

City of Brisbane
Memo

To: Mayor Liu and Members of the City Council

From: Michael H. Roush, City Attorney

Subject: Adoption of Ordinance 616, approving the First Amendment to the Development Agreement with Sierra Point LLC concerning the Opus Office Center Project (3000-3500 Marina Boulevard)

Meeting: March 2, 2017

City Council introduced on February 2, 2017 the above referenced Ordinance without change. It is on the March 2, 2017 agenda for adoption.

DRAFT ORDINANCE NO. 616

**AN ORDINANCE OF THE CITY OF BRISBANE APPROVING THE
FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR
ASSESSOR'S PARCEL NUMBER 007-165-020 (OPUS OFFICE
CENTER PROJECT)**

WHEREAS, Section 65864 *et. seq.* of the California Government Code and Resolution No. 88-10 adopted by the Brisbane City Council authorize the City to enter into a development agreement with any person having a legal or equitable interest in real property for the development of that property; and

WHEREAS, SIERRA POINT, LLC, a California limited liability company ("Developer") is the owner of vacant land located on the northwesterly side of Marina Boulevard, easterly of Highway 101, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-165-020 ("the Property"); and

WHEREAS, the City of Brisbane ("City") has granted land use approvals for development of an office project on the Property, consisting of approximately 438,104 square feet of office space in two buildings (8 and 10 stories), a 5-level 1,175 space parking structure, and 211 surface parking spaces ("the Project"), such approvals being identified as Design Permit DP-5-07 (as extended by DP-2-11), Use Permit UP-3-08 (as extended by UP-7-11), Variance V-1-08 (as extended by V-2-11), and Tentative Parcel Map TPM-1-08; and

WHEREAS, the City entered into a Development Agreement (Case DA-1-11) with the Developer on June 12, 2012 extending the above-referenced land use approvals to June 12, 2022 in exchange for a requirement for the Developer to construct the project to LEED Gold standards; and

WHEREAS, the Developer has filed an application to amend DA-1-11, said amendment identified as the First Amendment to the Development Agreement or Case DA-1-16; and

WHEREAS, the proposed First Amendment to the Development Agreement has been prepared and notice of the City's intention to consider adoption of such agreement amendment was given in accordance with the requirements of California Government Code Section 65867; and

WHEREAS, pursuant to the California Environmental Quality Act, the City has determined that Case DA-1-16 does not result in any new or substantially greater significant effects or require new mitigation measures not identified in the 2008 Initial Study (IS) and Mitigated Negative Declaration (MND) prepared for the Opus Office Center project and therefore does not meet the conditions described in CEQA Guidelines Section 15162 for preparation of a subsequent MND and an *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration* (Addendum) dated December 2016 has been prepared; and

WHEREAS, on January 12, 2017, following the conduct of a duly noticed public hearing, the Brisbane Planning Commission adopted Resolution No. DA-1-16, recommending to the City Council that the draft development agreement amendment be adopted; and

WHEREAS, the proposed First Amendment to the Development Agreement between the City and Developer was presented to the City Council for consideration, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, on February 2, 2017, the City Council conducted a duly noticed public hearing on the proposed First Amendment to the Development Agreement at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the City Council has considered the staff reports, the *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration*, the minutes, proceedings and recommendations of the Planning Commission, and the oral and documentary evidence presented at the public hearing and has determined that it would be in the best interest of the City to enact the Development Agreement,

NOW, THEREFORE, the City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: The City Council finds that amending the Development Agreement with Sierra Point, LLC, in the form attached hereto as Exhibit A, is consistent with the Brisbane General Plan and the Brisbane Zoning Ordinance and will provide substantial public benefits beyond the exactions for public improvements that would be required under the normal development review process.

SECTION 2: The City Council further finds that the environmental impacts of the Project have been fully and completely analyzed in the 2008 Mitigated Negative Declaration prepared for the Project, and as described in the 2016 *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration* (Addendum) and the Project as amended does not result in any of the conditions described in CEQA Guidelines Section 15162 for preparation of a subsequent MND.

SECTION 3: The First Amendment to the Development Agreement attached hereto as Exhibit A is hereby enacted and adopted.

SECTION 4: The City Council hereby authorizes and directs the Mayor to execute the First Amendment to the Development Agreement for and on behalf of the City after the effective date of this Ordinance.

SECTION 5: This ordinance shall take effect thirty (30) days from the date of its adoption.

The above and foregoing Ordinance was regularly introduced and, after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City

Council of the City of Brisbane held on the _____ day of _____, 2017, by
the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Recording requested by:

City of Brisbane

When recorded, mail to:

City Clerk
City of Brisbane
50 Park Place
Brisbane, CA 94005

Exempt from recording fee: Government Code, sections 6103, 27383

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR ASSESSOR'S PARCEL NUMBER
007-165-020 (OPUS OFFICE CENTER PROJECT)**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "First Amendment") is entered into this 1st day of April, 2017 between the City of Brisbane, a municipal corporation ("City") and Sierra Point, L.L.C., a Delaware limited liability company ("Developer").

