



STAFF REPORT
City of Dripping Springs
PO Box 384
511 Mercer Street
Dripping Springs, TX 78602

Submitted By: Laura Mueller, City Attorney

Council Meeting Date: November 10, 2020

Agenda Item Wording: Approval of a Resolution approving Assignments for the Heritage development from SLF IV to M/I Homes of Austin and Trendmaker Homes for the Development Agreement and related agreements.

Agenda Item Requestor: SLF IV

Summary/Background: *The City entered into a Development Agreement with SLF IV for the Heritage development in November 2017. The Agreement allows for assignment if:*

Assignment. In the event that Owner intends to convey any portion of or the entirety of the Property to another person or entity, this Agreement and the rights and obligations of Owner hereunder may be assigned by Owner to the proposed assignee, without the consent of the City, provided that the assignee assumes all of the assigned obligations of Owner hereunder and the assignee has provided Owner with a writing, certified by an officer with the authority to bind the assignee, stating that such assignee (i) does not owe delinquent taxes or fees to the City, (i) is not in material default (beyond any applicable notice and cure period) under any development agreement with City, and (iii) has the experience, expertise and the financial capacity and ability to perform the duties or obligations so assigned under this Agreement. In the event the proposed assignee is a home builder that is publicly traded and listed on the New York Stock Exchange and is a member of either the National Association of Home Builders or Texas Association of Home Builders, then the officer of such proposed assignee shall provide this information in the certification described in this paragraph in lieu of the requirements of item (iii), above. Owner shall provide the City sixty (60) days' prior written notice of any such assignment, and Owner shall provide the City with a copy of the writing described in this Section I 0.9. If the City has objections to such assignment pursuant to subsections (i) to (iii), above, the City shall provide written notice of such objections to the Owner within ten (10) days of receiving the assignment notice from Owner. Owner will not be released from its obligations under this Agreement if the City objects to such assignment as described above and such objections are not resolved by and between Owner and the City, provided, however the

City shall not unreasonably withhold Owner's release from its obligations under this Agreement.

Any assignment pursuant to this Section I 0.9 must be in writing, specifically describe the Property being conveyed, set forth the assigned rights and obligations, and be executed by the proposed assignee. A copy of the assignment document must be delivered to the City. Upon assignment pursuant to this Section I 0.9 (and absent objection by City as provided for in this Section I 0.9), Owner shall be released of any further obligations under this Agreement.

This Section 10.9 does not apply to any conveyance of any portion of the Property to any end-buyer of a fully developed and improved lot, or to a governmental entity, utility company or property owners association.

SLF IV requested assignment under this agreement. The City Attorney in consultation with Dottie Palumbo from the Bojorquez Law Firm reviewed the documentation presented by SLF IV and their assignees. We requested additional information to confirm that both Trendmaker and M/I Homes were adequate assignees under the Agreement to take over the requirements. We have determined that the documentation is adequate and recommend the assignment as required by the Agreement.

**Commission
Recommendations:**

N/A

**Recommended
Council Actions:**

Approval of assignment.

Attachments:

Staff Report

Assignment Request

Additional documentation is available at City Hall if needed.

Next Steps/Schedule:

If assignment is approved, then documentation will be sent to the applicant. The assignment would not be effective until the two assignees actually own the requirement.