

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AUTHORIZING THE INTERIM CITY MANAGER, OR DESIGNEE, TO
EXECUTE A SIXTH AMENDMENT TO THE DISPOSITION AND
DEVELOPMENT AGREEMENT AND ALL OTHER NECESSARY
DOCUMENTS BETWEEN THE CITY OF ALAMEDA AND ALAMEDA
POINT PARTNERS, LLC FOR THE SITE A DEVELOPMENT AT
ALAMEDA POINT

WHEREAS, the City of Alameda ("City") and Alameda Point Partners, LLC ("Developer") entered into a Disposition and Development Agreement for Alameda Point Site A dated as of August 6, 2015 ("Original DDA"), authorized by City of Alameda Ordinance No. 3127, whereby the City agreed to convey to the Developer Property described in the Original DDA and located at the former Naval Air Station Alameda under certain terms and conditions and Developer agreed to develop the Project described in the Original DDA and on the Property all in accordance with a Milestone Schedule incorporated into the Original DDA; and

WHEREAS, the City and Developer entered into that certain First Amendment to Disposition and Development Agreement dated as of February 8, 2017, and authorized by City Ordinance No. 3174 (the "First Amendment"), that certain Second Amendment to Disposition and Development Agreement dated as of July 19, 2017, and authorized by City Ordinance No. 3185 (the "Second Amendment"), that certain Third Amendment to Disposition and Development Agreement dated as of March 7, 2018, and authorized by City Council Resolution No. 15352 (the "Third Amendment"), that certain Fourth Amendment to Disposition and Development Agreement dated as of October 2, 2018 and authorized by City Council Resolution No. 15437 (the "Fourth Amendment"); and

WHEREAS, the Developer and Eden Housing, Inc. ("Eden") entered into that certain Partial Assignment and Assumption Agreement dated as of March 7, 2016, whereby the Developer assigned to Eden certain obligations with respect to the DDA including the obligation to construct 130 units of the very low- and low-income housing included within the Site A Project (as defined below); and

WHEREAS, the City and Eden entered into that certain Fifth Amendment to Disposition and Development Agreement dated as of October 2, 2018 and authorized by City Council Resolution No. 15438 (the "Fifth Amendment"; and together with the Original DDA, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and the Fifth Amendment, the "DDA"); and

WHEREAS, on February 4, 2014, by Resolution No. 14891, the City Council certified the Final Environmental Impact Report ("FEIR") (State Clearinghouse No. 201312043) under the California Environmental Quality Act ("CEQA"), California Public Resources Code Section 21000 et seq. and adopted written findings and a Mitigation Monitoring and Reporting Program ("MMRP") for the Alameda Point project, including the Town Center Plan area, which contains the project site (Alameda Point EIR); and

WHEREAS, on November 30, 2021, by Resolution No. 15841, the City Council certified a FEIR (State Clearinghouse No. 2021030563) under CEQA, and adopted written findings, a Statement of Overriding Considerations, and a MMRP for the General Plan Amendment to update the Alameda General Plan (General Plan EIR), which evaluated the environmental impacts of 12,000 additional housing units in Alameda over 20 years, including 5,353 housing units to accommodate the RHNA between 2023 through 2031; and

WHEREAS, the City has prepared an Environmental Checklist for Streamlined Review, which documents the application of the criteria for streamlining in Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 and concludes, based on substantial evidence, that no further review under CEQA is required; and

WHEREAS, the DDA contemplates development of a 68-acre area within Alameda Point that extends generally from the Main Street entrance of Alameda Point to the eastern edge of the Seaplane Lagoon and includes 800 housing units (200 affordable), 600,000 square feet of commercial development, and extensive parks and utility infrastructure (Site A Project); and

WHEREAS, the City issued a notice of default under the DDA, contended that it had not been cured, and contended that the default entitled the City to exercise certain rights and remedies under the DDA, including but not limited to the right of reverter and termination in 17.35 of the DDA and the option to repurchase, reenter, and repossess in Section 17.6; and

WHEREAS, the City and Developer agreed to a Tolling Agreement effective May 20, 2021, subsequently extended through April 30, 2022, further extended through July 31, 2022, and further extended through October 31, 2022; and

WHEREAS, the Developer has requested that the City prepare and approve a Sixth Amendment to the DDA to allow the Developer to extend the date for close of escrow on Phase 2 to no later than December 31, 2022; and

WHEREAS, the DDA authorizes the Developer to extend the date for close of escrow on Phase 2 by making certain payments to the City, the amount of which are dependent upon the stage of completion for the Phase 1 Backbone Infrastructure; and

WHEREAS, the Developer has paid the Extension Fee that would have been due if 50% or more of the Phase 1 Backbone Infrastructure was complete even though at the time of the request less than 50% of the Phase 1 Backbone Infrastructure was complete on the basis that Developer has been delayed as a result of the unforeseen infrastructure conditions existing at the Site; and

WHEREAS, the City and Developer wish to revise the DDA to increase the number of residential units to be constructed at Site A; and

WHEREAS, on July 25, 2022, the Planning Board approved an amended Development Plan, which includes the following components:

a. Approximately 1,300 residential units, of which 25% will be affordable units as more specifically defined in the DDA;

b. A minimum of 300,000 square feet and up to 360,000 square feet of permitted and conditionally permitted non-residential uses (including but not limited to, retail, commercial, civic and other commercial space) and, which may include the adaptive reuse of some of the existing structures on the Property; and

WHEREAS, the City has determined that approval of the Sixth Amendment to the DDA is in the best interest of the City because it will allow the Developer to continue to proceed in a diligent manner with the construction of Phases 1 and 2 of the Site, and further the City's progress toward its Housing Element goals; and

WHEREAS, the Developer and the City desire to amend the DDA in accordance with the terms and conditions of the Sixth Amendment to the DDA.

NOW, THEREFORE, BE IT ORDAINED, that after hearing all qualified and interested persons and receiving and considering all relevant evidence, the City Council of the City of Alameda finds and determines as follows:

Section 1. The Sixth Amendment to the DDA substantially in the form on file with the City Clerk, subject only to such changes as are approved by the City Attorney and the Interim City Manager, is hereby approved.

Section 2. The Interim City Manager, or designee, is authorized to execute the Sixth Amendment to the DDA and to take such other actions as are contemplated and consistent with the Sixth Amendment to the DDA.

Section 3. If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 4. This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the _____ day of _____ 2022, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____ 2022.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney
City of Alameda