



# Ordinance

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

## ORDINANCE NO. 151

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, AUTHORIZING THE THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN LOS PORTALES DEVELOPMENT, INC., AN ARIZONA CORPORATION, AND THE CITY OF SAN LUIS.

Be it ordained by the Mayor and Common Council of the City of San Luis, Arizona as follows:

Section 1: That the City Council passed Ordinances No. 95 and 96, and Ord.111, which authorized the Mayor and other appropriate officials to execute the Amended and Restated Development Agreement between Lewis Homes of California, a California general partnership, and the City of San Luis, Arizona, and that the same was recorded in the Yuma County Recorder's Office September 25, 1992 at Docket 1821, pages 489-493. That pursuant to the terms of said Development Agreement Lewis Homes of California was authorized to assign under specific circumstances its interest and has done so to Los Portales Development, Inc., an Arizona Corporation.

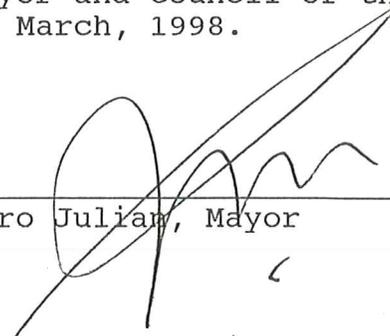
Section 2: That the parties have agreed to the Third Amendment to the Amended and Restated Development Agreement between Los Portales Development, Inc., an Arizona corporation, and the City of San Luis, Arizona and that A.R.S. 9-500.05 authorizes the City to enter into said Amendment by ordinance.

Section 3: That certain document known as the Third Amendment to the Amended and Restated Development Agreement by and between Los Portales Development, Inc., an Arizona corporation, and the City of San Luis, Arizona, three copies of which are on file in the office of the City Clerk of the City of San Luis, Arizona, which document is made a public record by Resolution No.372 of the City of San Luis, Arizona is hereby referred to, adopted and made a part hereof as if fully set forth herein.

PAGE 2  
ORDINANCE NO. 151  
CITY OF SAN LUIS

Section 4: That the Developer executed the Third Amendment to Amended and Restated Development Agreement between Los Portales Development, Inc., an Arizona corporation, and the City of San Luis, Arizona, adopted as a public record by resolution #372, which is hereby authorized pursuant to A.R.S. 9-500.05 and made a part hereof by reference and that the Council hereby approves such Third Amendment and hereby authorizes its Mayor and other appropriate officials to execute such third Amendment and to carry out its terms.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 25th day of March, 1998.



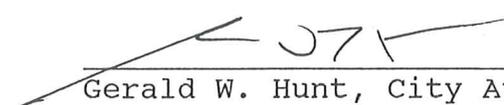
\_\_\_\_\_  
Pedro Julian, Mayor

ATTEST:



\_\_\_\_\_  
Alex U. Ruiz, City Administrator

APPROVED AS TO FORM:



\_\_\_\_\_  
Gerald W. Hunt, City Attorney



**FEE #: 1998 - 12905**

05/13/1998 12:47 PAGES: 0009  
FEES: 9.00 4.00 .00 .00 .00  
REQ BY: GERALD HUNT  
REC BY: PATTY MORENO

When recorded mail to:

Gerald W. Hunt  
330 West 24th Street  
Yuma, AZ 85364

THIRD AMENDMENT TO  
AMENDED AND RESTATED DEVELOPMENT AGREEMENT

DATED JULY 24, 1991

BETWEEN LEWIS HOMES OF CALIFORNIA,

A CALIFORNIA GENERAL PARTNERSHIP,

NOW LOS PORTALES DEVELOPMENT, INC.,

AN ARIZONA CORPORATION, AND

THE CITY OF SAN LUIS, ARIZONA,

This Third Amendment amends the original Amended and Restated Development Agreement dated July 24, 1991 recorded in the Office of the Recorder of Yuma County, Arizona August 2, 1991 at Docket 1753, pages 276-314 as amended by First Amendment recorded in the Office of the Recorder of Yuma County, Arizona September 23, 1993 at Docket 1821, pages 480-493 and Second Amendment recorded January 4, 1994 at Docket 1915, pages 318-323

THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This Third Amendment to Amended and Restated Development Agreement ("Amendment") is made as of the 11<sup>th</sup> day of March, 1998, by and between Los Portales Development, Inc., an Arizona corporation ("LPDI"), and the City of San Luis, a municipal corporation of the State of Arizona ("City"), and amends, modifies, supplements, and is made a part of that certain Amended and Restated Development Agreement, dated as of July 24, 1991, and recorded in the Office of the Recorder of Yuma County, Arizona ("Recorder's Office"), on August 2, 1991, at Docket 1753, Pages 376-414 (the "1991 Agreement"), by and between Lewis Homes of California ("LHC") and the City, as amended by that certain First Amendment to Amended and Restated Development Agreement, dated September 9, 1992, and recorded in the Recorder's Office on September 25, 1993, at Docket 1821, Pages 480-493, by and between LPDI, as LHC's assignee, and the City, and as further amended by that certain Second Amendment to Amended and Restated Development Agreement (the "Second Amendment"), dated as of October 23, 1993, and recorded in the Recorder's Office on January 4, 1994, at Docket 1915, Pages 318-323 (as so amended, the "Original Agreement"). All of LHC's rights, title and interest in and to the 1991 Agreement were assigned to LPDI by Amendment to Assignment Agreement, dated as of August 1, 1991 (the "Assignment"), by and between LHC and LPDI and the term "Original Agreement" includes the effect of the Assignment. All capitalized words, terms, and phrases not otherwise defined in this Amendment shall have the meanings assigned to them in the Original Agreement. This Amendment and the Original Agreement are sometimes collectively referred to as the "Agreement". This Amendment is made with reference to the following facts:

- A. LPDI has requested an extension of the Agreement until July 24, 2007, and certain other changes to the Agreement as set forth below. The City has agreed to such requests in return for the valuable consideration described below.

NOW, THEREFORE, in consideration of the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, LPDI and the City hereby agree as follows:

1. The first sentence of Paragraph 2 of the Original Agreement is hereby deleted in its entirety and the following is inserted in its place:

"This Agreement shall commence upon the date of its execution, and shall not terminate until such time as the obligations of the parties are fully complied with, or this Agreement is terminated, but in no event shall this Agreement extend beyond July 24, 2007."

2. The City acknowledges that LPDI has satisfied all of its obligations under Paragraph 4.A. and Paragraph 4.C. of the Original Agreement.
3. Paragraph 7 of the Original Agreement is hereby deleted in its entirety. LPDI shall have no obligation to construct the street called Los Oros, but LPDI agrees to dedicate to the City forthwith the thirty (30)-foot right-of-way for Los Oros as currently shown on the preliminary plat for this Project in accordance with applicable laws and ordinances. LPDI's obligation to construct the street called Merrill Avenue shall be as set forth on Exhibit B to the 1991 Agreement.
4. The City has fully earned the Two Hundred Twenty Thousand and 00/100 Dollars (\$220,000.00) in development fees which have been paid to it pursuant to the terms of the Original Agreement.
5. Paragraph 6 is hereby deleted in its entirety and the following is inserted in its place:
  - "6. Developer may assign its rights and obligations under this Agreement either: (a) to any affiliate of LPDI (a "Developer Affiliate"), without any further consent required from the City (other than the execution by the Developer Affiliate of an "Assignment" as described below), or (b) to any other person or entity with the prior written consent of the City ("Alternate Developer"), such consent not to be unreasonably withheld, delayed, or conditioned. (Developer Affiliate and Alternate Developer are sometimes referred to collectively as "New Developer.") Such permitted assignee(s): (i) shall succeed to all the rights and benefits of Developer under this Agreement (including, without limitation, the right to assign its/their rights and obligations under this Agreement subject to the prior written consent of the City, such consent not to be unreasonably withheld, delayed, or conditioned); (ii) shall assume all of the obligations of Developer under this Agreement; and (iii) shall provide performance and completion bonds pursuant to Arizona Revised Statutes Sections 34-222 and 34-223 in amounts reasonably acceptable to the City. In all cases, it shall be reasonable for the City to condition its consent to such a proposed assignment on the execution and delivery to the City by the proposed assignee of a formal assignment and assumption agreement assuming all of Developer's obligations under this Agreement (the "Assignment"). The Assignment shall provide for, among other things, LPDI's right to succeed to the rights of the New Developer under the Agreement if (1) New Developer is in default under the Agreement and (2) LPDI

elects, in its sole and absolute discretion, to cure such default. However, LPDI shall be under no obligation to cure such a default. For purposes of this provision, the term "Developer Affiliate" shall mean any person, partnership, corporation, limited liability company, or other entity of which more than fifty percent (50%) of the equity is owned, either directly or indirectly, by one or more of the following individuals: Ralph M. Lewis, Goldy S. Lewis, Richard A. Lewis, Robert E. Lewis, Roger G. Lewis, and Randall W. Lewis."

