


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL


Glen R. Googins
City Attorney

Dated: 11/12/15

MAINTENANCE AGREEMENT FOR INTERIM DRAINAGE
IMPROVEMENTS AND NPDES FACILITIES
FOR THE OTAY RANCH MILLENIA PHASE 2 (EUC)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF CHULA VISTA
OFFICE OF THE CITY CLERK
276 FOURTH AVENUE
CHULA VISTA, CA 91910

Above Space for Recorder's Use

CCV File No. PG874

**MAINTENANCE AGREEMENT FOR INTERIM DRAINAGE IMPROVEMENTS
AND NPDES FACILITIES
FOR THE OTAY RANCH MILLENIA PHASE 2 (EUC)**

This Maintenance Agreement (Agreement) is made by and between SLF IV-MILLENIA, LLC (Company), and the City of Chula Vista, a California Municipal Corporation (City), with reference to the following facts:

RECITALS

- A. Company owns approximately 118.6 acres of land known as the "Otay Ranch Millenia Phase 2" (the "Project") located at the intersection of Birch Road and Eastlake Parkway. Millenia Phase 2 consists of Lots 10, 11, and 12 of Final Map No. 15942. The property which is the subject matter of this agreement is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property").
- B. On September 15, 2009, the Chula Vista City Council, pursuant to Resolution No. 2009-223, and in accordance with the California Environmental Quality Act (CEQA) (Pub. Resources Code Section 21000 *et seq.*), certified the Final Second Tier Environmental Impact Report for the Otay Ranch Eastern Urban Center Sectional Planning Area (SPA) Plan (Final EIR-07-01) and adopted the Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program.
- C. On September 15, 2009 the City approved the SPA Plan including Planned Community District Regulations/Design Plan (Form Based Code), Public Facilities Finance Plan, Affordable Housing Program and other Regulatory Documents on 207 acres of land in the Eastern Urban Center portion of the Otay Ranch by Resolution 2009-224.

- D. On September 15, 2009, the City approved a Tentative Subdivision Map for the Project, known as the Otay Ranch Eastern Urban Center, Chula Vista Tract No. PCS-09-03 (the "Tentative Map"), by Resolution Number 2009-225, in which Tentative Map Conditions of Approval were required for the Project.

On September 13, 2011, in accordance with City Council Resolution 2011-167, the City Council approved the Interim Desiltation and Maintenance Agreement for the Mass Grading of Millenia between the City and SLF IV/McMillin Millenia JV, LLC, which was recorded on November 2, 2011, as Official Record Number 2011-0582265.

On December 11, 2012, in accordance with City Council Resolution 2012-241, the City Council approved an Amended and Restated Interim Desiltation and Maintenance Agreement with SLF IV/McMillin Millenia JV, LLC which was recorded January 25, 2013 as Official Record Number 2013-0053282.

This Agreement is necessary to identify those new Developer maintained features and responsibilities required of the Developer associated with the second phase of grading of Millenia and hereby supersedes the previous two agreements.

- E. Condition Number 52 of the Otay Ranch EUC Tentative Subdivision Map Conditions of Approval, as more particularly set forth on Exhibit B, requires the Company, prior to approval of each grading permit for the project, to prepare a maintenance program of all the proposed drainage and water quality treatment facilities.
- F. The City Engineer has determined that:
- a. Company shall enter into a maintenance agreement to secure the maintenance of temporary drainage related facilities, including but not limited to, the removal of silt from any temporary basins, the repair of any downstream erosion resulting from the operation of the on-site facilities, and to provide any resource agency permits necessary for said maintenance for the Project.
 - b. Certain drainage improvements, detention basins, desilting basins, storm water quality management facilities and erosion/sedimentation control facilities, as shown on the Mass Grading Plans for the Project, Chula Vista Drawing Number 15008 are adequate as of the date of this Agreement to service the mass-grading proposed for the Property on said drawings.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Defined Terms.** The following defined terms shall have the meaning set forth herein, unless otherwise specifically indicated.
 - 1.1. "Drainage Improvements and NPDES Facilities" shall mean certain temporary

storm water management facilities and other temporary private drainage improvements, desilting basins and erosion/sedimentation control facilities proposed for construction within the Project, as shown on Chula Vista Drawing No. 15008 and Drawing Number 10044 (Construction Changes "A"- "G") for the Phase 1 Mass Grading Plans (PG-799) as approved by the City Engineer, and as amended from time to time.

1.2. "Complete Construction" shall mean that construction of Drainage Improvements and NPDES Facilities have been completed to the satisfaction of the City Engineer.

1.3. "Maintain" or "Maintenance" shall mean to furnish, or the furnishing of, services and materials for the ordinary and usual maintenance required for the operation or implementation of the NPDES Facilities as set forth in the latest city-approved IOMP.

1.4. "Inspection, Operation, and Maintenance Plan" or "IOMP" means a description of the inspection, operation, and maintenance activities and schedules required to ensure proper operation and effectiveness of the Drainage Improvements and NPDES Facilities, which IOMP is attached hereto as Exhibit C and incorporated herein by this reference. The IOMP shall be updated to the satisfaction of the City Engineer, if construction changes are approved to the Chula Vista Drawing No. 15008 that modifies the Drainage Improvements and NPDES Facilities.

1.5. "Grading Plans" shall refer to the City of Chula Vista Mass Grading Plans for Millenia Phase 2 (Eastern Urban Center) in the City of Chula Vista, California Tract No. 09-03, Drawing Number 15008, Work Order Number PG-874. Grading Plans can be amended from time to time by approval of the City Engineer.

1.6. "Otay Ranch EUC Tentative Subdivision Map Conditions of Approval" shall refer to the Tentative Map conditions approved by City Council with Resolution 2009-225.

2. This agreement hereby supersedes and replaces the Interim Desiltation and Maintenance Agreement for the Mass Grading of the Eastern Urban Center (Millenia), recorded November 2, 2011, as recorded document number 2011-0582265 and Amended and Restated Interim Desiltation and Maintenance Agreement with SLF IV/McMillin Millenia JV, LLC for the Eastern Urban Center recorded January 25, 2013, as recorded document number 2013-0053282.

3. **Condition No. 52 of the Otay Ranch EUC Tentative Subdivision Map Conditions of Approval.** In partial satisfaction of Condition No. 52 of the Otay Ranch EUC Tentative Subdivision Map Conditions of Approval, Company agrees to the following:

3.1 Construction. Company agrees to construct Drainage improvements and NPDES Facilities, as shown on the approved Grading Plans for the Project and any

subsequent grading plans for Otay Ranch Millenia Project approved by the City Engineer. These Drainage Improvements and NPDES Facilities shall comply with all the provisions of the National Pollutant Discharge Elimination System and the Clean Water Program. Company understands and agrees that Company is responsible for obtaining all necessary permits, approvals, and certifications, if any, from applicable federal or state agencies, including but not limited to Caltrans, the California Department of Fish and Game and/or the US Army Corps of Engineers. City shall cooperate with Company as necessary to obtain all such permits, approvals and certifications.

3.2 Maintenance. Company shall operate and maintain the Drainage Improvements and NPDES Facilities in accordance with the latest city-approved IOMP until such time as the City, or a maintenance entity approved by the City, accepts them for maintenance, or they are replaced by permanent facilities

3.3 Fulfillment of Condition No. 52 of the Otay Ranch EUC Tentative Subdivision Map Conditions of Approval. Condition No. 52 shall be considered fully satisfied when the City Engineer makes the determination that the last grading permit for the Project has been issued and a funding mechanism has been identified and accepted by the City to perpetually maintain the Drainage Improvements and NPDES Facilities for the Project; otherwise, the requirements of Condition No. 52 shall be enforced for each grading permit for the Project. Company shall maintain all the Drainage Improvements and NPDES Facilities until such time the City Engineer releases Company of said obligation with a letter to the Company.

3.4 Securities. Company shall provide the City with maintenance securities, in accordance with Paragraph 3 below, to guarantee Company's maintenance obligation hereunder.

