

ORDINANCE 1194

AN ORDINANCE OF THE CITY OF TRACY APPROVING FIRST AMENDMENT TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH
THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002

WHEREAS, on April 18, 2013, the City and Surland Communities, LLC ("Surland") entered into an Amended and Restated Development Agreement ("Development Agreement"); and

WHEREAS, the Development Agreement provides for the offer to dedicate by Surland of sixteen (16) acres of land and the contribution of \$10,000,000 (the "Owner's Swim Center Contribution") towards the cost of construction of the swim center for the benefit of the greater Tracy community. The Owner's Swim Center Contribution is to be made in two installments. The First Payment of \$2,000,000 was due September 15, 2013 (60 days after the Annexation Effective Date) and the Second Payment of \$8,000,000 will be due July 17, 2016 (3 years after the Annexation Effective Date). The offer of dedication shall be made by Owner to the City within thirty (30) days after the Annexation Effective Date, as defined in the Development Agreement. The parties have calculated the Annexation Effective Date to be July 17, 2013, and the date for the offer of dedication to be August 16, 2013; and

WHEREAS, the parties wish to modify and amend the Development Agreement to extend the date for payment of the Owners' First Swim Center Payment of \$2,000,000 to no later than September 15, 2014, and to extend the time in which the City may accept the Land Dedication Offer to September 15, 2015; and

WHEREAS, on April 23, 2014, the Planning Commission, following a duly noticed public hearing and following appropriate notice, recommended approval of the First Amendment to the Development Agreement ("First Amendment") to the City Council.

The City Council of the City of Tracy does ordain as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein as findings.

2. Compliance with CEQA. On January 22, 2013, the City of Tracy certified the Modified Ellis Project Draft Environmental Impact Report (EIR) (SCH # 2012022023) for the Ellis project, including the Development Agreement. City staff has evaluated the proposed First Amendment to the Development Agreement ("First Amendment") and determined that it does not propose new significant changes to the environment that were not analyzed in the EIR, and would not require major revisions to the EIR. Therefore, under Section 15162 of the California Environmental Quality Act ("CEQA") implementing regulations (the "CEQA Guidelines"), no subsequent or supplemental environmental review is required for the proposed First Amendment. In addition, City staff has determined that the proposed First Amendment is exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the proposed First Amendment may have a significant effect on the environment. Therefore, no further documentation is needed.

3. Findings regarding Development Agreement. The City Council finds that the proposed First Amendment:

a. is consistent with the objectives, policies, general land uses and programs specified in the City General Plan and any applicable community and specific plan;

b. is in conformity with public convenience, general welfare, and good land use practices;

c. will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole;

d. will not adversely affect the orderly development of property or the preservation of property values; and

e. is consistent with the provisions of Government Code Sections 65864 *et seq.*

4. First Amendment Approval. The City Council approves the First Amendment attached hereto as Exhibit "1".

5. Effective Date. This Ordinance takes effect 30 days after its final passage and adoption.

6. Publication. This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within fifteen days from and after its final passage and adoption.

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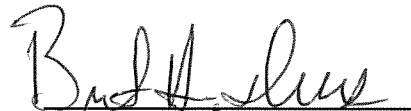
The foregoing Ordinance 1194 was introduced at a regular meeting of the Tracy City Council on the 20th day of May, 2014, and finally adopted on the 3rd day of June, 2014, by the following vote:

AYES: COUNCIL MEMBERS: MACIEL, RICKMAN, MANNE, YOUNG, IVES

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE


MAYOR

ATTEST:


CITY CLERK (INTERIM)

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

The City of Tracy
333 Civic Center Plaza
Tracy, California 95376

Doc #: 2014-064062
06/30/2014 12:03:32 PM
Page: 1 of 7 Fee: \$0
Kenneth W Blakemore
San Joaquin County Recorders
Paid By: CITY OF TRACY



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**FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT
AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND
SURLAND COMMUNITIES, LLC**

This FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY and SURLAND COMMUNITIES, LLC (the "First Amendment") is made and entered into as of this 3rd day of July, 2014 (the "Effective Date") by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC, a California limited liability company ("Owner"), pursuant to Government Code sections 65864 et seq. and City Resolution No. 2004-368 which establishes the rules, regulations and procedures for the approval, operation and modification of development agreements and the provisions of that certain Amended and Restated Development Agreement By and Between The City of Tracy and Surland Communities, LLC dated April 18, 2013 and recorded on September 17, 2013 as Document No. 2013-119548 Official Records of San Joaquin County, California (the "Development Agreement").