6. In the event LPDI, as Developer, has assigned its rights and obligations pursuant to Paragraph 6 of the Agreement to an Alternate Developer, then the Alternate Developer shall pay fees to obtain water and sewer permits at the rate of Nine Hundred and 00/100 Dollars (\$900.00) per lot for both permits until July 24, 2005, and thereafter at whatever rate the City is then charging other developers of single-family residential lots per lot for both permits. If LPDI remains the Developer or has assigned its rights and obligations to a Developer Affiliate, then it or the Developer Affiliate shall only pay fees to obtain water and sewer permits at the rate of One Hundred Sixty-four and 00/100 Dollars (\$164.00) per lot for both permits until July 24, 2005, and thereafter at whatever rate the City is then charging other developers of single-family residential lots per lot for both permits less Seven Hundred Thirty-six and 00/100 Dollars (\$736.00). Developer, whether or not it is LPDI or a Developer Affiliate, shall pay fees to obtain building permits in the amounts and at the times in the development process as charged by the City to other developers of single-family residential lots. Developer, whether or not it is LPDI or a Developer Affiliate, shall not be required to pay any other exactions, fees, assessments, or charges of any kind whatsoever in connection with its development of the Project (including, without limitation, developer fees) except for ad valorem property taxes. Nothing in the Original Agreement or in this Amendment, however, shall be interpreted to excuse the Developer, (whether it is LPDI, a Developer Affiliate, or an Alternate Developer) from providing the City, at the Developer's sole cost and expense, with performance bonds or other appropriate evidence of financial responsibility as the City may require from other developers of single-family residential lots to ensure the proper completion of all on-site and off-site work undertaken by the Developer once such work has commenced.
7. LPDI shall pay the City's reasonable attorneys' fees incident to the preparation of this Amendment and any documents related thereto.
8. LPDI and the City agree that, upon proper approval by the City, the effective date of this Amendment shall be deemed

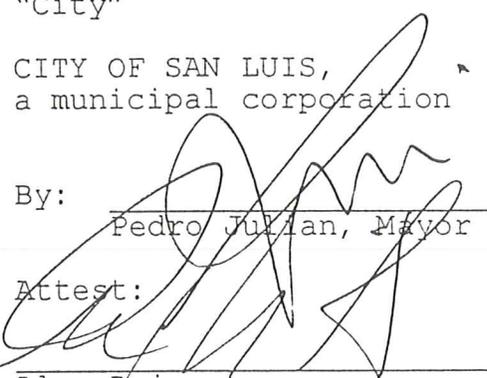
to be the date of this Amendment, but the parties agree that this Amendment effects a continuation of the Original Agreement without any lapse in time and shall be interpreted accordingly.

9. Neither LPDI nor the City is in default under the Agreement.
10. Except as expressly amended, modified, and supplemented by this Amendment, all of the terms and provisions of the Original Agreement are ratified and confirmed in all respects. Whenever the term "Agreement" is used in either the Original Agreement or in this Amendment it shall mean the Original Agreement as amended, modified, and supplemented by this Amendment unless the context would require otherwise. However, any conflict between the terms and provisions of this Amendment and the terms and provisions of the Original Agreement shall be resolved in favor of the terms and provisions of this Amendment.

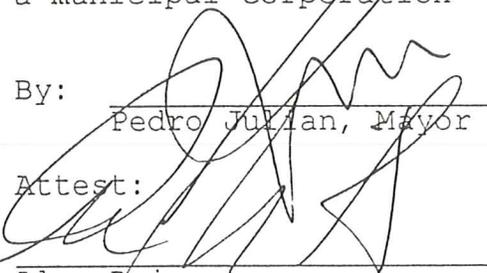
"City"

CITY OF SAN LUIS,  
a municipal corporation

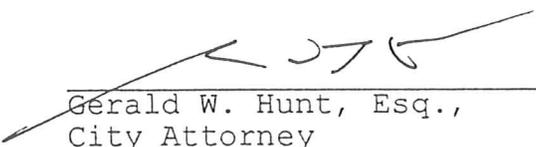
By:

  
Pedro Julian, Mayor

Attest:

  
Alex Ruiz,  
City Manager

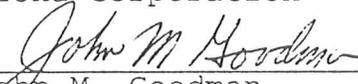
Approved as to form:

  
Gerald W. Hunt, Esq.,  
City Attorney

"LPDI"

LOS PORTALES DEVELOPMENT, INC.,  
an Arizona corporation

By:

  
John M. Goodman  
Vice President