4. **Security for Performance.**

4.1 Cash Deposit. Pursuant to and in satisfaction of Condition No. 52 of the Otay Ranch EUC Tentative Subdivision Map Conditions of Approval, Company shall provide the City with a cash deposit in the amount of Fifty Eight Thousand and Eight Hundred dollars (\$58,800) as more fully set forth in Exhibit D to guarantee Company's maintenance obligations hereunder until the City accepts Drainage Improvements and NPDES Facilities. Company acknowledges and agrees that the City may, in the sole discretion of the City Engineer expend said deposit solely as necessary to guarantee the Maintenance obligations under Section 3.2 of this Agreement in the event of Company's default in the performance of said Maintenance obligations. Should the City spend the deposit due to Company's default of its performance obligations, Company agrees to redeposit the equivalent sum of money needed to equal the required cash deposit, within 30 days of the City's request for such deposit. Any unexpended amount of the deposit, including any interest earned, shall be released and remitted to Company

upon the termination of its maintenance obligations as set forth in this Agreement. The cash deposit may be reduced upon transfer of responsibility to another party or upon replacement of temporary facilities with permanent facilities as determined by the City Engineer.

4.2 Maintenance Bond. Company also agrees to the following:

- a) Bond. Prior to issuance of the Grading Permit for the Project, at the City Engineer's, or designee's, request, Company shall provide the City with a bond (Maintenance Bond) for a series of five (5) years starting from the date of issuance of the grading permit in connection with the Grading Plans, in order to guarantee performance of its maintenance obligations under Section 3.2 of this Agreement in the amounts more fully set forth in Exhibit D. The Maintenance Bond shall be in a form approved by the City Attorney. The City Engineer, or designee, will review the security provided herein every five years prior to expiration thereof. The City acknowledges that bonds are issued for a one year period, however, it shall be the responsibility of Company to ensure that all times while Company has outstanding obligations under this Agreement, security as required herein will be valid and in full force and effect. Company understands and agrees that the City shall not issue building permits for the Project if the bonds or Cash Deposit are determined by the City to be insufficient or said bonds have not been renewed.
- b) Use of Maintenance Bond. Company acknowledges and agrees that if the Company fails to fulfill its maintenance obligations as set forth herein, the sum provided by said bond may be used by the City for the purpose of fulfilling such obligations as approved by the City Engineer, or designee. Company also agrees that the City may take any and all actions necessary, in order to obtain the funds necessary for the purpose of fulfilling such obligations. Company agrees to pay to the City any difference between the total cost incurred to perform the work, including but not limited to reasonable design and administration of maintenance in substantial conformance with the latest city-approved IOMP (including a reasonable allocation of overhead), and any proceeds from the Maintenance Bond.
- c) Company's Costs and Expenses. It is also expressly agreed and understood by the parties hereto that in no case will the City, or any department, board or officer thereof, be liable for any portion of the costs and expenses of the work obligated herein, nor shall the City or the City's officers, sureties or bondsmen, be liable for the payment of any sum or sums for said work or any materials furnished therefor.
- d) Reduction of Security. The City Engineer may, in his sole discretion, reduce the bond requirements by an incremental amount determined by the City Engineer to reflect a reduction in Company's maintenance

obligations. In addition, Company may request that another form of equivalent security, such as a letter of credit, or cash, acceptable to the City Engineer, be substituted for the Maintenance Bond described herein. Company acknowledges and agrees that such substitution is in the sole discretion of the City Engineer.

