

**RECORDING REQUESTED
BY AND WHEN RECORDED
MAIL TO:**

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

EXEMPT FROM RECORDER'S FEES
Pursuant to Government Code §6103, §27383

(Space above for Recorder's use)

**SECOND AMENDMENT TO DEVELOPMENT
AGREEMENT BY AND BETWEEN THE CITY OF CHULA
VISTA AND McMILLIN OTAY RANCH, LLC**

This Second Amendment to Development Agreement By and Between the City of Chula Vista and McMillin Otay Ranch, LLC ("Second Amendment") is made and entered into as of February __, 2023 [insert date of City Council second reading and adoption] ("Effective Date"), by and between the CITY OF CHULA VISTA, a chartered California municipal corporation ("City") and MILLENIA 2022, LLC, a Delaware limited liability company ("Master Developer") pursuant to the authority of Section 65864 through 65869.5 of the California Government Code and Article XI, Section 2 of the California Constitution.

RECITALS

A. The City and McMillin Otay Ranch, LLC ("Original Master Developer") entered into the Development Agreement By and Between the City of Chula Vista and McMillin Otay Ranch, LLC that was recorded October 27, 2009 as Document No. 2009-0595116. The City and SLF IV – Millenia, LLC ("First Successor Master Developer") entered into the First Amendment to Development Agreement that was recorded July 27, 2018 as Document No. 2018-0306624 ("First Amendment"). As used herein, the "Development Agreement" shall mean the original development agreement as amended by the First Amendment.

B. The Development Agreement concerns a project in the City originally called "Eastern Urban Center" and now called "Millenia." Master Developer is the successor in interest to Original Master Developer and First Successor Master Developer under the Development Agreement.

C. Much of Millenia has been sold and developed. Exhibit "A" hereto is a legal description of the remaining portions ("Remaining Property") of Millenia owned by Master Developer.

D. The Development Agreement is still in force and effect as to the Remaining Property.

E. The Parties have agreed to amend the Development Agreement in order to facilitate the development of uses within Millenia that both City and Developer desire.

F. The City's Planning Commission held a duly noticed public hearing on December 14, 2022 and by Resolution No. 2022-016 recommended to the City Council that this Second Amendment be approved.

G. On January 17, 2023, the City Council of the City held a duly noticed public hearing on the proposed Second Amendment at which time all persons had the opportunity to testify in support of or opposition to the proposed Second Amendment.

H. On _____, 2023 the City Council adopted Ordinance No. _____ approving this Second Amendment on the terms set forth therein ("Approving Ordinance").

NOW, THEREFORE, in consideration of the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Definitions. All defined (capitalized) terms not expressly defined herein shall have the same meaning as in the Development Agreement. In addition, the following terms shall have the following meanings in this Second Amendment:

- 1.1 "Jogging Trail Improvements" shall mean the design and construction of a jogging trail along the Lot 1 Remainder Parcel frontage as required by the Millenia Sectional Planning Area Plan and Parks Agreement.
- 1.2 "Lot 1 Remainder Parcel" shall mean the portion of existing Lot 1 of Final Map 16081 to be created by the Subdivision Map. The Lot 1 Remainder Parcel will contain approximately 8.8 acres. The approximate location of the Lot 1 Remainder Parcel is shown on Exhibit "B" hereto.
- 1.3 "Residential Parcel" shall mean Lot 19 of Final Map 16081.
- 1.4 "Residential Parcel Development" shall mean the Development on the Residential Parcel of any or all of the remaining 324 allowable residential units in the Millenia Project.
- 1.5 "Residential Parcel Review" shall mean the City's review as a Subsequent Approval (including but not limited to design review) of an application for the Residential Parcel Development.
- 1.6 "Preliminary Title Report" shall mean that certain preliminary title report dated November 9, 2022 and issued by First American Title Company with respect to Lot 1 of Final Map 16081.

