



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: September 28, 2017

COUNCIL DISTRICT: 3

SUBJECT: FILE NO. DA17-001. CONSIDERATION OF AN ORDINANCE TO APPROVE A SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE AND JACKSON-TAYLOR PARTNERS, LLC, FOR THE JAPANTOWN CORPORATION YARD REDEVELOPMENT PROJECT (ORDINANCE NO. 29528), AS AMENDED, FOR THE PROPERTY LOCATED AT 696 NORTH 6TH STREET.

RECOMMENDATION

The Planning Commission voted 6-0-1 (Pham absent) to recommend that the City Council adopt an ordinance approving the Second Amendment to the Development Agreement with Jackson-Taylor Partners, LLC.

OUTCOME

Should the City Council approve the ordinance for a Second Amendment to the Development Agreement with Jackson-Taylor Partners, LLC, as recommended by the Planning Commission and staff, the Development Agreement as amended would further facilitate the redevelopment of the former Japantown Corporation Yard for a mixed-use development and allow the City to use the site on a temporary basis for a farmer's market and public parking, as explained in the attached staff report.

BACKGROUND

On December 16, 2014, the City Council adopted a resolution (Resolution No. 77262) approving a Purchase and Sale Agreement with Jackson Taylor Partners LLC for the sale and development of the City's former Corporation Yard located in Japantown. The Council also adopted Ordinance No. 29528 approving a Development Agreement between the City and Jackson Taylor Partners, LLC, related to the former corporation yard. The Development Agreement vested the current General Plan

land use designation of Transit Residential and Jackson-Taylor Residential Strategy approved by the City Council on October 6, 1992.

On December 1, 2015, City Council adopted an ordinance (Ordinance No. 26951) rezoning the property from the R-M Multiple Residence Zoning District to the CP(PD) Planned Development Zoning District (File No. PDC15-018) to allow up to 600 residential units, up to 25,000 square feet of commercial space, and the Creative Center for the Arts community center on the 5.25 gross acre site.

On May 25, 2016, the Director of Planning approved a Planned Development Permit (File No. PD15-055) allowing the construction of 520 residential units, 19,191 square feet of commercial space and 729 parking spaces.

The Council-approved Development Agreement contains a provision requiring the parties to amend the Agreement upon the issuance of land use approvals and permits to include those land use approvals and permits as vested elements of the Agreement. Vesting land use approvals and permits in a development agreement allow a developer to have certainty that the entitlements obtained for a project are protected from changes that may be requested before commencement or completion of the project.

On November 8, 2016, the City Council adopted Ordinance No. 29819 approving the First Amendment to the Development Agreement between the City and Jackson-Taylor Partners, LLC, to vest the previously approved Planned Development Zoning and Planned Development Permit to authorize the construction of 520 residences and 19,191 square feet of commercial space. The Second Amendment to the Development Agreement would incorporate a one-year extension of the terms of the agreement; authorize the use of the site by the City on a temporary basis for a farmer's market and public parking; require a developer's community liaison for the project under specified circumstances; and revise remedies available in the event of any delay by the developer in performance or default of the agreement.

On September 27, 2017, the Planning Commission held a Public Hearing to consider the proposed Second Amendment to the Development Agreement between the City and Jackson-Taylor Partners, LLC. This item was on the Planning Commission's Consent Calendar. No members of the public asked to speak on this item, and there was no discussion by the Commission. The Planning Commission recommended approval (6-0-1, Pham absent) of the proposed Second Amendment.

ANALYSIS

As mentioned above, on December 16, 2014 the City Council approved the Purchase and Sale Agreement between Jackson-Taylor Partners, LLC for the sale and development of the former Japantown Corporation Yard. The Related Companies was the entity that formed the Jackson-Taylor Partners, LLC. On April 2017, Related completed the purchase of the property and owns the Japantown property. After purchasing the property, Related continued the process to obtain the necessary permits and secure the financing to construct the project. In Related's process to secure a financial partner, Shea Homes stepped forward with the necessary financing and a desire to build the

project. The proposed clarifications recommended for approval by the Planning Commission further clarify certain provisions of the Development Agreement and facilitate the assignment of the project from the Related Companies to Shea Homes. The proposed changes also allow the community's use of the parking area on Taylor Avenue between 6th and 7th Streets until grading begins on the property. In addition, Shea will support the Japantown Farmers' Market by paying for street closure and encroachment permits that will be needed for an interim period, necessary for the temporary relocation of the market during construction of the park, housing and retail project.

If the ordinance amending the Development Agreement is adopted by the Council, the following sections of the Agreement would be changed as explained below:

1. Section 1.C. Term of Agreement is amended to reflect a prior one-year letter extension by the City of the term of the Agreement, extending the term from seven years to eight years.
2. Section 1.F(2) Assignment to Non-Affiliate is amended to clarify that the assignment of the rights and obligations of the Agreement by the Developer is subject to the sole but reasonable prior written consent of the City.
3. Section 1.F(4) Assignment after Certificate of Occupancy is amended to provide that there are no restrictions of the Developer's ability to assign its rights under the Agreement as to Phase 1 of the development once Phase 1 has obtained a certificate of occupancy, and that similarly there are no restrictions of the Developer's ability to assign its rights under the Agreement as to Phase 2 of the development once Phase 2 has obtained a certificate of occupancy.
4. Section 2.D(5) Affordable Housing is amended to clarify that if the Development Agreement terminates, the Developer will become subject to the City's Inclusionary Housing requirements or Housing Impact Fee as applicable.
5. Section 3.A(3) Community Liaison is added to provide a Developer's community liaison for the project.
6. Section 3.A(4) Temporary Use of Subject Property by City is added to provide temporary use of the site for a Farmer's Market and public parking under specified conditions and until the site is graded by the Developer, and to provide temporary payment of the cost of street closure and encroachment fees for the Farmer's Market until completion of the project and acceptance of the public park.
7. Section 4.B Remedies for Failure to Timely Commence or Complete Construction is added to provide that if the Developer fails to commence or complete construction within the timelines required for Phase 1 or Phase 2, then the City's sole and exclusive remedy is that the Development Agreement will terminate with no further action required by the Parties at midnight of the date upon which construction was required to commence, including the result that the Vested Approvals specified in Section 2.A of the Development Agreement shall no longer be vested as of the date of termination of the agreement and all of the City's affordable housing requirements, including but not limited to, the Inclusionary Housing Ordinance (San Jose Municipal Code Chapter 5.08) and the Affordable Housing Impact Fee

(City Council Resolution No. 77218 as amended) shall apply to the development of the site. If the Developer does not commence construction of a Phase, the Development Agreement terminates and has no further force and effect.

Additionally, if the developer commences construction of a Phase, the City's remedies for failure to timely complete construction of that Phase by the applicable dates required by the Development Agreement are limited to (i) compelling the completion of that Phase only; and (ii) enforcement of any and all health and safety related laws. Moreover, the developer must maintain the subject property in a safe condition and shall not cause or suffer any nuisance upon the subject property, including removal of unsafe conditions such as trespassers, debris, fire hazards, overgrown vegetation, graffiti, and the like.

The Planning Commission voted 6-0-1 (Pham absent) to recommend that the City Council approve the Second Amendment to the Development Agreement.

A complete analysis of the issues regarding this project, including Development Agreement Ordinance findings, is contained in the attached staff report to the Planning Commission.

EVALUATION AND FOLLOW-UP

City Council approval of this action will allow the City and developer to incorporate a letter extension into the Development Agreement for a one-year extension, clarify the provisions governing assignment, clarify the provisions regarding the applicability of inclusionary housing requirements and housing impact fees, authorize the use of the site by the City on a temporary basis for a farmer's market and public parking, assign a developer's community liaison for the project, and revise the remedies for the developer's delay in performance or default of the Agreement.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

This memo was coordinated with the City Attorney's Office.

CEQA

Pursuant to Section 15162 of the California Environmental Quality Act of 1970, as amended (CEQA), the City has determined that the impacts of the project are fully covered by the certified Japantown Corporation Yard Redevelopment Project Final Environmental Impact Report (EIR) and Addenda thereto (May 20, 2008, May 2, 2014, and November 17, 2015). The project will not create new or increased significant impacts on the environment beyond those previously analyzed. Additional analysis is provided in the attached staff report.

/s/
ROSALYNN HUGHEY, SECRETARY
Planning Commission

For questions please contact Sylvia Do, Division Manager, at 408-535-7907.

Attachment: Planning Commission Staff Report



PLANNING COMMISSION STAFF REPORT

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|--------------------------|--|
| File No. | DA17-001 |
| Applicant | City of San Jose |
| Location | Block bounded by N. Sixth Street, E. Taylor Street, N. Seventh Street, and Jackson Street |
| Existing Zoning | CP(PD) Planned Development |
| Council District | 3 |
| Historic Resource | No |
| Annexation Date | March 27, 1850 (Original City) |
| CEQA | Final Environmental Impact Report for the Japantown Corporation Yard Redevelopment Project (Resolution No. 74384) and Addenda thereto (May 20, 2008, May 2, 2014, November 17, 2015). |

APPLICATION SUMMARY: Consideration of an ordinance to approve the Second Amendment to the Development Agreement By and Between the City of San Jose and Jackson Taylor Partners, LLC, for the Japantown Corporation Yard Redevelopment Project (Ordinance No. 29528), as amended. The Second Amendment to the Development Agreement would amend and add certain terms and language to the following sections: (i) Section 1.C Term of Agreement; (ii) Section 1.F(2) Assignment to Non-Affiliate; (iii) Section 1.F(4) Assignment after Certificates of Occupancy; (iv) Section 2.D(5) Affordable Housing; (v) Section 3.A(3) Community Liaison; (vi) Section 3.A(4) Temporary Use of Subject Property by City; and (vii) Section 4.B Remedies for Failure to Timely Commence or Complete Construction.

