

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO. 2024-03

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO
RECOMMENDING THAT THE CITY COUNCIL APPROVE
AN AMENDMENT TO A DEVELOPMENT AGREEMENT FOR THE
DE ANZA HOTEL PROJECT LOCATED AT 10931 N DE ANZA BLVD

The Planning Commission recommends that the City Council find the amendment to the Development Agreement (DA-2023-003) consistent with the project's Mitigated Negative Declaration and approve the amendment to the existing Development Agreement (DA-2018-01), in substantially similar form to the Draft Ordinance attached hereto as Exhibit DA, with the following modification:

- Development Agreement to require that the project comply with the bird safe and dark sky ordinance, Cupertino Municipal Code Chapter 19.102: *Glass and Lighting Standards*.

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 12th day of March 2024, by the following roll call vote:

AYES: COMMISSIONERS: Fung, Lindskog, Mistry, Scharf

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS: Madhhipatla

ATTEST:

APPROVED:

/s/Piu Ghosh

Piu Ghosh

Planning Manager

/s/David Fung

David Fung

Chair, Planning Commission

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING AN AMENDMENT TO A DEVELOPMENT AGREEMENT
FOR THE DE ANZA HOTEL PROJECT**

In accordance with Cupertino Municipal Code Section 19.144.110 *Development Agreement*, the City Council of the City of Cupertino finds that the amendments to a Development Agreement (DA-2018-01):

- A. Is consistent with the objectives, policies, general land uses and programs specified in the General plan and any applicable specific plan;
General Plan Strategy LU-9.1.3: Economic Development and Business Retention – Encourages the City attract new businesses and retain existing businesses that provide local shopping and services, add to municipal revenues, contribute to economic vitality, and enhance the City’s physical environment. Approving the requested amendment supports and facilitates a potential revenue generating use for the City, with added community benefits that include restaurant and community shuttle services. Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on March 3, 2020 and April 21, 2020, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2018-01, Resolution No. 20-006).
- B. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is or will be located;
Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on March 3, 2020 and April 21, 2020, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2018-01, Resolution No. 20-006).
- C. Is in conformity with and will promote public convenience, general welfare and good land use practice;
Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on March 3, 2020 and April 21, 2020, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2018-01, Resolution No. 20-006). Extending the expiration of the Development Agreement, or future revisions to the

amount of parking and/or parking layout, to be treated as an Administrative Project Amendment will not be at odds with promoting public convenience, general welfare and good land use practice.

D. Will not be detrimental to the health, safety and general welfare;

Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on March 3, 2020 and April 21, 2020, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2018-01, Resolution No. 20-006). Further, on March 3, 2020, the City of Cupertino adopted the Initial Study and Mitigated Negative Declaration, State Clearinghouse (SCH) Number 2019079010, and approved the project. The Development Agreement extends the term of the entitlement up to eight years from the original entitlement, with no changes to the development scope.

E. Will not adversely affect the orderly development of property or the preservation of property values; and

Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on March 3, 2020 and April 21, 2020, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2018-01, Resolution No. 20-006). The treatment of the amount of parking or revisions to the parking layout as an Administrative Amendment would not affect the orderly development of the property or the preservation of property values.

F. Will promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.

Nothing in the Development Agreement Amendment revises the scope of the project as approved by the City Council on March 3, 2020 and April 21, 2020, in which the project was found to be in conformance with the General Plan and Zoning standards applicable to this site, as well as those standards that were amended as part of General Plan Amendment (GPA-2018-01, Resolution No. 20-006). An extension in the number of years for which the project entitlement is valid for and a reduction in the voluntary community amenity payments would promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.

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

SECTION 1. Adoption.

The Development Agreement is amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or re-adoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

The City Council declares that no further environmental review is necessary under CEQA Guidelines section 15162 and that the amendment to the Development Agreement is in conformance with the previously adopted Mitigated Negative Declaration (State Clearinghouse No. 2019079010).

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on April 16, 2024 and **ENACTED** at a regular meeting of the Cupertino City Council on May __, 2024 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Sheila Mohan, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202
Attention: City Manager

Record for the Benefit of
The City of Cupertino
*Pursuant to Government Code
Section 27383*

Space Above Reserved for Recorder's Use Only

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN CITY OF CUPERTINO AND NORTHWEST PROPERTIES FOR THE DE ANZA HOTEL PROJECT

This First Amendment to Development Agreement ("**Amendment No. 1**") is made by and between the CITY OF CUPERTINO, a municipal corporation (the "**City**") and Northwest Properties, a California Limited Partnership ("**Developer**"), and is dated for reference purposes as of _____.

RECITALS

A. City and Developer entered into a Development Agreement dated April 21, 2020 and recorded in the Official Records against certain property described in Exhibit A (the "**Project Site**") identified as Document No. 24514911 ("**Development Agreement**"). Any capitalized term used in this Amendment No. 1 that is not defined will have the meaning given to such term in the Development Agreement.

