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City of Hercules

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City of Hercules
111 Civic Drive
Hercules, CA 94547

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JOSEPH CANCIAMILLA, Clerk - Recorder
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Tuesday, MAY 29, 2018 10:59:19
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AAR / R8 / 1-8



DOCUMENT TITLE:

AMENDMENT TO THE DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT FOR THE HILL TOWN REDEVELOPMENT PROJECT (DOPA 07-01) BY AND BETWEEN THE CITY OF HERCULES, THE REDEVELOPMENT AGENCY OF THE CITY OF HERCULES, AND THE SANTA CLARA VALLEY HOUSING GROUP, INC.

**AMENDMENT TO THE DEVELOPMENT AND OWNER
PARTICIPATION AGREEMENT
FOR THE HILL TOWN REDEVELOPMENT PROJECT
(DOPA 07-01) BY AND BETWEEN THE CITY OF
HERCULES, THE REDEVELOPMENT AGENCY OF THE
CITY OF HERCULES, AND THE SANTA CLARA VALLEY
HOUSING GROUP, INC.**

This AMENDMENT TO THE DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT (this "**Amendment**") is entered into and effective as of the 24th day of April, 2018, between the City of Hercules, a municipal corporation (the "**City**"), the Redevelopment Agency of the City of Hercules (the "**Agency**"), and Santa Clara Valley Housing Group, Inc., a California corporation, ("**Owner**"). The City, Agency, and Owner are collectively "**Parties**" to this Amendment.

RECITALS

A. The City, the Agency, and Owner are Parties to that certain Development and Owner Participation Agreement adopted by ordinance on September 23, 2008, a memorandum of which is recorded in the Office of the Contra Costa County Recorder, State of California, on November 25, 2008 as Document No. 2008-0256803-00 (the "**Development Agreement**"), with respect to the development of approximately 44 acres of certain real property located in the City of Hercules, California and described in Exhibit "A" attached to the Development Agreement (the "**Project Site**"). Unless otherwise defined in this Amendment, all capitalized terms have the meanings given to those terms in the Development Agreement.

B. Pursuant to the State's Redevelopment Dissolution Law (ABx1 26 and subsequent amendments; together, the "Redevelopment Dissolution Law"), the Agency was dissolved as of February 1, 2012 and the Successor Agency to the City of Hercules Redevelopment Agency ("**Successor Agency**") undertook the responsibility of winding up the affairs of the Agency. Consistent with those efforts, the Successor Agency desires to remove itself as a party to the Development Agreement.

C. The Development Agreement addresses, among other things, the potential development of up to 640 residential dwelling units, a neighborhood retail facility, a series of public and private open space amenities, and a network of new roadways (the "**Project**") in accordance with all required Project Approvals.

D. The City and Owner desire to amend certain provisions of the Development Agreement as described in this Amendment, including but not limited to the term of the Development Agreement and removal of the Agency as a party to the Development Agreement.

E. On April 24, 2018, after duly noticed public hearings, the Successor Agency adopted Resolution No. SA 18-018 approving this Amendment, which ordinance is incorporated herein by reference.

F. On May 8, 2018, after duly noticed public hearings, the City Council of the City of Hercules adopted Ordinance No. 509 approving this Amendment, which ordinance is incorporated herein by reference.

AGREEMENT

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, THE CITY, THE SUCCESSOR AGENCY, AND THE OWNER AGREE THAT THE DEVELOPMENT AGREEMENT IS AMENDED AS FOLLOWS:

1. Redevelopment Agency Withdrawal. On behalf of the Agency, the Successor Agency hereby approves the withdrawal of the Agency from the Development Agreement. All rights and obligations of the Agency under the Development Agreement are hereby terminated.
2. Agency Provision Amendments. All references to “Agency” are hereby deemed to refer to “City” unless otherwise specified in this Amendment or unless such reference would obligate the City to act or refrain from acting in a manner contradictory to federal, state, or local law. Section 5 is hereby eliminated.
3. Recital Amendments. Recitals A, B, and C are hereby amended in full to read as follows:
 - A. The Legislature enacted Government Code Section 65864 *et seq.* (“Development Agreement Statute”) in response to the lack of certainty in the approval of development projects, which can result in a waste of resources, escalate the cost of housing, and discourage investment in and commitment to planning that would maximize the efficient utilization of resources.
 - B. The Development Agreement Statute is designed to strengthen the public planning process, encourage private participation in comprehensive, long-range planning, and reduce the economic costs of development. It authorizes a city to enter into a binding agreement with any person having a legal or equitable interest in real property located in unincorporated territory within that city’s sphere of influence regarding the development of that property.
 - C. Pursuant to the Development Agreement Statute and the City of Hercules regulations governing development agreements (Chapter 8 of Title 10 of the City of Hercules Municipal Code, the “Development Agreement Ordinance”), City and Owner desire to enter into this Agreement to govern the development of that certain real property comprising the “Project Site” as described in Exhibit A and depicted on Exhibit B attached hereto. Owner and City agree that this Agreement shall henceforth be governed in accordance with such state and local regulations.
4. Definition Amendments. Section 1.20 is hereby amended in full to read as follows:

1.20 “Laws.” Laws include the constitutions and laws of the State of California, the United States, any political subdivision within the State of California, any codes, statutes, ordinances, resolutions, regulations, official policies, or rules of any of them, including but not limited to the Development Agreement Statute, effective within the City and any court decision, state or federal, thereunder.

