

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BURLINGAME ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF BURLINGAME AND DW BURLINGAME I OWNER LLC, DW BURLINGAME II OWNER LLC, BURLINGAME II OWNER A LLC, BURLINGAME II OWNER B LLC, AND DW BURLINGAME III OWNER LLC, RELATED TO THE DEVELOPMENT PROJECT AT 1200-1340 OLD BAYSHORE HIGHWAY

WHEREAS, on March 24, 2022 DW Burlingame I Owner LLC, DW Burlingame II Owner LLC, DW Burlingame II Owner A LLC, DW Burlingame II Owner B LLC, and DW Burlingame III Owner LLC (collectively, “Developer”) filed an application with the City of Burlingame Community Development Department – Planning Division requesting approval of a development project located at 1200-1340 Old Bayshore Highway and consisting generally of three, 11-story office/research & development buildings and two, 10-10.5-story parking structures, which applications included requests for Environmental Review (and associated Water Supply Assessment), Commercial Design Review, Special Permits for Building Heights and Development under Tier 3/Community Benefits, and a Vesting Tentative Map (collectively, the “Final EIR” and the “Project Approvals”); and

WHEREAS, on January 17, 2023, the Developer submitted an application for a Development Agreement per Municipal Code Chapter 25.104 and 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, on February 13, 2023, in conjunction with the Design Review Study meeting, the Planning Commission held a pre-application study session on the Development Agreement application pursuant to Burlingame Municipal Code Section 25.104.040; and

WHEREAS, City staff and Developer have negotiated proposed terms for a development agreement for the 1200-1340 Old Bayshore Highway Project (the “Development Agreement”), attached hereto as Attachment 1; and

WHEREAS, the Development Agreement, among other things, sets forth the effective date and term of the agreement; applicable fees; applicable rules, regulations and policies; required infrastructure improvements; provisions governing amendments, annual review, and default; and other miscellaneous provisions; and

WHEREAS, on March 11, 2024, and as required by the Development Agreement Statute and the Burlingame Municipal Code, the Planning Commission conducted a duly noticed public hearing to consider the Final EIR and the Project Approvals and the Development Agreement and recommended that the City Council certify the Final EIR, approve the Project Approvals, and

approve an ordinance adopting the Development Agreement; and

WHEREAS, at its regular meeting of April 1, 2024, the Burlingame City Council conducted a duly noticed public hearing to consider the Planning Commission's recommendations on the Final EIR, Project Approvals, and the Development Agreement; and

WHEREAS, at that regular meeting of April 1, 2024, the Burlingame City Council certified the Final EIR (Resolution _____), approved the Project Approvals _____ (Resolution _____), and introduced and adopted the first reading of this Ordinance No. _____ adopting the Development Agreement; and

WHEREAS, at its regular meeting of April 15, 2024 the Burlingame City Council adopted this Ordinance No. _____ adopting the Development Agreement.

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 Final EIR was properly certified by the City Council pursuant to Resolution _____, which Final EIR evaluated any and all potential environmental effects caused by adoption of the Development Agreement and the Project Approvals. The Final EIR concluded that the Project would not cause any significant and unavoidable impacts and that all other impacts could be mitigated to less than significant levels through implementation of identified mitigation measures.

Section 4. That based on the recitals set forth above, the staff reports for the Project Approvals, the FEIR (including the Mitigation Monitoring and Reporting Program and all appendices), the CEQA Findings, and all other documents, reports, studies, memoranda, maps, oral and written testimony, and materials in the City's file for the Project Approvals; and all adopted City planning documents relating to the Project including the City's General Plan and Municipal Code and all other applicable City laws and regulations (collectively, the "Record"), 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 with the Special Permits for building height and Development under Tier 3/Community Benefits.
2. The Development Agreement is consistent with the uses authorized in and the regulations prescribed for the BFC (Bayfront Commercial) zoning district in which

the property is located, with Special Permits for building height and Development under Tier 3/Community Benefits.

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, including, but not limited to, a public plaza; publicly accessible park space; cultural, arts and events spaces; commuter shuttle; sea level rise infrastructure; public parking; and a \$3,500,000 contribution towards the City's Broadway Grade Separation Project.

Section 5. The City Council hereby approves and adopts the Development Agreement attached hereto as Attachment 1 and authorizes and directs the City Manager to execute it in substantially the form attached hereto as Attachment 1, 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, 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.

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 of April 2024 and adopted thereafter at a regular meeting of the City Council held on the 15th day of 2024 by the following votes:

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

ATTEST:

Meaghan Hassel - Shearer, City Clerk

Attachment 1: Development Agreement

- Exhibit A - Property Map
- Exhibit B - Legal Description of Property
- Exhibit C - Pre-Vesting Tentative Map Property Ownership
- Exhibit D - Post-Vesting Tentative Map Property Ownership
- Exhibit E - Temporary and Final Bay Trail Improvements
- Exhibit F - Map of Community Benefits
- Exhibit G - Impact Fees
- Exhibit H - Annual Review Form
- Exhibit I - Form of Assignment and Assumption