

**AMENDMENT NUMBER ONE (1) TO
EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT**

This Amendment Number One (1) (“Amendment”) to the Exclusive Right To Negotiate Agreement (“ERN”) is made and entered into on the date of last signature of this agreement (“Effective Date”) by and among SVS LLC (“DEVELOPER”), and Ojai Unified School District (“OUSD”), collectively known as the “Parties”

RECITALS

The Parties having previously entered into the ERN, now desire to amend the ERN to provide an extension of time for performance of all remaining terms and conditions thereunder.

In executing this Amendment, the Parties acknowledge that time continues to be “of the essence” with respect to the terms and conditions of the underlying Agreement and this Amendment and particularly stress the importance of:

a. Expeditious submittal of planning related documents and applications to the City of Ojai with notice to OUSD prior to each submittal.

b. The ability of the Parties to review a bona fide financing plan as soon as reasonably practicable following planning commission and/or City Council initial review of development application.

c. Timely submittal of presentations, reports, documents and other materials for OUSD board review when agendaized for discussion or action at public meetings of the Board, with updates provided to OUSD on at least a quarterly basis.

d. Timely review of items a, b, and c above by OUSD Board and Staff.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties hereby amend the Agreement as set forth below:

Section 2.A is hereby amended to read as follows:

A. The Parties agree to negotiate in good faith for a period up to and including January 13, 2022 (the “Negotiation Period”).

Section 2.D is hereby amended to read as follows:

D. DEVELOPER agrees to make “Meaningful Progress” toward determining the feasibility of the project during the Negotiation Period. Meaningful Progress shall include accomplishing all of the following:

1. DEVELOPER shall conduct a physical inspection of the Parcels within the first 180 days of the Negotiation Period.

2. DEVELOPER shall request a “Will Serve” letter from OUSD for the use of the Parcels, identifying the plan DEVELOPER intends to redevelop for use, pending successful negotiation of the Land Contract, within the first 180 days of the Negotiation Period.
3. DEVELOPER shall initiate a Phase 1 hazardous materials investigation of the Parcels within the first 180 days of the Negotiation Period.
4. DEVELOPER shall initiate a soils and/or geotechnical inspection of the Parcels within the first 180 days of the Negotiation Period.
5. DEVELOPER shall conduct a Title search and ALTA survey review of the Parcels within the first 180 days of the Negotiation Period.
6. DEVELOPER shall prepare and submit a development Concept Plan (subject to modification depending upon the investigations in items 3 and 4 above) to the City within twelve (12) months of the execution of this ERN.
7. Notwithstanding a pre-application, within three (3) months after the Negotiation Period, DEVELOPER shall file a planning application with the City of Ojai to secure planning entitlements related to both the Parcels. Said planning application will require sufficient preliminary design for the project. Compliance with this condition shall be evidenced by DEVELOPER’s delivery to OUSD of a copy of the complete planning applications at the time of submittal and delivery to OUSD of a copy of correspondence from the City and/or County indicating the planning applications are accepted and the entitlement process has commenced.
8. DEVELOPER shall comply with any and all CEQA requirements that may apply to said planning entitlements. Upon filing of a preapplication and subsequent complete application, DEVELOPER shall thereafter make good faith efforts to obtain said planning entitlements. Notwithstanding any to the contrary in this document, if a planning application is filed in this time frame, any delays in City approvals, including any delays arising from a new or modified General Plan, shall toll the Negotiation Period day-for day-upon notice to OUSD. However, in no event shall such tolling exceed eighteen (18) months without written agreement between the Parties.
9. DEVELOPER shall pursue project financing during the Negotiation Period, pursuit of which shall be evidenced by the development of a complete development pro forma for the Project. An initial draft of the pro forma has been delivered prior to the execution of this ERN, which draft pro forma was provided on a confidential basis and includes the estimated total costs development and construction costs for the Project, operating expenses and net operating income, total payments to OUSD and return on investment to the DEVELOPER (the “Initial Pro Forma”). Together with the execution of this ERN DEVELOPER

shall further provide OUSD's representative, on a confidential basis, a letter setting forth the experience of DEVELOPER in executing projects of a reasonably similar scope as the Project.

10. Concurrently with the submission of the Concept Plan to the City DEVELOPER shall deliver a complete pro forma for the Project, which complete pro forma shall be reviewed with a representative of OUSD. Such complete pro forma shall include all of the information included in the Initial Pro Forma based on the final development and financial plan for the Project together with a demonstration of the capability of the DEVELOPER at such time to execute such plan to the reasonable satisfaction of OUSD or its representative. DEVELOPER may deliver materials to make such demonstration to OUSD or its representative under separate submission which shall also be on a confidential basis.
11. During the Negotiating Period an offering memorandum for the financing of the Project shall be prepared by DEVELOPER, which shall be consistent with the complete pro forma and shall outline the amount of financing (debt and equity) desired. A copy of such offering memorandum shall be delivered to OUSD prior to its distribution to potential financing parties and shall share the distribution list with OUSD prior to distribution. OUSD's approval of the final pro forma and offering memorandum shall be contingent upon OUSD's sole determination that the final pro forma and offering memorandum are reasonably sufficient to demonstrate DEVELOPER's capacity to complete the Project as set forth in the approved plans. OUSD shall not unreasonably withhold, condition or delay its approval of the final pro forma and the offering memorandum.

Section 2.E is hereby amended to read as follows:

E. Should DEVELOPER fail to achieve Successful Completion within the Negotiating Period, then OUSD may, at its sole discretion, terminate this Agreement. Notwithstanding the above, OUSD agrees that it will provide DEVELOPER a 60-day notice of its intent to terminate, and DEVELOPER shall have this notice period to remedy any deficiencies required to demonstrate to the satisfaction of OUSD that DEVELOPER is prepared to achieve Successful Completion within a timeframe acceptable to OUSD to avoid the termination of this Agreement after the Extension Period. This Agreement may also be terminated by mutual written agreement of the Parties with or without cause.

2. This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. If any provision of this Amendment shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Amendment or the Agreement.

3. This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed an original and all of which shall constitute one and the same instrument.

4. In the event of any inconsistency between the terms of this Amendment and the Agreement, the terms of this Amendment shall control.

5. Each Party represents and warrants that this Amendment has been reviewed and approved by their respective legal counsel, board and/or other officers with authority to bind each Party.

IN WITNESS WHEREOF, OUSD and DEVELOPER have signed this Amendment Number One (1) as of the dates set forth below.

OUSD

DEVELOPER



By:

By:
Kristine Overacre

Dr. Tiffany Morse
Superintendent of Schools

Its:

Its:

March 10, 2021

3/26/2021

Date

Date