

RESOLUTION NO. 4616

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS APPROVING AND AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO FUNDING AGREEMENT AND ACKNOWLEDGEMENT OF ASSUMPTION AND ASSIGNMENT IN CONNECTION WITH COMMUNITY FACILITIES DISTRICT 2005-4 (STRATFORD RANCH) OF THE CITY OF PERRIS; AND MAKING FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Perris (the “City”) has taken proceedings pursuant to the Mello-Roos Community Facilities Act of 1982 (constituting Sections 53311 *et. seq.* of the Government Code of the State of California) and formed Community Facilities District 2005-4 (Stratford Ranch) of the City of Perris (“District”) and for the issuance of bonds by the District; and

WHEREAS, Stratford Ranch Partners LLC, Delaware limited liability company and Centex Homes, a Nevada corporation (“Former Owners”) and the City entered into that certain Funding Agreement effective as of October 31, 2006; and

WHEREAS, the Former Owners assigned their interests in the Funding Agreement upon sale of the two original tracts of property within the District (Tract 32707 and 32708); and

WHEREAS, Centex developed Tract 32708 and the District funded facilities and fees pursuant to the Funding Agreement and the issuance of bonds; and

WHEREAS, the current owner of Tract 32707 located within the District is MPLC Evans 137, LLC, a California limited liability corporation (the “Owner”); and

WHEREAS, the Owner acquired the Property at a foreclosure sale and therefore, do not have an assigned interest in the Funding Agreement with respect to Tract 32707; and

WHEREAS, the Owner and the City desire to enter into the First Amendment to Funding Agreement and Acknowledgement of Assumption and Assignment (“First Amendment”) to provide for the Owner and Mission Pacific Land Company to be parties to the Funding Agreement with respect to Tract 32707;

WHEREAS, the Owner proposes to sell the Property in the future to Richmond American Homes and requests that the City consent to an assignment related thereto pursuant to the Funding Agreement, as amended by the First Amendment; and

WHEREAS, there is attached to this Resolution the First Amendment which is incorporated herein by this reference; and

WHEREAS, the City has determined that it is necessary and desirable to enter into the First Amendment Agreement to authorize the funding of certain fees and facilities in accordance with the Act;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Perris, California, as follows:

Section 1. That the recitals set forth hereinabove are true and correct in all respects.

Section 2. That said form of First Amendment be and is hereby approved with such changes as may be approved by the City Manager or Mayor, said City Manager's or Mayor's execution thereof to be conclusive evidence of approval of said changes. The City Manager or Mayor is hereby authorized and directed to execute the First Amendment on behalf of the City with such execution to be attested to by the City Clerk.

ADOPTED, SIGNED and APPROVED this 27th day of August, 2013.

Mayor, Daryl R. Busch

ATTEST:

City Clerk, Nancy Salazar

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Nancy Salazar, CITY CLERK OF THE CITY OF PERRIS, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Resolution Number 4616 was duly and regularly adopted by the City Council of the City of Perris at a regular meeting held the 27th day of August, 2013, by the following called vote:

AYES: ROGERS, YARBROUGH, LANDERS, RODRIGUEZ, BUSCH

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

City Clerk, Nancy Salazar

EXHIBIT A

FIRST AMENDMENT TO FUNDING AGREEMENT AND ACKNOWLEDGEMENT OF ASSUMPTION AND ASSIGNMENT

THIS FIRST AMENDMENT TO FUNDING AGREEMENT AND ACKNOWLEDGMENT OF ASSUMPTION AND ASSIGNMENT (the "First Amendment") is entered into as of the 27th day of August, 2013, by and among MPLC Evans 137, LLC, a California limited liability company ("MPLC"), Mission Pacific Land Company, LLC, a Delaware limited liability company ("Developer") and the City of Perris, a municipal corporation of the State of California ("City"), as a party under the Funding Agreement and for and on behalf of the District (as hereafter defined).

