

RECORDED AT REQUEST OF AND
WHEN RECORDED RETURN TO:

City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attn: City Clerk

Fee Exempt B Gov't Code '6103

(Space above for Recorder's Use)

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
between the
City of Chula Vista,
Village II Town Center, LLC
and
Sunranch Capital Partners, LLC

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (Amendment) dated for reference purposes only as of _____, 2019, is entered into by and among THE CITY OF CHULA VISTA, a California charter city and municipal corporation (City), VILLAGE II TOWN CENTER, LLC, a California limited liability company (Village II) and SUNRANCH CAPITAL PARTNERS, LLC, a Delaware limited liability company (Sunranch). Village II and Sunranch are collectively referred to in this Amendment as the "Owner." The City or the Owner are sometimes individually referred to in this Amendment as a "Party" and are collectively referred to as the "Parties." The Parties enter into this Amendment with reference to the following facts:

RECITALS

A. Development Agreement. Owner and City are parties to that certain Development Agreement recorded in the Official Records of the County of San Diego, State of California, on June 17, 2015 as Doc. No. 2015-0312805 (Agreement) for the property in the City of Chula Vista, State of California, more particularly described in the Agreement. Terms defined in the Agreement shall have same meaning when used in this Amendment.

B. First Hotel. A 148-room hotel meeting the requirements for the first hotel, as described in Section 5.1.1 of the Agreement, has been completed.

C. CFD. A Community Facilities District (CFD) for the maintenance of the Park, as described in Section 5.3.1.3 of the Agreement, has been created.

D. BRT Right of Way. The right-of-way for the Bus Rapid Transit (BRT) line right of way, as described in Section 5.3.3 of the Agreement, has been dedicated.

E. Affordable Housing Agreement. An Amended and Restated Housing Development Agreement, which provides for housing credits against Owner's affordable housing obligations in Planning Area (PA) 12, was entered into between Owner and the City in September 2017.

F. Transit-Oriented Development. The City would like Owner to construct mid-rise higher density apartments with mixed-use ground floor commercial east of Town Center Drive near the BRT line, because the City finds that:

a. This change to the project will promote the principles of smart growth, maximizing land use potential within walking range of Otay Ranch BRT station and ensuring transit-supportive densities near BRT line.

b. The transit-oriented development will establish a compact walkable community by replacing surface parking with 5-level structured parking, benefiting the environment by reducing carbon emissions.

c. This type of housing product, which is considered costly to construct and has not been built in Chula Vista, will improve housing affordability and economic development by providing a more diverse mix of housing types in a fiscally sustainable manner.

d. The City wants this form of development and Owner is willing to fund this high-cost product.

G. Amendment. To achieve the City's transit-oriented development objectives and assure that both Parties can achieve the mutual benefits envisioned in the Agreement, Owner and City would like to amend the Agreement as provided in this Amendment.

NOW, THEREFORE, in consideration of the above Recitals and the mutual obligations of the Parties set forth herein, Owner and City agree as follows:

1. Residential Density. Maximum residential density for the FC-2 area of the Sectional Planning Area (SPA) Plan shall be amended to allow for up to 900 residential units.

2. Second Hotel. The trigger for the commencement of construction of the Second Hotel is hereby changed. Owner shall commence construction of the Second Hotel prior to issuance of the building permit for the 651st residential unit. Section 5.1.2 of the Agreement is hereby replaced in its entirety with the following:

“5.1.2 Owner shall commence substantial construction of the second hotel containing 150 hotel rooms (or the number of rooms needed to bring the total hotel room count of the two hotels to a total of 300 rooms) (the “Second Hotel”) prior to issuance of the building permit for the 651st residential unit for the Project. In the event that Owner has not pulled building permits and, in the reasonable

determination of the Director of Development Services, commenced substantial construction of the Second Hotel prior to the issuance of the building permit for the 651st residential unit for the Project, Owner shall pay to the City the amount of \$629,860 per year (the “In Lieu Hotel Payment”) as provided herein.

