

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 DEVELOPMENT AGREEMENT,
PARKS AGREEMENT,
SUBDIVISION IMPROVEMENT AGREEMENT,
SUPPLEMENTAL SUBDIVISION IMPROVEMENT AGREEMENT,
EASEMENT AGREEMENT
BETWEEN
SLF IV/MCMILLIN JV, LLC,
AC MILLENIA CHULA VISTA OWNER, 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 DEVELOPMENT AGREEMENT, PARKS AGREEMENT, INTERIM
DESILTATION AGREEMENT, SUBDIVISION IMPROVEMENT AGREEMENT,
SUPPLEMENTAL SUBDIVISION IMPROVEMENT AGREEMENT, EASEMENT
AGREEMENT, AND THREE-PARTY PARK DESIGN AGREEMENT**

This Assignment of Development Agreement, Parks Agreement, Interim Desiltation Agreement, Subdivision Improvement Agreement, Supplemental Subdivision Improvement Agreement, Easement Agreement, and Three-Party Park Design Agreement (this "Agreement"), dated for identification purposes as of this _____ day of _____, 2014, is entered into by and among 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 OTAY RANCH, LLC, a Delaware limited liability company ("McMillin") and City entered into the following agreements:

1. "Development Agreement by and between the City of Chula Vista and McMillin Otay Ranch LLC," recorded October 27, 2009 as Document No. 2009-0595116 of Official Records of the San Diego County Recorder (the "Development Agreement"); and

2. "Agreement Regarding Construction of Parks in a Portion of Otay Ranch Eastern Urban Center," recorded October 28, 2009 as Document No. 2009-0599389 of Official Records of the San Diego County Recorder (the "Parks Agreement").

B. By an assignment, memorandum and confirmations recorded February 22, 2011 as Document No. 2011-0098720 of Official Records of the San Diego County Recorder, McMillin assigned its rights and transferred its obligations under the Development Agreement and Parks Agreement to Assignor.

C. Thereafter, Assignor and City entered into the following agreements:

1. “Amended and Restated Interim Desiltation and Maintenance Agreement with SLF IV/McMillin Millenia JV, LLC for the Eastern Urban Center (Millenia),” recorded January 25, 2013 as Document No. 2013-0053282 of Official Records of the San Diego County Recorder (the “Interim Desiltation Agreement”);

2. “Subdivision Improvement Agreement,” recorded September 23, 2013 as Document No. 2013-0579636 of Official Records of the San Diego County Recorder (the “SIA”);

3. “Supplemental Subdivision Improvement Agreement for Otay Ranch Millenia (Eastern Urban Center, Chula Vista Tract No. 09-03),” recorded September 23, 2013 as Document No. 2013-0579637 of Official Records of the San Diego County Recorder (the “SSIA”); and

4. “Grant of Easements, License and Maintenance Agreement, recorded January 10, 2014 as Document No. 2014-0012781 of Official Records of the San Diego County Recorder (the “GELMA”); and

5. “Three-Party Agreement Between City of Chula Vista, SLF IV / McMillin Millenia JV, LLC and Schmidt Design Group, Inc. for Park Design Services for Millenia Park P-1 (Northeastern Park)” (“Three-Party Agreement”) dated September 17, 2013.

As used in this Agreement, “Development Agreement” includes the unrecorded letter clarification, dated October 4, 2013, signed by City and Assignor. The Development Agreement, Parks Agreement, Interim Desiltation Agreement, SIA, SSIA, GELMA, and Three-Party Agreement are referred to collectively as the “Assigned Agreements.”

D. The Assigned Agreements are the subjects of and provide for certain parameters and agreements related to the development of the Eastern Urban Center (now known as “Millenia”) in City, the legal description of which is attached hereto as Exhibit “A” (the “Property”). The Property excludes some real property which was subject to some of the earlier Assigned Agreements but which McMillin or Assignor previously sold, and as to which the seller previously assigned its rights and transferred its obligations.

E. 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 Assigned Agreements.

F. The Development Agreement provides that the Assignor may assign its rights and interests and transfer or delegate its duties under the Development Agreement to another entity it identifies to City to be “Master Developer” under the Development Agreement who agrees in writing to fulfill the Master Developer’s role with regard to the Development Agreement. The Development Agreement further provides that City retains the right to consent or not consent to

such transfer, not to be unreasonably withheld and limited to confirming the financial resources of the successor necessary to fulfill its role under the Development Agreement. The other Assigned Agreements contain various provisions relating to assignment and City approval.

