

ORDINANCE NO. NS-2817

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA ANA AND GRAND PLAN 2, LLC AND LYON INTEGRAL MACARTHUR PLACE, LLC

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

A. The City is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing certainty for both City and owner in the development process.

B. The City enters into this Amendment to Development Agreement pursuant to the provisions of the Government Code and applicable City policies.

C. The Planning Commission has, following a duly noticed public hearing, on March 14, 2011, recommended approval of this Amendment to Development Agreement.

D. Entering into this Amendment to Development Agreement would provide the City with extraordinary and significant benefits that are of regional significance, relate to existing deficiencies in public facilities, require the owner of MacArthur Place South to contribute a greater percentage of benefits than would otherwise be required, and represent benefits which would not otherwise be required as part of the development process.

E. The City Council has held a noticed public hearing on this Ordinance and has considered all testimony presented thereto.

F. The previously adopted and certified Final Environmental Impact Report EIR for the Nexus Project, No. ER 2004-02, and its Addendum, have been approved and certified by this Council by resolution simultaneously with the introduction of this ordinance.

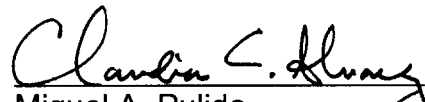
G. The proposed project will not adversely affect the General Plan, as is expressly set forth in the Request for Council Action dated April 4, 2011, together with all supporting documents, including but not limited to, proposed resolutions, which are incorporated herein by this reference.

Section 2. The Amendment to Development Agreement, a true and correct copy of which is attached hereto as Exhibit 1, is hereby approved, and the City Manager and Clerk of the Council are authorized to execute it on behalf of the City with such non-substantive changes as may be authorized by the City Manager and City Attorney. The Clerk of the Council is hereby authorized and directed to cause this Development Agreement to be recorded with the County Recorder's Office.

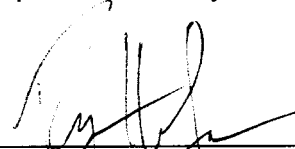
Section 3. This ordinance shall not be effective unless and until Resolution No. 2011-021 is adopted and becomes effective. If said resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or otherwise does not go into effect for any reason, then this ordinance shall be null and void and have no further force and effect.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

ADOPTED this 18th day of April 2011.


Miguel A. Pulido
Mayor *for Mayor Pulido*

APPROVED AS TO FORM:
Joseph Straka, City Attorney

By: 
Ryan O. Hodge
Assistant City Attorney

YES: Councilmembers: Alvarez, Benavides, Bustamante, Martinez (4)

NOES: Councilmembers: None (0)

ABSTAIN

And ABSENT: Councilmembers: Pulido (1)

NOT PRESENT: Councilmembers: Sarmiento, Tinajero (2)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2817 to be the original ordinance adopted by the City Council of the City of Santa Ana on April 18, 2011 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 5/3/2011

Maria D. Huizar
Clerk of the Council
City of Santa Ana

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Clerk of the Council
City of Santa Ana
20 Civic Center Plaza M-30 P.O. Box 1988
Santa Ana, California 92702

FREE RECORDING
GOVERNMENT CODE § 6103

FOURTH AMENDMENT TO
DEVELOPMENT AGREEMENT

by and between

THE CITY OF SANTA ANA

and

LYON INTEGRAL MACARTHUR PLACE, LLC

Dated: _____, 2011

Ordinance No. NS-xxxx

**FOURTH AMENDMENT TO
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SANTA ANA, and
LYON INTEGRAL MACARTHUR PLACE, LLC**

This FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT (“Fourth Amendment”) is entered into between THE CITY OF SANTA ANA, a charter city and municipal corporation duly authorized under the Constitution and laws of the State of California (“City”), and LYON INTEGRAL MACARTHUR PLACE, LLC, a Delaware limited liability company (“Lyon/Integral”).

1. Reference to Facts. This Fourth Amendment is entered into with reference to the following facts:

1.1 Capitalized terms not defined herein shall have the meaning set forth in the Development Agreement.

1.2 The Grand Plan 1, LLC, a California limited liability company (“GP1”) and The Grand Plan 2, LLC, a California limited liability company (“GP2”), on the one hand, and City, on the other hand, entered into that certain Development Agreement dated August 4, 2005 and recorded in the Orange County Official Records on July 21, 2005 as Instrument No. 2005000565108 (as amended, the “Development Agreement”) pursuant to which, among other things, Owner (as defined in the Development Agreement) was granted the vested right to develop a mixed use Project with residential condominiums and office/commercial/retail uses, as more particularly described therein. GP1 subsequently assigned its rights and obligations under the Development Agreement with respect to Integral to Integral Communities I, Inc., a Delaware corporation.

1.3 A First Amendment to the Development Agreement by and between the City, GP2, NDC Skyline Associates, LLC and Integral Communities I, Inc. (the latter two being assignees of GP1 and GP2 as applicable) was executed on or about July 7, 2008 and recorded in the Orange County Official Records on July 22, 2008 as Instrument No. 2008000349227. A Second Amendment to the Development Agreement by and between the City, NDC Skyline Associates, LLC, and Integral Communities I, Inc. was adopted by Ordinance Nos. NS-2782 and NS-2783 on or about May 18, 2009, and recorded in the Orange County Official Records as Instrument No. 2009000447820. A Third Amendment to the Development Agreement by and between the City and The Grand Plan 2, LLC was adopted by Ordinance No. NS-2786 on or about June 1, 2009, and recorded in the Orange County Official Records as Instrument No. 2009000447821.

