

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA APPROVING
A FIRST AMENDMENT TO THE RESTATED AND
AMENDED PRE-ANNEXATION DEVELOPMENT
AGREEMENT BETWEEN SSBT LCRE V, LLC AND THE
CITY OF CHULA VISTA (FORMER SNMB DEVELOPMENT
AGREEMENT)

WHEREAS, on or about March 18, 1997, City and SNMB, LTD entered into that certain Amended and Restated Pre-Annexation Development Agreement (Development Agreement) as approved by the City of Chula Vista by Ordinance No. 2700; and

WHEREAS, on July 8, 2014 the City Council approved a Land Offer Agreement (LOA) between SSBT LCRE V, LLC and the City of Chula Vista that contemplated certain amendments to the Development Agreement, with said LOA being recorded in the San Diego County Recorder's Office on July 29, 2014, as Document No. 2014-0319703; and

WHEREAS, the property which is the subject matter of this Ordinance is identified in that certain First Amendment to Restated and Amended Pre-Annexation Development Agreement (First Amendment) and commonly known as a portion of Planning Area 20 and Otay Ranch Villages 3, 8 East and 10 (the "Property"); and

WHEREAS, that certain amendment to the Development Agreement was a component of the Entitlements described in the LOA, attached hereto as Exhibit K; and

WHEREAS, the City's Development Services Director has reviewed the Project for compliance with the California Environmental Quality Act (CEQA) and determined that the project was adequately covered in Final Environmental Impact Report (EIR-13-01). Thus, no further environmental review or documentation is required; and

WHEREAS, the Planning Commission set the time and place for a hearing on said First Amendment and notice of said hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City and its mailing to property owners within 500 feet of the exterior boundaries of the project site at least ten days prior to the hearing; and

WHEREAS, the hearing was held at the time and place as advertised, namely 6:00 p.m. November 19, 2014, in the Council Chambers, 276 Fourth Avenue, and the Planning Commission voted thereon; and

WHEREAS, on December 2, 2014, a duly noticed public hearing was scheduled before the City Council of the City of Chula Vista to consider adopting the Ordinance to approve the First Amendment between the City of Chula Vista and SSBT LCRE V, LLC; and

WHEREAS, City staff has reviewed the First Amendment and determined it to be consistent with the Otay Ranch General Development Plan and the City's General Plan.

NOW, THEREFORE, THE CITY COUNCIL of the City of Chula Vista does hereby order and ordain as follows:

I. PLANNING COMMISSION RECORD

The proceedings and all evidence introduced before the Planning Commission at their public hearing held on November 19, 2014, and the minutes and resolutions resulting therefrom, are hereby incorporated into the record of this proceeding. These documents, along with any documents submitted to the decision makers, shall comprise the entire record of the proceedings for any CEQA claims.

II. COMPLIANCE WITH CEQA

The City Council hereby finds that the adoption of the Ordinance approving the First Amendment would have no new effects that were not examined in said Final EIR.

III. CONSISTENCY WITH GENERAL PLAN AND OTAY RANCH GENERAL DEVELOPMENT PLAN

The City Council finds that the proposed First Amendment is consistent with the City's General Plan and Otay Ranch General Development Plan (GDP). The First Amendment implements the General Plan and GDP by providing for facilities and development that are consistent with the General Plan and GDP.

IV. ACTION

The City Council hereby adopts an Ordinance approving the First Amendment between SSBT LCRE V, LLC and the City of Chula Vista in the form presented, with such modifications as may be required or approved by the City Attorney, a copy of which shall be kept on file in the Office of the City Clerk, finding said First Amendment between SSBT LCRE V, LLC and the City of Chula Vista consistent with the California Government Code, adopted City policies, the General Plan, and the GDP, which shall include amendment to the following provisions thereto:

1. Term. The following language shall be added after the phrase "twenty (20) years" and before the phrase "(the term)" in the fourth sentence of Section 3 of the Development Agreement:

"from _____, 2014, the date upon which the City may accept the Offers of Dedication in Sections 3.3 of that certain "Land Offer Agreement" by and between the City and SSBT LCRE V, LLC, a Delaware limited liability company, approved by the City Council on or about July 8, 2014."

2. Tentative Map/Permit Duration. Section 6.2 of the existing Development Agreement, entitled "Length of Validity of Tentative Subdivision Maps," is hereby deleted in its entirety and replaced with the following:

"6.2 Tentative Map/Permit Duration." Pursuant to California Government Code section 66452.6, any tentative subdivision map, parcel map or other map authorized

by the State Subdivision Map Act that is approved for the Project shall remain valid for a period of time equal to a term of this Agreement. In addition, notwithstanding any condition or provision to the contrary, every permit and approval for the Project other than ministerial approvals shall remain valid for a period of time equal to "the term of this Agreement."

3. Growth Management. The second full paragraph of Section 5.2 appearing at page 8 of the existing Development Agreement, entitled "Development of Property," which begins "Notwithstanding the foregoing," shall be deleted in its entirety and replaced with the following:

"Notwithstanding any provision of this Agreement to the contrary, the City's Growth Management program, as set forth in the Growth Management Element of the City General Plan, applicable to the Project shall be those in effect on the date the City approves the Land Offer Agreement referenced in Section 3 hereof "

4. Modifications to Existing Project Approvals. The following sentence shall be added to the end of Section 5.2.3 of the existing Development Agreement:

"The parties agree that they accept the modifications to the Existing Project Approvals approved by the City Council on _____, 2014."

5. Reimbursement. At the end of the first sentence of Section 7.5 of the existing Development Agreement, entitled "Facilities Which are the Obligations of Another Party, or are of Excessive Size, Capacity, Length or Number," a new sentence shall be inserted as follows:

"City shall not require such monies or improvements unless City provides reasonable assurance of funding or reimbursement in accordance with State law and/or the City's ordinances."

6. Owner. Owner is the successor to the rights and obligations of Jewels of Charity and SNMB under the respective Development Agreements. The addresses for notices to Owner in Section 16.3 of the Development Agreement are changed to:

SSBT LCRE V, LLC
c/o State Street Bank and Trust
One Lincoln Street (SFC9)
Boston, MA 02111-2900
Attention: Q. Sophie Yang and Paul J. Selian
Facsimile No: (617) 664-3555

with a copy to:

SSBT LCRE V, LLC
c/o State Street Bank and Trust
One Lincoln Street (SFC9)
Boston, MA 02111-2900

Attention: Al Uluatam, Senior Counsel
Facsimile: (617) 664 4747

And a copy to;
Bingham McCutchen
Three Embarcadero Center
San Francisco, CA 94111-4067
Attention: Edward S. Merrill
Facsimile: (415) 262-9228

7. No Further Modification. Except as set forth in this First Amendment to Restated and Amended Pre-Annexation Development Agreements, all of the terms and provisions of the Development Agreement shall remain unmodified and in full force and effect.

V. SEVERABILITY

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

VI. CONSTRUCTION

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

VII. EFFECTIVE DATE

This Ordinance shall take effect and be in full force on the thirtieth day from and after its adoption.

VIII. PUBLICATION

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by:

Approved as to form by:

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Kelly Broughton, FASLA
Development Services Director

Glen R. Googins
City Attorney