

SECOND EXTENSION OF TOLLING AGREEMENT

On February 23, 2024 (the “Effective Date”), Milan REI X, LLC, a California limited liability company, (“Milan”) and the City of Orange, a municipal corporation (the “City”) (collectively, the “Parties”), entered into a tolling agreement (“Agreement”) concerning Milan’s application for a housing development project in the City on the real property located along Santiago Canyon Road with the Assessor’s parcel numbers of 370-011-08, 370-041-12, 370-011-18, 370-011-22, 370-041-25, 093-280-07, 093-280-27, 093-280-29, 093-280-30, and 093-280-07 (the “Property” or “Creekside Village site”). The executed Agreement is attached as Exhibit “A”.¹

RECITALS

- A. The Agreement, in recital “F”, noted that a primary reason the Parties wished to enter into the Agreement was a desire to evaluate non-residential uses for the Property. To that end, the Parties continue to assess non-residential uses and wish to extend the Agreement to continue to evaluate such uses.
- B. The Agreement in recital “G”, noted the Parties agreed to a Tolled Application Period as defined in therein and as stated in the Agreement paragraph 2. The Agreement in recital “H”, noted the parties agreed to a Tolled Litigation Period as defined therein and as further defined in the Agreement paragraph 3. The Tolled Application Period and the Tolled Litigation Period are collectively referred to at the Tolled Periods in the Agreement paragraph 4.
- C. The Agreement paragraph 6 provides that in the Parties’ discretion, prior to the termination of the Tolled Periods, the Agreement may be mutually extended in writing for an additional period(s) of time.
- D. As of the date of this Extension Agreement, the Parties agree that the Tolled Periods have not expired.
- E. On July 29, 2024, the Parties agreed to an extension of the Tolling Agreement to February 23, 2025.

NOW, THEREFORE, in consideration of the terms and conditions of this Extension, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

¹ The Agreement contains two scrivener errors in Recitals “B” and “C.” Recital “B” should state “On or about October 16, 2023, Milan submitted a preliminary application for a housing development project on the Creekside Village site.” Recital “C” should state “The October 16th application (the “Application” for the “Project”) replaced a previously filed application for a housing development project on the Property.” These corrections to the Recitals are hereby incorporated into the Agreement.

AGREED TERMS AND CONDITIONS:

1. Material Terms of Agreement. All material terms of the Agreement remain in force and effect and are incorporated herein by this reference and made a part hereof.

2. Extension of Tolling Agreement. The Tolling Agreement is hereby extended for ninety (90) days from February 23, 2025, until May 28, 2025.

IN WITNESS WHEREOF, and intending to be legally bound, each Party hereto has caused this Extension to be executed as of the date(s) set forth below.

MILAN REI X, LLC,
a Delaware limited liability company

Name: Christopher Nichelson
Its: President of its Managing Agent
Dated:

CITY OF ORANGE,
a municipal corporation

Name: Thomas C. Kisela
Its: City Manager
Dated:

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Kirsten Shea, Senior Assistant City Attorney

√

Exhibit A

TOLLING AGREEMENT

This TOLLING AGREEMENT ("Agreement") effective February 23, 2024 ("Effective Date") is made by and between Milan REI X, LLC, a California limited liability company ("Milan") and the City of Orange, a municipal corporation (the "City"). Milan and the City are sometimes referred to herein each as a "Party" and together as the "Parties".

RECITALS

A. Milan owns the real property located along Santiago Canyon Road with the Assessor's parcel numbers of 370-011-08, 370-041-12, 370-011-18, 370-011-22, 370-041-25, 093-280-07, 093-280-27, 093-280-29, 093-280-30, and 093-280-07 (the "Creekside Village site") in the City (the "Property").

B. On or about October 3, 2023, Milan submitted to the City a preliminary application pursuant to Senate Bill 330 ("SB 330") for a housing development project on the Creekside Village site ("Project").

C. The October 3, 2023, application (the "Application" for the "Project") replaced a previously filed application for a housing development project on the Property.

