

RESOLUTION NO. 18-18

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL APPROVE ADOPTION OF AMENDMENTS TO EXTEND BY FOUR MONTHS THE TERM AND THE PERFORMANCE DEADLINES OF THE DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT FOR THE HILLTOWN PROJECT (DOPA 07-01) BY AND BETWEEN THE CITY OF HERCULES AND THE SANTA CLARA VALLEY HOUSING GROUP, INC.

WHEREAS, The City and the Santa Clara Valley Housing Group ("Owner") are Parties to that certain Development and Owner Participation Agreement ("Development Agreement") adopted by ordinance of the City Council on or about September 23, 2008, with respect to the development of approximately 44 acres of certain real property located in the City of Hercules, California; and

WHEREAS, 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; and

WHEREAS, the Development Agreement was previously amended by the City Council May 8, 2018 to approve certain amendments to the 2008 Hilltown Development Agreement, including but not limited to removal of the Redevelopment Agency as a party to the agreement and an extension of the term of the Agreement; and

WHEREAS, due to delay resulting from Owner's consideration of a proposal to acquire the property for another use, said proposal ultimately being rejected, the Owner now desires to proceed with the original development as described in the amended Development Agreement and is requesting an extension of the term for the reasons specified in his letter of October 17, 2018 which is Exhibit A to this Resolution; and

WHEREAS, the Planning Commission did hold a properly noticed public hearing on November 19, 2018 to consider owner's application to amend the Development Agreement, and did hear and use its independent judgment to consider said application, reports, recommendations, and related testimony.

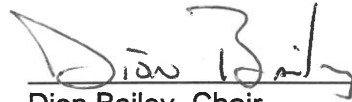
NOW, THEREFORE, BE IT RESOLVED:

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The Planning Commission, based on its independent judgment and analysis, after due study, deliberation and public hearing, finds and determines that the proposed second amendment to the 2008 Development Agreement contained in Exhibit B to this Resolution is in the public interest, is in conformance with the requirements of state law (Government Code Section 65864 *et seq.*) and the City's municipal code (Title 10, Chapter 8).

BE IT FURTHER RESOLVED: The Planning Commission recommends that the City Council approve the proposed second amendment to the 2008 Development Agreement as specified in Exhibit B to this Resolution, attached hereto and incorporated by reference herein.

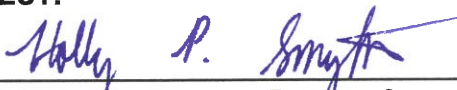
PASSED, AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF HERCULES
on this 19th day of November 2018, by the following votes:

AYES: Galieva, Tolley, Morrison, Rubio, Bailey
NOES: None
ABSENT: None
ABSTAIN: None



Dion Bailey, Chair

ATTEST:



Holly P. Smyth, Planning Director &
Secretary

Exhibit A: Letter Requesting Extension of Term

Exhibit B: Amendment to the Development and Owner Participation Agreement for the Hill Town Redevelopment Project (DOPA 07-01)



October 17, 2018

City of Hercules
Mr. David Biggs
111 Civic Drive
Hercules, CA 94547

RE: Hilltown Site

Dear David:

As I know you are aware, the deal we were attempting to negotiate with Costco has proven unfruitful. Their lack of being able to provide a reasonable, non-refundable deposit amount after an Initial Feasibility Period along with the length of time for entitlements and workplans that they insisted upon were too much to overcome.

I have instructed my team to resume activities toward the submission of our application in accordance with the Development Agreement.

Given the fact that we put our project on hold since early July, while exploring the feasibility with Costco and pursuant with comments we heard from several Councilmembers during our presentation/update in August, we are requesting adding four months to the timeline established in the Development Agreement.

Please identify what will be required of us so that the matter may be heard by Council at the earliest opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen E. Schott', is written over a horizontal line.

Stephen E. Schott

CC: Patrick Tang
Jim Sullivan
Cory Kusich

404 Saratoga Avenue, Suite 100
Santa Clara, CA 95050-7062
Facsimile: 408-985-6050

Mailing Address:
P.O. Box 58171
Santa Clara, CA 95052-8171

**AMENDMENT No. 2 TO THE DEVELOPMENT AND
OWNER PARTICIPATION AGREEMENT
FOR THE HILL TOWN PROJECT (DOPA 07-01) BY AND
BETWEEN 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 ____ day of _____, 201_, between the City of Hercules, a municipal corporation (the "**City**"), and Santa Clara Valley Housing Group, Inc., a California corporation, ("**Owner**"). The City and Owner are collectively "**Parties**" to this Amendment.

RECITALS

A. The City 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. 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.

C. The Development Agreement was previously amended by the City Council in May, 2018 to approve certain amendments, including but not limited to removal of the Redevelopment Agency as a party to the Agreement and an extension of the term of the Agreement; and

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

E. On _____, 201_, after duly noticed public hearings, the City Council of the City of Hercules adopted Ordinance No. ____ approving this Amendment, which ordinance is incorporated herein by reference.

AGREEMENT

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

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 **August 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 **December 23, 2019** if Owner submits the following to the City on or before **August 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 **December 23, 2019** or prior to recordation of a final map for the Project, whichever occurs first. “

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

Integration. Except as expressly provided to the contrary herein, all provisions of the initial Development Agreement as amended, which is incorporated herein by reference, shall remain in full force and effect. The Development Agreement and this Second 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 as amended and this Amendment conflict, the terms of this Amendment shall prevail and control.

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