RECITALS

1. The City, Stratford Ranch Partners, LLC, a Delaware limited liability company ("Stratford") and Centex Homes, a Nevada general corporation ("Centex"), entered into that certain Funding Agreement effective as of October 31, 2006 (the "Funding Agreement") relating to certain property located in Community Facilities District No. 2005-4 (Stratford Ranch) of the City of Perris (the "District").
2. The District includes the property described in the Funding Agreement as Tract No. 32707 and Tract No. 32708 and shown on the District map hereto as Exhibit A and by this reference incorporated herein.
3. Centex Homes developed Tract No. 32708 with 234 residential homes and public fees for public facilities related to Tract No. 32708 were subject to payment through a prior bond issue ("Bonds Issue No. 1").
4. In 2007, Stratford sold and conveyed a portion of Tract No. 32707 to Redhawk Communities, Inc., a California corporation ("Redhawk") and assigned the Funding Agreement to Redhawk with respect to such portion of Tract No. 32707 pursuant to an Assignment Agreement, dated as of May __, 2007 between Stratford and Redhawk, as consented to by the City (the "Redhawk Assignment").
5. In 2007, Stratford sold and conveyed the remaining portion of Tract No. 32707 to Artisan Monterey LLC, a California limited liability company ("Artisan") and assigned the Funding Agreement to Artisan with respect to such portion of Tract No. 32707 pursuant to an Assignment Agreement, dated as of May __, 2007 between Stratford and Artisan, as consented to by the City (the "Artisan Assignment").
6. In 2008, Artisan sold and conveyed its portion of Tract No. 32707 to Redhawk, resulting in Redhawk taking title to all of Tract No. 32707.

7. In 2009, Redhawk was foreclosed upon and the Developer obtained title to Tract No. 32707 by trustee's deed.
8. In 2010, the Developer transferred title to Tract No. 32707 to MPLC.
9. Tract No. 32707 is described more particularly on Exhibit B hereto and by this reference incorporated herein.
10. As the current owner of Tract No. 32707, MPLC desires to assume all the rights, obligations and interests relating to Tract No. 32707 under the Funding Agreement, including the rights, obligations and interests previously assigned to Redhawk pursuant to the Redhawk Assignment and Artisan pursuant to the Artisan Assignment; however due to the conveyance by Artisan of its portion of Tract No. 32707 to Redhawk and the subsequent foreclosure of Redhawk and trustee's sale of Tract No. 32707, neither Redhawk nor Artisan maintain any interest in Tract No. 32707 [and are in existence or available?] to assign.
11. The proposed development of Tract No. 32707 is for 137 single family homes ("Project") and the Tract No. 32707 property is entitled for such purposes. Stratford prepaid certain City development impact fees related to the 137 lots on April 27, 2007 in the aggregate amount of \$1,091,205 (the "Prepaid Fees").
12. MPLC proposes to sell Tract No. 32707 to Richmond American Homes of Maryland, Inc. a Maryland corporation ("Richmond American"). Upon the close of escrow for such sale (if it occurs), MPLC shall desire to assign its rights, obligations and interests under the Funding Agreement, as amended by this First Amendment, to Richmond American.
13. Section 6.04 of the Funding Agreement permits assignment of the rights pursuant to the Funding Agreement upon the consent of the City.
14. As contemplated by the Funding Agreement, MPLC and the City now desire to enter into this First Amendment with respect to Tract No. 32707 pursuant to which MPLC will assume and agree to all of the rights, obligations and liabilities relating to Tract No. 32707 under the Funding Agreement; subject to the provisions herein.

AGREEMENT

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

1. Recitals. MPLC and Developer represent that the recitals hereto are true and correct and said recitals are incorporated herein by this reference.
2. Assumption. City, Developer and MPLC agree that MPLC hereby assumes all of the rights, obligations and interest relating to Tract No. 32707 under the Funding Agreement,

including the rights, obligations and interests previously assigned to Redhawk pursuant to the Redhawk Assignment and Artisian pursuant to the Artisian Assignment, as if the name MPLC shall be substituted for Stratford therein with respect to Tract No. 32707. MPLC hereby agrees to each and every provision of the Funding Agreement relating to Tract No. 32707 and certifies that the representations therein and herein are true and correct in all material respects as of the date hereof with respect to MPLC.