RECITALS

A. On June 12, 2012 City and Developer entered into a Development Agreement ("the Agreement") concerning the property identified as San Mateo County Assessor's Parcel No. 007-165-020, consisting of approximately 8.87 +/- acres and commonly known as 3000-3500 Marina Boulevard, Brisbane, California, more particularly described in Exhibit A attached hereto and made a part hereof ("the Property").

B. The Agreement was recorded on February 4, 2013, in the Official Records of San Mateo County, Instrument No. 2013-018557.

C. City and Developer now wish to amend the Agreement as provided herein.

D. The Successor Agency of the Redevelopment Agency of the City of Brisbane ("Successor Agency") owns certain undeveloped property located at the eastern end of Sierra Point Parkway, commonly known as 400 Sierra Point Parkway in the City, consisting of approximately 3.4 +/- acres and identified as a portion of San Mateo County Assessor's Parcel No. 007-165-060 ("the Leased Property"). City and Developer's predecessor in interest previously entered into a Ground Lease Agreement, dated March 29, 1984 and recorded March 29, 1984 for the lease of the Leased Property by City to Developer's predecessor in interest.

E. City has prepared an *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration* dated December 2016 ("Addendum") to the Opus Office Center Initial Study/Mitigated Negative Declaration ("2008 IS/MND") which was adopted by the City in

December 2008. The Addendum concludes that the proposed revisions to the Agreement and the Opus Office Center project (the "Project") which are the subject of this First Amendment (1) would not cause new significant environmental effects not identified in the 2008 IS/MND, and (2) would not cause environmental effects to be substantially more severe than those identified in the 2008 IS/MND, and no substantive changes have occurred with respect to current circumstances under which the Project would be undertaken that would cause new or substantially more severe significant environmental effects than were identified in the 2008 IS/MND, nor has new information become available that shows that the Project would cause new or substantially more severe environmental effects which have not already been analyzed in the 2008 IS/MND.

F. As provided by law, on January 12, 2017, the Planning Commission of the City conducted a public hearing on the proposed amendment to the Agreement adopted Resolution No. DA-1-16 recommending the Brisbane City Council approve the First Amendment.

G. As provided by law, on February 2, 2017, the City Council of the City conducted a public hearing on the First Amendment, accepted the findings and recommendations of the Planning Commission, determined the First Amendment was consistent with the General Plan and introduced Ordinance No. 616 to adopt the First Amendment to the Agreement.

H. On March 2, 2017, the City Council adopted Ordinance No. 616 adopting the First Amendment to the Agreement. Ordinance No.616 became effective April 1, 2017.

Now, therefore, in consideration of the mutual covenants contained in this First Amendment, City and Developer agree as follows:

Section 1. Unless otherwise provided herein, the Definitions used in the Agreement shall have the same meanings as used in this First Amendment.

Section 2. Section 2.2 of the Agreement (Land Use Term) is amended to read as follows:

"2.2 Land Use Term. The term of the Agreement, as amended, shall commence on the effective date of Ordinance No. 616 (as set forth in Recital H) and shall expire 10 years thereafter, on April 1, 2027, subject to Sections 6 and 8.2 of the Agreement, unless sooner terminated or extended as hereinafter provided. Notwithstanding any provisions to the contrary that may be contained in City's Subdivision or Zoning Ordinances, the Project Approvals shall remain in full force and effect during the Land Use Term of this Agreement, as amended, and any extensions thereof."

Section 3. Section 4.1 of the Agreement (Applicable Ordinances and Approvals) is hereby amended by adding thereto a new subsection (d) to read as follows.

"4.1 Applicable Ordinances and Approvals. Developer shall have the right to proceed with development of the Project in compliance with Applicable Law, subject to the following:

(Subsections (a), (b) and (c), no change.)

(d) Notwithstanding anything in this Agreement to the contrary, City determines that the permitted uses in the Research and Development category of the SP-CRO Sierra Point Commercial District, as generally described in Chapters 17.02 and 17.18 of the Brisbane Municipal Code include, but are not limited to, the following uses and facilities:

- (i) A use primarily engaged in the study, testing, engineering, design, analysis of experimental products, processes or services related to current or new technologies. Research and development of uses may include manufacturing, fabricating, processing or storing products, materials or similar related activities where such activities are accessory to research, development or evaluation. Related administrative uses such as finance, marketing, sales, accounting, purchasing or corporate offices; providing services to others on- or off-site; and related educational uses may also be included provided they remain accessory to the primary uses of “research and development” , and are consistent with any limitations on accessory uses for the SP-CRO Sierra Point Commercial District. Typical “research and development” uses may include, but are not limited to, computer software and hardware firms, electronic research firms, biotechnical firms, clean technology firms and pharmaceutical research laboratories.
- (ii) A use for which research and development components require substantial laboratory space and/or equipment for testing or development, which may also include associated adjacent or nearby work stations for recording or preparing written documentation of research. Typical laboratory research and development uses may include, but are not limited to, biotechnical firms and pharmaceutical research laboratories.
- (iii) A use for which the research and development components primarily occur in an office setting, with minimal laboratory area or research equipment, other than computers and other related electronic equipment. Typical office type research and development uses may include, but are not limited to, computer software and computer simulation firms.
- (iv) Any use otherwise determined by the City’s Community Development Director to be a permitted use under the research and development category.

