

ORDINANCE NO. 549

AN ORDINANCE OF THE CITY OF FOSTER CITY APPROVING A MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FOSTER CITY, AMB INSTITUTIONAL ALLIANCE FUND III, L.P., FOSTER CITY EXECUTIVE PARK PARTNERS, AND THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY FOR DEVELOPMENT PURSUANT TO A MIXED-USE MASTER PLAN OF UP TO 296,000 SQUARE FEET OF COMMERCIAL/INDUSTRIAL OFFICE USE AND UP TO 730 RESIDENTIAL UNITS, INCLUDING UP TO 64 LIVE/WORK UNITS -DA-08-001

CITY OF FOSTER CITY

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 Foster City ("City") enacted Resolution No. 80-73 to implement procedures for the processing and approval of development agreements; and

WHEREAS, the Development Agreement Statute and Resolution No. 80-73 require the City to hold a public hearing and make findings that the provisions of the development agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in the General Plan; and

WHEREAS, AMB Institutional Alliance Fund III, L.P., Foster City Executive Park Partners, and the Northwestern Mutual Life Insurance Company (collectively, the "Developers") own adjacent real property in Foster City ("Property") and propose a project that entails development under a mixed-use master plan of up to 296,000 square feet of commercial/industrial office use and up to 730 residential units, including up to 64 live/work commercial units ("Project"); and

WHEREAS, Developers and the City desire to enter into the proposed Master Development Agreement ("Master Development Agreement"), on file with the City Clerk, in order to provide Developers with some certainty in the land use regulatory process and to promote the development of the Property which will provide public benefits to the City, including the provision of housing and needed infrastructure for area growth; and

WHEREAS, in accordance with the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*) and implementing guidelines ("CEQA") the City Council, by Resolution No. 2008-39 adopted April 21, 2008, certified a final environmental impact report for the Project and adopted a mitigation monitoring and reporting program; and

WHEREAS, on April 21, 2008, by Resolution No. 2008-38, the City Council made General Plan map and text amendments to change the Property's land use plan designation from Service Commercial to Service Commercial with Housing and to adopt the Pilgrim Drive/Triton Drive Commercial-Industrial-Housing Area policies; and

WHEREAS, on May 5, 2008, by Ordinance No. 546, the City Council approved a rezoning of the Property from CM/PD (Commercial Mix/Planned Development) District to a CM/PD (Commercial Mix/Planned Development) District (PZ-06-002) with a General Development Plan; and

WHEREAS, a Notice of Public Hearing was duly posted, published, and mailed for consideration of the proposed Master Development Agreement at the Planning Commission meeting of August 20, 2009, and on said date the Public Hearing was opened, held and closed, at which time the Planning Commission recommended approval by adoption of Resolution P-20-09; and

WHEREAS, a Notice of Public Hearing was duly posted, published, and mailed for consideration of the proposed Master Development Agreement at the City Council meeting of September 21, 2009, and on said date the Public Hearing was opened, held and closed.

NOW, THEREFORE, BE IT ORDAINED by the City Council as follows:

Section 1. Findings. The City Council hereby makes the following findings:

- (i) The Project set forth in the proposed Master Development Agreement is consistent with the adopted City of Foster City General Plan and all of its goals, policies, standards and land use designations; and
- (ii) The proposed Master Development Agreement is in the public interest in that it offers the Developers the assurance needed in order to plan, finance, schedule and construct the project over several phases and several years in accordance with approved plans, and the granting of such assurance to the Developers will offer the City the best opportunity to secure the Project and its resulting tax, employment and associated economic and public benefits; and
- (iii) The proposed Master Development Agreement preserves the City's rights to retain, via the City's usual Use Permit design review process subject to the terms of the proposed Master Development Agreement, full and complete discretion with respect to design review issues.

Section 2. Master Development Agreement. The City Council hereby: (i) approves the Master Development Agreement; and (ii) authorizes the Mayor to execute said Master Development Agreement, and (iii) authorizes the City Manager to take such further actions and execute such documents as are necessary to carry out the transactions set forth in the Master Development Agreement.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 5. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

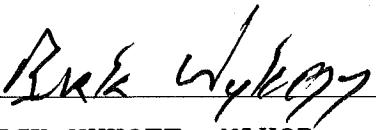
This Ordinance was introduced and read on the twenty-first day of September, 2009, and passed and adopted on the 5th day of October, 2009, by the following vote:

AYES: Councilmembers Frisella, Kiesel, Koelling, and Mayor Wykoff

NOES: None

ABSENT: None

ABSTAIN: None



RICK WYKOFF, MAYOR

ATTEST: 

DORIS L. PALMER, CITY CLERK

CERTIFICATE OF POSTING

I, Shannon Templin, hereby certify as follows:

That I am, and at all time herein mentioned, was the duly acting and qualified Deputy City Clerk/District Secretary of the **City of Foster City/Estero Municipal Improvement District**, Foster City, San Mateo County, California.

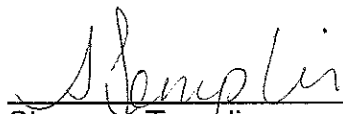
I further certify to the proper posting of:

Ordinance No. 549 -- An Ordinance of the City of Foster City Approving a Master Development Agreement Between the City of Foster City, AMB Institutional Alliance Fund III, L.P., Foster City Executive Park Partners, and the Northwestern Mutual Life Insurance Company for Development Pursuant to a Mixed-Use Master Plan of Up to 296,000 Square Feet of Commercial/Industrial Office Use and Up to 730 Residential Units, Including Up to 64 Live/Work Units – DA-08-001

in the following four public places of the **City of Foster City/Estero Municipal Improvement District**, Foster City, San Mateo County, California:

1. Federal Post Office, Charter Square
1050 Shell Boulevard
2. Foster City Public Library
1000 E. Hillsdale Boulevard
3. Recreation Center Lobby
650 Shell Boulevard
4. Council Chambers (not a mandatory posting site)
620 Foster City Boulevard

Executed at the **City of Foster City/Estero Municipal Improvement District**, Foster City, San Mateo County, California this October 6, 2009.



Shannon Templin
Deputy City Clerk/District Secretary