

**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 as of the 8th day of January, 2019, 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 January 8, 2019, after duly noticed public hearings, the City Council of the City of Hercules adopted Ordinance No. 516 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 **September 10, 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 **January 10, 2020** if Owner submits the following to the City on or before **September 10, 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 **January 10, 2020** 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