1.7 “Subdivision Map” shall mean the subdivision map or lot line adjustment that will create the Lot 1 Remainder Parcel.

2. **Option**. Master Developer hereby grants City an exclusive and irrevocable option to acquire the Lot 1 Remainder Parcel (“Option”) subject to the following terms and conditions:

2.1 **Option Term**. The term of the Option (the "Option Term") shall commence on the date that the Subdivision Map has been recorded and shall automatically expire on the date falling five (5) years thereafter (the "Option Termination Date"). The Option Term may be extended by written mutual agreement of the Parties.

2.2 **Developer Rights and Obligations During the Option Term**. During the Option Term, Master Developer shall retain all rights and obligations of ownership of the Lot 1 Remainder Parcel, including without limitation all applicable obligations under the Development Agreement. In addition, with respect to the Lot 1 Remainder Parcel during the Option Term, Master Developer shall (a) pay any and all applicable taxes, assessments and fees when due; (b) maintain the Lot 1 Remainder Parcel in its existing condition, in compliance with all applicable laws; (c) not make any major removals, alterations, or changes thereto, except as may be required by law or with City’s prior written approval; and (d) except as provided in the Preliminary Title Report, maintain the Lot 1 Remainder Parcel free and clear of monetary and non-monetary liens and encumbrances.

2.3 **Contingency**. Master Developer shall have no obligation to convey the Lot 1 Remainder Parcel unless both (a) the Subdivision Map has recorded, and (b) the City has approved the Residential Parcel Development.

2.4 **Terms for Acquisition**. City and Master Developer shall use commercial best efforts in good faith to agree, by no later than fifteen days after the Effective Date, on the form of a Purchase and Sale Agreement (the “PSA”) by which the Lot 1 Remainder Parcel shall be transferred. Such PSA shall include the following terms: (a) a sales price of one dollar (\$1.00); (b) the transfer of the property in an “as is” condition; (c) provision for Master Developer’s requirement that the Lot 1 Remainder Parcel exclude future residential development; (d) covenants by Developer to improve the Lot 1 Remainder Parcel into a rough graded, generally developable condition, construct any and all required Jogging Trail Improvements and do any and all work necessary to obtain lot pad certification, all as conditions to close,; (e) the other terms and conditions for transfer identified in this Section 2; and (f) such other commercially reasonable terms as are typical for the transfer of land within the San Diego real estate market area as may be agreed upon by City and Master Developer.

2.5 **Exercise of Option**. At any time during the Option Term, City, or City’s assignee as authorized under Section 2.6 below, may exercise the Option by timely sending Master Developer a written notice of Optionee's intention to exercise the Option (the "Exercise Notice") with a proposed closing date of no sooner than sixty (60) days after the Exercise Notice date. The Exercise Notice shall be accompanied by three (3) executed copies of the PSA. Master Developer shall promptly execute the PSA and return two (2) fully executed originals to City or its assignee.

2.6 Assignment. City may assign the Option granted under this Second Amendment without the prior consent of Master Developer, provided: (a) City gives Master Developer written notice of such assignment within thirty (30) days after such assignment; and (b) City's assignee executes an instrument in a form reasonably satisfactory to Master Developer agreeing to be bound by all the terms and conditions of the Option and the PSA. Master Developer agrees to make minor, conforming changes to the PSA in order to cause the transfer of the Lot 1 Remainder Parcel to City's designated assignee, and to meet and confer with City and assignee in order to consider such other minor, non-material proposed amendments.

2.7 Prior entry by City. City, or its assignee, shall have the right to enter the Lot 1 Remainder Parcel before the conveyance if and only if City (a) has provided Master Developer at least five business days written notice of its intent to enter, (b) has liability insurance of at least \$1 million naming Master Developer as an additional insured with respect to the entry, and (c) has workers' compensation insurance with respect to the entry. City hereby agrees (or, as a condition to entry, shall cause its assignee to agree) to defend, indemnify and hold Master Developer and its heirs, successors, assigns, attorneys, and employees, and the Lot 1 Remainder Parcel, harmless from and against any and all claims, costs, damages, demands, expenses, liabilities and liens (collectively, "Losses") arising from such entry, excluding any such Losses caused by Master Developer's gross negligence or willful misconduct.

