

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, APPROVING A FIRST AMENDMENT TO THE  
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF  
SANTA CLARA AND TOD BROKAW, LLC FOR THE  
PROPERTY LOCATED AT 1205 COLEMAN AVENUE, SANTA  
CLARA**

[Original Ordinance No. 2003 Adopted July 9, 2019]

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, California Government Code Sections 65864 through 65869.51 (collectively the “Development Agreement Act”) authorize cities to enter into binding development agreements with owners of real property and these agreements govern the development of the property;

**WHEREAS**, The City of Santa Clara (“City”) and TOD Brokaw, LLC (“Property Owner”) entered into a Development Agreement adopted on July 9, 2019, effective on September 26, 2019 and recorded on October 9, 2019 as document 24300322 in the Official Records of Santa Clara County (the “Original Development Agreement”) concerning the certain real property located at 1205 Coleman Avenue (“Project Site”) that consists of two parcels totaling 21.4 acres (APNs: 230-46-069 and 230-46-070);

**WHEREAS**, the Original Development Agreement authorizes phased development on the Project Site of up to 1,565 multi-family residential units, 45,000 square feet of supporting retail and associated parking within four multi-story buildings on individual parcels (Buildings 1 – 4); a 152,000 square foot high-rise hotel with associated parking on a separate parcel; 2.6 acres of dedicated parkland; private streets and shared surface parking on common lots; site landscaping; and public and private on- and off-site improvements (“Project”);

**WHEREAS**, on July 9, 2019, in Resolution 19-8733, the City Council certified an Environmental Impact Report (“EIR”) and approved the Mitigation Monitoring and Reporting Program (“MMRP”) for the Project;

**WHEREAS**, on May 4, 2020, the “Property Owner” filed an application to amend the Original Development Agreement (“First Amendment to Development Agreement”) to move the timing of hotel construction from Phase 1 to before the issuance of the first residential building (“Building 3”) in Phase 2 of Project development;

**WHEREAS**, the First Amendment to Development Agreement is attached hereto and incorporated by this reference;

**WHEREAS**, the requested First Amendment to Development Agreement to move hotel construction from Phase 1 to before the issuance of the first residential building (“Building 3”) in Phase 2 development does not modify the approved land uses, intensity of development or timing of full build-out of the Project as approved, and therefore would not result in new significant impacts or impacts of substantially greater severity to require further environmental analysis;

**WHEREAS**, Santa Clara City Code § 17.10.130 provides for the review and recommendation of the City’s Planning Commission of all development agreements before action is to be taken by the City Council;

**WHEREAS**, on June 10, 2020, the Planning Commission held a duly noticed public hearing to consider the proposed First Amendment to Development Agreement, at the conclusion of which, the Commission voted to recommend that the Council approve the proposed First Amendment to Development Agreement;

**WHEREAS**, notice of the July 7, 2020 City Council hearing on the proposed First Amendment to Development Agreement was published in the *Weekly*, a newspaper of general circulation for the City, on June 24, 2020;

**WHEREAS**, on June 25, 2020, the City mailed notice of the City Council public hearing to all property owners within 1,000 feet of the Project Site and approximately 4,800 properties in the Old Quad, and posted notice of the public hearing in three conspicuous locations within 300 feet of the Project Site; and

**WHEREAS**, on July 7, 2020, the City Council conducted a public hearing to consider the First Amendment to Development Agreement, at which time the City Council received and considered all verbal and written testimony and evidence submitted.

**NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, AS FOLLOWS:**

**SECTION 1:** The City Council hereby finds that all the foregoing recitals are true and correct and by this reference makes them a part hereof.

**SECTION 2:** The City Council finds that consideration of the First Amendment to Development Agreement is based on the determination that the proposed Amendment does not modify the approved land uses, intensity of development or timing of full build-out of the Project as approved, and therefore would not result in new significant impacts or impacts of substantially greater severity to require further environmental analysis; and furthermore find that the mitigation measures in the certified EIR and approved MMRP remain unchanged and will be implemented with each phase of Project development.

**SECTION 3:** Pursuant to Government Code Section 65867.5, the City Council hereby finds that the provisions of the First Amendment to Development Agreement do not include changes to the approved land use types, intensity of development that is to occur on the site, or number of phases of Project development and is therefore consistent with the General Plan land use designation and approved development plan for the Project Site.

**SECTION 4:** The City Council has reviewed the First Amendment to Development Agreement and based on its review finds that the Development Agreement, as amended by the First Amendment to Development Agreement complies with all requirements of Government Code section 65865.2 [entitled “Contents” (of Development Agreement)].

**SECTION 5:** The City Council hereby approves the First Amendment to Development Agreement, substantially in the form attached hereto.

**SECTION 6:** The City Manager is hereby authorized to execute the First Amendment to Development Agreement on behalf of the City upon adoption of this Ordinance, together with such minor and clarifying changes consistent with the terms thereof as may be approved by the Manager, or designee, is also authorized and directed to take any action and execute any documents necessary to implement the Development Agreement as amended, including but not limited to conducting an annual review of compliance as specified therein.

**SECTION 7:** Except as specifically set forth herein, this Ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

**SECTION 8:** Within ten (10) days after the City Manager executes the First Amendment to Development Agreement, the City Clerk shall cause the First Amendment to Development Agreement to be recorded with the Santa Clara County Recorder.

**SECTION 9:** This Ordinance shall not be codified in the Santa Clara City Code.

**SECTION 10: Savings Clause:** The changes provided for in this ordinance shall not affect any offence or act committed or done or any penalty or forfeiture or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgement rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

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**SECTION 11:** Effective date. This Ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

**PASSED FOR THE PURPOSE OF PUBLICATION** this 7th day of July, 2020, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

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NORA PIMENTEL  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. First Amendment to Development Agreement