

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: 6/3/14

ASSIGNMENT OF AFFORDABLE HOUSING TRANSFER
AGREEMENT
BETWEEN
MCMILLIN OTAY RANCH, LLC;
SLF IV/MCMILLIN MILLENIA JV, LLC;
AC MILLENIA CHULA VISTA OWNER, LLC AND
THE CITY OF CHULA VISTA

When Recorded Mail To:
SLF IV/McMillin Millenia JV, LLC
c/o The Corky McMillin Real Estate Group,
LLC
Attention: Todd Galarnau
P.O. Box 85104
San Diego, CA 92186-5104

With a copy to:
Chula Vista City Clerk
276 Fourth Avenue
Chula Vista, CA 91910

SPACE ABOVE FOR RECORDER'S USE ONLY

ASSIGNMENT OF AFFORDABLE HOUSING TRANSFER AGREEMENT

This Assignment of Affordable Housing Transfer Agreement (the "Agreement"), dated for identification purposes as of this ____ day of _____, 2014, is entered into by and among MCMILLIN OTAY RANCH, LLC, a Delaware limited liability company ("McMillin"); SLF IV/McMILLIN MILLENIA JV, LLC, a Delaware limited liability company ("Assignor"); AC MILLENIA CHULA VISTA OWNER, LP, a Delaware limited partnership ("Assignee"); and the CITY OF CHULA VISTA, a chartered California municipal corporation ("City"), with respect to the following facts:

RECITALS

A. McMillin and City entered into the Affordable Housing Transfer Agreement, recorded in the Official Records of the San Diego County Recorder on January 31, 2006 as Document No. 2006-0071110 (the "Transfer Agreement"). The Transfer Agreement required that the Eastern Urban Center project (now known as "Millenia") in City include affordable housing on specified terms.

B. McMillin was the owner of Millenia when it entered into the Transfer Agreement, but later sold Millenia to Assignor. It appears that an explicit assignment to Millenia and release of McMillin was overlooked.

C. Portions of Millenia not affected by the Transfer Agreement have been sold. The legal description of the portion of Millenia that is affected by the Transfer Agreement is attached hereto as Exhibit "A" (the "Property").

D. Assignor and Assignee have entered into that certain Agreement For Purchase and Sale of Real Property and Joint Escrow Instructions dated as of May 8, 2014, as it may be modified from time to time (the "Purchase Agreement"), pursuant to which Assignor intends to sell, and Assignee intends to purchase, the Property. Pursuant to the terms of the Purchase Agreement, Assignor desires to assign to Assignee and Assignee desires to assume all rights and obligations of Assignor under the Transfer Agreement.

E. Section 9(m) of the Transfer Agreement provides that the owner of the Property may assign its rights and transfer its obligations thereunder with the consent of City's Director of Community Development (now the Director of Development Services). The parties hereto intend to provide for a complete assignment and transfer from McMillin to Assignor and, effective upon Assignee's acquisition of the Property, from Assignor to Assignee.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignments. To the extent not previously done, McMillin hereby grants, assigns, transfers, conveys and delivers to Assignor all of McMillin's right, title and interest in the Transfer Agreement. Effective as of the Effective Date, Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee all of Assignor's right, title and interest in the Transfer Agreement.

2. Assumption. To the extent not previously done, Assignor hereby assumes and agrees to perform all of McMillin's obligations under the Transfer Agreement and shall be bound by the Transfer Agreement. Effective as of the Effective Date, Assignee hereby assumes and agrees to perform all of Assignor's obligations under the Transfer Agreement and shall be bound by the Transfer Agreement.

3. Effect of Assignment and Assumption. Immediately, (i) McMillin shall have no further rights or obligations under the Transfer Agreement, and (ii) all right, title, interest and obligations of McMillin under the Transfer Agreement shall vest in Assignor. As of the Effective Date, (i) Assignor shall have no further rights or obligations under the Transfer Agreement, and (ii) all right, title, interest and obligations of Assignor under the Transfer Agreement shall vest in Assignee.

4. Approval by City. City hereby consents to and approves the assignments and assumptions as set forth above. Without limiting the generality of the foregoing, City further agrees to the immediate release of McMillin from any and all obligations under the Transfer Agreement pursuant to Section 3 above, and agrees to the release of Assignor from any and all obligations under the Transfer Agreement, as of the Effective Date, pursuant to Section 3 above.