1.4 Lyon/Integral is an assignee of Integral Communities I, Inc. under the Development Agreement. Lyon/Integral’s current rights and obligations under the Development Agreement include the Residential Condominium Units Element of the Project, which is the subject of this Fourth Amendment. The Residential Condominium Units Element of the Project was initially referenced as the “Integral Project” in the original Development Agreement, but shall be amended by this agreement to be referenced as the “Lyon/Integral Project.”

1.5 The original Development Agreement and Entitlements (i) described the Residential Condominium Units (“Lyon/Integral Project”) Element of the Project as consisting of a five (5) or six (6) story building containing two-hundred seventy-six (276) for-sale residential condominium units.

1.6 Lyon/Integral seeks approval of an amendment to the Residential Condominium Units (“Lyon/Integral Project”) Element of the Project. For purposes of this Fourth Amendment, the “Lyon/Integral Project” shall be amended to consist of three-hundred (300) for-sale residential condominium units along with a 2,100 square foot commercial space.

1.7 In connection with the foregoing, Lyon/Integral and the City now desire to amend the Development Agreement to provide Lyon/Integral with approval of the “Lyon/Integral Project” subject to the terms and conditions of the Development Agreement, as amended.

2. Lyon/Integral Project. Lyon/Integral and the City hereby acknowledge and agree that Lyon/Integral has the right under this Fourth Amendment to construct and operate the “Lyon/Integral Project”, as hereinafter defined.

3. Modification of Certain Provisions. The Development Agreement is hereby amended and supplemented in the following particulars:

3.1 Section 2.21. This section is hereby supplemented by adding the following after the third sentence appearing therein, as added by the Third Amendment to Development Agreement:

“The new entitlements for the Lyon/Integral Project shall include Conditional Use Permit No. 2011-05, Variance No. 2011-04, and Site Plan Review No. 2011-01, as approved by the City.

3.2 Section 2.24. The term “Integral” shall be replaced with the term “Lyon/Integral.”

3.3 Section 2.43(3). The entire section shall be amended to read as follows:

“(3) A five (5) or six (6) story building containing three-hundred (300) for-sale residential condominium units or for-rent residential units along with a 2,100 square foot commercial space (the “Lyon/Integral Project”); and”

3.4 Section 2.43. In the final sentence of this section, as added by the Third Amendment to Development Agreement, the term “Integral Project” shall be replaced with the term “Lyon/Integral Project.”

3.5 Section 2.50. As added to this section by the Second Amendment to Development Agreement, the term “Integral Project” shall be replaced with the term “Lyon/Integral Project.”

3.6 Section 4.1. As added to this section by the Second Amendment to Development Agreement, the term “Integral Project” shall be replaced with the term “Lyon/Integral Project.”

3.7 Section 4.2. The term “Integral Project” shall be replaced with the term “Lyon/Integral Project.” In addition, “Lyon” shall also be included in any reference to “Integral.”

3.8 Section 4.2.1. As added to this contract by the Second Amendment to Development Agreement, the term "Integral Project" shall be replaced with the term "Lyon/Integral Project." In addition, "Lyon" shall also be included in any reference to "Integral."

3.9 Section 4.3(d). The term "Integral Project" shall be replaced with the term "Lyon/Integral Project." In addition, "Lyon" shall also be included in any reference to "Integral."

3.10 Section 4.3(f). As added to this section by the Second Amendment to Development Agreement, the term "Integral Project" shall be replaced with the term "Lyon/Integral Project."

3.11 Section 5.1.3. The term "Integral Project" shall be replaced with the term "Lyon/Integral Project."

3.12 Exhibit B, Section 2. As added to this section by the First Amendment to Development Agreement, the term "Integral Project" shall be replaced with the term "Lyon/Integral Project."

Full Force and Effect; Counterparts. Except as amended herein, the Development Agreement shall remain in full force and effect in accordance with its terms. This Fourth Amendment may be executed in any number of counterparts, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Fourth Amendment has been executed by the City of Santa Ana and Lyon Integral MacArthur Place, LLC.

Dated this ____ day of _____, 2011.

"CITY"

THE CITY OF SANTA ANA, a charter city and municipal corporation duly authorized under the Constitution and laws of the State of California

By _____
DAVID N. REAM
City Manager

ATTEST:

MARIA D. HUIZAR
Clerk of the Council

Approved as to Form:

JOSEPH STRAKA
Interim City Attorney

By _____
Ryan O. Hodge
Assistant City Attorney

“Lyon/Integral”

LYON INTEGRAL MACARTHUR PLACE, LLC, a
Delaware limited liability company

By _____
Name _____
Its _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public,
personally appeared _____, who proved
to me on the basis of satisfactory evidence to be the person(s) whose names(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 OF NOTARY PUBLIC

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public,
personally appeared _____, who proved
to me on the basis of satisfactory evidence to be the person(s) whose names(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 OF NOTARY PUBLIC