2.8 Transfer of Plaza Obligation. Upon the transfer of the Lot 1 Remainder Parcel, Master Developer, with City's consent hereby granted, shall transfer to City's assignee the obligation to develop the approximately 0.25-acre plaza planned for the Lot 1 Remainder Parcel. The transfer shall be incorporated into the PSA and shall also constitute a transfer pursuant to the Parks Agreement and Development Agreement.

3. **Project Processing**.

3.1 No SPA Plan Amendment Required. City acknowledges and agrees that the Residential Parcel Review can and shall be processed as a Subsequent Approval pursuant to the Existing Entitlements without requiring an amendment to the SPA Plan.

3.2 Timing and Coordination with Residential Parcel Review. City agrees to complete each cycle of a Residential Parcel Review within ten (10) business days of Master Developer's (or Master Developer's merchant builder) submittal of each cycle of the application and such submittal is deemed complete by City staff. Master Developer (or Master Developer's merchant builder) agrees not to submit a formal application for the Residential Parcel Development, and City will have no obligation to process or take action on any such approval unless and until the final form of PSA described in Section 2.4, above, has been approved by City and Master Developer.

3.3 Subdivision Map and Hotel Development on Lot 1. Upon the Effective Date, Master Developer shall diligently pursue the processing of the Subdivision Map for City consideration with a target final approval and recordation date of February 1, 2023. Master Developer anticipates applying to Develop a hotel on the portion of existing Lot 1 of Final Map 16081 that it will retain. City agrees to complete each cycle of its review of that hotel application within ten (10) business days of Master Developer's submittal of each cycle of the application and such submittal is deemed complete by City staff.

4. **Effect on Development Agreement; Effective Date.** Except as specifically set forth herein, all other terms and conditions of the Development Agreement and Developer's and City's obligations thereunder shall remain in full force and effect. This Second Amendment shall go into effect and amend the Development Agreement as of the Effective Date, provided that the Approving Ordinance goes into effect in accordance with its terms.

5. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to either party's rights or obligations under the terms of this Second Amendment.

6. **City Reservation of Discretion.** Notwithstanding any term or provision in this Second Amendment, or in the final PSA, Developer acknowledges and agrees that City reserves its full regulatory power or authority to approve, condition or disapprove any and all permits or approvals required for the Residential Parcel Development or any proposed hotel development on the Remaining Property.

[NEXT PAGE IS SIGNATURE PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as provided herein.

CITY OF CHULA VISTA,
a chartered municipal corporation

MILLENIA 2022, LLC,
a Delaware limited liability company

By: _____

By: Meridian Communities, LLC,
a Delaware limited liability company,
its sole member

ATTEST:

By: _____
Kerry Bigelow, City Clerk

By: _____
Guy Asaro
Its: Manager

APPROVED AS TO FORM:

Name: _____

Title: _____

By: _____
Glen R. Googins, City Attorney

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)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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(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)

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)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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(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)

EXHIBIT "A"

Legal Description of Remaining Property

Lots F and G and H and Lots 1, and 19 in the City of Chula Vista, County of San Diego, State of California, according to Map thereof No. 16081 filed in the Office of the County Recorder of San Diego County on December 28, 2015 and Parcels 1 and 2 of Parcel Map 21622 filed in the Office of the County Recorder of San Diego County on September 14, 2018, and Parcel "A" as shown on Certificate of Compliance for Adjustment Plat No. LA19-0001 as evidenced by document recorded May 19, 2019 as Instrument No. 2019-1094634 of Official Records.

EXHIBIT "B"

Approximate Depiction of Lot 1 Remainder Parcel