D. On November 17, 2023, the City sent a letter to Milan stating that, while it was not required under the law to give notice, the City believed the Application did not include certain statutorily required information.

E. The City and Milan currently have different interpretations of relevant state law, in part, concerning the processing of the Application, including the scope of the materials Milan must provide to the City and the City's duty to process and approve the Project. For example, Milan asserts that the Application must be processed pursuant to California Government Code section 65589.5, subdivision (d), the so-called "Builders Remedy" provision, and that the Application is not subject to any time limits imposed by SB 330. In this case, in part, the City asserts that an SB 330 application does not preserve the "Builders Remedy" if such remedy applies to the Project. In contrast, Milan asserts that, pursuant to the legal position of the California Department of Housing and Community Development, an SB 330 application does vest an application for a Builder's Remedy project.

F. The Parties wish to have time to further evaluate non-residential uses for the Property, including, but not limited to, recreational and sport uses, uses by an educational institution, acquisition by the City or a third party, or other paths that may be acceptable to both Parties. In the absence of the time provided by this Agreement, the Parties (and in particular, Milan) may be forced to seek relief through the courts. The Parties believe it is in their best interests to avoid the time, expense, and risk of such litigation for the period identified by this Agreement.

G. First, the Parties wish to toll the applicable time period(s) in which Milan must submit a complete Application for the Project (the "Application Period"), without Milan or the City waiving any rights or arguments related to their respective obligations, limitations or protections, including, but not limited to, waiving the right to assert that a complete Application is or is not required or waiving any claims related to the City's processing of the Application (the "Tolled Application Period").

H. Second, the Parties wish to preserve any rights that may exist as of the date of this Agreement for the Parties to commence legal action at a future date concerning the City's processing of the Application and/or the Project, which, but for this Agreement, might otherwise be time-barred by any applicable statute of limitations, laches, and other possible time-bars and defenses based in whole or in part on the time which may elapse from the effective date of this Agreement to the filing of an action (all of which time-bars and defenses, including, the statute of limitations and laches, are referred to as "Time Defenses" (the "Tolled Litigation Period").

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREED TERMS AND CONDITIONS

1. Recitals. The above Recitals form a material part of this Agreement, are true and correct, and are incorporated herein by this reference and made a part hereof.
2. Tolled Application Period. As to the Tolled Application Period, this Agreement shall become effective as of the Effective Date, and shall remain in effect, unless further extended, until six (6) months after the Effective Date, or until cancelled by either the City or Milan hereto upon thirty (30) days advance written notice. Upon the termination of the Tolled Application Period, the Application Period shall resume running, and any remaining periods of time within the Application Period shall be preserved during the Tolled Application Period until such termination. For example, if sixty (60) days of a one hundred eighty (180) period in which to submit a complete application had run as of the Effective Date, then, at the termination of the Tolled Application Period, one hundred twenty (120) days would remain until the Application Period deadline.
3. Tolled Litigation Period. As to the Tolled Litigation Period, this Agreement shall become effective as of the Effective Date, and shall remain in effect, unless further extended, until six (6) months after the Effective Date, or until cancelled by either the City or Milan hereto upon thirty (30) days advance written notice. Upon the termination of the Tolled Litigation Period, any and all applicable statutes of limitation shall resume running, and any remaining periods of time with the applicable statutes of limitation shall be preserved during the Tolled Litigation Period. For example, if sixty (60) days of a one year period in which to file litigation had run as of the Effective Date, then, at the termination of the Tolled Litigation Period, three hundred and five (305) days would remain under the relevant statute of limitation.

4. Covenant Not to Challenge Legitimacy of Either Tolling Period. Nothing in this Agreement nor the circumstances that gave rise to this Agreement shall be construed as an acknowledgment by any Party that any claim was or was not barred, or was or was not about to be barred, by any Time Defenses or other defense based on the lapse of passage of time, as of the end of the day immediately preceding the start of the Tolle Application Period and/or the Tolle Litigation Period (collectively "Tolle Periods").

