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**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
SANTA CLARA AND INNOVATION COMMONS OWNER LLC**

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "**First Amendment**"), dated as of _____, 2020 (the "**First Amendment Effective Date**"), is entered into by and between the CITY AND OF SANTA CLARA, a chartered California municipal corporation (the "**City**"), and INNOVATION COMMONS OWNER LLC, a Delaware limited liability company ("**Developer**"), with reference to the following facts and circumstances:

RECITALS

A. The City and Yahoo! Inc., a Delaware corporation ("**Yahoo**") entered into that certain Development Agreement, dated May 25, 2010, recorded June 28, 2010 as Document No. 2075596, and re-recorded October 1, 2010 as Document No. 20896671, in the Santa Clara Clerk-Recorder's Office ("**Development Agreement**"), as well as that certain Operating Memorandum between the City and Yahoo, recorded June 17, 2015 as Document No. 22989859, in the Santa Clara County Clerk-Recorder's Office, which was amended by that certain First Amendment to Operating Memorandum between City and Yahoo, recorded December 2, 2015 as Document No. 23106419, in the Santa Clara County Clerk-Recorder's Office (collectively, the "**Memoranda**"). All capitalized terms used but not defined herein shall have the meanings assigned to them in the Development Agreement.

B. On or about June 16, 2016, Yahoo and LeEco Real Estate Group, LLC, a Delaware limited liability company ("**LeEco**") entered into that certain Assignment of Development Agreement ("**Assignment**") wherein Yahoo assigned all of its rights, title and interests under the Development Agreement to LeEco and LeEco agreed to be bound by and perform all of Yahoo's obligations under the Development Agreement and Memoranda. On or about June 28, 2018, LeEco transferred all of its rights and obligations in the Development Agreement to Developer.

C. The Development Agreement authorizes the development of the Property with up to 3,060,000 square feet of office/R&D/commercial use consisting of 13 six-story buildings, three two-story commons buildings, surface parking, two levels of below-grade parking, site circulation, landscaping, and public and private improvements.

D. On or around May 10, 2010, the Santa Clara City Council (“**City Council**”) certified the Environmental Impact Report for the Yahoo Santa Clara Campus Project (“**2010 EIR**”) under the California Environmental Quality Act (“**CEQA**”), approved rezoning the Property from ML-Light Industrial to PD - Planned Development, and approved the Vesting Tentative Parcel Map for the Property. In approving the Project, the City Council adopted Resolution No. 10-7724 making findings required under CEQA, including a statement of overriding considerations and a mitigation monitoring and reporting program.

E. By this First Amendment, the Parties intend to extend the Term of the Development Agreement to facilitate the development of the Property.

F. On or about _____, 2019, the City approved an Addendum to the 2010 EIR, which determined that the Project was previously evaluated in the 2010 EIR, and no subsequent or supplemental environmental impact report is required in connection with approval of this First Amendment because: (a) there are no substantial changes to the Project which will require major revisions to the 2010 EIR; (b) no substantial changes have occurred with respect to the circumstances under which the Project is being undertaken that will require major revisions to the 2010 EIR due to new significant impacts or a substantial increase in the severity of previously identified impacts; and (c) there is no new information which was not known and could not have been known at the time the 2010 EIR was certified as complete that has become available and shows new significant impacts, an increase in the severity of a previously identified significant impact, or changes related to the feasibility of, or new mitigation measures and alternatives which would substantially reduce significant impacts and which were rejected.

G. By this First Amendment, the Parties desire to amend the Development Agreement to reflect the foregoing, in accordance with the terms set forth herein.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Developer agree as follows:

1. **Term.** Section 1 of the Development Agreement is hereby deleted and replaced with the following:

“1.1 **Duration of Term.** The term (“Term”) of this Agreement shall commence on the Effective Date set forth above, approving this Agreement, and shall continue for a period of thirteen (13) years, unless sooner terminated or extended as hereinafter provided.

