

ORDINANCE 23-4

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST SACRAMENTO
APPROVING THE FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WEST SACRAMENTO
AND ASB SOUTHPORT II LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND THE
BILLY G. AND LOUISE YARBROUGH TRUST, A REVOCABLE FAMILY TRUST, AS
LANDOWNERS RELATIVE TO YARBROUGH**

The City Council of the City of West Sacramento does ordain as follows:

Section 1. Purpose And Authority. The purpose of this Ordinance is to amend that certain Development Agreement by and Between the City of West Sacramento and ASB Southport II LLC, A California Limited Liability Company, and the Billy G. and Louise Yarbrough Trust, A Revocable Family Trust, as Landowners Relative to Yarbrough dated June 18, 2008 (“Development Agreement”).

Section 2. Amendments. The City and ASB Southport II LLC, successor to the developer parties to the Development Agreement, hereby amend the Development Agreement according to the terms and provisions of the First Amendment, attached hereto as Attachment A.

Section 3. Severability. If any provision of this Ordinance, or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Ordinance, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable.

Section 4. Effective Date and Publication. This Ordinance shall take effect 30 days after its adoption, and pursuant to Resolution 99-46 was published in summary format prior to adoption, and a summary will be published within 15 days after adoption in a paper of general circulation published and circulated within the City of West Sacramento.

PASSED AND ADOPTED by the City Council of the City of West Sacramento this 17th day of May 2023, by the following votes:

AYES: Sulpizio Hull, Orozco, Guerrero.

NOES: Alcalá.

ABSENT: Early.

ABSTAIN: None.

DocuSigned by:
Martha Guerrero
272D63442949406...
Martha Guerrero, Mayor

ATTEST:

DocuSigned by:
Jennifer Cusmir
A4226B8B4FBC4E8
Jennifer Cusmir, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Jeffrey Mitchell
F802FF46DDB44EA
Jeffrey Mitchell, City Attorney

CODIFY ___ UNCODIFY X

Attachment A

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WEST SACRAMENTO AND ASB SOUTHPORT II LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND THE BILLY G. AND LOUISE YARBROUGH TRUST, A REVOCABLE FAMILY TRUST, AS LANDOWNERS RELATIVE TO YARBROUGH

This FIRST AMENDMENT to the DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WEST SACRAMENTO AND ASB SOUTHPORT II LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND THE BILLY G. AND LOUISE YARBROUGH TRUST, A REVOCABLE FAMILY TRUST, AS LANDOWNERS RELATIVE TO YARBROUGH dated June 18, 2008, is entered into by and between ASB SOUTHPORT II LLC, A CALIFORNIA LIMITED LIABILITY COMPANY and the BILLY G. AND LOUISE YARBROUGH TRUST, A REVOCABLE FAMILY TRUST (“**Developer**”) and the City of West Sacramento, a municipal corporation (“**City**”) is entered pursuant to the authority of Government Code Sections 65864 through 65869.5 and shall be deemed to have an Effective Date of _____, 2023.

RECITALS

This First Amendment is predicated upon the following facts and findings:

- A. The City and Developer entered into a Development Agreement on June 18, 2008 (“**Development Agreement**”) relative to the Yarbrough project (the “**Project**”) as approved on that date by City Ordinance 08-04, a memorandum of which was recorded by the Yolo County Recorder on July 26, 2008.
- B. The Project encompasses approximately 711 acres and is located in the southwest village of Southport and generally bound by the Deep-Water Ship Channel (DWSC) to the west, the Bridgeway Lakes communities to the north, agricultural land immediately to the east, and the southeast village of Southport beyond the former Yolo Shortline Railroad corridor. The project will support a balanced mixed of land uses including approximately 3,004 dwelling units, 150,000 square feet of commercial space, an 18-hole public golf course and a 55.9-acre interconnected lake park and canal system.
- C. The ownership is now solely comprising of one party, ASB Southport II LLC, A California Limited Liability Company.
- D. Section 22.1 of the Development Agreement provides for amendments to such Agreement pursuant to state law and the West Sacramento Municipal Code.
- E. Over the course of the last several years, the real estate market has suffered, and the Project has been delayed for a variety of reasons, including disruptions to work schedules and supply chain interruptions caused by the COVID-19 pandemic and projects to mitigate flooding in the City.
- F. As a result of these delays, Developer and the City wish to amend the Development Agreement for an extension to enable the Parties to evaluate the Project’s status, determine if any substantive changes to the Project are necessary to best serve the respective needs of the Parties, and to consider the timeline of the Project going forward.

- G. To accommodate these evaluations, the Parties wish to extend the term of the Development Agreement for one year, until July 18, 2024, with an option to extend the term for an additional year, until July 18, 2025, at the discretion of the City Manager if the Parties are making good faith efforts and progress towards the evaluations described in Recital F.
- H. On March 16, 2023, the Planning Commission conducted a public hearing on this First Amendment and recommended approval to the City Council.
- I. On _____, 2023, the City Council conducted a public hearing on this First Amendment and voted to approve the amendment by adoption of Ordinance 23-4.
- J. The Developer and the City both desire to amend Section 5.2 the Development Agreement to extend the Development Agreement, based on the conditions contained in this First Amendment.

NOW THEREFORE, the parties agree to amend the Development Agreement as follows:

1. Amendment of Section 5.2. Section 5.2 of the Development Agreement shall be amended to read as follows:

“5.2 **Term.** The term of this Agreement shall commence on the Effective Date and shall end on July 18, 2024, unless said term is terminated, modified, or extended by circumstances set forth in this Agreement.

5.2.1 **Tolling.** The term of this Agreement shall be tolled if and for as long as City determines development within the Southport area is infeasible due to State, Federal, or local health and safety requirements; provided, however, that under this circumstance the term of this Agreement shall not be tolled for longer than five (5) years.

5.2.2 **Extension.** At the City Manager’s discretion, the Term of this Agreement may be extended for one (1) year, until July 18, 2025, if the City Manager determines such an extension is in the best interest of the City.

Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, except as described in Section 26.1.”

2. Remainder of Provisions of Development Agreement. Except as expressly provided herein, nothing in this First Amendment shall be deemed to waive or modify any of the other provisions of the Development Agreement.
3. Interpretation of Conflicts. In the event that any provisions of this First Amendment conflict with the provisions of the Development Agreement, the terms of this First Amendment shall prevail.
4. Memorandum of First Amendment. Contemporaneously herewith, the City and Developer shall execute a notarized Memorandum of First Amendment in the form attached hereto as Exhibit A, which Memorandum shall be recorded with the Yolo County Recorder.

IN WITNESS WHEREOF, this First Amendment has been executed by the parties on the day and year first written above.

CITY OF WEST SACRAMENTO

A municipal corporation

DocuSigned by:
Martha Guerrero
By: 272D63142919406...
Martha Guerrero, Mayor

ASB SOUTHPORT II LLC

A California Limited Liability Company

By: _____
Frank Andrews, Jr., Manager

By: _____
Debra Russo, Manager

By: _____
David Stroud, Manager

ATTEST:

DocuSigned by:
Jennifer Cusmir
By: A4226B8B4FBC4E8...
Jennifer Cusmir, City Clerk

APPROVED AS TO FORM:

KRONICK, MOSKOVITZ, TIEDMAN & GIRARD

A professional corporation

DocuSigned by:
J Mitchell
By: E802FF46DBB44EA...
Jeffrey Mitchell, City Attorney

EXHIBIT A

Memorandum of Agreement

**RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:**

City of West Sacramento
1110 West Capitol Avenue
West Sacramento, CA 95691

NO RECORDING FEE REQUIRED PURSUANT TO GOVT CODE § 27383

SPACE ABOVE LINE FOR RECORDER'S USE ONLY

**MEMORANDUM OF FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WEST SACRAMENTO
AND ASB SOUTHPORT II LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND THE
BILLY G. AND LOUISE YARBROUGH TRUST, A REVOCABLE FAMILY TRUST, AS
LANDOWNERS RELATIVE TO YARBROUGH**

THIS MEMORANDUM OF FIRST AMENDMENT TO DEVELOPMENT AGREEMENT is made this ___ day of _____, 2023, by and between the CITY OF WEST SACRAMENTO ("City") and ASB SOUTHPORT II LLC ("Developer").

City and Developer are parties to that certain "DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WEST SACRAMENTO AND ASB SOUTHPORT II LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND THE BILLY G. AND LOUISE YARBROUGH TRUST, A REVOCABLE FAMILY TRUST dated June 18, 2008. The City and Developer are also parties to that certain "FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WEST SACRAMENTO AND ASB SOUTHPORT II LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND THE BILLY G. AND LOUISE YARBROUGH TRUST, A REVOCABLE FAMILY TRUST, AS LANDOWNERS RELATIVE TO YARBROUGH," ("First Amendment") dated _____, 2023. The terms and conditions of the First Amendment are incorporated herein by this reference. The Development Agreement as amended by the First Amendment controls the development of the certain real property, including improvements thereto, situated in the County of Yolo, State of California, and described as follows:

SEE EXHIBIT "1"

<p>Dated: _____</p> <p>THE CITY OF WEST SACRAMENTO</p> <p>DocuSigned by: <i>Martha Guerrero</i></p> <p>By: _____ 272D63142919406... Martha Guerrero, Mayor</p> <p>DocuSigned by: <i>Jennifer Cusmir</i></p> <p>Attest: _____ A4226B8B4FBC4E8... Jennifer Cusmir, City Clerk</p>	<p>Dated: _____</p> <p>ASB SOUTHPORT II LLC</p> <p>By: _____ Frank Andrews, Jr., Manager</p> <p>By: _____ Debra Russo, Manager</p> <p>By: _____ David Stroud, Manager</p>
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Exhibit 1

Legal Description