RECOMMENDATION: Planning staff recommends that the Planning Commission find the subject Second Amendment to the Development Agreement with Jackson Taylor Partners, LLC, consistent with the General Plan and that the required findings for approval of development agreements and amendments thereto in the Municipal Code can be made, and forward to the City Council a recommendation to adopt the ordinance approving of the Second Amendment to the Development Agreement.

PROJECT DATA

| GENERAL PLAN CONSISTENCY | |
|---------------------------------|--|
| General Plan Designation | Transit Residential <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent |
| Consistent Policies | FS-1.7, IP-7.5, LU-1.1, LU-2, LU-10.4, VN-1.3, VN-4.2, VN-4.3 |
| Inconsistent Policies | None |

| SURROUNDING USES | | | |
|-------------------------|--|--|--|
| | General Plan Land Use | Zoning | Existing Use |
| North | Mixed Use Neighborhood | A(PD) Planned Development, CN Commercial Neighborhood, LI Light Industrial | Undeveloped parcel, single-family residence, multi-family residence, auto repair shop |
| South | Mixed Use Neighborhood | A(PD) Planned Development | Mixed-use residential |
| East | Mixed Use Neighborhood | CP Commercial Pedestrian, LI Light Industrial, A(PD) Planned Development | Mixed-use residential (under construction) |
| West | Mixed Use Neighborhood, Mixed Use Commercial | A(PD) Planned Development | Commercial retail, church/religious assembly, vacant commercial building, undeveloped parcel, senior housing |

| RELATED APPROVALS | |
|--------------------------|---|
| Date | Action |
| 10/6/92 | City Council adoption of the Jackson-Taylor Residential Strategy, which designated the site with mixed use, recommended ground-floor retail, and park land use designations. |
| 4/14/08 | General Plan Amendment and General Plan Text Amendment to change the Jackson-Taylor Planned Residential Community Specific Land Use Plan from Mixed Use 2 and Public Park/Open Space to Mixed Use 2A to allow: (1) up to 600 multi-family residential units, (2) 16,000 to 30,000 square feet of ground-floor commercial retail space, (3) 10,000 to 20,000 square feet of community amenity space, and (4) an increase in height from 65 to 175 feet (File Nos. GP07-03-04 and GPT07-03-04). |
| 11/1/11 | City Council adoption of the Envision San Jose 2040 General Plan, which designated the subject property as Mixed Use Neighborhood on the Land Use/Transportation Diagram. |
| 11/19/13 | Director-initiated General Plan Amendment to change the Land Use/Transportation Diagram designation from Mixed Use Neighborhood to Transit Residential to align with the Jackson-Taylor Specific Plan (File No. GP13-007). |
| 8/19/14 | Director-initiated Conventional Conforming Rezoning from the LI Light Industrial Zoning District to R-M Multiple Residence Zoning District (File No. C14-039). |
| 12/16/14 | Consideration of an ordinance to approve a Development Agreement between Jackson Taylor Partners, LLC, and the City of San Jose to develop between 425 to 600 multi-family attached residential units and between 16,000 and 25,000 square feet of commercial space for mixed-use development consistent with the provisions of the Japantown Corporation Yard Redevelopment Project Final Environmental Impact Report, Jackson-Taylor Residential Strategy, and Envision San Jose 2040 General Plan. The Development Agreement includes findings to recognize that the extraordinary benefit to be provided by the project includes redeveloping an underutilized property in an infill location with housing and jobs; locating housing near jobs, transit and neighborhood commercial retail; contribution of land to the City for use as a cultural and performance space; and committing to a very high standard |

| | |
|----------|---|
| | of quality for the project. (File No. DA14-003) |
| 11/17/15 | Planned Development Rezoning from the R-M Multiple Residence Zoning District to the CP(PD) Planned Development Zoning District to allow up to 600 residential units, up to 25,000 square feet of commercial space, and a private community center on 5.25 gross acre site (File No. PDC15-018). |
| 5/25/16 | Planned Development Permit to remove five ordinance-sized trees, and construct 520 residential units and 19,191 square feet of commercial space on 5.25-gross acre site (File No. PD15-055). |
| 11/8/16 | Consideration of an ordinance to approve the First Amendment to the Development Agreement between Jackson Taylor Partners, LLC, Et. Al. and the City of San José to vest previously approved Planned Development Zoning (File No. PDC15-018) and Planned Development Permit (File No. PD15-055) for the subject property located at 696 North 6th Street (City of San Jose, Owner). The First Amendment to the Development Agreement would vest the Zoning District designation of R-M(PD) Planned Development and the development standards set forth in the rezoning and also authorize the construction of 520 residential unit and 19,191 square feet of commercial space as further set forth in the Planned Development Permit. (File No. DA16-001) |

PROJECT DESCRIPTION

If the ordinance amending the development agreement is adopted by the Council, the following sections of the agreement would be changed as explained below:

1. Section 1.C. Term of Agreement is amended to reflect a prior one-year letter extension by the City of the term of the Agreement, extending the term from seven years to eight years.
2. Section 1.F(2) Assignment to Non-Affiliate is amended to clarify that the assignment of the rights and obligations of the Agreement by the Developer is subject to the sole but reasonable prior written consent of the City.
3. Section 1.F(4) Assignment after Certificate of Occupancy is amended to provide that there are no restrictions of the Developer's ability to assign its rights under the Agreement as to Phase 1 of the development once Phase 1 has obtained a certificate of occupancy, and that similarly there are no restrictions of the Developer's ability to assign its rights under the Agreement as to Phase 2 of the development once Phase 2 has obtained a certificate of occupancy.
4. Section 2.D(5) Affordable Housing is amended to clarify that if the Development Agreement terminates, the Developer will become subject to the City's Inclusionary Housing requirements or Housing Impact Fee as applicable.
5. Section 3.A(3) Community Liaison is added to provide for a Developer's community liaison for the project
6. Section 3.A(4) Temporary Use of Subject Property by City is added to provide for the temporary use of the site for a Farmer's Market and public parking under specified conditions and until the site is graded by the Developer, and to provide for temporary payment of the cost of street closure and encroachment fees for the Farmer's Market until completion of the project and acceptance of the public park.
7. Section 4.B Remedies for Failure to Timely Commence or Complete Construction. This section is added to provide that if the Developer fails to commence or complete construction within the timelines required for Phase 1 or Phase 2, then the City's sole and exclusive

remedy is that the Development Agreement will terminate with no further action required by the Parties at midnight of the date upon which construction was required to commence, including the result that the Vested Approvals specified in Section 2.A of the Development Agreement shall no longer be vested as of the date of termination of the agreement and all of the City's affordable housing requirements, including but not limited to, the Inclusionary Housing Ordinance (San Jose Municipal Code Chapter 5.08) and the Affordable Housing Impact Fee (City Council Resolution No. 77218 as amended) shall apply to the development of the site. If the Developer does not commence construction of a Phase, the Development Agreement terminates and has no further force and effect.

Additionally, if the Developer commences construction of a Phase, the City's remedies for failure to timely complete construction of that Phase by the applicable dates required by the Development Agreement are limited to (i) compelling the completion of that Phase only; and (ii) enforcement of any and all health and safety related laws. Moreover, the Developer must maintain the subject property in a safe condition and shall not cause or suffer any nuisance upon the subject property, including removal of unsafe conditions such as trespassers, debris, fire hazards, overgrown vegetation, graffiti, and the like.

This Development Agreement Amendment will be considered by the City Council on October 3, 2017.

Site Location and Description

The subject one-parcel site is 5.25 acres and comprises the entire block bounded by N. Sixth Street, E. Taylor Street, N. Seventh Street, and Jackson Street. The site is located immediately north of Downtown and within 2,000 feet of the Japantown/Ayer light rail station. The site is within the Jackson-Taylor Planned Residential Community and the Japantown Neighborhood Business District.

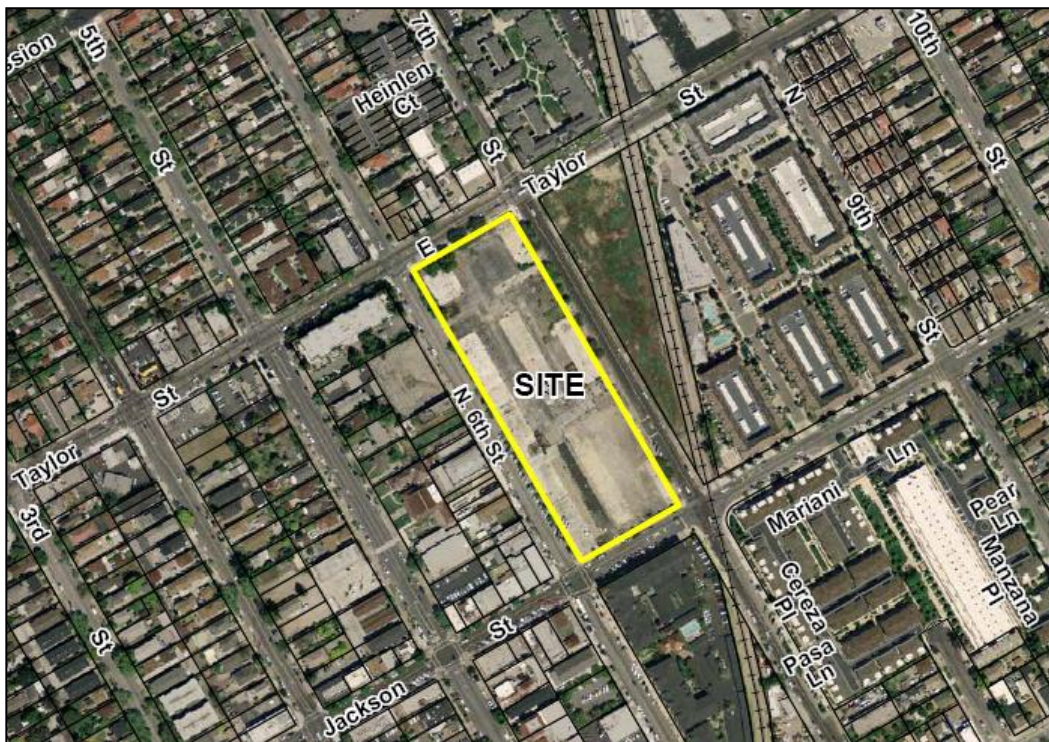


Figure 1: Aerial photo of project site

The site is situated on the City's former Main Corporation Yard and was developed with a series of buildings, mechanical equipment, and parking areas for the Main Corporation Yard. In 2007, the City expanded operations at its Central Service Yard on Senter Road and the uses of the Japantown Corporation Yard were transferred to the Central Service Yard. In 2008, the City's former Redevelopment Agency commenced demolition of the series of on-site buildings associated with the corporation yard. The entire site is currently paved and is used as the location for the Japantown Farmers Market and as a parking lot.

