

April 8, 2009

**First Amendment
to
Memorandum of Understanding and Sequences of Events
Between The Coalition Group and JMI Real Estate/Developer**

This document represents the First Amendment to an Agreement between the Coalition Group and JMI Real Estate concerning the development parameters for Rio Santiago and the Sequence of Events for both the Ridgeline and Rio Santiago projects.

The Parties have entered into this First Amendment to the MOU in good faith to support a reasonable use of Developer's property, to promote good planning, and to provide important public benefits to the community. The Parties understand that Developer is entering into this First Amendment to the MOU on the assumption that neither the City, the County, nor any other governmental agency will impose additional significant financial burdens on the development of one or both of these projects. However, if such burdens are imposed, the Parties will meet in good faith to modify this First Amendment to the MOU in order to achieve a mutually acceptable modified MOU.

The Coalition Group was formed to provide for community input regarding future development plans for the Sully-Miller site (i.e. Rio Santiago.) This group represents the surrounding neighborhoods of Mabury Ranch, and initially Orange Park Acres and The Reserve. Both the Santiago Creek Greenway Alliance and Orange Citizens for Parks and Schools are also represented in the Coalition Group.

Orange Park Acres (OPA) was initially represented in the Coalition Group for over a year during which the Rio Santiago proposals were being reviewed. Although the OPA representatives indicated support for the Rio Santiago proposal (including the Senior Living Community), they were asked to resign from the Coalition Group when it was discovered that they were making inappropriate demands of the Developer and without the knowledge of the Coalition Group. Subsequent to removal of the OPA representatives from the Coalition Group, the City of Orange also removed the OPA Board of Directors (which serves as the OPA Advisory Committee to the City of Orange) from acting in its quasi-official status as advisor to the City of Orange on both the Ridgeline and Rio Santiago projects.

Nevertheless, many of the issues raised and the input provided by OPA has been taken into consideration in this MOU. Specifically, the Coalition Group continues to support the preservation of the existing 7.6-acre arena site to further the equestrian life-style of OPA.

The Rio Santiago project is depicted in Exhibit A and is planned to provide approximately 42 acres of passive Open Space (Area B) identified as the Santiago Creek Greenway Reserve; recreational open space uses on approximately 28 acres (Areas C1 and C2) which may include an Autism Center and a YMCA, and a Senior Living Community (Area A) on 25-30 acres. Another 10-15 acres (Area D) on the east end of the site will be used for low-intensity recreation uses, agriculture, and/or supplemental uses to primarily serve the Senior Living Community (such as storage, gardens, etc.).

The Developer will offer to donate the existing 7.6-acre arena site on the south side of Santiago Canyon Road to a 501(c)3 nonprofit corporation established solely for accepting title to and operating and maintaining the arena property. Said donation to be made following City Council approvals of the Ridgeline and the Rio Santiago projects as outlined in this First Amendment to the MOU and according to the attached Sequence of Events. The Developer agrees to seek approval¹ for development of these properties from the City of Orange that are consistent with this First Amendment to the MOU.

A. Existing 7.6-acre Arena Site

1. The Developer will offer to donate the existing 7.6-acre arena site and the income from existing tenants, currently at \$20,000 per year to a 501(c)3 nonprofit corporation established solely for accepting title to and operating and maintaining the arena property. Said offer shall be in fee and in “as is” condition. The donation shall occur as set forth in the Sequence of Events and which is also made a part of this First Amendment to the MOU.
2. The subject 7.6-acre arena site shall be used for the sole and limited purpose of equestrian activities for the Orange Park Acres community and to promote the exercise, sustenance and well-being of horses (the “Equestrian Activities”). The subject 7.6-acre arena site shall not be used or permitted for any other purpose.

¹All references to “approval” within this amended MOU mean an approval on terms and conditions which are acceptable to the Developer and consistent with this amended MOU.