5. Term Amendments. Section 2.2 is hereby amended in full to read as follows:

2.2 Land Use Term. The Land Use Term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until April 23, 2019 unless extended or terminated as provided in this section or sections 8.1 or 10.2.

2.2.1 The Land Use Term shall automatically extend by 4 months to August 23, 2019 if Owner submits the following to the City on or before April 23, 2019:

2.2.1.1 A complete application for a tentative map for the Project in a form acceptable to the City in its reasonable discretion; and

2.2.1.2 Payment of \$50,000 of the \$100,000 due to the City for Owner’s proportionate share of CEQA work for the Project required by section 3.6.1.7 of this Agreement.

2.2.2 If the Land Use Term is extended pursuant to section 2.2.1 above, Owner shall pay the remaining \$50,000 due to the City under section 3.6.1.7 of this Agreement on or before August 23, 2019 or prior to recordation of a final map for the Project, whichever occurs first.

6. Vested Right to Develop the Project. The first sentence only of section 3.1 is amended to read as follows:

Owner shall have the vested right to develop the Project on the Project Site and City shall have the right to regulate development of the Project and use the of the Project Site in accordance with the terms and conditions of this Agreement, the Existing Project Approvals, the Subsequent Project Approvals, the Governing Ordinances, and all Laws.

7. Park and Recreation In-Lieu fee. Section 3.6.1.3 is hereby amended in full to read as follows:

3.6.1.3 Park and Recreation In-Lieu Fee. In lieu of dedicating land on the Project Site for the construction of public park and recreation facilities, Developer shall pay to City a fee amount of \$5,000 per residential dwelling (“Park and Recreation In-

Lieu Fee”). The Park and Recreation In-Lieu Fee shall be paid upon issuance of building permits for each residential unit within the Project. The City shall use all Park and Recreation In-Lieu Fees collected from the Project for any park or recreation use consistent with the City’s General Plan.

8. Affordable Housing. Section 3.6.1.6 is hereby amended in full to read as follows:

3.6.1.6 Affordable Housing. Owner shall set aside five percent (5%) of the total number of residential units constructed on the Property for moderate income housing pursuant to the Affordable Housing Plan, Exhibit G to this Agreement.

9. C-3 Requirements. Section 3.6.3 is amended to add the following sentence at the end of the section:

Owner is responsible for all design, construction, and installation of required stormwater control and clean water requirements applicable to the Project at time of construction.


10. Successor and Assigns. This Amendment shall be binding upon and inure to the benefit of the City, the Owner, their respective successors and assigns.

11. Integration. Except as expressly provided to the contrary herein, all provisions of the initial Development Agreement, which is incorporated herein by reference, shall remain in full force and effect. The Development Agreement and this Amendment shall hereafter be collectively referred to as the Development Agreement. The Development Agreement, as amended herein, integrates all of the terms and conditions of agreement between the Parties and supersedes all previous agreements between the Parties with respect to the subject matter hereof. To the extent that the terms of the initial Development Agreement and this Amendment conflict, the terms of this Amendment shall prevail and control.

12. Authority to Execute. The person or person executing this Amendment on behalf of Owner warrant(s) and represent(s) that they have the authority to execute this Amendment, that they are the proper interest holders and/or successors in interest to the previous Parties executing the Development Agreement, and they further warrant that they have the authority to bind their respective Owner to the performance of the obligations hereunder. Signatories shall defend, indemnify, and hold harmless the City, and its agents, officers, and employees, from any challenge related to the authority of any person or person signing this Amendment.


IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date set forth above.

APPROVED AS TO FORM:

By: 
Patrick Tang
City Attorney

CITY:

CITY OF HERCULES
a municipal corporation

By: 
David Biggs
City Manager

OWNER:

SANTA CLARA VALLEY HOUSING
GROUP, INC., a California corporation

By: 
Stephen E. Schott
Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Santa Clara)

On May 24, 2018 before me, Pamela M. Takeshita, Notary Public,

Date

Here Insert Name and Title of the Officer

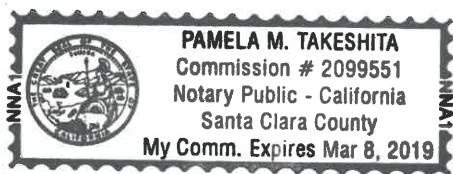
personally appeared Stephen E. Schott

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Pamela M. Takeshita
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Amend. to the Dev. 1.0wter... Document Date: April 24, 2018

Number of Pages: 5 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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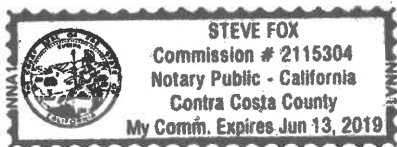
State of California

County of Contra Costa }

On May 22, 2018 before me, Steve Fox, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared DAVID BIGGS
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature Steve Fox
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: AMENDMENT TO THE DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT.

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: DAVID BIGGS

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☒ Other: City Manager

Signer is Representing: City of Hercules

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☐ Other: _____

Signer is Representing: _____