RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING A PERMIT PURSUANT TO SAN JOSE MUNICIPAL CODE CHAPTER 13.37 FOR A MAJOR ENCROACHMENT TO BE LOCATED WITHIN A PORTION OF THE COLEMAN AVENUE RIGHT-OF-WAY

WHEREAS, TM San Jose 78 LLC, a Delaware limited liability company ("Permittee") has applied for an encroachment permit pursuant to Chapter 13.37 of the San José Municipal Code ("Chapter 13.37"); and

WHEREAS, the Permittee is the owner of certain real property in the City of San José, County of Santa Clara, State of California, described as Lot 1 on that certain Parcel Map recorded on May 8, 2017, in Book 903 of Maps, Pages 46-49, in the Official Records of Santa Clara County, California, San José, California ("Property"); and

WHEREAS, the Property is bounded by or subject to that certain public right-of-way commonly known as Coleman Avenue ("Public Property"); and

WHEREAS, the Permittee has an easement within a portion of the Public Property for private vehicle parking and related improvements ("Private Parking") so long as they are not inconsistent with the public's street easement; and

WHEREAS, the Permittee has requested that the City authorize the Permittee to design, construct, maintain, repair, occupy and use (i) a trash enclosure structure and associated appurtenances including footings, foundation and pipelines within a portion of the Public Property, and (ii) additional private parking and related surface improvements within a portion of the Public Property, both of which are not encompassed by the Private Parking (collectively, "Encroachment"); and

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WHEREAS, the Encroachment is classified as a Major Encroachment under San Jose Municipal Code Chapter 13.37; and

WHEREAS, on February 20, 2018, the Director of the Department of Public Works submitted to the City Council a memorandum setting forth its findings and recommendation for Council approval of the Encroachment (hereinafter "Report"); and

WHEREAS, the Permittee has consented to the terms of the Maintenance and Access and Encroachment Agreement attached to the Report ("Agreement"), and all other applicable provisions of Chapter 13.37; and

WHEREAS, the Agreement will govern both the Private Parking and the Encroachment; and

WHEREAS, this resolution shall constitute the City Council's authorization for the Encroachment, subject to the terms and conditions contained herein ("Authorization"), and together with the Agreement, shall constitute the revocable license for the Encroachment ("Encroachment Permit");

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. Based on the Report and all other evidence submitted, the City Council makes the following findings:

A. The Encroachment will provide a public benefit to those using the Public Property;

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B. No other reasonable method of obtaining the desired results is available except for the Encroachment as proposed;

C. Granting the Permit will not unreasonably interfere with or disrupt use of the Public Property;

D. The Public Property has the capacity to accommodate the proposed Encroachment and any other existing or foreseeable public or private facilities;

E. Granting the Permit will not be detrimental to the public interest, safety, health or welfare or have the potential to injure the property interests of others; and

F. The Permittee has demonstrated its ability to install, maintain, repair and remove the Encroachment.

SECTION 2. The Encroachment Permit is hereby authorized, subject to all of the following conditions:

A. No additional conditions.

SECTION 3. After satisfaction of all conditions to issuance of a permit under Chapter 13.37, the Director of Public Works is hereby directed to execute the Agreement and record a certified copy of the Encroachment Permit on the Property with the Office of the Recorder for the County of Santa Clara.

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ADOPTED this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

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