3. Provided that no litigation or a Referendum is filed by any person or entity challenging any aspect of either or both the Ridgeline and Rio Santiago project approvals, entitlements, or subsequent development, including, but not limited to, the project's environmental review, the offer of donation will be made. In the event litigation or a Referendum is filed the offer of donation of the 7.6-acre arena site may be rescinded.
4. No encumbrances or agreements of any kind shall be placed on the property.
5. If, at any time, the equestrian use ceases for a continuous period of one year, the entire 7.6-acre site shall revert back to the Grantor.
6. The name of this site shall be the "Orange Park Acres Equestrian Center". Any subsequent name change or additions to it or other naming will be subject to the approval of the Grantor or its representative.
7. A separate 501(c)3 nonprofit corporation shall be established in cooperation with JMI Real Estate to manage the operation and use of the Equestrian Center.

B. Rio Santiago Site – Refer to Exhibit A

1. A Senior Living Community (Area A) with independent living care (315 units), assisted living care (80 units) and casitas living (64 units) shall be located on approximately 25-30 acres. (Future market conditions may dictate alternate residential considerations in which case the 64 units (on the perimeter of the central Senior Living Community) could be replaced by (1) a maximum of 44 single-family attached/detached housing similar to "The Wilderness" development, or (2) a maximum of 25 single-family detached residential units on minimum 8,000 square foot lots). The independent living component is limited to a maximum of 3 stories dropping to 2 stories in the perimeter end units. The central lobby-dining hall is a 2-story component. Mature trees will be installed to screen the 3-story elevations. The casitas units along the main north-south entry road are single-story; the casitas units on the north side of the Senior Living Community and the 80-unit Assisted Living area are 2-stories. All units adjacent to The Reserve residential community boundary shall not exceed 2 (two) stories in height.

The Developer shall provide the Coalition Group with the opportunity to review and provide input on the design of Area A prior to submittal to the City.

2. Approximately 42 acres identified as the "Santiago Creek Greenway Reserve"

(Area B) shall be offered for dedication in fee in its “as is” condition to a suitable entity for preservation in its natural state and as a possible addition to Santiago Oaks Regional Park. Developer shall retain all mitigation rights and the ability to restore the site for mitigation standards, if needed.

3. Appropriate zoning and land use designations shall be assigned on approximately 28 acres (Areas C1 and C2), to accommodate recreation open space and other land uses selected from the following list:

- a. Sports Facilities and fields: pay-to-play fields, public and/or private athletic facilities. (Night lighting will be addressed in the EIR and during Site Plan review).
- b. YMCA Facility with Swimming Center and Gymnasium
- c. Tennis Facility
- d. Multi-purpose facilities not to exceed 97,000 sqft and 2 stories in height
- e. Parking
- f. Trails
- g. Educational Facilities
- h. Special Resource Center (such as an “Autism Center”)
- i. Equestrian Facility (state-of-the-art equestrian design techniques will be utilized to minimize dust, odor and noise)
- j. Ancillary uses in support of the above list

With respect to Site Plans subsequently submitted to the City for any of the land uses identified in 3a through 3j, the Developer shall provide the Coalition Group with the opportunity to review and provide input on the Developer’s proposed uses and design layouts prior to submittal to the City.

4. Low intensity recreation uses such as a golf putting course, horseshoes, open play areas, agriculture (such as strawberries, Christmas Tree Farm), and/or supplemental storage area for use primarily by residents of the Senior Living Community only may be located on approximately 10-15 acres (Area D). Limited RV Parking may be available. The Developer shall provide the Coalition Group with the opportunity to review and provide input on the uses and design of Area D prior to submittal to the City.

C. City Park and Open Space Requirements.

The parties to this First Amendment to the MOU agree that the land use dedications and offer of donations of land and facilities as described above are intended to satisfy the respective park and open space requirements.

D. Land Use Designations.

All General Plan classifications and Zoning/Specific Plan designations are to be in accordance with the above-described scenarios.

E. Development Agreement.

If the public benefits required by this First Amendment to the MOU cannot be required by the City of Orange without a Development Agreement (DA), or if the Developer, in its sole discretion, elects to ask the City to enter into a Development Agreement for one or both of the projects, the parties to this First Amendment to the MOU shall accept the Development Agreement provided it is not in conflict with this First Amendment to the MOU.

