

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BURLINGAME ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BURLINGAME AND 220 PARK - BURLINGAME LLC, RELATED TO THE DEVELOPMENT PROJECT AT 220 PARK ROAD (HISTORIC POST OFFICE PROJECT).

WHEREAS, on April 9, 2020, 220 Park – Burlingame, LLC (Sares Regis / Dostart Development Company) (“Developer”) submitted a proposal for the adaptive reuse and redevelopment of the former Post Office building at 220 Park Road, to include construction of a new six-story, 140,000 sf office project with 11,915 sf of ground floor retail and two levels of underground parking with 280 parking spaces, including portions of the underground garage below City Parking Lot E (the “Post Office Project”), and filed applications for Commercial Design Review, (Historic) Parking Variance and (Historic) Height Variance (collectively, the “Project Approvals”); and

WHEREAS, on November 23, 2020, the Burlingame Historic Preservation Commission (comprised of the Planning Commission) approved listing the Post Office building on the City’s Local Register of Historic Places; and

WHEREAS, pursuant to the California Environmental Quality Act (“CEQA”) (set forth in Public Resources Code, Section 21000 et seq.) and the State CEQA Guidelines (“CEQA Guidelines”) (set forth in California Code of Regulations section 15000 et seq.), the City Council previously adopted a Mitigated Negative Declaration for City’s Burlingame Downtown Specific Plan (the “Specific Plan MND”), approved the Specific Plan in reliance on the Specific Plan MND, and in connection therewith adopted mitigation measures as Standard Conditions of Approval to be applied to the development activities contemplated by the Specific Plan; and

WHEREAS, pursuant to CEQA the City Council previously certified an Environmental Impact Report for City’s 2040 General Plan (Envision Burlingame) (the “General Plan EIR”), approved the 2040 General Plan in reliance on the General Plan EIR, and in connection therewith adopted a mitigation measures to be applied to the development activities contemplated by the 2040 General Plan; and

WHEREAS, Section 15183 of the CEQA Guidelines provides that projects which are consistent with the development density established by existing zoning, community plan or general plan policies for which an environmental impact report was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site or were not analyzed in the previous environmental impact report; and

WHEREAS, pursuant to CEQA the City through an independent consultant prepared an initial study which evaluated potential significant environmental effects of the Post Office Project (the “Project Initial Study”), considered the treatment of such effects by the General Plan EIR and Specific Plan MND, identified the mitigation measures, Specific Plan Standard Conditions, General Plan goals and policies, and existing rules and regulations applicable to such effects, and concluded that all such effects were adequately addressed, no further CEQA analysis was

required, and consideration of the Project Approvals can rely on CEQA Guidelines section 15183; and

WHEREAS, on November 23, 2020, on the basis of the Project Initial Study and related documents submitted and reviewed for potential environmental impacts per CEQA, and comments received and addressed by the Planning Commission, the Planning Commission adopted a CEQA finding that there is no substantial evidence that the Post Office Project will have a significant effect on the environment, and may rely on CEQA Section 15183, based on consistency with the General Plan and Downtown Specific Plan, with incorporation of mitigation measures set forth in a Mitigation Monitoring and Reporting Plan (“MMRP”); and

WHEREAS, on November 23, 2020, after adopting its CEQA finding the Planning Commission approved the Project Approvals subject to the MMRP; and

WHEREAS, on December 11, 2020, pursuant to CEQA the City posted with the County Clerk of the County of San Mateo a CEQA Notice of Determination announcing approval of the Project Approvals and the CEQA documentation on which the Project Approvals relied; and.

WHEREAS, Developer has requested that the City enter into a proposed statutory development agreement regarding the Post Office Project pursuant to California Government Code section 65864 *et seq.* (the “Development Agreement Statute”), which authorizes a city and a party having a legal or equitable interest in real property to enter into a voluntary binding, long-term development agreement, which among other things can establish certain development rights in property and provide certain benefits for the public; and

WHEREAS, the City is informed that Developer is under contract with the current property owner to purchase fee title to the property at 220 Park Road, and therefore has sufficient interest in the property to enter into a development agreement; and

WHEREAS, City staff and Developer have negotiated proposed terms for a development agreement for the Post Office Project, attached hereto as Exhibit “A” (“Development Agreement”). The Development Agreement would provide certain benefits to Developer not otherwise available under the regular permitting system (here, easements to use City land, vested rights and a longer permit life to build) and in return would provide to City certain substantial above-nexus community benefits, including public parking rights within the Post Office Project garage on nights and weekends, construction of public amenity improvements between the City’s future potential Town Square and the rehabilitated Post Office building, and a \$2,000,000 (Two Million Dollar) cash payment, which can be used for construction of the Town Square if so desired by City; and

WHEREAS, on January 11, 2021, as required by the Development Agreement Statute, the Planning Commission reviewed the proposed terms for the development agreement, and recommended approval of a development agreement consistent with those terms to the City Council; and

WHEREAS, at its regular meeting of February 1, 2021, the Burlingame City Council conducted a duly noticed public hearing to consider the Planning Commission's recommendation to adopt a Development Agreement between the City and Developer, related to the Post Office Project; and

WHEREAS, pursuant to CEQA the Development Agreement is considered a subsequent approval for the Post Office Project and may rely on the CEQA documentation used to support the Project Approvals to the extent appropriate.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGAME DOES ORDAIN AS FOLLOWS:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council hereby finds that the proposed Ordinance is in the public interest.

Section 3. The City Council hereby finds, on the basis of the Project Initial Study and related documents submitted and reviewed for potential environmental impacts of the Development Agreement under CEQA, and comments received and addressed by the Council, based on substantial evidence in the record (i) there are no environmental effects peculiar to the Development Agreement or its approval not previously identified as part of the Project Approvals; (ii) there are no significant environmental effects associated with the Development Agreement that were not analyzed in the General Plan EIR with which the Development Agreement is consistent; (iii) there are no potentially significant off-site impacts or cumulative impacts from the Development Agreement which were not discussed in the General Plan EIR; (iv) no new information has become available since certification of the General Plan EIR that would indicate previously identified significant effects discussed in the General Plan EIR may have a more severe adverse impact from the Development Agreement than as discussed in the General Plan EIR; and (v) compliance with the mitigation measures set forth in the MMRP and in the other conditions of approval for the Post Office Project will substantially mitigate all environmental effects of the Development Agreement; and furthermore, the Specific Plan MND provides additional documentation and support for the above findings; so that CEQA Guidelines section 15183 is satisfied and can be relied on in approving the Development Agreement.

Section 4. That based on an analysis of the facts set forth above, the staff report to the City Council, the presentation to the Council, supporting documents, and public testimony, the City Council hereby adopts the following as its findings:

1. The development agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and the Downtown Specific Plan, with Variances for height and parking approved pursuant to the Historic Preservation Ordinance.
2. The development agreement is compatible with the uses authorized in and the regulations prescribed for the HMU (Howard Mixed Use) zoning district in which the property is located, with Variances for height and parking approved pursuant to the Historic Preservation Ordinance.

3. The development agreement is in conformity with public convenience, general welfare and good land use practices.
4. The development agreement will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City.
5. The development agreement will not adversely affect the orderly development of property or the preservation of property values within the City.
6. The development agreement will promote and encourage the development of the project by providing a greater degree of certainty with respect thereto.
7. The development agreement will result in the provision of public benefits by the applicant, including, but not limited to, financial commitments and public parking rights, the value of which exceeds the value of the easements to be granted to Developer over a portion of the adjacent City-owned Lot E property.
8. The development agreement can be approved without additional CEQA environmental review pursuant to CEQA Guidelines section 15183, in reliance on the Project Initial Study, the General Plan EIR and Specific Plan MND and the Project Approvals.

Section 5. The City Council hereby approves and adopts the Development Agreement, which shall be dated upon execution by the parties on or following the effective date of this ordinance. The City Council authorizes and directs the City Manager to execute the Development Agreement in substantially the form attached hereto as Exhibit "A", subject to minor technical conforming changes as may be approved by the City Attorney. The City Council further authorizes the City Manager to execute and record such documents, including the City Easement and Public Use Agreement, and take such actions as are necessary to consummate the transactions provided for in the Development Agreement.

Section 6. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The City Council of the City of Burlingame hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 7. This Ordinance shall go into effect 30 days following its adoption.

Section 8. The City Clerk is directed to publish this Ordinance in a manner required by law.

Section 9. City staff are directed to file a CEQA Notice of Determination regarding approval of the Development Agreement with the County Clerk of the County of San Mateo.

Exhibit A: Development Agreement

I, MEAGHAN HASSEL-SHEARER, City Clerk of the City of Burlingame, certify that the foregoing ordinance was introduced at a regular meeting of the City Council held on 1st day of February 2021 and adopted thereafter at a regular meeting of the City Council held on the ____ day of _____ by the following votes:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

ATTEST:

Meaghan Hassel - Shearer, City Clerk

OAK #4846-0227-6057 v1

ADD EXHIBIT A HERE

**DEVELOPMENT AGREEMENT INCLUDING ALL EXHIBITS, INCLUDING
EASEMENT AND PUBLIC USE AGREEMENT/
SCHEDULE OF PERFORMANCE**