UNDERSIGNED, being the Manager of MI San Luis Ranch, LLC, a Delaware limited liability company (the "Company"), formerly known as MI Dalidio, LLC, acting pursuant to the provisions of the Limited Liability Company Agreement of the Company dated January 9, 2014, as amended by that certain First Amendment to Limited Liability Company Agreement of Company dated as of May 8, 2014 (collectively, the "Operating Agreement"), hereby adopts the following actions by written consent:

WHEREAS, pursuant to Section 3.2 of the Operating Agreement, the Manager of the Company shall have the authority to bind the Company to any third party with respect to any matter;

WHEREAS, the Manager finds it to be in the best interests of the Company to authorize Donald R. Faye to execute, as Authorized Agent of the Company, the final map and any and all recordable documents, instruments, statements or similar items related thereto in connection with the Company's mapping of all or a portion of the property owned by the Company (the "Property").

NOW THEREFORE BE IT FURTHER RESOLVED, Donald R. Faye is hereby authorized by the Manager to sign and execute documents described herein on behalf of the Company as may be applicable to the process of mapping the Property.


IN WITNESS WHEREOF, the undersigned has executed this Action by Unanimous Written Consent effective as of July 22, 2020.

**MANAGER:**

MI ENTITLEMENT IV, LLC  
a Delaware limited liability company

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

Its: Manager

By:   
Michael M. Sullivan  
Its: Authorized Representative