

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 THE 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 José 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.

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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 1. 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



1570 Oakland Road San Jose, CA 95131

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

Manci Klein
NAME: **MANCI 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 Anita Garford, NOTARY PUBLIC,
PERSONALLY APPEARED Manci 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/HEN/HEM EXECUTED THE SAME IN THE MANNER AND WITHIN THE 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 Sandra Anita Garford
PRINTED NOTARY'S NAME Sandra Anita Garford
COUNTY OF NOTARY'S PRINCIPAL PLACE OF BUSINESS Santa Clara
NOTARY'S COMMISSION NUMBER #2120642
EXPIRATION OF NOTARY'S COMMISSION August 14, 2019



CITY LAND SURVEYOR'S STATEMENT

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

DATE: 08/26/15
STEVE G. CHOY, LS 6672
CITY OF SAN JOSE, CALIFORNIA



CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HERON 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: 9/1/15
BARRY E. NG, CE 35569
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 PM
IN BOOK 887 OF MAPS, AT PAGES 15-16 SANTA CLARA COUNTY RECORDS
AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY.

REGINA ALCOMENDRAS, COUNTY RECORDER
SANTA CLARA COUNTY, CALIFORNIA
BY: Regina Alcomendras DEPUTY
N. Bonavides

SHEET 1 OF 2 SHEETS HMH 4617.00.231

Bk: 887
Pg: 15-16

#23096766

#15

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



1570 Oakland Road San Jose, CA 95131

1 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 348 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.

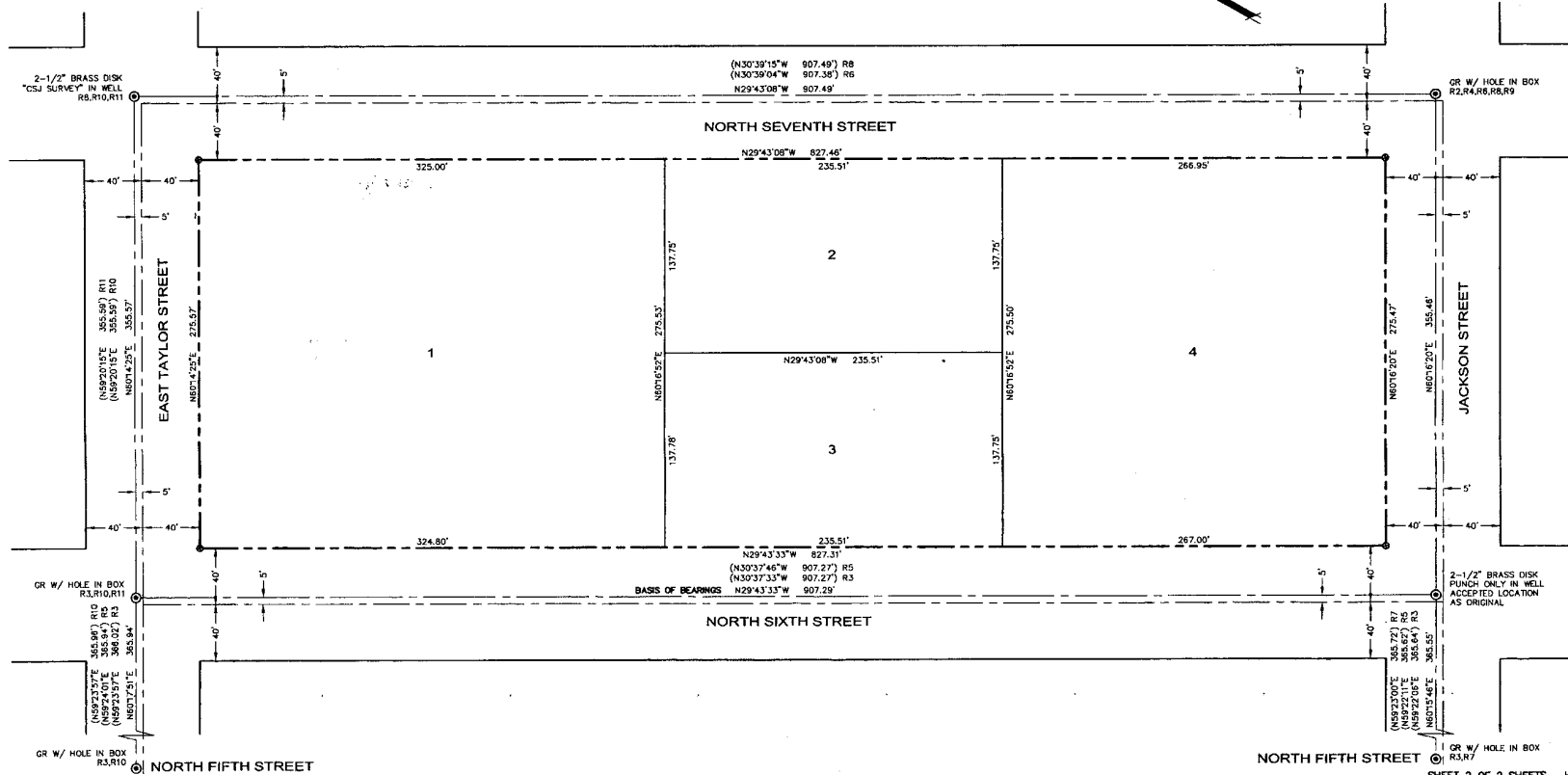
NOTES

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 PERMITS, 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 REFERENCES:

R1: A-MAPS-72	R5: 537-M-42	R9: 749-M-1
R2: 254-M-7	R6: 552-M-25	R10: 755-M-48
R3: 349-M-10	R7: 511-M-5	R11: 827-M-15
R4: 514-M-19	R8: 745-M-24	
- ⊙ R# 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
- (---)R# DIMENSION AS DESCRIBED IN RECORD



Bk: 887
Pg: 16-16

461700P.W02

23096766

16

NORTH FIFTH STREET
SHEET 2 OF 2 SHEETS HMH 4617.00.231