Site History

San Jose's Japantown is one of only three remaining Japantowns in the United States. Japantown is a thriving, active neighborhood in which the Japantown Neighborhood Business District has continued to add new retail offerings, even through the recent recession. The community continues to grow and is home to many cultures and ages that are drawn by the mix of new homes, the neighborhood-serving retail and specialty shops, and the area's proximity to Downtown and light rail transit.

In 2003, the community and the City's former Redevelopment Agency began working on redevelopment of the corporation yard with a Request for Qualifications (RFQ) and subsequent selection of the Olson Company. In March 2006, the City, the former Redevelopment Agency, and the Japantown Community Congress of San Jose convened a 20-member community task force to define the principles by which the corporation yard redevelopment would take place. The original project proposed by the Olson Company included approximately 600 residential units, 15,000 square feet of retail, and a 200 seat performing arts center. In late 2006, due to a slow-down in the economy, Olson Company informed the City and Agency that they would not proceed with redevelopment of the corporation yard.

In 2007, the City created a new RFQ and developer Williams/Dame and Associates from Portland was selected to redevelop the site. In 2008, due to further decline in the economy, Williams/Dame indicated they could not move forward with the proposed development. In 2012, staff reached out to Williams/Dame to reinstate plans for the corporation yard site. On February 26, 2013, the City Council approved a non-binding term sheet with Williams/Dame for the purchase of this City property and directed staff to continue non-binding and non-exclusive discussion with the development for the purposes of preparing a purchase and sale agreement for the City Council's consideration. In late 2013, Williams/Dame and The Related Companies agreed to partner on the project. Jackson-Taylor Partners, LLC was subsequently created to proceed with this redevelopment proposal.

The proposed project results from the City and developer's continued engagement with the Japantown community over the past 10 years. The project remains a high-density development, as it will construct up to 600 residential units and up to 25,000 square feet of commercial space on 3.75 acres, along with the completion a 0.75 acre turn-key park and dedication of a 0.75 acre site committed to a permanent home for the San Jose Taiko Conservatory and Creative Center for the Arts.

Since the 2014 City Council approval of the original Development Agreement, the City has since granted a Planned Development Rezoning in November 2015 to allow the residential, commercial and private community center development, as described above. A subsequent Planned Development Permit (File No. PD15-055) was approved in May 2016 to construct 520 multi-family residential units and 19,191 square feet of commercial space. In November 2016, the City Council approved an amendment to the Development Agreement that would vest the Planned Development Zoning District designation and the development standards set forth by that rezoning.

ANALYSIS

The proposed project was analyzed for conformance with the following: 1) the Envision San Jose 2040 General Plan; 2) the Jackson-Taylor Residential Strategy; 3) Development Agreement Ordinance findings; and 4) the California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The project site is designated Transit Residential on the Envision San Jose 2040 General Plan Land Use/Transportation Diagram. This designation is the primary designation for new high-density, mixed-use residential development sites that are located in close proximity to transit, jobs, amenities, and services. The allowable intensity for mixed-use development is 50 to 250 dwelling units per acre (DU/AC) and a range of 5 to 25 stories. The allowable density is further defined within applicable policy documents, such as the Jackson-Taylor Residential Strategy. The project is consistent with its General Plan designations in that it proposes a mixed-use development with a range of 113 to 160 DU/AC, which would be the equivalent of at least 5 stories in height.

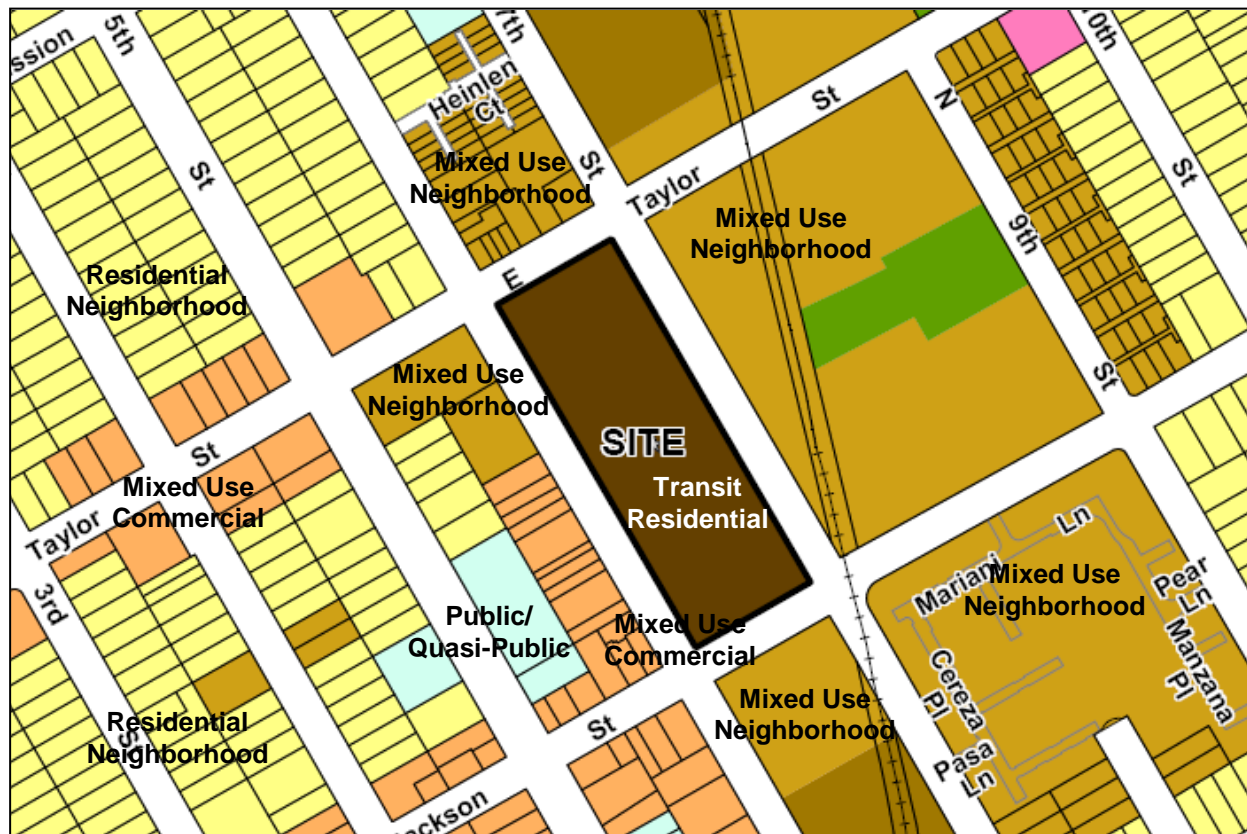


Figure 2: General Plan Land Use/Transportation Diagram

The site is in the Japantown Specific Plan Growth Area and Japantown Neighborhood Business District (NBD), as designated by the General Plan. The General Plan identifies Growth Areas as specific areas which are planned to accommodate the majority of the City's job and housing growth, such as specific plan areas. The NBD designation applies to commercial areas along both sides of a street, which function in their neighborhoods or communities as central business districts, providing community focus and identity through the delivery of goods and services. NBDs may include adjacent non-commercial land uses. This project is consistent with the Growth Area and NBD designation in that it incorporates high-density residential in a mixed-use

format that proposes ground-floor commercial retail along Jackson Street, the main commercial-oriented street of the Japantown NBD.

In addition to the site's consistency with its General Plan designations, the project was analyzed for consistency with the following General Plan goals and policies:

- Fiscal Sustainability Goal FS-1.7: Partner with public-non-profit, and private organizations to form mutually beneficial relationships that further the City's fiscal, environmental, economic development, and other major objectives.

Analysis: This Development Agreement is a partnership between the City and a private developer to ensure the redevelopment of a major underutilized site in the Japantown community. The Development Agreement would facilitate the City's sale of the former corporation yard site, thereby divesting the City's fiscal resources from paying property taxes and property maintenance. The subsequent development addresses community needs and expectations, as outlined in the Jackson-Taylor Residential Strategy.

- Implementation Policy IP-7.5: Typically accomplish implementation of specific plans through the rezoning and site development entitlement process.

Analysis: The project site is located in the Japantown Specific Plan, which is guided by the Jackson-Taylor Residential Strategy document. The project proposed under this Development Agreement is consistent with this Strategy, as further analyzed in the below section "Jackson Taylor Residential Strategy." This Development Agreement facilitates the implementation of the Strategy and would result in future entitlement permits consistent with the Strategy.