5. Covenant Not to Commence Litigation During Tolle Periods. Parties agree that they will not commence litigation concerning any claims referenced in this Agreement during the Tolle Periods, and Milan will not file or join with any other party in litigation concerning any other so-called "Builder's Remedy" application currently on file with the City or that may be filed by any party, including Milan or anyone doing so on Milan's behalf, during the Tolle Periods.

6. Extension of Tolle Periods. In the Parties' discretion, prior to termination of the Tolle Periods, this Agreement may be mutually extended in writing for an additional period(s) of time.

7. No Waiver. Nothing in this agreement shall operate as a waiver of and/or prejudice either Party's right to assert that the statute of limitations or any other Time Defenses have been tolled or have not yet run for reasons other than the stated in this Agreement.

8. No Admission. This Agreement does not constitute an admission of any liability or wrongdoing by either Party to this Agreement nor regarding either Party's views of the facts, or the law, as they pertain to the Tolle Periods and/or any tolled claims that may exist.

9. Notice. Each Party shall deliver any notice under this Agreement (each, a "Notice") in writing and addressed to the other Party at its address set out below (or to any other address that the receiving Party may designate from time to time in accordance with this section). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), email, or certified or registered mail (in each case, return receipt requested, postage prepaid). A Notice is effective only (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section. Either Party may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other person or address in substitution of the address to which such notice shall be given.

If to City: City of Orange
 300 E. Chapman Avenue
 Orange, CA 92866
 Attn: City Manager

with a copy to: Mike Vigliotta
 300 E. Chapman Avenue
 Orange, CA 92866
 Email: mvigliotta@cityoforange.org

If to Milan: Milan Capital Management
701 South Parker Street, Suite 5200
Orange, CA 92868
Attn: Christopher Nicholson, President

with a copy to: Alex DeGood
Cox, Castle & Nicholson LLP
2029 Century Park East, Suite 2100
Los Angeles, CA 90067
Email: adegood@coxcastle.com

10. Entire Agreement. This Agreement, including the recitals, constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Each Party acknowledges that in entering into this Agreement, she/it has not relied on any promise, representation, or warranty not contained in this Agreement.

11. Modification. No modification of this Agreement shall be binding unless in writing and signed by each of the Parties hereto.

12. Successors. The Parties intend this Agreement to be legally binding upon and shall inure to the benefit of each of them and their respective parents, subsidiaries, affiliates, predecessors, successors, assigns, executors, administrators, heirs, and estates. Such successors include any entity or entities that may purchase or have transferred to them title to or some form of ownership interest in the Property or part of the Property.

13. Interpretation, Severability, and Enforcement.

a. Interpretation. The headings in this Agreement are purely for convenience and are not to be used as an aid in interpreting its terms. The Parties agree that they participated equally in drafting and negotiating the terms of this Agreement and that this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

b. Severability. Should any provision of this Agreement be declared or be determined by any court to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

c. Enforcement. Nothing in this Agreement shall be construed as, or constitute, a release of any Party's right to enforce the terms of this Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

14. Authority. The signatories to this Agreement represent and warrant that they have the authorization and power to bind the Party on whose behalf they are signing, and that no other individuals or parties are necessary to join herein in order to toll the statute of limitations and other Time Defenses for the Tolloed Claims.

15. Counterparts and Copies. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures and signature pages sent by email shall be binding as though they are originals.

IN WITNESS WHEREOF, and intending to be legally bound, each Party hereto has caused this Agreement to be executed as of the date(s) set forth below.

MILAN

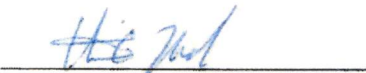


Name: Christopher Nichelson

Its: President of its Municipal Agent

Dated: February 23, 2024

CITY OF ORANGE



Name: Thomas C. Kisela

Its: City Manager

Dated:

APPROVED AS TO FORM:



Mike Vigliotta, City Attorney