

(O-2002-61)

ORDINANCE NUMBER O- 19020 (NEW SERIES)

ADOPTED ON DEC 10 2001

AN ORDINANCE APPROVING THE FIRST AMENDMENT
TO SECOND AMENDED AND RESTATED DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
BLACK MOUNTAEN RANCH LIMITED PARTNERSHIP.

WHEREAS, Black Mountain Ranch Limited Partnership, a Delaware limited partnership [Owner], is the owner or equitable owner of that certain real property consisting of approximately 1,240.30 acres designated as Planned Urbanizing and located within the North City Future Urbanizing Area [NCFUA]; and

WHEREAS, the City of San Diego, a charter city, is authorized pursuant to Government Code sections 64864 through 65869.5 to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to establish certainty in the development process. The City further enters into this First Amendment to Second Amended and Restated Development Agreement pursuant to San Diego Municipal Code section 124.0101 et seq.; and

WHEREAS, the parties desire to enter into this First Amendment to Second Amended and Restated Development Agreement relating to the above-described real property in conformance with the provisions of the Government Code in order to achieve the development of private land uses together with the provision of public services, public uses, and public infrastructure all in the promotion of the health, safety, and general welfare of the City of San Diego; and

WHEREAS, the property is located within the geographic boundaries of the NCFUA Framework Plan. The NCFUA Framework Plan was adopted by the Council of the City of San Diego on October 1, 1992, by Resolution No. R-280787; and

In conjunction with the adoption of the NCFUA Framework Plan, the Council certified the information contained in the Environmental Impact Report [EIR] and approved the findings of the environmental document in compliance with the California Environmental Quality Act of 1990, as amended; and

WHEREAS, development of the subject property will be in conformance with the NCFUA Framework Plan, the Black Mountain Ranch Subarea I Plan, the underlying zones, various development permits, and various vesting tentative maps and a Resource Protection Ordinance. The environmental effects of the development permitted pursuant to the agreement were addressed in Final Environmental Impact Report No. 96-7902 (SCH No. 97111070) and Addendum to an Environmental Impact Report, LDR No. 40-0528, which has been certified by the City; and

WHEREAS, because of the complexities of financing the urban infrastructure, certainty in the development process is desirable. The phasing, timing, and development of the public infrastructure including, but not limited to, parks, libraries, fire stations, transportation facilities, sewer and water facilities, other utilities, and open space maintenance necessitates a significant commitment of resources, planning, and effort by the property owners and the City in order for the public facilities financing to be successfully completed. Accordingly, in return for the participation and commitment to provide a pro rata share of public facilities and the significant

contribution of private resources for public purposes, the City in return desires to make a commitment for certainty in the development process; and

WHEREAS, pursuant to the terms of the First Amendment to Second Amended and Restated Development Agreement, Owner will provide substantial public improvements and benefits to the City including participation in the public facilities financing plan for Subarea I. In consideration of the public improvements and benefits to be provided by Owner pursuant to the First Amendment to Second Amended and Restated Development Agreement, in consideration of Owner's agreement to finance public facilities, and in order to strengthen the public planning process and reduce the economic costs of development, by the First Amendment to Second Amended and Restated Development Agreement the City intends to give Owner assurance that Owner can proceed with the development of the subject property for the term of the First Amendment to Second Amended and Restated Development Agreement pursuant to the First Amendment to Second Amended and Restated Development Agreement; and

WHEREAS, on November 15, 2001, the Planning Commission of the City of San Diego, after giving notice pursuant to Government Code sections 65854, 65854.5, and 65856, and San Diego Municipal Code section 124.0104 held a public hearing on the application for the First Amendment to Second Amended and Restated Development Agreement; and

WHEREAS, the Council, after providing public notice as required by law, held a public hearing on Owner's application, wherein all persons desiring to be heard were heard, and pursuant to the public hearing the Council recommended approval of the First Amendment to Second Amended and Restated Development Agreement; and

WHEREAS, the Council finds that the First Amendment to Second Amended and Restated Development Agreement is consistent with the Progress Guide and General Plan, the NCFUA Framework Plan, the Subarea I Plan, as well as all other applicable policies and regulations of the City of San Diego; and

WHEREAS, the Council has reviewed and considered the First Amendment to Second Amended and Restated Development Agreement and determined the content of the First Amendment to Second Amended and Restated Development Agreement to be complete and correct; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That it finds and determines the facts stated above to be true.

Section 2. That it approves the First Amendment to Second Amended and Restated Development Agreement, Case No. 40-0528, a copy of which is on file in the Office of the City Clerk as Document No. OO- 19020, and authorizes and directs the City Manager to execute the First Amendment to Second Amended and Restated Development Agreement in the name of the City of San Diego not later than fifteen days following the effective date of this ordinance. Failure of Owner to execute the First Amendment to Second Amended and Restated Development Agreement within ninety days shall render this action null and void. The City Clerk is directed to record the First Amendment to Second Amended and Restated Development Agreement and this ordinance with the County Recorder of San Diego County within ten days after its execution.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By



Richard A. Duvernay
Deputy City Attorney

RAD:lc
11/16/01
Or.Dept:Dev.Svcs.
Aud.Cert:N/A
O-2002-61
Form=o&t.firm