- Land Use Policy LU-1.1: Foster development patterns that will achieve a complete community in San Jose, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing and a resident workforce.

Land Use Goal LU-2: Focus new growth into identified Growth Areas to protect the quality of existing neighborhoods, while establishing new mixed use neighborhoods with a compact and dense form that is attractive to the City's projected demographics i.e., a young and senior population, and that supports walking, provides opportunities to incorporate retail and other services in a mixed-use format, and facilities transit use.

Land Use Policy LU-10.4: Within identified growth areas, develop residential projects at densities sufficient to support neighborhood retail in walkable, main street type development.

Vibrant Neighborhoods Policy VN-1.3: Encourage the development and maintenance of compatible neighborhood retail and services within walking distance of residences as a means to promote the creation of "complete" neighborhoods.

Analysis: These General Plan goals and policies encourage high-density housing and mixed-use development near public transit stations. This Development Agreement results in high-density residential project that incorporates ground-level commercial uses and, therefore, jobs within walking proximity to an existing light rail station and existing and future residences.

- Vibrant Neighborhoods Policy VN-4.2: Encourage the availability of diverse cultural spaces and places throughout the community that can be used for the arts and cultural education, rehearsals, production, performance, and other programming.

Vibrant Neighborhoods Policy VN-4.3: Consider opportunities to include spaces that support arts and cultural activities in the planning and development of the Downtown, new Urban Village areas, and other Growth Areas.

Analysis: The site is located in the Japantown Specific Plan Growth Area. The redevelopment proposal includes a 0.75 acre land dedication of a 0.75 acre site for the Creative Center for the Arts (CCA). The CCA is envisioned as a privately developed building that would support the San Jose Taiko Conservatory with a venue for practices and performances and house other community-based organizations such as CreaTV. San Jose Taiko is a local non-profit organization dedicated to Japanese cultural traditions through the advancement of the taiko art form. CreaTV is a non-profit community media center that helps San Jose residents, businesses, schools, and organizations to communicate their message to a broader audience through public and education television and Internet channels.

Based on the above analysis, the proposed project conforms to the General Plan Land Use/Transportation Diagram designation, goals, and policies.

Jackson-Taylor Residential Strategy Conformance

The project site is located in the Jackson-Taylor Residential Strategy area, which is an approximately 75-acre area consisting of about 15 blocks between E. Hedding Street and E. Empire Street from roughly N. Sixth Street to N. 11th Street. The Jackson-Taylor Residential Strategy was originally approved by the City Council on October 6, 1992 and most recently amended on May 20, 2008.

The Strategy recognizes that the existing industrial uses in the area are undergoing transition, yet is oriented towards providing housing that will be more compatible with the surrounding residential neighborhood. To this end, the Strategy supports a mixed-use residential and commercial core in Japantown that is urban in character and at a scale and density that makes change economically feasible. Ground-floor retail space in select locations would provide neighborhood-serving and specialty shopping in a manner that complements the Japantown NBD, and supports employee and resident needs.

The Jackson-Taylor Residential Strategy designates the site with mixed use, recommended ground-floor retail, and park land use designations. The project was analyzed for consistency with the following Jackson-Taylor Residential Strategy objectives and designations:

- Land Use Objectives: The Strategy identifies land use objectives, including: (1) provide for a mix of housing types, densities, and prices; (2) encourage supportive mixed uses; (3) and improve the quantity/quality of neighborhood open space.

Analysis: Japantown consists of a mix of housing types. Developed and entitled properties immediately surrounding the project site include residential density ranges of 19, 39, 53, 72, 136, and 161 dwelling units per acre. The project proposes a density of 113 to 160 DU/AC, which falls within the existing density range and contributes towards the diversity of urban housing types. In addition to providing multi-family residences, the proposed development incorporates 16,000 to 25,000 square feet of ground-floor retail, provides for a 0.75 acre turn-key public park, and dedication of a 0.75 acre site for the future development of the Creative Center for the Arts.

- Neighborhood Character Objectives: The Strategy identifies neighborhood character objectives, including: (1) maintain existing neighborhood character; (2) strengthen pedestrian linkages to adjacent neighborhoods, transit, and Japantown NBD; and (3) maintain existing street pattern.

Analysis: The project maintains and enhances the character of the neighborhood by extending substantial ground-floor retail along Jackson Street, which is the Japantown NBD's main commercial corridor. Retail space within residential development provides shopping and employment opportunities within walking distance of various land uses and links these land uses to the existing Japantown/Ayer light rail station. The project maintains the existing street-block pattern, while providing for mid-block pedestrian access between Sixth and Seventh Streets through the future park and Creative Center for the Arts sites.

- **Mixed-Use Core Land Use Designation:** This designation allows a mix of residential, office, and retail uses. New development would be up to 14 stories or 175 feet in height, with some ground-floor retail, up to two stories of office space, and 1 to 2 stories for community amenity uses. All parking would be below ground, in architecturally or landscape-treated structures or structures faced with ground-floor commercial, office, or residential space.

Analysis: The new residential development would be 5 stories with up to 25,000 square feet of ground-floor retail. Vehicle parking at the ground-level is proposed to be wrapped by residential units, associated residential amenity spaces, and commercial retail spaces. The remainder of the parking spaces is proposed below grade. The community amenity building, the Creative Center for the Arts, is envisioned to be up to 2 stories.

- **Parks, Open Space, and Community Facilities Land Use Designation:** Public parks and plazas are fundamental features of livable and enjoyable higher-density communities. The parks shown in the Strategy reinforce the pedestrian streets that lead to and from main residential and shopping destinations. Whether designed as a landscaped park or a hard-surface plaza, public spaces should be the focus of commercial and residential developments and be placed next to public streets. The community that lives in the surrounding neighborhood sees a great need for a multi-purpose facility that sponsors activities and has space for classes, meetings, and performances for people of all ages.

Analysis: The 0.75 acre turn-key park is centered on the project site between two proposed residential buildings. The park would be accessible from Sixth and Seventh Streets. In addition to the turn-key park, the project's dedication of a 0.75 acre site would facilitate the future development of the Creative Center for the Arts that provides spaces for community-based activities and gathering.

Based on the above analysis, the proposed project conforms to the Jackson-Taylor Residential Strategy.

Development Agreement Amendment Findings

Pursuant to Chapter 18.02.250 of the San Jose Municipal Code, an Amendment to this Development Agreement can be made if the following findings are made:

1. An amendment may be granted upon a finding by the city council that an amendment is consistent either with the general plan and zoning codes in effect at the time the ordinance authorizing the agreement was adopted or at the time of any amendment.

Analysis: The proposed development is consistent with the General Plan designation of Transit Residential as it provides new mixed-use residential development in close proximity to transit, jobs, amenities and services. Additional analysis is described above in the "Envision San Jose 2040 General Plan Conformance" section.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A Second Addendum to the Japantown Corporation Yard Redevelopment Project Environmental Impact Report (adopted May 21, 2008 by Council Resolution No. 74384), was prepared for the project under the provisions of the environmental review requirements the California Environmental Quality Act of 1970, as amended (CEQA), including the state and local implementing regulations. The CEQA Guidelines Section 15162 states that when an EIR has been certified, no subsequent EIR shall be prepared for that project unless the lead agency determines that either substantial changes are proposed to the project which will require major revisions to the previous EIR, substantial changes will occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR, or new information of substantial importance is available. The Addendum provided updated studies for noise. The Addendum concluded that the implementation of the proposed Planned Development Rezoning would not result in any new significant impacts, impacts that are cumulatively considerable, or impacts that will directly or indirectly cause substantial adverse effects on human beings beyond those disclosed and evaluated in the Final EIR. This Second Addendum was adopted on October 6, 2015 (File No. PDC15-018). The proposed project is also consistent with the City's Greenhouse Gas Reduction Strategy outlined in the General Plan, as determined in the first EIR completed for Japantown, and as updated in the first Addendum completed in 1998. The EIR includes a First Addendum, which was adopted on May 2, 2014 (File No. PP14-006).

PUBLIC HEARING NOTIFICATION

Although this item does not meet any of the criteria above, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Lea Simvoulakis

Approved by: 

Sylvia Do, Division Manager for Rosalynn Hughey,
Interim Planning Director

Date: 9/19/17

Attachments:

Draft Ordinance with draft Development Agreement Second Amendment

| Owner: | Applicant: |
|---|---|
| City of San Jose 200 East Santa Clara Street, 17 th Floor Tower San Jose, CA 95113 | Related California Urban Residential c/o Susan Smartt 44 Montgomery Street, Suite 7050 San Francisco, CA 94104 |

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE APPROVING A SECOND AMENDMENT TO DEVELOPMENT AGREEMENT WITH JACKSON-TAYLOR PARTNERS, LLC, RELATIVE TO THE DEVELOPMENT OF THE JAPANTOWN CORPORATION YARD REDEVELOPMENT PROJECT ON CERTAIN REAL PROPERTY LOCATED AT 696 NORTH SIXTH STREET AND AUTHORIZING THE CITY CLERK TO EXECUTE THE SECOND AMENDMENT TO DEVELOPMENT AGREEMENT AND CAUSE THE SAME TO BE RECORDED WITH THE SANTA CLARA COUNTY RECORDER'S OFFICE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. This Ordinance is adopted under the authority of California Government Code Section 65868 and pursuant to the provisions of the City of San José ("CITY") Ordinance No. 28986, codified in Chapter 18.02 of Title 18 of the San Jose Municipal Code (the "Enabling Ordinance"), both of which provide for the ability of CITY to adopt development agreements and amendments and set forth procedures and requirements for the consideration of those agreements.