Owner shall make the first In Lieu Hotel Payment to the City prior to the final inspection for the building permit for the 651st residential unit for the Project. Owner shall, thereafter, make the In Lieu Hotel Payment annually on the anniversary date of the issuance of the building permit for the 651st residential unit for the Project. Owner's obligation to make the In Lieu Hotel Payment shall continue until the earlier to occur of (a) the beginning of substantial construction, in the reasonable determination of the Director of Development Services, of the Second Hotel, or (b) the twentieth (20th) anniversary of the Effective Date of the Agreement. Owner's obligation to make the In Lieu Hotel Payment shall be secured by a security interest in the Property or, at the Owner's request, by another security interest reasonably acceptable to the City Manager and City Attorney. Owner shall, at the City's request, enter into a separate promissory note and deed of trust to secure the obligation to make the In Lieu Hotel Payment at the time of issuance of the building permit for the 651st residential unit. Failure to make the In Lieu Hotel Payment when due shall be a material breach of this Agreement and shall, in addition to other available remedies, entitle the City to foreclose on its security interest. Notwithstanding the foregoing, Owner's obligation to make the In Lieu Hotel Payment hereunder shall terminate in the event that the City issues final approval or enters into a contract for the provision of direct or indirect financial incentives to another hotel development within the Otay Ranch community, without first meeting and conferring with Owner in good faith regarding the provision of substantially equivalent financial incentives, and, if Owner's hotel qualifies for such incentives, tendering to the City Council for its consideration approval of such incentives. City Council shall reserve the right to approve or disapprove such incentives in its sole discretion.”

3. Commercial/Mixed Use. The requirement for construction of commercial development on the Property is hereby reduced. Owner shall only be required to construct 15,000 square feet of commercial development on the Property. Section 5.2 of the Agreement is hereby replaced in its entirety with the following:

“5.2 Construction of Commercial/Mixed Use. Owner agrees and acknowledges that the SPA Plan originally contemplated only commercial development on the Property. Although the City has agreed to amend the SPA Plan to allow residential development on the Property, commercial development is still an important use for the site. Therefore, Owner agrees to obtain building permits for and commence substantial construction of 15,000 square feet of commercial development on the Property in accordance with the Project Approvals prior to or concurrently with obtaining building permits and commencing construction of the residential development located east of Town Center Drive. The 15,000 square

feet of commercial development will be constructed to construction standards that qualify for commercial occupancy “B” or “M”.”

4. Park

a. Park and Park Site. Section 5.3.1 of the Agreement is hereby replaced in its entirety with the following:

“Based on City standards in effect as of August 2018, Owner’s park obligations (land and improvements) related to the Project would require the dedication and the improvement to City standards of up to a 7.05-acre park on the Property, if all 900 residential units are built. Owner’s actual baseline park obligations shall be established for the first 600 residential units at the time park obligations become due for those units in accordance with City standards, including, but not limited to, Chapter 17.10 of the Chula Vista Municipal Code using the PAD fee rates in effect as of the dates of final inspection for each of the units (“Baseline Park Obligations”). Owner’s actual additional park obligations shall be established for the final (up to) 300 residential units at the time park obligations become due for those units in accordance with City standards, including, but not limited to, Chapter 17.10 of the Chula Vista Municipal Code using the PAD fee rates in effect as of the dates of final inspection for each of the units (“Additional Park Obligations”). Owner shall satisfy its actual park obligations as follows:”

b. Granting of Park Site and Development of the Park. Section 5.3.1.1 of the Agreement is hereby replaced in its entirety with the following:

“Owner shall grant two (2) acres of the Property (the “Park Site”) to the City in a permanent easement for public usage and shall develop a highly amenitized, “turnkey” park (the “Park”) on the Park Site, as described in this Agreement, to the satisfaction of the Director of Development Services. The Park shall generally be located as depicted in Exhibit “B,” with the final location subject to City approval. In order to create an extraordinary public space, the Park shall generally consist of the elements described in Exhibit “E” to this Agreement. Owner shall invest substantially more to the development and granting of the Park than would be typical for a City standard park, up to and including the value equivalent to the dedication and improvement required to achieve the Owner’s Baseline Park Obligations. Owner shall commence construction of the Park prior to the issuance of the five hundred thirtieth (530th) residential building permit and substantially complete the Park within fifteen (15) months of commencement of construction.”

c. Audit and Payment of Excess Park Obligations. Section 5.3.1.2 of the Agreement is hereby replaced in its entirety with the following:

“Owner shall, within sixty (60) days of the date on which the Director of Development Services reasonably determines, in writing, that the Park has been completed, exclusive of the warranty period, provide the City, for its review and approval, all documentation the City reasonably requires, to determine the cost (land and improvement) of the Owner’s construction of the Park on the Park Site. The City shall use this information to prepare an audit of the actual costs of the development of the Park on the Park Site. The audit shall also compare the actual costs of the development of the Park on the Park Site (including the actual costs incurred during the warranty period) with the value of the Owner’s actual Baseline Park Obligations. Based on this audit, Owner shall satisfy its remaining park obligations, if any, by paying the excess park obligations to the City’s PAD fee account for the development of other parks in eastern Chula Vista. Such excess park obligations shall be calculated through the audit and shall be paid as either a pro rata permit fees collected in connection with any remaining residential permits or, if no residential permits remain, in a lump sum payment to the City made within sixty (60) days of the audit, or such later date as is approved by the Director of Development Services.”

c. Park Benefit Fees. Section 5.3.1.5 is added, as follows:

“Park Benefit Fees. The development of the Park described in Section 5.3.1.1 of the Agreement will satisfy the Developer’s Baseline Park Obligation. Given the lack of available acreage that could be acquired to serve the Project, the City hereby waives PAD fees for the remaining 300 residential units. Developer shall meet its Additional Park Obligation for each residential unit in excess of 600 through payment of a Park Benefit Fee. The Park Benefit Fee shall be in an amount equal to the PAD fees that would otherwise have been due pursuant to Chapter 17.10 of the Chula Vista Municipal Code. The Park Benefit Fee shall be due and payable no earlier than building permit issuance, but no later than final inspection and shall be assessed using the PAD fee rates in effect as of the date of payment. Park Benefit Fees may be utilized by the City to acquire or develop parkland serving the City’s eastern territories.”

5. Community Purpose Facilities. Section 5.3.2 of the Agreement is hereby replaced in its entirety with the following:

“Owner shall provide a total of 3.24 acres of net usable land for Community Purpose Facilities (CPF) if all 900 residential units are built. If not all 900 residential units are built, then Owner shall provide a pro-rated amount of CPF in accordance with the actual amount of the total number of residential units built (e.g. 900 residential units = 3.24 acres of net usable land for CPF; while 700 residential units = 2.52 acres of net usable land for CPF). Owner may satisfy this CPF requirement in any manner consistent with Chula Vista Municipal Code Section 19.48.025, which may include the provision of the CPF land offsite,

alternative compliance, or adjustments to the percentage limitations on the types of facilities, including recreational facilities, that may count toward satisfying the CPF requirement, all in the discretion of the Director of Development Services. Owner shall commence grading of the CPF land or begin alternative compliance prior to the issuance of the building permit for the five hundred thirtieth (530th) residential unit.”

6. Term. The Agreement shall have a remaining term of twenty (20) years from the effective date of the enabling ordinance by which this Amendment is approved, subject to extension as provided in Section 6.1.1.

7. Full Force. Except as expressly provided herein, all other terms and conditions of the Agreement shall remain in full force and effect.

8. Authority. Each party represents that it has full right, power and authority to execute this Amendment and to perform its obligations hereunder, without the need for any further action under its governing instruments, and the parties executing this Amendment on the behalf of such party are duly authorized agents with authority to do so.

[Signatures on following page]

Owner and City have executed this Amendment, which is effective as of the effective date of the enabling ordinance which is at second reading of the City Council.

CITY

OWNER

CITY OF CHULA VISTA, a California charter city and municipal corporation

VILLAGE II TOWN CENTER, LLC, a California limited liability company*

By: _____
Mary Casillas Salas, Mayor

By: _____
Name:
Title:

Date: _____

ATTEST:

By: _____
Name:
Title:

By: _____
Kerry K. Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

SUNRANCH CAPITAL PARTNERS, LLC, a Delaware limited liability company*

By: _____
Glen R. Googins, City Attorney

By: _____
Name:
Title:

By: _____
Name:
Title:

Date: _____

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)
) ss.
COUNTY OF)

On _____, _____, before me, _____,
Notary Public in and for said State, personally appeared
_____, 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/their 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 _____

(Seal)

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)
) ss.
 COUNTY OF)

On _____, _____, before me, _____,
 Notary Public in and for said State, personally appeared
 _____, 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/their 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 _____

(Seal)