RECITALS

A. The City and Owner entered into the Development Agreement in order to strengthen the public planning process and encourage private participation and the funding of community benefits and amenities that could not otherwise be required under controlling law. Specifically, the Development Agreement provides for the offer to dedicate by Owner of sixteen (16) acres of land and the contribution of \$10,000,000 (the "Owner's Swim Center Contribution") towards the cost of construction of the swim center for the benefit of the greater Tracy community. The Owner's Swim Center Contribution is to be made in two installments. The First Payment of \$2,000,000 was due September 15, 2013 (60 days after the Annexation Effective Date) and the Second Payment of \$8,000,000 will be due July 17, 2016 (3 years after the Annexation Effective Date). The offer of dedication shall be made by Owner to the City within thirty (30) days after the Annexation Effective Date, as defined in the Development

Agreement. The parties have calculated the Annexation Effective Date to be July 17, 2013, and the date for the offer of dedication to be August 16, 2013.

B. The parties wish to modify and amend the Development Agreement to extend the date for payment of the Owners' First Swim Center Payment of \$2,000,000 to no later than September 15, 2014, and to extend the time in which the City may accept the Land Dedication Offer to September 15, 2015.

C. Pursuant to the provisions of the Development Agreement Enabling Resolution, Government Code section 65868 and the provisions of the Development Agreement, Owner has filed with the City an application for an amendment to the Development Agreement. The City has considered the application and reviewed the substance of the proposed changes, modifications, and amendments contained in this First Amendment. By entering into and executing this First Amendment, the parties hereto agree that the Development Agreement shall hence forward be modified and amended as contained herein.

D. On April 23, 2014, the City Planning Commission, following a duly noticed public hearing and following appropriate notice, recommended approval of this First Amendment. On June 3, 2014, the City Council, following a noticed public hearing which was held on May 20, 2014, adopted Ordinance No. 1194 approving this First Amendment and authorizing its execution. That Ordinance took effect on July 3, 2014, the Effective Date of the First Amendment.

NOW, THEREFORE, the parties hereto agree as follows:

1. Incorporation of Recitals: The recitals set forth above are incorporated into this First Amendment as though set forth in full herein.

2. Subsection 1.01(a), The Swim Center Obligations, shall be amended to read as follows:

1.01 **The Swim Center Obligations.**

(a) Owner hereby commits to provide ten million dollars (\$10,000,000.00) ("Owner Swim Center Contribution") to the City, as set forth in this Section 1.01(a), to fund the design, construction, operation and maintenance of a swim center. Owner shall deposit into a segregated and interest-bearing City account the Owner Swim Center Contribution, for use by the City for the construction and operation of a swim center as provided herein. Upon completion of the Owner Swim Center Contribution, Owner shall be deemed to have satisfied any and all fees applicable to the Property or the Ellis Project for a swim center or pool.

(1) Not later than September 15, 2014, Owner shall deposit into a segregated and interest-bearing account designated by the City (the "Swim Center Funds Account") two million dollars (\$2,000,000.00) ("Owner's First Swim Center

Payment”) for use by the City in the development, construction, operation and maintenance of a Swim Center.

(2) Not later than two (2) years following the date of Owner’s First Swim Center Payment, Owner shall deposit into the Swim Center Funds Account eight million dollars (\$8,000,000.00) (“Owner’s Second Swim Center Payment”) for use by the City in the development, construction, operation and maintenance of a Swim Center.