The prohibition of research and development including the use of live dogs, cats or nonhuman primates set forth in Section 17.18.020 K of the Brisbane Municipal Code is not affected by this Section 4.1 (d), nor is the requirement for compliance with conditions imposed by the Fire

Marshal or Building Official on building permit applications and building design. As to the uses described in this Section 4.1 (d), the Developer shall not be required to apply for a conditional use permit for such use unless, following a risk assessment under Section 17.18.045 of the Brisbane Municipal Code (as said Section may be amended) or following an evaluation by the Fire Marshal or Building Official, there is a recommendation that certain conditions of approval are necessary to protect the public health, safety and welfare and those conditions are not otherwise included in any of the Codes, standards or regulations applicable to such use. The City and the Developer recognize that the likelihood of such conditions not being included in the Codes, standards or regulations applicable to such uses is not substantial. Prior to submitting an application for a Subsequent Project Approval, a Developer may submit a Risk Assessment Questionnaire in order for the City to conduct a risk analysis and for the Fire Marshal and Building Official to evaluate the risks. Thirty days from the date the City has received the completed Risk Assessment Questionnaire and any other information from the Developer the City needs to conduct the risk analysis and undertake an evaluation of the risk, the City will advise the Developer, based on the completed Questionnaire and other information it has received, whether the Developer needs to apply for a conditional use permit. If the City fails to advise the Developer within 30 days of its receipt of a fully completed Questionnaire (and any other information that the City has requested) whether the Developer needs to apply for a conditional use permit, the Developer shall not be required to apply for such permit. ”

Section 4. Within 10 days of the effective date of Ordinance 616, Developer shall (a) by separate instrument quitclaim or otherwise terminate all of its interest in the Leased Property to the Successor Agency and (b) pay to City \$300,000, which payment will be used for site preparation of that portion of the Leased Property to be developed for public purposes.

Section 5. Each time the City issues a building permit for development of the Property, the Developer shall pay to City \$.50 times the square footage of the building (other than the parking structure) for which the City has issued such building permit, which payment will also be used toward developing for public purposes the Leased Property. The \$.50/square foot will be adjusted each January 1 to reflect the change in the Engineering Cost Index.

Section 6. Developer shall install on the top floor of the parking structure that it constructs on the Property a solar panel system sufficient to provide electrical energy to help meet the electrical energy needs of the Project. This Section 6 supersedes and replaces Condition of Approval V of the Project Approvals.

Section 7. In all other respects, the terms and conditions of the Agreement shall continue in full force and effect.

In witness whereof, City and Developer have executed this First Amendment on the date set forth above.

City of Brisbane, a municipal corporation

Mayor

Sierra Point, L.L.C., a Delaware limited liability
company

BY: Keith F. Beden 11

Its President

Attest:

City Clerk

Approved as to form:

City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 17 day of February, 2017, by Keith P. Bednarowski, the President of Sierra Point, L.L.C., a Delaware limited liability company, on behalf of the limited liability company.



Deeann S. Peissig
Notary Public

EXHIBIT A

Legal Description

Real property in the City of Brisbane, County of San Mateo, State of California, described as follows:

PARCEL 1, AS DESIGNATED ON THE MAP ENTITLED "PARCEL MAP", CITY OF BRISBANE, SAN MATEO COUNTY, CALIFORNIA, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON FEBRUARY 27, 1987 IN BOOK 58 OF PARCEL MAPS AT PAGES 76, 77 AND 78.

EXCEPTING ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS SUITABLE TO THE GRANTOR, ITS SUCCESSORS AND ASSIGNS, INCLUDING LATERAL OR SLANT DRILLING, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE LANDS HEREBY CONVEYED, AND IN SUCH MANNER AS NOT TO DAMAGE THE SURFACE OF SAID LANDS OR ANY BUILDING NOR THEREON OR HEREAFTER ERECTED THEREON OR THE SUBSTRUCTURE OF ANY SUCH BUILDING, OR TO INTERFERE WITH THE USE THEREOF BY THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, AS EXCEPTED IN THE FOLLOWING DEEDS TO UTAH CONSTRUCTING & MINING CO., A CORPORATION, PREDECESSOR IN INTEREST TO THE VESTEE HEREIN:

- A. FROM MAUDE LOUISE PHILLIPS, RECORDED SEPTEMBER 14, 1959 IN BOOK 3670 OF OFFICIAL RECORDS AT PAGE 624, DOCUMENT NO. 86272-R.
- B. FROM JOHN F. WILLCOX, ALSO KNOWN AS JOHN FREDERICK WILLCOX RECORDED SEPTEMBER 14, 1959 IN BOOK 3670 OF OFFICIAL RECORDS AT PAGE 625, DOCUMENT NO. 86273-R.
- C. FROM MARITA CLARKE, RECORDED SEPTEMBER 14, 1959 IN BOOK 3670 OF OFFICIAL RECORDS AT PAGE 626, DOCUMENT NO. 86274-R.