SECTION 2. This Ordinance incorporates by reference as though fully set forth herein that certain "Second Amendment to Development Agreement By and Between the City of San José and Jackson-Taylor Partners LLC for Japantown Corporation Yard Redevelopment Project" (the "SECOND AMENDMENT"), the substantive form of which is attached hereto as Exhibit "A." All defined terms not otherwise defined herein shall have the same meaning as set forth in the AGREEMENT as amended.

SECTION 3. The environmental impacts of the residential/commercial mixed use development project described within the SECOND AMENDMENT to the AGREEMENT

were disclosed, analyzed and evaluated as a part of that certain Final Environmental Impact Report prepared for the Japantown Corporation Yard Redevelopment Project (the "EIR"), considered and certified by the City Council on May 20, 2008, by Resolution No. 74384, a first addendum to that EIR prepared and approved by the Director of Planning, Building and Code Enforcement on May 2, 2014, and a second Addendum to that EIR prepared and approved by the City Council on November 17, 2015 (collectively, the "PROJECT ENVIRONMENTAL CLEARANCE"), prior to taking any approval actions on this Ordinance, in conformance with the California Environmental Quality Act of 1970 ("CEQA"), together with state and local guidelines implementing CEQA, all as amended to date.

SECTION 4. The City Council of the City of San José finds that the following are the relevant facts concerning the proposed SECOND AMENDMENT:

- a. The City Council conducted a duly noticed public hearing on December 16, 2014 to consider an ordinance to approve the Development Agreement ("AGREEMENT") by and between the CITY and Jackson-Taylor Partners, LLC, a Delaware limited liability company ("DEVELOPER") to develop between 425 to 600 multi-family attached residential units and between 16,000 to 25,000 square feet of commercial space for a mixed-use development with dedication of public parkland and dedication of public community performance land located on approximately 5.25 gross acres bounded by North Sixth Street, East Taylor Street, North Seventh Street and Jackson Street ("PROJECT"), all as more specifically set forth in the AGREEMENT.
- b. After conducting a duly noticed public hearing on December 16, 2014, the City Council considered, confirmed and certified that the PROJECT ENVIRONMENTAL CLEARANCE adequately addresses the environmental impacts of the PROJECT at the SUBJECT PROPERTY and the AGREEMENT, approved under its Ordinance No. 29528 the form of the AGREEMENT, authorized the execution of the AGREEMENT, and found that the provisions of the AGREEMENT are consistent with the GENERAL PLAN and the SPECIFIC PLAN, as amended, and the DEVELOPMENT AGREEMENT ORDINANCE.
- c. The CITY and DEVELOPER fully executed the AGREEMENT on March 24, 2015 and the AGREEMENT was recorded in the Santa Clara County Recorder's Office on April 17, 2015 as Document No. 22920137.

- d. At the time of the approval of the AGREEMENT by the City Council on December 16, 2014, the following CITY entitlements had been granted with respect to the SUBJECT PROPERTY and the DEVELOPER's development of the PROJECT:
 1. GENERAL PLAN designation of Transit Residential; and
 2. The "Jackson-Taylor Residential Strategy" approved by CITY Council Resolution No. 64109 on October 6, 1992, including amendments through the effective date of March 24, 2015 (the "SPECIFIC PLAN").
- e. Although the PROJECT is consistent with the CITY's GENERAL PLAN designation and applicable SPECIFIC PLAN, as of the effective date (March 24, 2015) of the AGREEMENT the PROJECT could not be constructed under the then existing zoning for the SUBJECT PROPERTY, and required a rezoning. Therefore, as of the effective date of the AGREEMENT, DEVELOPER did not have a vested right to construct the PROJECT through the AGREEMENT.
- f. On December 1, 2015, the City Council adopted Planned Development (PD) Rezoning No. PDC15-018, under Ordinance No. 29651, which consisted of the rezoning of the SUBJECT PROPERTY from the R-M Multiple Residence Zoning District to the CP(PD) Planned Development Zoning District to allow construction of up to 600 residential units, up to 25,000 square feet of commercial space, and a private community center with indoor performance use ("PD ZONING").
- g. On May 25, 2016, CITY's Planning Director approved and issued Planned Development Permit No. PD15-055, which allowed the removal of five (5) ordinance sized trees and the construction of 520 multi-family residential units in two (2) buildings, 19,191 square feet of commercial space, and 729 parking spaces ("PD PERMIT").
- h. The CITY and DEVELOPER desired to amend the AGREEMENT to vest the PD REZONING and PD PERMIT under the AGREEMENT, so on November 29, 2016, the City Council adopted Ordinance No. 29819 amending the AGREEMENT specifically to amend the definition of DEVELOPMENT APPROVALS in the AGREEMENT to include the PD REZONING and PD PERMIT and to specify the PD REZONING AND PD PERMIT as a VESTED ELEMENT under the AGREEMENT, and did not otherwise amend the terms and conditions of the AGREEMENT in any other manner ("FIRST AMENDMENT").
- i. In accordance with the terms of Exhibit C of the AGREEMENT, the DEVELOPER requested and the CITY granted a one year extension of the term of the AGREEMENT on September 29, 2016 ("LETTER EXTENSION").

- j. The CITY and DEVELOPER now desire to further amend the AGREEMENT in order to incorporate the LETTER EXTENSION into the AGREEMENT; clarify the provisions governing assignment; clarify the provisions regarding the applicability of inclusionary housing requirements and housing impact fees; authorize the use of the SUBJECT PROPERTY by the CITY on a temporary basis for a farmers market and public parking; assign a DEVELOPER'S Community Liaison for the PROJECT; and revise the remedies for DEVELOPER delay in performance or default of the AGREEMENT; and does not otherwise amend the terms and conditions of the AGREEMENT in any other manner.
- k. The CITY and DEVELOPER have taken all actions mandated by and fulfilled all requirements set forth in Chapter 18.02 of Title 18 of the San José Municipal Code and under applicable State law in connection with this SECOND AMENDMENT.
- l. On [REDACTED], 2017, the Planning Commission, designated by Chapter 18.02 of Title 18 of the San José Municipal Code as the advisory agency to the City Council for purpose of development agreement amendment review pursuant to California Government Code Section 65867 and said Chapter 18.02 of Title 18, considered this SECOND AMENDMENT to the AGREEMENT, at a duly noticed public hearing and recommended to the City Council that CITY adopt an ordinance approving this SECOND AMENDMENT.
- m. Consistent with the information contained in the AGREEMENT as amended:
 - i. Development of the PROJECT as set forth in the SECOND AMENDMENT is consistent with the GENERAL PLAN and all applicable specific and area plans and policies, as amended;
 - ii. Development of the PROJECT should be encouraged because it will help meet important economic, social, environmental and planning goals of the CITY, including but not limited to; locating housing near jobs, transit (i.e., within 2,000 feet of light rail) and neighborhood commercial retail to reduce commutes for San José residents, reduce vehicle trips and increase transit ridership; redeveloping underutilized property in an infill location with housing and jobs; integrating high density residential with neighborhood serving commercial uses; and further, providing for an extraordinary contribution of land to facilitate the development of a desired community amenity, specifically, a performance and cultural space;
 - iii. The SECOND AMENDMENT will facilitate the development of the PROJECT in the manner proposed in the AGREEMENT for the further reasons set forth in the Recitals to the AGREEMENT as amended;

- iv. DEVELOPER will incur unusually substantial costs in order to provide public improvements, facilities or services, in particular an extraordinary contribution of land to facilitate the development of a performance and cultural center long-desired by the community in the CITY, from which the public will benefit, as set forth in more detail in the AGREEMENT; and Jackson-Taylor Partners, LLC, has made commitments to a very high standard of quality for the PROJECT and has agreed to development limitations beyond that required by the existing laws, as set forth in the PROJECT description, in the DEVELOPMENT APPROVALS described in the original AGREEMENT and amendments thereto generally; and
- v. Development of the PROJECT will make a substantial contribution to the economic development of the City of San José in that the PROJECT will create additional, transit-oriented housing to support transit infrastructure investments, as well as provide an extraordinary contribution of land to facilitate the development of a performance and cultural center long desired by the community.

SECTION 5. This Council, based upon analysis of the facts set forth above and the provisions of the original AGREEMENT, the FIRST AMENDMENT, and the SECOND AMENDMENT finds and concludes that the PROJECT, as described in the AGREEMENT, the FIRST AMENDMENT, and the SECOND AMENDMENT, will make a substantial contribution to the economic development of CITY.

SECTION 6. Based upon the foregoing facts, findings, and conclusions, and as required by the Enabling Ordinance, the City Council hereby adopts the following as its findings:

- a. The proposed PROJECT is consistent with the GENERAL PLAN, as amended, and all applicable specific or area plans of CITY including amendments thereto.
- b. The proposed PROJECT should be encouraged in order to meet important economic, social, environmental or planning goals of CITY.
- c. The proposed SECOND AMENDMENT will facilitate the development of the PROJECT on the SUBJECT PROPERTY in the manner proposed in the original AGREEMENT.
- d. The proposed PROJECT will make a substantial contribution to the economic development of CITY in that DEVELOPER will incur unusually substantial costs

to provide public improvements, facilities or services, including, without limitation, an extraordinary contribution of land to facilitate the development of a performance and cultural center long desired by the community in the CITY, all as more specifically described in the original AGREEMENT, from which the public will benefit, and DEVELOPER, has made a commitment to a very high standard of quality for the PROJECT and has agreed to development standards beyond that required by applicable existing laws.

- e. The proposed SECOND AMENDMENT is consistent with the provisions of the Enabling Ordinance and the AGREEMENT is in the public interest.