F. Sequence of Events

The Sequence of Events assures that certain actions precede other actions and is designed to protect the interests of the Parties, Land Owner/Developer and those organizations, associations, groups, and individuals represented by the Coalition Group. The two development projects (Ridgeline and Rio Santiago) are not contiguous and are under separate ownerships.

The Ridgeline and Rio Santiago projects and the associated Sequence of Events below may occur in any order as long as the offers of dedication and donation follow the issuance of the First Building Permits as identified below:

1. Planning Commission Approval of Ridgeline EIR, GPA, ZC/SP, TT Map, and DA
2. City Council Approval of Ridgeline EIR, GPA, ZC/SP, TT Map, and DA
3. Planning Commission Approval of Rio Santiago EIR, GPA, ZC/SP, Land Use Plans/Maps, and DA
4. City Council Approval of Rio Santiago EIR, GPA, ZC/SP, Land Use Plans/Maps, and DA
5. Obtain Rough Grading Permits for Ridgeline

6. Obtain Precise Grading Permits for Ridgeline
7. Record Ridgeline Final Tract Map
8. Obtain First Building Permits for Ridgeline
9. Obtain Rough Grading Permits for Rio Santiago
10. Obtain Precise Grading Permits for Rio Santiago
11. Record Rio Santiago Final Tract Map
12. Obtain First Building Permits for Rio Santiago Senior Living Community
13. Offer of donation of 7.6-acre arena site in its “as is” condition to the suitable 501(c)3 nonprofit corporation shall be made within 30 days of obtaining the First Building Permit for the Ridgeline project, subject to the expiration, without a lawsuit or a Referendum being filed to challenge any of the approvals listed as F1-F4 above, of all applicable statutes of limitation for any challenge which could be brought to any one or more of those approvals. Subject donation is also contingent on City Council approval of the Rio Santiago project (F4 above).
14. Offer of dedication of the Santiago Creek Greenway Reserve (Area B) in its “as is” condition shall be made to a suitable public entity within 30 days of obtaining the First Building Permit for the Senior Living Community, for preservation in its natural state and for possible addition to Santiago Oaks Regional Park. Developer shall retain all mitigation rights and the ability to restore the site for mitigation standards if needed.
15. An initial Grading Permit for the purpose of rough grading the degraded Rio Santiago property may be obtained at any time subject to City approval.

The Parties hereto agree that this First Amendment to the MOU is intended to document their intentions based upon the stated anticipated occurrences and that the Sequence of Events are subject to potential variable and unknown factors. Therefore, if there are substantial changes to this First Amendment to the MOU, the Coalition Group, its members and the Developer retain the right to reject such changes.

The Development Agreement, the First Amendment to the MOU and the Sequence of Events are to run with the property.

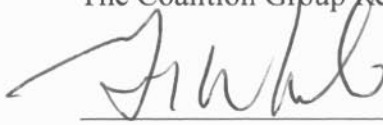
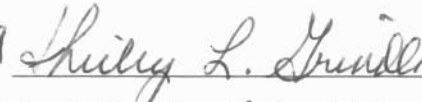
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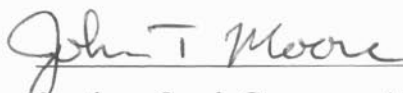

ZC	Zone Change	GPA	General Plan Amendment
CUP	Conditional Use Permit	OPA	Orange Park Acres
TTM	Tentative Tract Map	DA	Development Agreement
SP	Specific Plan	EIR	Environmental Impact Report
MOU	Memorandum of Understanding		
Sqft	Square Feet		



The following signatories hereby approve of this First Amendment to the MOU and the Sequence of Events:

 Date 4/8/09
John Martin, Principal JMI Real Estate/Developer

The Coalition Group Representing:

 Date 4/8/09  Date 4/8/09
Orange Citizens for Parks and Schools – Shirley L. Grindle and Greg Holcomb

 Date 4/8/09  Date 4-8-09
Santiago Creek Greenway Alliance – John Moore, Pres. and Kirk Winterroth

 Date 4/8/09  Date 4/8/09
Mabury Ranch HO Assn. – Dan Swoish, President and Sue Obermayer, Chair
Environmental Committee

Attachment: Exhibit A – Conceptual Land Use Plan for Rio Santiago