

**ORDINANCE NO. XXX-22**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY  
APPROVING A DEVELOPMENT AGREEMENT, DA-22-001, BETWEEN THE  
CITY OF UNION CITY AND WINDFLOWER PROPERTIES, LLC FOR THE  
WINDFLOWER PROJECT – BLOCK 2**

**WHEREAS**, in accordance with California Government Code sections 65864 et seq. (the “Development Agreement Statute”), which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights, the City of Union City (“City”) adopted Chapter 18.104, Procedures and Requirements for Consideration of Development Agreements, to implement procedures for the processing and approval of development agreements; and

**WHEREAS**, Windflower Properties, LLC, (“Applicant”) is requesting approval of a Development Agreement (DA-22-001) for the Windflower – Block 2 – development project; and

**WHEREAS**, the project site consists of 3.5 acres (“Property”) and is located at 34302 11<sup>th</sup> Street between Galliano Way and Berger Way (APN: 087-340-002); and

**WHEREAS**, the Applicant previously received certain land use approvals from the City for the development of a multi-family residential development on the Property by the City Council on November 14, 2017 per Resolution No 5143-17 (the “Project Approvals”); and

**WHEREAS**, the Applicant and the City desire to enter into a Development Agreement in order to provide the Applicant with some certainty in the land use regulatory process until the Developer commences construction of the Project and to extend the Project Approvals until December 31, 2024; and

**WHEREAS**, the proposed Development Agreement is labeled Exhibit A, attached hereto and made part hereof; and

**WHEREAS**, pursuant to Section 15162 and 15168 of the CEQA Guidelines, the proposed Windflower project is within the scope of the project and analysis in the November 2010 Station District Mixed-use Development Project EIR (City Council Resolution 4072-10) and the 2040 Union City General Plan Update EIR (City Council Resolution No. 5548-19). All adopted mitigation measures continue to apply to the project; and

**WHEREAS**, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

## **PLANNING COMMISSION REVIEW**

**WHEREAS**, the Planning Commission held a duly noticed public hearing on the proposed Development Agreement on February 17, 2022, at which time all interested parties had the opportunity to be heard. The Planning Commission considered a staff report dated February 17, 2022, and all written and oral testimony, and adopted Resolution No. XX-22 recommending approval of the Development Agreement. The staff report and resolution are incorporated herein by reference; and

## **CITY COUNCIL REVIEW**

**WHEREAS**, the City Council held a duly noticed public hearing on the proposed Development Agreement on March 8, 2022, at which time all interested parties had the opportunity to be heard. The City Council considered a staff report dated March 8, 2022, and incorporated herein by reference, the Planning Commission recommendation, and all written and oral testimony before taking action on the Development Agreement.

## **THE CITY COUNCIL OF THE CITY OF UNION CITY DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The above recitals are true and correct and made a part of this Ordinance.

**SECTION 2. CEQA.** The project is within the scope of the Station District Mixed-Use Development Project EIR (certified in November 2010 by City Council Resolution No. 4072-10) and the 2040 Union City General Plan Update EIR (certified on December 10, 2019 by City Council Resolution No. 5548-19). No new information of substantial importance has been discovered requiring revisions to the impacts, mitigation measures or alternatives that were provided in either EIR. Additionally, there have not been any substantial changes with respect to City policies or requirements that would require additional environmental analysis, which determined that the project would not result in any significant environmental impacts with the incorporation of mitigation measures. All adopted mitigation measures continue to apply to the project. Thus, pursuant to Sections 15162 and 15168 of the CEQA Guidelines, the City has determined that no further analysis is required.

**SECTION 3. Findings.** The City Council makes the following findings in support of approving this Ordinance, based on the whole of the record before it.

1. That the proposed Development Agreement is consistent with the CSMU (Station Mixed Use Commercial) General Plan land use designation and related policies that apply to development in the Station District. The Development Agreement would foster a high-density, mixed use residential development, which helps support transit ridership. Additionally, the uses and design of the project encourage transit use and minimize automobile dependence; the project helps create a vibrant, transit-oriented mixed-use area, and is pedestrian-friendly and minimizes parking impacts on the streetscape and the

neighborhood; and the project will be harmonious with existing and potential uses within the Station District and surrounding areas. The project is also consistent with the DIPSA Specific Plan, which identified high-density residential and commercial development for the Station District area; and

2. That the proposed Development Agreement will not be detrimental to the health, safety and general welfare of persons residing in the immediate area, not be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole because mitigation measures have been included to mitigate all potential significant environmental impacts to less than significant levels, and in addition, the project has been designed and conditioned consistent with applicable requirements to protect health and safety including the provision of adequate water supply including water used for fire suppression systems, adequate access for emergency vehicles, and that the project will also be constructed consistent with current Building Code requirements; and
3. That the proposed Development Agreement will not adversely affect the orderly development of property or the preservation of property values because it includes provisions to facilitate the orderly development of the project. The complexity, enormity and long-range nature of the project would be difficult for the developer to undertake if City had not determined, through this Development Agreement, to insert a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the project. As a result of the execution of this Development Agreement, both parties can be certain that the project can proceed without disruption caused by a change in planning and development policies and requirements, and such assurance will reduce the actual or perceived risk of planning, financing and proceeding with construction of the project; and
4. That the proposed Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5 because it provides some assurances to the applicant to proceed with the multi-year project in accordance with existing policies, rules and regulations in return for the provision of public benefits. A noticed public hearing on the Development Agreement was held by the Planning Commission.

**SECTION 4. Approval.** The City Council hereby approves the Development Agreement between the City of Union City and Windflower Properties, LLC, as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours. The City Council further authorizes the City Manager to execute the Development Agreement, on behalf of the City, in substantially the form attached as Exhibit A, and to make revisions to such Agreement, subject to the approval of the City Attorney, which do not materially or substantially increase the City's obligations thereunder.

**SECTION 5. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**SECTION 6. Publication and effective date.** Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on the 22<sup>nd</sup> day of March 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

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CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

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ANNA M. BROWN  
City Clerk

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KRISTOPHER J. KOKOTAYLO  
City Attorney