G. Assignor also holds credits for various City impact fees that City's Municipal Code allows to be assigned. These include but are not limited to the following:

1. Mitigation land credits conveyed to the Preserve Owner/Manager by deed recorded October 23, 2013 as Document No. 2013-0632395 of Official Records of the San Diego County Recorder;

2. Park-in-lieu fee credits of up to \$6,957,565, of which \$3,602,508 has been allocated to the developer of Lot 4 to meet its park obligations for the units of Lot 4; and

3. All traffic development impact fee credits for improvements already constructed in Millenia.

As used herein, "Assignable Credits" includes all fee credits relating to Millenia that are allowed by City's Municipal Code to be assigned, less the \$3,602,508 in park-in-lieu fee credits previously allocated.

H. Assignor, Assignee and City agree to provide for the assignment and assumption of the Assigned Agreements and Assignable Credits as set forth herein.

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

1. Assignment. Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee all of Assignor's right, title and interest in all of the Assigned Agreements and Assignable Credits, including but not limited to its position as Master Developer of the Property, effective as of the Effective Date.

2. Assumption. Assignee hereby assumes and agrees to perform all of Assignor's obligations under all of the Assigned Agreements and Assignable Credits, including but not limited to all obligations as Master Developer of the Property, effective as of the Effective Date. Upon conveyance of the Property to Assignee, Assignee shall be bound by all of the Assigned Agreements and Assignable Credits.

3. Effect of Assignment and Assumption. As of the Effective Date, (i) Assignor shall have no further rights or obligations under any of the Assigned Agreements or Assignable Credits, (ii) all right, title and interest and all obligations of Assignor under the Assigned Agreements and Assignable Credits shall vest in Assignee, and (iii) Assignee shall be the Master Developer of the Property and Millenia project.

4. Approval by City. City hereby consents to and approves the assignment and assumption set forth above effective as of the Effective Date, and agrees, as of the Effective Date, to the provisions set forth in Section 3 above, including but not limited to the release of Assignor from any and all obligations under the Assigned Agreements.

5. Provisions Unique to Particular Assigned Agreements. Notwithstanding the foregoing:

a. SIA/SSIA: On or before the Effective Date, Assignee shall replace all security (in any form) posted for the SIA and/or SSIA with new security. Existing security provided by Assignor shall be released upon City's receipt of Assignee's replacement security.

b. Interim Desiltation Agreement: City may retain the "Cash Deposit," as defined in the Interim Desiltation Agreement, which City has been holding on account for Assignor. Assignor hereby releases its right, title and interest in the Cash Deposit (fifty-eight thousand eight hundred dollars, \$58,800.00) to Assignee.

c. Three-Party Agreement: Pursuant to Section 6 and Exhibit A, Paragraph 9 of the Three-Party Agreement, Assignee's "Administrator" and contact information as of the Effective Date shall be:

AC Millenia Chula Vista Owner, LP
c/o Ambient Communities, LLC
2917 Canon Street
San Diego, California 92160
Attention: Robert Anselmo

d. Three-Party Agreement: Schmidt Design Group, Inc., also a party to the Three-Party Agreement, has approved the assignment and transfer of that agreement by a letter dated May 22, 2014.

6. 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.

7. Notices. From and after the Effective Date, the address for notices to Assignee under each of the Assigned Agreements (except the "Administrator" under the Three-Party Agreement) 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

8. Confirmations.

- a. Assignor and City hereby confirm and certify to Assignee that: (i) all of the Assigned Agreements are in full force and effect and have not been amended or modified; (ii) Assignor has made no prior assignments in or to any of the Assigned Agreements; (iii) all parties to the Assigned Agreements 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 any of the Assigned Agreements, 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 under the terms thereof.
- b. Assignor hereby confirms and certifies to City that: (i) all of the Assigned Agreements are in full force and effect and have not been amended or modified; (ii) Assignor has made no prior assignments in or to any of the Assigned Agreements; (iii) all parties to the Assigned Agreements 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 any of the Assigned Agreements, 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 under the terms thereof.
- 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.

9. 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.

10. 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.

11. No Amendment. This Agreement is made in accordance with the provisions of the Assigned Agreements and is not an amendment or modification thereof. The Assigned Agreements remain in full force and effect.

12. 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.

13. 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.

14. 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.

“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”

CITY OF CHULA VISTA
A chartered California municipal corporation

By: _____

Its: _____

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.

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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.