

RESOLUTION NO. 2019-11

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL APPROVE ADOPTION OF AMENDMENT #3 TO EXTEND THE TERM 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 revised by City Council's approval on May 8, 2018 of Amendment #1 making 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, the Development Agreement was further revised by City Council's approval on January 8, 2019 of Amendment #2 making further modifications of timelines; and

WHEREAS, the City and Owner desire to further amend certain provisions of the Development Agreement as described in this Amendment No. 3, including but not limited to the term of the Development Agreement and affordable housing requirements as stated therein; and

WHEREAS, the Planning Commission did hold a properly noticed public hearing on October 21, 2019 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 third

amendment to the 2008 Development Agreement contained in Exhibit A 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 third amendment to the 2008 Development Agreement as specified in Exhibit A to this Resolution, attached hereto and incorporated by reference herein.

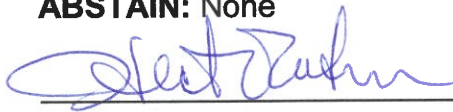
PASSED, AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF HERCULES on this 21st day of October 2019, by the following votes:

AYES: Commissioners K. Morrison, H. Rubio, N. Sacramento, S. Tolley

NOES: None

ABSENT: Chair I. Galieva

ABSTAIN: None



Hector Rubio, Acting Planning Chair, 2019

ATTEST:



Holly P. Smyth, Planning Director &
Secretary

Exhibit A: Amendment #3 to the Development and Owner Participation Agreement for the Hill Town Redevelopment Project (DOPA 07-01)

AMENDMENT No. 3 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

This AMENDMENT No. 3 TO THE DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT (this "Amendment No. 3") is entered into as of the ____ day of _____, 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 No. 3, 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 roadways (the "Project") in accordance with all required Project Approvals.

C. The Development Agreement was previously amended twice by the City Council. The first Amendment was made by the City Council in May of 2018 to approve certain amendments, including but not limited to removal of the Redevelopment Agency as a party to the Development Agreement and an extension of the term of the Development Agreement ("Amendment No. 1"). The City Council also amended the Development Agreement a second time in January of 2019 in order to further extend the term ("Amendment No. 2").

D. The City and Owner desire to further amend certain provisions of the Development Agreement as described in this Amendment No. 3, including but not limited to the term of the Development Agreement and affordable housing requirements.

E. On _____, 2019, after duly noticed public hearings, the City Council of the City of Hercules adopted Ordinance No. _____ approving this Amendment No. 3, 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:

1. 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 **June 30, 2020 or the date four months after the date on which the City Council opens the first public hearing on the tentative map application for the Project, whichever is later**, unless the Land Use Term is extended or terminated as provided in this section or sections 8.1 or 10.2.

2.2.1 Owner shall pay the remaining \$50,000 of the \$100,000 due to the City under section 3.6.1.7 of this Agreement on or before January 10, 2020.

[Sections 2.2.1.1, 2.2.1.2, and 2.2.2 are hereby eliminated.]”

2. Affordable Housing Amendments. 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 **an Affordable Housing Plan to be agreed to and executed by the Parties prior to issuance of the first residential unit building permit for the Project.**”

3. Successor and Assigns. This Amendment No. 3 shall be binding upon and inure to the benefit of the City, the Owner, and their respective successors and assigns.
4. 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 Amendment No. 3 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 No. 3 conflict, the terms of this Amendment No. 3 shall prevail and control.
5. Authority to Execute. The person or persons executing this Amendment No. 3 on behalf of Owner warrant(s) and represent(s) that they have the authority to execute this Amendment No. 3, 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 persons signing this Amendment No. 3.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 3 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

By: _____
Dan Romero
Mayor

OWNER:

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

By: _____
Stephen E. Schott
Vice President