

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 AT 200 EDENVALE AVENUE

WHEREAS, 200 Edenvale Avenue Hotel Investors LLC (“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 has entered into that certain purchase and sale agreement dated August 17, 2018, as amended on October 22, 2018, October 30, 2018, November 6, 2018 and November 13, 2018 (“Purchase and Sale Agreement”) to acquire from the City the real property and related improvements located at 200 Edenvale Avenue, San José, California (“Property”); and

WHEREAS, the Property is bounded by or subject to that certain public right-of-way or publicly owned or controlled property known as Edenvale Court (“Public Property”); and

WHEREAS, pursuant to the Purchase and Sale Agreement, Permittee will acquire sidewalk, concrete walls, driveways and landscaping improvements (collectively, “Encroachment”) that lie outside of the Property boundaries and within a portion of the Public Property (the “Subject Premises”); and

WHEREAS, the Permittee has requested that the City authorize the Permittee to maintain, repair, reconstruct, occupy and use the Encroachment in connection with its operation of the hotel and conference center located on the Property; and

WHEREAS, the Encroachment is classified as a Major Encroachment under Chapter

13.37; and

WHEREAS, on November 19, 2018, the Director of the Department of Public Works submitted to the City Council a memorandum setting forth his findings and recommendation for Council approval of the Encroachment (hereinafter "Report"); and

WHEREAS, the Permittee shall execute the City's standard form of encroachment agreement as approved by the City Council pursuant to Resolution No. 78284 ("Encroachment Agreement"), and has agreed to abide by all applicable provisions of Chapter 13.37; and

WHEREAS, this resolution shall constitute the City Council's authorization for the Encroachment subject to the terms and conditions for issuance of the permit ("Authorization"), and together with the Encroachment 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. The City Council hereby adopts the Report, and based on the Report and all other evidence submitted, makes the following findings:

- A. The Encroachment will provide a public benefit to those using the Public Property;
- 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. This Encroachment Permit shall not become effective before the Permittee acquires the Property pursuant to the Purchase and Sale Agreement.

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 Encroachment 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.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk