

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING AN AMENDED DEVELOPMENT AGREEMENT FOR THE BUSK PROJECT DAA-14-10: EAST DUNNE-BUSK EXTENDING THE COMMENCEMENT OF CONTRUCTION DATE FOR THE SEVEN, FISCAL YEAR 2015-2016 BUILDING ALLOCATIONS (APN 817-19-044).**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded seven building allotments for application MC-13-16: East Dunne – MDMH Investors for FY 2015-16.

**SECTION 4.** On April 6, 2016, the City Council adopted Ordinance No. 2195, N.S., which approved a Development Agreement which established "commence construction" dates for 12 units within a 14-unit project, referred to as "Dunne-Murphy". Reference is hereby made to that certain Agreement on file in the Office of the City Clerk of the City of Morgan Hill. The Agreement signed by the City of Morgan Hill and the property owner(s) set forth, in detail, the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council of the City of Morgan Hill found that, on the basis of the whole record before it (including the initial study and any comments received), there is no substantial evidence that the project will have a significant effect on the environment and the Mitigated Negative Declaration reflects the City Council's independent judgment and analysis. The Mitigated Negative Declaration was adopted prior to action taken to adopt the original project proposal. The custodian of the documents or other material which constitute the record shall be the City's Community Development Agency.

**SECTION 6.** A 6-month extension is currently requested for seven allocations awarded for FY 2015-16.

**SECTION 7.** On October 22, 2009, the City Council adopted Council Policy CP-09-02, establishing criteria by which to evaluate exceptions to the loss of building allocations (ELBA) requests filed by developers. In accordance with Policy CP-09-02, projects that have timely completed at least six of eight steps in the permitting process would be considered favorably for an extension because it

demonstrates good faith effort by the developer in commencing and completing the project. The Council may also consider other circumstances unique to a project to support an extension of the building allocation provided the applicant provides sufficient evidence of the extraordinary or unique circumstances.

**SECTION 8.** The project has experienced delays due to the lack of availability of design professionals need to prepare the necessary applications for submittal to the City.

**SECTION 9.** The project applicant has demonstrated that there are circumstances unique to the project that have precluded the project in achieving Steps 1, 2, 4, 5 & 6 therefore it does meet the criteria for favorable consideration of approving an exception to loss of building allotment.

**SECTION 10.** Based on the findings required in Municipal Code Section 18.78.125 and Council Policy CP-09-02, the City Council approves a six-month exception to loss of building allotment for the seven Fiscal Year 2015-16 building allotments for MC-13-16: East Dunne-MDMH Investors (Busk) and hereby amends the project Development Agreement as shown in the attached Exhibit A.

**SECTION 11.** The City Council hereby approves the Development Agreement Amendment for DAA-14-10: E. Dunne-Busk (APN 817-19-044) attached to this Ordinance as Exhibit A.

**SECTION 12.** The City Council hereby finds that the Development Agreement Amendment approved by this Ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 13. Severability.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 14. Effective Date; Publication.** This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 14<sup>th</sup> DAY OF DECEMBER 2016, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE \_\_ DAY OF \_\_\_\_\_ 2016, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:**

**AYES:            COUNCILMEMBERS:  
NOES:            COUNCILMEMBERS:  
ABSTAIN:        COUNCILMEMBERS:  
ABSENT:         COUNCILMEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

\_\_\_\_\_  
**STEVE TATE, Mayor**

❧ CERTIFICATION ❧

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
IRMA TORREZ, City Clerk

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## EXHIBIT A

Exhibit B of the development agreement shall be amended as follows:

### *EXHIBIT B*

#### DEVELOPMENT SCHEDULE

##### MC 13-16: E. Dunne- MDMH Investors 7 FY 2015-16 & 5 FY 2016-17 Allocations

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<b>I. SUBDIVISION AND ZONING APPLICATIONS</b>	
Applications Filed:	10-31-2014
<b>II. SITE REVIEW APPLICATION</b>	
Application Filed:	01-30-2017
<b>III. FINAL MAP SUBMITTAL</b>	
Map, Improvements Agreement and Bonds:	
FY 2015-16 (7 unit)	10-24-2016
FY 2016-17 (5units)	10-24-2016
<b>IV. BUILDING PERMIT SUBMITTAL</b>	
Submit plans to Building Division for plan check:	
FY 2015-16 (7 unit)	02-30-2017
FY 2016-17 (5 units)	02-30-2017
<b>V. BUILDING PERMITS</b>	
Obtain Building Permits:	
FY 2015-16 (7 unit)	03-30-2017
FY 2016-17 (5 units)	03-30-2017
<b>VI. COMMENCE CONSTRUCTION:</b>	
FY 2015-16 (7 unit)	06-30-2017
FY 2016-17 (5 units)	06-30-2017

Failure to obtain building permits by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 7 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.