5. Effective Date. This Agreement shall be effective as of the date a deed conveying title to the Property to Assignee is recorded in the Official Records of the San Diego County Recorder's Office, which date is referred to herein as the "Effective Date" of this Agreement. Assignor shall provide a conformed copy of the deed conveying title to the Property to City immediately upon recordation of said deed in the San Diego County Recorder's Office.

6. Notices. From and after the Effective Date, the address for notices to Assignee under each of the Assigned Agreements shall be as follows:

AC MILLENIA CHULA VISTA OWNER, LP
c/o Ambient Communities, LLC
2917 Canon Street
San Diego, California 92160
Attention: Robert Anselmo

With a copy to:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 9910
Attention: City Attorney

7. Confirmations.

- a. Assignor and City hereby confirm and certify to Assignee that: (i) the Transfer Agreement is in full force and effect and has not been amended or modified; (ii) Assignor has made no prior assignments in or to the Transfer Agreement; (iii) all parties to the Transfer Agreement are in full compliance with all duties and obligations thereunder as of the date hereof and as of the Effective Date; and (iv) no breach or default exists under the Transfer Agreement, and no event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a breach or default thereunder.
- b. Assignor hereby confirms and certifies to City that: (i) the Transfer Agreement is in full force and effect and has not been amended or modified; (ii) Assignor has made no prior assignments in or to the Transfer Agreement; (iii) all parties to the Transfer Agreement are in full compliance with all duties and obligations thereunder as of the date hereof and as of the Effective Date; and (iv) no breach or default exists under the Transfer Agreement, and no event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a breach or default thereunder.
- c. Assignee hereby confirms and certifies to City that the financial information previously provided by Assignee to City regarding the financial resources of the Assignee, which is the May 30, 2014 correspondence from Assignee to City Manager Jim Sandoval confirming commitments from its limited partners to make capital contributions, is true and correct in all material respects as of the dates and for the periods set forth therein and that City is relying on such financial information in granting its approval hereunder.

8. Governing Law and Venue. This Agreement is entered into and will be performed in the County of San Diego, State of California, and shall be governed by the laws of the State of California and shall be enforceable in the Superior Court for the County of San Diego.

9. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

10. No Amendment. This Agreement is made in accordance with the provisions of the Transfer Agreement and is not an amendment or modification thereof. The Transfer Agreement remains in full force and effect.

11. Further Assurances. The parties hereto shall perform such further acts and execute and deliver such additional agreements and instruments (including but not limited to any notices to third parties) as any other party may reasonably require to consummate, evidence or confirm the transaction contemplated hereby.

12. Capacity of Parties. Each signatory and party hereto hereby warrants and represents to the other parties that it has legal authority and capacity and direction from its principal(s) to enter into this Agreement, and that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.

13. Integration. This Agreement embodies the entire agreement and understanding among the parties regarding the subject matter hereof, so no prior or contemporaneous oral or written representations, agreements, understandings, and/or statements on its subject matter shall have any effect.

[SIGNATURE AND NOTARY ACKNOWLEDGMENT PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date set forth above.

“MCMILLIN”

McMILLIN OTAY RANCH, LLC
a Delaware limited liability company

By: McMillin Land Development Services, L.P.
A California limited partnership
Its: Manager

By: Corky McMillin Construction Services, Inc.
A California corporation
Its: General Partner

By: _____
Title: _____

By: _____
Title: _____

“ASSIGNOR”

SLF IV/McMILLIN MILLENIA JV, LLC
a Delaware limited liability company

By: The Corky McMillin Real Estate Group, LLC
a Delaware limited liability company,
Its: Managing Member

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

“ASSIGNEE”

AC MILLENIA CHULA VISTA OWNER, LP
a Delaware limited partnership

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**“CITY,” INCLUDING ITS DIRECTOR OF
DEVELOPMENT SERVICES**

CITY OF CHULA VISTA
A chartered California municipal corporation

By: _____

Its: _____

**DIRECTOR OF DEVELOPMENT SERVICES
OF THE CITY OF CHULA VISTA**

Printed name: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

CITY ATTORNEY

By: _____

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On _____, before me, _____, Notary Public, 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 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)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On _____, before me, _____, Notary Public, 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 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)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On _____, before me, _____, Notary Public, 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 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)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On _____, before me, _____, Notary Public, 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 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)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Chula Vista, County of San Diego, State of California, described as follows:

LOTS 1, 2, 3, 5 THROUGH 12, AND LOTS A THROUGH M OF CHULA VISTA TRACT NO. 09-03, OTAY RANCH MILLENIA (EASTERN URBAN CENTER), IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15942, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 23, 2013.