SECTION 7. The City Council hereby approves the proposed SECOND AMENDMENT in substantially the form attached hereto as Exhibit "A" and hereby authorizes and directs the City Clerk to execute the SECOND AMENDMENT, substantially in the form attached hereto as Exhibit "A," on behalf of the CITY as soon as this ordinance becomes effective and the FIRST AMENDMENT is executed by the DEVELOPER.

SECTION 8. The City Clerk is hereby directed to record this ordinance including the fully executed form of the SECOND AMENDMENT attached hereto as Exhibit "A" with the Santa Clara County Recorder no later than ten (10) days following the effective date of this ordinance.

PASSED FOR PUBLICATION of title this _____ day of _____, 2017 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

RECORDING REQUESTED BY:

The City of San José

WHEN RECORDED, RETURN TO:

City of San José
200 East Santa Clara Street
San José, CA 95113
Attn: City Clerk, 14th Floor Tower

This document is for the benefit of the City of San José.

Request for recordation without fee is made in accordance with Sections 6103 and 27383 of the Government Code of the State of California.

ATTEST: TONI J. TABER, CMC, City Clerk
City of San José

By: _____

Title: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSÉ
AND
JACKSON-TAYLOR PARTNERS LLC
FOR
JAPANTOWN CORPORATION YARD
REDEVELOPMENT PROJECT**

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND
JACKSON-TAYLOR PARTNERS LLC
FOR
JAPANTOWN CORPORATION YARD
REDEVELOPMENT PROJECT**

This SECOND AMENDMENT ("SECOND AMENDMENT") TO THE DEVELOPMENT AGREEMENT CONTAINING PERPETUAL COVENANTS RUNNING WITH THE LAND INCLUDING ENVIRONMENTAL COVENANTS ("AGREEMENT") is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation ("CITY"), JACKSON TAYLOR PARTNERS LLC, a Delaware limited liability company ("DEVELOPER"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code (the "DEVELOPMENT AGREEMENT STATUTE") and pursuant to CITY's powers as a charter city, including, without limitation, CITY Ordinance No. 28986, codified in Chapter 18.02 of Title 18 of the San José Municipal Code ("DEVELOPMENT AGREEMENT ORDINANCE").

RECITALS

This SECOND AMENDMENT is made and entered into on the basis of the following facts and understandings of the parties hereto:

- A. The City Council conducted a duly noticed public hearing on December 16, 2014 to consider an ordinance to approve the AGREEMENT by and between the CITY and DEVELOPER to develop between 425 to 600 multi-family attached residential units and between 16,000 to 25,000 square feet of commercial space for a mixed-use development with dedication of public parkland and dedication of public community performance land located on approximately 5.25 gross acres bounded by North Sixth Street, East Taylor Street, North Seventh Street and Jackson Street ("PROJECT").
- B. The SUBJECT PROPERTY referred to in this SECOND AMENDMENT and the AGREEMENT is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.
- C. After conducting a duly noticed public hearing on December 16, 2014, the City Council considered, confirmed and certified that the PROJECT ENVIRONMENTAL CLEARANCE adequately addresses the environmental impacts of the PROJECT at the SUBJECT PROPERTY and the AGREEMENT, approved under its Ordinance No. 29528 the form of the AGREEMENT, authorized the execution of the AGREEMENT, and found that the provisions of

the AGREEMENT are consistent with the GENERAL PLAN and the SPECIFIC PLAN, as amended, and the DEVELOPMENT AGREEMENT ORDINANCE.

- D. The CITY and DEVELOPER fully executed the AGREEMENT on March 24, 2015 and the AGREEMENT was recorded in the Santa Clara County Recorder's Office on April 17, 2015 as Document No. 22920137.
- E. At the time of the approval of the AGREEMENT by the City Council on December 16, 2014, the following CITY entitlements had been granted with respect to the SUBJECT PROPERTY and the DEVELOPER's development of the PROJECT:
 - 1. GENERAL PLAN designation of Transit Residential; and
 - 2. The "Jackson-Taylor Residential Strategy" approved by CITY Council Resolution No. 64109 on October 6, 1992, including amendments through the effective date of March 24, 2015 (the "SPECIFIC PLAN").
- F. Although the PROJECT is consistent with the CITY's GENERAL PLAN designation and applicable SPECIFIC PLAN, as of the effective date (March 24, 2015) of the AGREEMENT the PROJECT could not be constructed under the then existing zoning for the SUBJECT PROPERTY, and required a rezoning. Therefore, as of the effective date of the AGREEMENT, DEVELOPER did not have a vested right to construct the PROJECT through the AGREEMENT.
- G. On December 1, 2015, the City Council adopted Planned Development (PD) Rezoning No. PDC15-018, under Ordinance No. 29651, which consisted of the rezoning of the SUBJECT PROPERTY from the R-M Multiple Residence Zoning District to the CP(PD) Planned Development Zoning District to allow construction of up to 600 residential units, up to 25,000 square feet of commercial space, and a private community center with indoor performance use ("PD ZONING").
- H. On May 25, 2016, CITY's Planning Director approved and issued Planned Development Permit No. PD15-055, which allowed the removal of five (5) ordinance sized trees and the construction of 520 multi-family residential units in two (2) buildings, 19,191 square feet of commercial space, and 729 parking spaces ("PD PERMIT").
- I. The CITY and DEVELOPER desired to amend the AGREEMENT to vest the PD REZONING and PD PERMIT under the AGREEMENT, so on November 29, 2016, the City Council adopted Ordinance No. 29819 amending the AGREEMENT specifically to amend the definition of DEVELOPMENT APPROVALS in the AGREEMENT to include the PD REZONING and PD PERMIT and to specify the PD REZONING AND PD PERMIT as a VESTED ELEMENT under the AGREEMENT, and did not otherwise amend the terms and conditions of the AGREEMENT in any other manner ("FIRST AMENDMENT").

- J. In accordance with the terms of Exhibit C of the AGREEMENT, the DEVELOPER requested and the CITY granted a one year extension of the term of the AGREEMENT on September 29, 2016 ("LETTER EXTENSION").
- K. The CITY and DEVELOPER now desire to further amend the AGREEMENT and FIRST AMENDMENT in order to incorporate the LETTER EXTENSION into the AGREEMENT; clarify the provisions governing assignment; clarify the provisions regarding the applicability of inclusionary housing requirements and housing impact fees; authorize the use of the SUBJECT PROPERTY by the CITY on a temporary basis for a farmers market and public parking; assign a DEVELOPER'S Community Liaison for the PROJECT; and revise the remedies for DEVELOPER delay in performance or default of the AGREEMENT and does not otherwise amend the terms and conditions of the AGREEMENT in any other manner.
- M. The CITY and DEVELOPER have taken all actions mandated by and fulfilled all requirements set forth in Chapter 18.02 of Title 18 of the San José Municipal Code and under applicable State law in connection with this SECOND AMENDMENT.
- N. On [REDACTED], 2017, the Planning Commission, designated by Chapter 18.02 of Title 18 of the San José Municipal Code as the advisory agency to the City Council for purpose of development agreement amendment review pursuant to California Government Code Section 65867 and said Chapter 18.02 of Title 18, considered this SECOND AMENDMENT to the AGREEMENT, at a duly noticed public hearing and recommended to the City Council that CITY adopt an ordinance approving this SECOND AMENDMENT.
- O. On [REDACTED], 2017, the CITY's City Council considered this SECOND AMENDMENT as a part of Ordinance No. [REDACTED], at duly noticed public hearings and found that the provisions of this SECOND AMENDMENT are consistent with all of the applicable provisions of the CITY'S General Plan and zoning codes, together with all of the VESTED ELEMENTS listed in the AGREEMENT, and voted to adopt Ordinance No. [REDACTED], approving in substantive form of this SECOND AMENDMENT and authorizing the City Clerk to execute this SECOND AMENDMENT.

AGREEMENT

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. SECOND AMENDMENT Effective Date: The parties hereto agree that, subject to the full execution of this SECOND AMENDMENT by the parties, the effective date of this SECOND AMENDMENT shall be the effective date of Ordinance No. [REDACTED] approving and authorizing the execution of this SECOND AMENDMENT ("SECOND AMENDMENT EFFECTIVE DATE").

2. Definitions: All defined terms not otherwise defined herein shall have the same meaning as set forth in the AGREEMENT.

3. Term: Section 1.C of the AGREEMENT is amended by this SECOND AMENDMENT to read as follows:

C. Term

The term of this AGREEMENT shall commence upon the later of the EFFECTIVE DATE set forth hereinabove or the EFFECTIVE DATE of Ordinance No. 29528 (hereinafter "ADOPTING ORDINANCE") and shall extend to and through the eighth (8th) anniversary of the PSA CLOSING, subject to extension as provided herein, including under Section 3.C(5) and EXHIBIT C Section 3, unless said term is earlier terminated or modified by circumstances set forth in this AGREEMENT or by mutual consent of the parties hereto. Following the expiration or termination of said term, this AGREEMENT shall be of no further force or effect, with the exception of the PERPETUAL COVENANTS, attached hereto as EXHIBIT D which shall run with the land and survive in perpetuity except as expressly provided to the contrary herein.