(3) Owner’s obligations under this section are separate and independent of Owner’s obligations under Subsection (b), and are binding upon Owner regardless of whether or not City accepts Owner’s Dedication Offer as provided in Subsection (b).

(4) In addition to any other remedies available to the City under this Agreement, and any and all other provisions of this Agreement or the City’s Growth Management Ordinance and Guidelines to the contrary notwithstanding, Owner fails to make either or both of the two non-refundable payments as required by Sections 1.01(a)(1) and (2) above, then the City may, in its sole and exclusive discretion, withhold from Owner such Residential Growth Allotments or building permits as Owner would otherwise be entitled to receive under this Agreement or the City’s Growth Management Ordinance or Guidelines, and may continue to withhold the issuance of such Residential Growth Allotments or building permits until all such overdue payment or payments due under this Agreement have been made in full.

3. Subsection 1.01(b)(1) shall be amended to read as follows:

(b) Owner shall offer to dedicate to the City approximately sixteen (16) acres of land as described generally in the Revised EIR and the Ellis Specific Plan as the location of the “Potential Swim Center” (the “Ellis Swim Center Site”), subject to the following:

(1) Not later than September 15, 2014, Owner shall offer to dedicate to the City at no cost to the City, the Ellis Swim Center Site (“Land Dedication Offer”). City shall have until September 15, 2015 to accept the Land Dedication Offer (“Dedication Acceptance Period”), subject to such extensions as may be mutually agreed by the Parties. If City does not accept the Land Dedication Offer within the Dedication Acceptance Period, then one day after the conclusion of the Dedication Acceptance Period, the Land Dedication Offer shall be considered rejected by the City and shall expire without any further action of the Parties.

Thereafter, the Ellis Swim Center Site shall be available for development by Owner pursuant to the 2013 Ellis Specific Plan. Additionally, at any time prior to the end of the Dedication Acceptance Period, City may, by resolution of the City Council, reject the Land Dedication Offer and upon such City rejection, the Ellis Swim Center Site shall be available to Owner for development pursuant to the 2013 Ellis Specific Plan.

4. This First Amendment shall become effective upon the Effective Date which is deemed to be thirty (30) days after the adoption of the Ordinance approving this First Amendment, which Effective Date shall then be inserted into this First Amendment.

5. Recordation: Pursuant to the provisions of Government Code section 65868.5, the duly executed and notarial acknowledged copy of this First Amendment shall be recorded in the Official Records of San Joaquin County, California, no later than ten (10) days following its Effective Date and the burdens and benefits conferred herein will constitute covenants running with the land binding on successors and assigns.

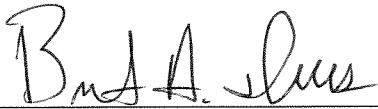
6. Continued Effectiveness of Development Agreement: Except as expressly modified herein, the Development Agreement shall remain in full force and effect. The provisions of this First Amendment are several and separate and should a legal challenge be brought challenging the First Amendment, such challenge shall in no way affect or impact the continued validity and existence of the Development Agreement.

[Signatures on following page]

Executed on the date indicated below.

"City"

CITY OF TRACY, a municipal corporation



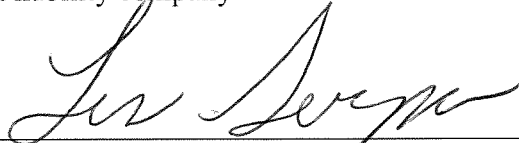
By: Brent Ives

Title: Mayor

Date: 6/5/14

"Owner"

SURLAND COMMUNITIES, LLC, a California limited liability company

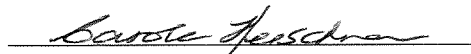


Les Serpa, Managing Member

Title: Managing Member

Date: 5/28/14

Attest:



By:

Title: CITY CLERK

Date: June 9, 2014

Approved As To Form:



By: Daniel Sodergren

Title: City Attorney

Date: 6/4/14