- 4.3 Municipal Code Requirements. Company understands and agrees that Company shall be subject to all the provisions of the Ordinances, Standards, and Policies of the City of Chula Vista (including Section 14.20.310 of the Municipal Code), the laws of the State of California, and federal law as applicable to said work as all may be amended from time to time.
5. **Future Approvals.** Company acknowledges and agrees that the performance of Company's obligations herein is required for the health and safety of the residents of the City. Therefore, the Company agrees that the City shall have the absolute and unfettered right to withhold the issuance of any grant of approval for the Property, if the Company is determined by the City not to be in compliance with the terms of this Agreement. If Company is determined by the City not to be in compliance with any term of this Agreement, the City shall notify Company of Company's non-compliance and provide the Company with thirty (30) days to cure said non-compliance. The Company shall not be in non-compliance if, upon notification of non-compliance, Company starts immediately to work toward cure of said non-compliance and diligently pursues, as determined by the City Engineer, a course of action to achieve a cure within a reasonable time-frame.
6. **Agreement Binding upon Successors.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company as to any or all of the Property until released by the City or terminated in accordance with the terms hereof. However, City agrees to release individual properties from the obligations of this Agreement upon completion of permanent facilities approved by the City as part of a development plan for those individual properties or upon City approval of a transfer of responsibility pursuant to sections 2.1 or 2.2 of the Agreement.
7. **Agreement Running with the Land and in favor of City.** The burden of the covenants contained in this Agreement is for the benefit of the City, City is deemed the beneficiary of such covenants running with the land without regard to whether City has been, remained or are owners of any particular land or interest therein. If such covenants are breached, the City shall have the right, but not the obligation, to exercise all rights and remedies and to maintain any action or suits at law or in equity or other proper proceedings to enforce the curing of such breach to which it or any other beneficiaries of this Agreement and covenants may be entitled.
8. **Indemnification.** Company further understands and agrees that City, as indemnitee, or any officer or employee thereof, shall not be liable for any injury to person or property occasioned by reason of the acts or omissions of Company, its agents or employees, related to the construction of the Drainage Improvements and NPDES

Facilities and Company's maintenance activities. Company further agrees to protect and hold the City, its officers and employees, harmless from any and all claims, demands, causes of action, liability or loss of any sort, because of or arising out of acts or omissions of Company, its agents or employees, related to the construction of the Drainage Improvements and NPDES Facilities and Company's maintenance activities. The approved improvement securities referred to above shall not be deemed to limit the provisions of this paragraph. Such indemnification and agreement to hold harmless shall extend to damages to adjacent or downstream properties as a result of Company's construction and maintenance activities as provided herein. It shall also extend to damages resulting from erosion or siltation, or modification of the point of discharge as the result of the construction of the Drainage Improvements and NPDES Facilities and maintenance and/or siltation removal activities. The approval of plans for the Drainage Improvements and NPDES Facilities and any related improvements shall not constitute the assumption by City of any responsibility for such damage or taking, nor shall City, by said approval, be an insurer or surety for the construction of the Drainage Improvements and NPDES Facilities and any related improvements. The provisions of this paragraph shall become effective upon the execution of this Agreement and shall remain in full force and effect regardless of the City's approval of the Drainage Improvements and NPDES Facilities. However, nothing in this paragraph shall apply to any liability or claims arising from the active negligence or willful misconduct of City or its officers or employees.

9. Miscellaneous Provisions.

- 9.1 Entire Agreement. This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the parties relating to the subject matter hereof and any and all other prior or contemporaneous oral or written agreements are hereby superseded. This Agreement may be amended, but only pursuant to a written amendment properly authorized and executed by both parties hereto.
- 9.2 Compliance with Laws. In the performance of its obligations under this Agreement, Company shall comply with any and all applicable federal, state and local laws, regulations, policies, permits and approvals.
- 9.3 Recitals and Exhibits. All Recitals and attached Exhibits referred to herein are hereby incorporated hereunder.
- 9.4 Term. This Agreement shall remain in effect for so long as either party has executory obligations hereunder.
- 9.5 Recording. The parties hereto shall cause this Agreement to be recorded in the Office of the County Recorder of San Diego County.
- 9.6 Assignment. The obligations of the Company under this Agreement shall not be assigned in whole or in part without the express written consent of the City

pursuant to Section 10.2.3 of the Development Agreement. City's consent shall not be withheld if the assignment and delegation is to a Merchant Builder (as defined in the Development Agreement) by private agreement and the Company remains obligated to the City.