4. Assignment to Non-Affiliate: Section 1.F(2) of the AGREEMENT is hereby amended by this SECOND AMENDMENT to read as follows:

(2) Assignment to Non-Affiliate. DEVELOPER shall have the right to assign and delegate all of its rights and obligations under this AGREEMENT to an unrelated third party ("**Non-Affiliate Assignee**") subject to the CITY'S sole but reasonable prior written consent, which consent shall be based upon the proposed assignee's track record and ability to carry out development of the Project. Prior to CITY'S consideration of any such proposed assignment, DEVELOPER and the proposed Non-Affiliate Assignee shall submit to CITY, for its review and approval: (i) reliable evidence of the proposed Non-Affiliate Assignee's qualifications as CITY may reasonably request, including but not limitation to documentation of the proposed Non-Affiliate Assignee's professional knowledge, experience, and financial ability to develop projects that are of similar scope and nature to the Project and to satisfactorily complete the obligations of DEVELOPER under this AGREEMENT, and (ii) all other legal documents proposed to effect any such assignment and by which the proposed Non-Affiliate Assignee shall expressly assume all of the obligations of DEVELOPER under this AGREEMENT and agree to be subject to all conditions and restrictions to which DEVELOPER is subject. In the absence of specific written agreement by CITY, which agreement may be granted or withheld in the CITY'S sole but reasonable discretion, no such assignment to a Non-Affiliate Assignee shall be deemed to relieve DEVELOPER from any obligations under this AGREEMENT. Without limiting the generality of the foregoing, CITY'S consent to any such Non-Affiliate Assignee shall not be deemed to have been unreasonably withheld in the event that such Non-Affiliate Assignee does not

provide reasonably satisfactory evidence of its professional knowledge, experience, and financial ability to develop projects that are of similar scope and nature of the Project and to satisfactorily complete the obligations of DEVELOPER under this AGREEMENT.

5. Assignment after Certificate of Occupancy: Section 1.F(4) of the AGREEMENT is hereby amended by this SECOND AMENDMENT to read as follows:

(4) Assignment after Certificate of Occupancy. Following the date when DEVELOPER or its successors in interest have obtained a certificate of occupancy or its equivalent from CITY with respect to the improvements required hereunder for Phase 1, there shall be no restrictions on the ability of DEVELOPER to assign its rights under this Agreement with respect to Phase I. Following the date when DEVELOPER or its successors in interest have obtained a certificate of occupancy or its equivalent from CITY with respect to the improvements required hereunder for Phase 2, there shall be no restrictions on the ability of DEVELOPER to assign its rights under this Agreement, and DEVELOPER shall be released from its obligations under this AGREEMENT.

6. Affordable Housing: Section 2.D(5) of the AGREEMENT is hereby amended by this SECOND AMENDMENT to read as follows:

(5) The residential component of the PROJECT will be market-rate residential rental housing. The rental provisions of the CITY'S Inclusionary Housing Policy adopted by the City Council on November 2, 2010 by Resolution No. 75623 (the "INCLUSIONARY POLICY") are not currently applicable. If the rental provisions in the INCLUSIONARY POLICY do become applicable as a result of subsequent legislation, DEVELOPER shall remain exempt from the requirements of the INCLUSIONARY POLICY unless this AGREEMENT terminates prior to the completion of such rental housing. Further, notwithstanding Section 2.D(4) above, if CITY adopts a Housing Impact Fee (defined as any fee imposed by CITY for the provision of affordable housing either on- or off-site, excepting the INCLUSIONARY POLICY) or a Public Art Requirement or Fee applicable to new rental housing development, which fee or requirement becomes effective after the date of the second reading of the ADOPTING ORDINANCE, DEVELOPER shall be exempt from the application of the fee or requirement to the PROJECT unless this AGREEMENT is terminated prior to the completion of such rental housing. If a condominium map is recorded by the DEVELOPER and units will be offered for sale at a future date, DEVELOPER agrees that: (1) the for-sale requirements of the INCLUSIONARY POLICY shall apply; (ii) DEVELOPER shall notify CITY of its intent to sell individual units no less than 6 (six) months prior to offering the units for sale; and (iii) DEVELOPER shall obtain CITY'S approval of an affordable housing plan and affordability agreement as required by such INCLUSIONARY POLICY and shall record the affordability agreement on the SUBJECT PROPERTY prior to offering any residential unit on the SUBJECT PROPERTY for sale.

7. Section 3.A(3) is hereby added to the AGREEMENT by this SECOND AMENDMENT to read as follows:

(3) Community Liaison. DEVELOPER and CITY'S Director of Economic Development shall mutually agree upon a person to serve as a community liaison for the PROJECT, at DEVELOPER'S sole cost and expense, to attend public meetings relating to the PROJECT and serve as DEVELOPER'S point person for contact with the neighboring community of the PROJECT about the PROJECT until such time as a building permit is issued for PHASE I of the PROJECT. DEVELOPER shall provide reasonably sufficient documentation of the qualifications to perform the Duties of Community Liaison of any person it desires to replace as Community Liaison to the CITY Director of Economic Development, and shall obtain the CITY Director of Economic Development's prior written consent to the designation of its Community Liaison, which consent shall not be unreasonably withheld. The PARTIES may mutually agree in writing to terminate the obligations of this Section 3.A(3) of the AGREEMENT at any time.

8. Section 3.A(4) is hereby added to the AGREEMENT by this SECOND AMENDMENT to read as follows:

(4) Temporary Use of SUBJECT PROPERTY by CITY. The temporary use of a portion of the SUBJECT PROPERTY by the CITY for a farmer's market and public parking is authorized respectively by the March 30, 2017 Farmer's Market Lease Agreement between CITY and DEVELOPER and the March 30, 2017 Parking Lease Agreement between CITY and DEVELOPER (collectively "TEMPORARY USE AGREEMENTS"). Within 60 calendar days of the SECOND AMENDMENT EFFECTIVE DATE, DEVELOPER and CITY shall modify the TEMPORARY USE AGREEMENTS in order to extend the authority for the CITY to (i) use a portion of the SUBJECT PROPERTY for a farmer's market and for public parking until such time as DEVELOPER obtains a grading permit for the SUBJECT PROPERTY; and (ii) require DEVELOPER to pay street closure and/or encroachment fees for periodic use of CITY streets for the farmer's market due to cessation of that use on the SUBJECT PROPERTY as may be required from time to time until the completion of the PROJECT and CITY's acceptance of the public park.

9. Section 4.B is hereby added to the AGREEMENT by this SECOND AMENDMENT to read as follows:

B. Remedies for Failure to Timely Commence or Complete Construction.

CITY and DEVELOPER have entered into this AGREEMENT for the purpose of completion of the PROJECT and not for speculation in land holding. Subject to Section 9, notwithstanding any provision to the contrary set forth in this AGREEMENT, the PSA, or any other agreement between the CITY and

DEVELOPER relating to the SUBJECT PROPERTY or the PROJECT, if the DEVELOPER fails to commence or complete construction after commencement of construction of the PROJECT in accordance with the timelines for performance in EXHIBIT C (as may be extended by the City Manager in accordance with EXHIBIT C), the remedies specified in Subsections 4.B(1), 4.B(2), and 4.B(3) below shall apply.

(1) Failure to Commence Construction. If DEVELOPER fails to commence construction of Phase 1 or Phase 2 by the applicable dates required by Exhibit C (and as may be extended by the City Manager in accordance with Exhibit C) for Phase 1, two (2) years after the PSA Closing; and for Phase 2, five (5) years after the PSA Closing), as the CITY's sole and exclusive remedy this AGREEMENT shall terminate with no further action required by the Parties at midnight of the date upon which construction was required to commence, including the result that the VESTED ELEMENTS specified in Section 2.A of the AGREEMENT shall no longer be vested as of the date of termination of the AGREEMENT and all of the CITY'S affordable housing requirements, including but not limited to, the Inclusionary Housing Ordinance (San Jose Municipal Code Chapter 5.08) and the Affordable Housing Impact Fee (City Council Resolution No. 77218 as amended) shall apply to the development of the SUBJECT PROPERTY.

(2) Failure to Complete Construction. If DEVELOPER commences construction of a Phase, the CITY'S remedies for failure to timely complete construction of that Phase by the applicable dates required by Exhibit C (and as may be extended by the City Manager in accordance with Exhibit C) (for Phase 1, five (5) years after the PSA Closing; and for Phase 2, eight (8) years after the PSA Closing) shall include (i) compelling the completion of that Phase only; and (ii) any and all health and safety related laws including . If DEVELOPER does not commence construction of a Phase, this AGREEMENT shall terminate and have no further force and effect.

(3) Maintenance of SUBJECT PROPERTY. DEVELOPER shall maintain the SUBJECT PROPERTY in a safe condition and shall not cause or suffer any nuisance upon the SUBJECT PROPERTY, including removal of unsafe conditions such as trespassers, debris, fire hazards, overgrown vegetation, graffiti, and the like. Notwithstanding the foregoing limitation on remedies for failure to commence construction or complete construction after commencement in Sections 4.B.(1) and 4.B.(2), the CITY may enforce all laws relating to public health, safety, and the condition of the SUBJECT PROPERTY. Unless otherwise excepted by this Section 4.B, the CITY may avail itself of any other remedies CITY deems appropriate in the event of DEVELOPER'S breach of this AGREEMENT or laws applicable to the maintenance and use of the SUBJECT PROPERTY.

10. Full Force and Effect; Conflicts: All of the recitals, terms and conditions of the AGREEMENT and FIRST AMENDMENT not expressly modified by this SECOND

AMENDMENT shall remain in full force and effect, and the CITY and DEVELOPER hereby ratify and affirm all their respective rights and obligations under the AGREEMENT as modified by this SECOND AMENDMENT. If there is a direct, irreconcilable conflict between the terms and conditions of the AGREEMENT and this SECOND AMENDMENT, the terms and conditions contained within this SECOND AMENDMENT shall control.