3. Amendment to Agreement. The Funding Agreement is hereby amended to substitute MPLC as the Owner of Tract No. 32707 in place of Stratford (and/or Redhawk or Artisian, as applicable). The parties hereby acknowledge that Tract No. 32708 is fully developed and that neither Stratford nor Centex Homes own any interest in Tract No. 32708 or any rights subject to this First Amendment. MPLC and Developer have agreed to defend and indemnify and hold harmless the City and the District with respect to any claims under the Funding Agreement by Stratford, Redhawk, Artisian or any other party relating to the rights and obligations as an Owner of Tract No. 32707. Such indemnification is included in the indemnification clause in Section 5 hereof.
4. Assignment and Assumption. All of the right, title and interest of Redhawk and Artisian in and to the Funding Agreement has been assigned to MPLC by virtue of its interest as owner of Tract No. 32707. MPLC hereby accepts the assignment of all of Redhawk's and Artisian's rights under the Funding Agreement and assumes all of Redhawk's and Artisian's rights, title, interest, and obligations under the Funding Agreement. The execution of this First Amendment by MPLC, Developer and the City shall be deemed to satisfy all of the conditions set forth in Section 6.04 of the Funding Agreement relating to such assumption and assignment.
5. Indemnification. Notwithstanding any provisions in the Funding Agreement to the contrary, to the full extent permitted by law, MPLC and Developer shall assume the defense of, indemnify and hold harmless the City, the District, their officers, directors, employees and agents (each, and "Indemnified Party" and collectively, the "Indemnified Parties") and each of them, from and against all actions, damages, claims, losses, liability, costs, reasonable attorney fees, or expenses of every type and description to which such Indemnified Party may be subjected or put, by reason of, or resulting from (a) this First Amendment, (b) the assignment and assumption of the obligations and rights under the Funding Agreement being assigned and assumed herein, (c) any claim, demand or lawsuit, or controversy with respect to the prior owners of Tract No. 32707 for credit to available MPLC in the amount of the Prepaid Fees, any refund of Prepaid Fees and/or disagreement over the relative rights of the owners of Tract No. 32707 under the Funding Agreement. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss, liability, cost, fee, or expense directly attributable to the intentional acts or gross negligence of an Indemnified Party.
6. Limitations on Rights under Agreement. MPLC and the City agree that notwithstanding anything to the contrary in the Funding Agreement (a) the Prepaid Fees, although a credit for Tract No. 32707, shall not be paid or reimbursed through the District, (b) MPLC shall be required to obtain an agreement with Val Verde Unified School District and/or Eastern

Municipal Water District to the extent MPLC determines necessary to exercise its rights under the any joint community facilities agreement with any such entity relating to Tract No. 32707, (c) the District's payment of fees and MPLC's reimbursement shall be subject to the requirement that the facilities or items funded thereby qualify for funding under applicable state and federal law. All of MPLC's rights to payment of fees from the District and reimbursement of deposits are contingent on bonds being issued and funds being available for payment, such funds solely being from the proceeds of bonds to be issued secured by the special taxes in the District.

7. Bonds. The District or City, on behalf of the District, shall in its discretion determine whether to issue bonds, and the terms and principal amount of the bonds to be issued for Tract No. 32707.
8. Cooperation. The parties agree to cooperate with each other and to execute any and all other documents reasonably necessary in order to consummate the intent of the parties with respect to this First Amendment.
9. Applicable Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of California.
10. Ratification of Funding Agreement. The Funding Agreement is hereby ratified and confirmed in all respects and all terms, conditions and provisions of the Funding Agreement, except as amended by this First Amendment, shall remain in full force and effect. The provisions of this First Amendment shall supersede and prevail over any conflicting provisions of the Funding Agreement.
11. Counterparts. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
12. Assignment. The rights, obligations and interests relating to Tract No. 32707 under the Funding Agreement, as amended by this First Amendment, may be assigned to a subsequent owner of all or a portion of Tract No. 32707 (other than individual homebuyers); however, no such assignment will be effective as against the City unless consented to by the City. The City hereby consents to the assignment by MPLC and assumption by Richmond American of the rights, obligations and interests relating to Tract No. 32707 under the Funding Agreement, as amended by this First Amendment, upon the close of escrow of Tract No. 32707 to Richmond American, provided MPLC and Richmond American execute an Assignment and Assumption Agreement in substantially the form attached as Exhibit D to the Funding Agreement. The City Manager shall be provided with a draft of the assignment to Richmond American to review.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date and year first written above.

MPLC EVANS 137, LLC, a California limited liability company

By: MISSION PACIFIC LAND COMPANY, LLC,
a Delaware limited liability company

By: _____
Its: Managing Director

MISSION PACIFIC LAND COMPANY, LLC, a Delaware limited liability company

By: _____
Its: Managing Director

CITY OF PERRIS, a municipal corporation, and on behalf of COMMUNITY FACILITIES DISTRICT NO. 2005-4 [STRATFORD RANCH] OF THE CITY OF PERRIS.

By: _____
Its: City Manager

EXHIBIT A

[ATTACH DISTRICT BOUNDARY MAP]

EXHIBIT B

[ATTACH LEGAL DESCRIPTION OF TRACT NO. 32707]