- 9.7 Authority of Signatories. Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable it to enter into this Agreement.
- 9.8 Termination. Upon the termination of this Agreement pursuant to applicable provisions hereof, at the request of Company or any successor in interest who owns any portion of the Project encumbered by this Agreement, the City will execute an instrument in recordable form prepared by Company in a form acceptable to the City Attorney which evidences the termination of this Agreement and confirms the release of the Project or applicable portion thereof from the encumbrance of this Agreement.
- 9.9 Attorney's Fees. If either party commences litigation for the judicial interpretation, reformation, enforcement or rescission hereof, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and court costs incurred. The "prevailing party" shall be deemed to be the party who is awarded substantially the relief sought.
- 9.10 Preparation of Agreement. No inference, assumption or presumption shall be drawn from the fact that a party or his/her attorney prepared and/or drafted this Agreement. It shall be conclusively presumed that both parties participated equally in the preparation and/or drafting of this Agreement.
- 9.11 Notices. Unless otherwise provided in this Agreement or by law, any and all notices required or permitted by this Agreement or by law to be served on or delivered to either party shall be in writing and shall be deemed duly served, delivered, and received when personally delivered to the party to whom it is directed, or in lieu thereof, when three (3) business days have elapsed following deposit in the U. S. Mail, certified or registered mail, return receipt requested, first-class postage pre-paid, addressed to the address indicated in this Agreement. A party may change such address for the purpose of this paragraph by giving written notice of such change to the other party.

CITY OF CHULA VISTA
276 Fourth Avenue
Chula Vista, CA 91910
Attention: City Engineer

With a copy to:

276 Fourth Avenue
Chula Vista, CA 91910
Attention: City Attorney

COMPANY:
SLF IV-MILLENIA, LLC
5949 Sherry Lane, Suite 1750
Dallas, TX 75225

And

Millenia Real Estate Group
Attn: Todd Galarneau
2750 Womble Road, Suite 200
San Diego, CA 92186

9.12 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be original but all of which, when taken together shall constitute but one instrument.

9.13 Miscellaneous. The above-referenced Recitals are true and correct and are incorporated into the body of this Agreement by this reference.

End of page
(Next pages are signature pages)

SIGNATURE PAGE 1 OF 2
MAINTENANCE AGREEMENT FOR DRAINAGE IMPROVEMENTS
AND NPDES FACILITIES
FOR THE OTAY RANCH MILLENIA PHASE 2 (EUC)

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the _____ day of _____, 20__ (the "Effective Date").

COMPANY:

SLF IV-MILLENIA, LLC
A Delaware Limited Liability Company
Its Owner

BY: SLF IV MILLENIA INVESTOR, LLC
A Texas Limited Liability Company
Its Sole and Managing Member

BY: Stratford Land Fund IV, L. P.
A Delaware Limited Partnership
Its Co-Managing Member

BY: Stratford Fund IV GP, LLC
A Texas Limited Liability Company
Its General Partner

By: Mark Wintersby
Its: VP

(Notary to attach acknowledgement for each signature)
(Corporate Authority required for each signatory)

SIGNATURE PAGE 2 OF 2

**MAINTENANCE AGREEMENT FOR DRAINAGE IMPROVEMENTS
AND NPDES FACILITIES
FOR THE OTAY RANCH MILLENIA PHASE 2 (EUC)**

CITY OF CHULA VISTA:

BY: _____
Mary Casillas Salas
Mayor

APPROVED AS TO FORM:

BY: _____
Glen R. Googins
City Attorney

ATTEST:

BY: _____
Donna Norris
City Clerk

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.

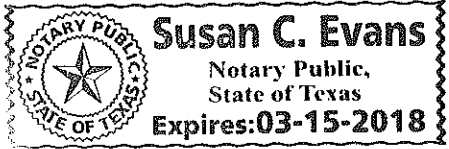
STATE OF TEXAS)
)ss.
COUNTY OF DALLAS)

On NOVEMBER 9, 2015 before me, SUSAN C. EVANS, Notary Public, personally appeared MARIL WETHEAUG, who proved to me on the basis of satisfactory evidence (personally known) 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 Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *[Handwritten Signature]* (Seal)



Attachments:

- Exhibit A: Legal Description of the Property
- Exhibit B: Condition No. 52 of the Otay Ranch EUC Tentative Subdivision Map Conditions of Approval
- Exhibit C: Inspection, Operation, and Maintenance Plan (IOMP) titled "Sediment Basin Operation and Maintenance Plan – Millenia Phase 2 (Eastern Urban Center) Mass-Grading," dated August, 2015 and prepared by Project Design Consultants
- Exhibit D: Security Requirements

J:\Engineer\LANDDEV\Projects\Eastern Urban Center\PHASE 2\Grading\Maintenance Agreement.docx