WITNESS THE EXECUTION HEREOF, on the date first written hereinabove.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____
VERA M. I. TODOROV
Senior Deputy City Attorney

By: _____
TONI J. TABER, CMC
City Clerk

“DEVELOPER”

JACKSON-TAYLOR PARTNERS LLC, a Delaware limited liability corporation

By: _____

Name: _____

Title: _____

PARCEL MAP

JAPANTOWN MIXED USE
CONSISTING OF 2 SHEETS

BEING A SUBDIVISION OF LOTS 233 THROUGH 244 IN BLOCK 23, WHITE'S ADDITION, AS SHOWN ON THAT MAP ENTITLED "CITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEER", FILED FOR RECORD IN BOOK A OF MAPS, PAGE 72, SANTA CLARA COUNTY RECORDS, AND LYING WITHIN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

AUGUST, 2015



OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN ON THE MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HEREBY CONSENT TO THE MAKING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE AND ALL DEDICATIONS AND OFFERS OF DEDICATION THEREIN.

CITY OF SAN JOSE
A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA

Marc Klein
NAME: MARC KLEIN
TITLE: DIRECTOR OF REAL ESTATE

ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF California SS
COUNTY OF Santa Clara
ON August 27, 2015, BEFORE ME, Sandra Orita Garford, NOTARY PUBLIC,

PERSONALLY APPEARED Marc Klein WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/HIS/HER EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITIES, AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

NOTARY'S SIGNATURE

PRINTED NOTARY'S NAME

COUNTY OF NOTARY'S PRINCIPAL PLACE OF BUSINESS

NOTARY'S COMMISSION NUMBER

EXPIRATION OF NOTARY'S COMMISSION

Sandra Orita Garford
Sandra Orita Garford
Santa Clara
#2120642
August 14, 2019



CITY LAND SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREON SUBDIVISION MAP AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

DATE: 09/28/15



Steve G. Oddy
STEVE G. ODDY, LS 8822
CITY OF SAN JOSE, CALIFORNIA

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREON PARCEL MAP; THAT THE SUBDIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF ANY, AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, IF REQUIRED, HAVE BEEN COMPLIED WITH.

DATE: 9/11/15



Barry E. No. 227
BARRY E. NO. 227
CITY OF SAN JOSE, CALIFORNIA

RECORDER'S STATEMENT

FILE NO. 23096766 FEE \$ 10.00 PAID, ACCEPTED FOR RECORD AND FILED THIS
1st DAY OF October 2015 AT 2:20 P.M.
IN BOOK 887 OF MAPS, AT PAGES 15-16 SANTA CLARA COUNTY RECORDS
AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY.

REGINA ALCONDRAS, COUNTY RECORDER
SANTA CLARA COUNTY, CALIFORNIA

Regina Alcondras
REGINA ALCONDRAS
RECORDER

DATE: 8-19-2015

Tracy L. Conzett
TRACY L. CONZETT, LS 8720

SHEET 1 OF 2 SHEETS HMH 4617.00.231

#23096766

Bk: 887
Pg: 15-16

#15

PARCEL MAP

JAPTANTOWN MIXED USE
CONSISTING OF 2 SHEETS

BEING A SUBDIVISION OF LOTS 233 THROUGH 244 IN BLOCK 23, WHITE'S ADDITION, AS SHOWN ON THAT MAP ENTITLED "CITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEER", FILED FOR RECORD IN BOOK A OF MAPS, PAGE 72, SANTA CLARA COUNTY RECORDS, AND LYING WITHIN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

AUGUST, 2015



1570 Oakland Road San Jose, CA 95131

50 0 25 50
1 INCH = 50 FEET



BASIS OF BEARINGS

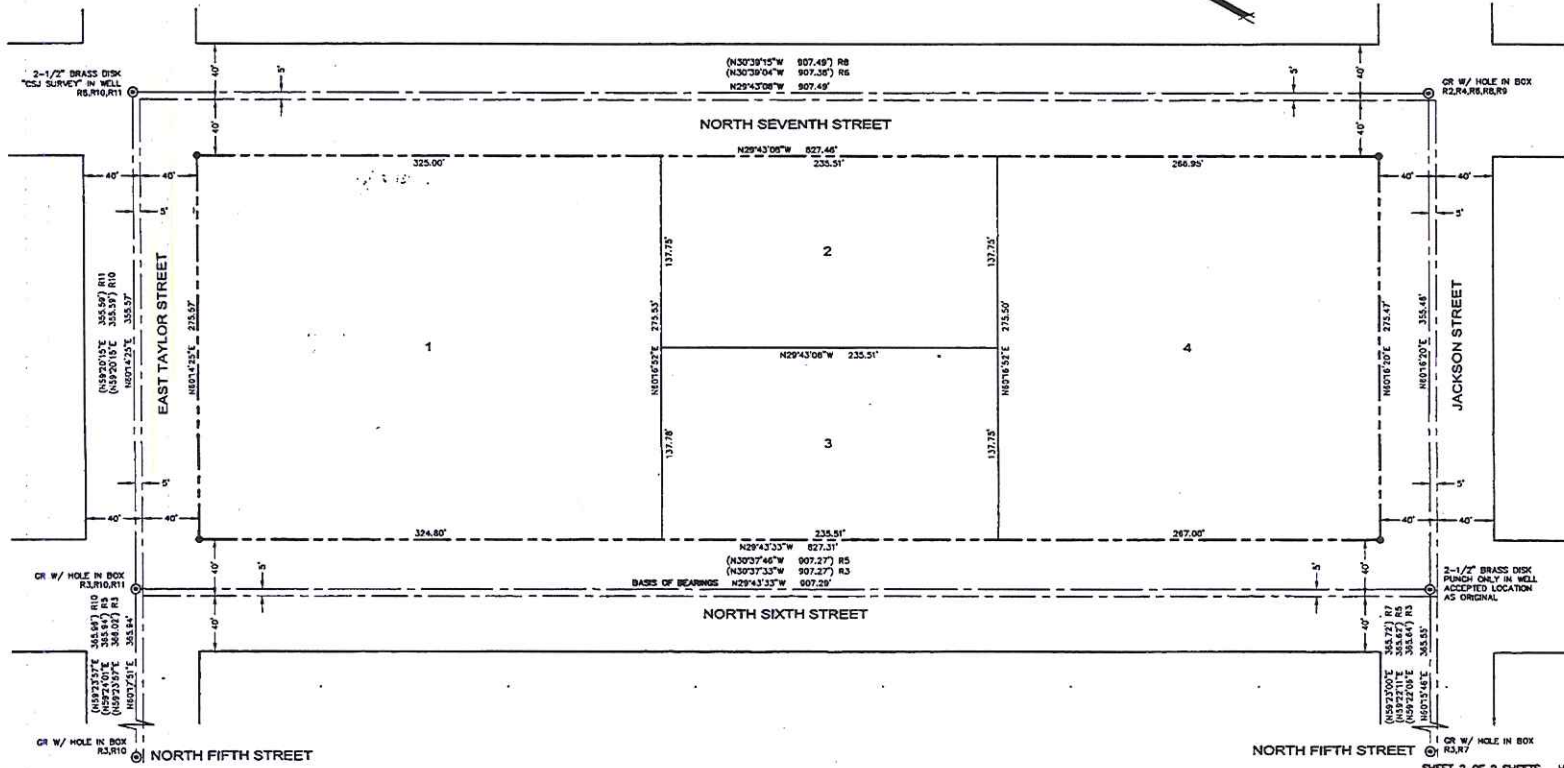
THE BEARING NORTH 30°37'33" WEST OF THE MONUMENT LINE OF NORTH SIXTH STREET FROM JACKSON TO EAST TAYLOR STREETS AS SHOWN ON THAT RECORD OF SURVEY FILED FOR RECORD IN BOOK 349 OF MAPS, PAGE 10, SANTA CLARA COUNTY RECORDS, AND AS FOUND MONUMENTED AND ROTATED CLOCKWISE 0° 54' 00" FOR THE PURPOSE OF THIS MAP, WAS ADOPTED AS THE BASIS OF BEARINGS.

NOTES

1. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
2. THE DISTINCTIVE BORDER DENOTES THE BOUNDARY OF THE SUBDIVISION.
3. THE AREA WITHIN THE DISTINCTIVE BORDER IS 5.23 ACRES, MORE OR LESS.
4. PARCELS 1 THROUGH 4 ARE SUBJECT TO FUTURE DEDICATION AND IMPROVEMENT REQUIREMENTS UNDER FUTURE REZONINGS, SITE DEVELOPMENT PERMIT(S), PLANNED DEVELOPMENT PERMIT(S), CONDITIONAL USE PERMIT(S) OR OTHER SIMILAR REGULATIONS AND PAYMENT OF APPLICABLE SANITARY SEWER CONNECTION FEES AND STORM DRAINAGE FEES AND OTHER APPLICABLE FEES BEFORE DEVELOPMENT.

LEGEND

- DISTINCTIVE BORDER LINE
 - LOT LINE
 - R# RECORD DOCUMENT
 - R# REFERENCE
 - ⊙ FOUND 2.5" BRASS DISK IN MONUMENT WELL UNLESS OTHERWISE NOTED (NO KNOWN RECORD UNLESS NOTED R#)
 - ⊙ NAIL & TAG SET & STAMPED "LS 8720"
 - LINE NOT DRAWN TO SCALE
 - (---) DIMENSION AS DESCRIBED IN RECORD
- | | | |
|--------------|-------------|-------------|
| R# A-MAPS-72 | R# 537-M-42 | R# 749-M-1 |
| R# 294-M-7 | R# 552-M-25 | R# 755-M-48 |
| R# 348-M-10 | R# 611-M-5 | R# 627-M-15 |
| R# 514-M-18 | R# 745-M-24 | |



Bk: 887
Pg: 16-16

23096766

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