B. The Parties acknowledge that Developer has performed all obligations required under the Development Agreement as of the date of this Amendment No. 1, including providing payments as described in Section 5.1.1.1.

C. The Parties now wish to amend the Development Agreement as set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **TERM OF AGREEMENT.** Section 2.2 of the Development Agreement is hereby revised and restated as follows: “The ‘Term’ of this Agreement shall commence on the Effective Date and shall expire on the eight (8th) anniversary of the Effective Date, unless earlier terminated or extended by mutual written consent of the Parties hereto in accordance with the requirements of Section 8.1, below.”

2. **COMMUNITY AMENITY FUNDING.** Subsection 5.1.1 of the Development Agreement is hereby revised and restated as follows: “Community Amenity Funding. Developer agrees to pay City Five Hundred Thousand Dollars (\$500,000.00) in installments as described below, for City’s use in the City Council’s discretion subject to the following suggested guidelines (“Community Amenity Payment”), which payment shall be in addition to any Impact Fees otherwise due. Once paid, each installment of the Community Amenity Payment shall be nonrefundable, except as provided in Section 5.1.1.1 below.

5.1.1.1 The Community Amenity Payment shall be made in installments as follows:

(1) Within ninety (90) days after the Effective Date, Developer shall pay City a first installment of the Community Amenity Payment in the amount of Fifty Thousand Dollars (\$50,000.00).

(2) On or before December 1st of each year, beginning on the first December 1st after the Effective Date, until the Community Amenity Payment is paid in full, as part of each annual review and together with submission of the Annual Review Form, Developer shall pay City an installment of the Community Amenity Payment in the amount of Fifty Thousand Dollars (\$50,000.00).

(3) In the event the Developer submits for a Building Permit for the core and shell of the hotel within three (3) years of the Effective Date of the 1st Amendment, the Term of the agreement is automatically extended for two additional years, for a total of five years. Otherwise, the Term is only extended for three years.

(4) If Certificate of Occupancy for the Project is issued within five (5) years of the Effective Date of the First Amendment, Developer shall be relieved of its obligations to make further payments under Section 5.1.1.1. Nothing in this section shall constitute a refund of prior payments made under this Development Agreement.

(5) In the event of a Litigation Challenge (described below in Section 9.3), all unpaid Community Amenity Payment installments shall be postponed until final resolution of the Litigation Challenge.”

3. **ADMINISTRATIVE PROJECT AMENDMENTS.** Subsection 8.2.1 of the Development Agreement is hereby revised and restated as follows: "Upon Developer's written request for an amendment or modification to the Project Approvals or Subsequent Approvals, the City Manager shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the City Manager or his/her designee finds, in his or her sole discretion, that the proposed amendment or modification is minor, consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the MND, the amendment or modification shall be determined to be an "Administrative Project Approval Amendment" and shall not require an amendment to this Agreement. Upon the City Manager's approval, any Administrative Project Amendment shall be automatically incorporated into the applicable Project Approvals and this Agreement. Without limiting the foregoing, and by way of example, after City approval of the Existing Approvals, Developer requests for lot line adjustments, minor changes in improvement plans, minor changes in land uses involving minimal acreage, minor alterations in vehicle circulation patterns or vehicle access points, changes in the amount of parking and parking layout, changes in pathway alignments, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the infrastructure connections, facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Site Map or Property Description may be treated as Administrative Project Amendments."

4. **MISCELLANEOUS.**

a. **Incorporation.** This Amendment No. 1 constitutes a part of the Development Agreement and any reference to the Development Agreement shall be deemed to include a reference to the Development Agreement as amended by this Amendment No. 1.

b. **Effective Date.** This Amendment No. 1 shall be effective on the date that it is signed by both Parties and recorded in the Official Records.

c. **Ratification.** To the extent of any inconsistency between this Amendment No. 1 and the Development Agreement, the provisions contained in this Amendment No. 1 shall control. As amended by this Amendment No. 1, all terms, covenants, conditions, and provisions of the Development Agreement shall remain in full force and effect.

d. **Governing Law.** This Amendment No. 1 shall be governed by and construed in accordance with the laws of the State of California.

e. Integration. This Amendment No. 1 contains the entire agreement between the Parties with respect to the subject matter of this Amendment No. 1. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this Amendment No. 1.

NOW THEREFORE, the parties hereto have executed this Amendment No. 1 as of the date set forth above.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

CITY:

CITY OF CUPERTINO, a municipal corporation

By: _____
Pamela Wu, City Manager
[Signature must be notarized]

ATTEST:

By: _____
Kirsten Squarcia, City Clerk

APPROVED AS TO FORM:

By: _____
Christopher D. Jensen, City Attorney

DEVELOPER:

NORTHWEST PROPERTIES,
a California limited partnership

By: _____
Name
:
Its: _____

By: _____
Name
:
Its: _____

[Signatures must be notarized]