1.2 **Options.** If a Certificate of Occupancy has been issued for at least fifty percent (50%) of Phase I as set forth in the Development Plan within thirteen (13) years from the Effective Date, then the Term of the Agreement shall be automatically extended by an additional five (5) years. If a Certificate of Occupancy has been issued for at least fifty percent (50%) of Phase II as set forth in the Development Plan within eighteen (18) years of the Effective Date, then the Term of the Agreement shall be extended by an additional five (5) years upon written request by the Developer. In no event shall the maximum term of this Agreement be longer than twenty-three (23) years from the Effective Date.

1.3 **Expiration.** Following expiration of the Term or any extension, or if sooner terminated, or if the requirements of Section 1.2 are not met this Agreement shall have no force and effect, subject, however, to post-termination obligations of Developer and City.”

2. **TDM Plan.** A new section 4.13 is hereby added to section 4 (“Development Fees, Exactions and Dedications”) to read as follows:

“4.13 TDM Plan.

a. The Developer is required to prepare, institute, and monitor a Transportation Demand Management Plan (TDM) to reduce employee vehicle trips by a minimum of twenty-five percent (25%) at full buildout and occupancy of the Project as measured against the trip generation rates provided in the Institute of Transportation Engineers (ITE) Trip Generation Manual. The measures in the TDM plan may include, but are not limited to, bicycle parking, showers, lockers, last-mile shuttle service to nearby transit stations, carpool ride matching, carpool preferential parking, personalized commute assistance, and a commute kiosk.

b. The initial TDM plan shall be completed by a qualified (as determined by the Director of Community Development) third-party consultant prior to the issuance of an occupancy permit. Said plan shall be reviewed and approved by the Director of Community Development. Each calendar year, an annual review of the TDM plan shall be completed by a qualified third-party consultant, and the third-party consultant shall submit the TDM annual report covering the prior calendar year to the Planning Division for review and approval on or before February 28th of each year, to the satisfaction of the Director of Community Development. The Director of Community Development shall have the authority and discretion to require reasonable modification of the TDM measures as a means to achieve the identified overall trip reduction target (or to achieve reasonable progress toward the target prior to full Project buildout and occupancy).”

3. **Miscellaneous.**

(a) **Incorporation.** This First Amendment constitutes a part of the Development Agreement and any reference to the Development Agreement shall be deemed to include a reference to the Development Agreement as amended by this First Amendment.

- (b) Ratification. To the extent of any inconsistency between this First Amendment and the Development Agreement, the provisions contained in this First Amendment shall control. As amended by this First Amendment, all terms, covenants, conditions, and provisions of the Development Agreement shall remain in full force and effect.
- (c) Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same document, binding on all parties hereto notwithstanding that each of the parties hereto may have signed different counterparts. Delivery of this First Amendment may be effectuated by hand delivery, mail, overnight courier, or electronic communication (including by PDF sent by electronic mail, facsimile, or similar means of electronic communication). Any electronic signatures shall have the same legal effect as manual signatures.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and Developer have each caused this First Amendment to be duly executed on its behalf as of the First Amendment Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

Attest:

NORA PIMENTAL, MMC
Assistant City Clerk
City of Santa Clara

DEVELOPER:

INNOVATION COMMONS OWNER LLC
a Delaware limited liability company

By: De Sun
Name: De Sun
Title: CEO

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.

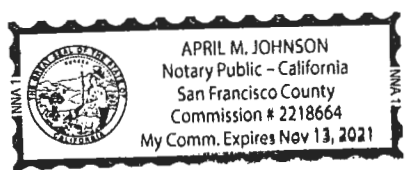
State of [CA])
) ss.
County of San Francisco)

On December 19, 2019, before me, April M. Johnson,
a Notary Public, personally appeared OU SUN,
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/they executed the same
in his/her/their authorized capacity(ies), 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 and official seal.

[Affix seal here]



[Signature]
Signature of Notary Public