

ORDINANCE NO. 2021

**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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**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Santa Clara
City Hall
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF SANTA CLARA,
a chartered California municipal corporation,

and

TOD BROKAW, LLC,
a California limited liability company

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“**Amendment**”) is dated for reference purposes as of _____, 2020, and is made by and between THE CITY OF SANTA CLARA (“**City**”), a chartered California municipal corporation, and TOD BROKAW, LLC, a California limited liability company (“**Developer**”).

Recitals

- A. Developer and the City are parties to that certain Development Agreement effective September 26, 2019 and recorded on October 9, 2019 as document number 24300322 in the Official Records of Santa Clara County (the “Original Agreement” or “Original Development Agreement”).
- B. Concurrently with the submission of its Development Agreement application, Developer submitted applications to develop the subject property with a transit-oriented mixed use development consisting of up to 1,565 residential dwelling units and up to 197,000 square feet of hotel and retail uses (the "Project").
- C. The Original Development Agreement contemplated that the Project would be developed in several phases which are outlined in more detail in the Development Plan and the Conditions of Approval, as those terms are defined in the Original Development Agreement. Commencement of hotel construction was required during phase one of the Project, and Developer agreed that no building permit may be issued for the construction of the second residential building in phase one unless and until a building permit was first issued for the hotel and construction activities started on the hotel, per Sections 2.7 and 2.8 of the Original Development Agreement. The Original Development Agreement also

required that Developer provide at least 10 percent of residential units at affordable rents in both phases of development.

- D. As a result of the global pandemic's effects on the hotel industry, the Original Agreement's requirements regarding timing of the Project's hotel became infeasible.
- E. Allowing the Project to proceed under revised phasing would benefit the City in several ways, including: earlier development of 725 residential units, including 73 Below Market Rate units; creating nearly 20,000 square feet of new retail space, including a 7,500 square foot lease for the Police Activities League located in building 2 that would have been delayed under the Original Agreement; approximately \$35 million in impact fees payable for phase one; construction of a two-acre Public Park, Brokaw Road improvements, and increased VTA ridership. In addition, Developer has now committed to providing 15 percent of residential units at affordable rents during Phase Two, in addition to the 10 percent of residential units at affordable rents being provided during Phase One.
- F. Sections 11.1 and 11.2 of the Original Development Agreement provide that City and Developer may modify the terms of the Original Agreement pursuant to Government Code section 65858 and City Code section 17.10.300, and the parties intend to do so by this Amendment.
- G. On June 10, 2020, City's Planning Commission held a duly noticed public hearing on this Amendment and: (i) determined that consideration of this Amendment complies in all respects with CEQA; (ii) determined that this Amendment is consistent with the City's General Plan; and (iii) recommended that the City Council approve this Amendment.

H. On July 7, 2020, the City Council held a duly noticed public hearing on this Amendment and determined that consideration of this Amendment complies in all respects with CEQA; found this Amendment to be consistent with the City's General Plan; and introduced Ordinance No. _____, approving this Amendment.

I. On _____, the City Council adopted Ordinance No. _____, enacting this Amendment and the Ordinance became effective thirty (30) days later on _____, ("Effective Date").

NOW, THEREFORE, pursuant to the authority contained in Section 65864 et seq., of the California Government Code and The Code of the City of Santa Clara, California ("SCCC") Section 17.10.010 et seq., and in consideration of the mutual covenants and promises of the parties, the Parties agree as follows:

1. Development of the Property

City and Developer agree that, notwithstanding anything to the contrary in the Original Agreement, sections 2.7 and 2.8 of the Original Agreement are hereby amended as follows:

(a) **"2.7 Timing of Improvements.** Developer may implement the Development Plan in phases, as described herein or as outlined in the Development Plan, or as otherwise approved by the City. The phasing set forth in the Development Plan is the approved phasing as of the Effective Date. As set forth in Section 2.8, commencement of the hotel construction is required prior to phase two of the Project. With the exception of the hotel construction schedule of Section 2.8, Developer may request alternate phasing in writing based on business constraints or considerations. Prior to implementation, such alternate phasing must be approved in writing by the City Council, whose approval shall not be unreasonably withheld taking into consideration whether the terms and conditions of this

Agreement, the Development Plan, the Conditions of Approval and the Mitigation Monitoring and Reporting Program are met, that the revised phasing will not unduly burden, hamper or constrain prior or future phases of the Project, and that the revised phasing will not modify the hotel construction schedule specified in Section 2.8. It is the Parties' specific intent that this Agreement shall prevail over any later-adopted initiative or moratorium that might otherwise have the effect of restricting or limiting the timing of development of the Project and that Developer shall have the right to develop the Project at such time as Developer deems appropriate within the exercise of its subjective business judgment and no annual (or other) limit, moratoria, or other limitation upon the number of, or phasing or pacing of, buildings which may be constructed, or Building Permits which may be obtained, or the like shall apply to the Project.”

(b) **“2.8 Timing of Hotel Construction.** The Developer agrees to begin construction of the hotel prior to phase two of the Project. In order to facilitate this requirement, the Developer agrees that no building permit shall be issued for the construction of the first residential building in phase two, unless and until a building permit has first been issued for the hotel and construction activities started on the hotel. For the purposes of this requirement the term "construction activities started" is satisfied by commencement of foundation work.”

2. Development Fees, Exactions and Dedications

City and Developer agree that, notwithstanding anything to the contrary in the Original Agreement, subsection “a” of section 4.5 of the Original Agreement is hereby amended as follows:

“a. During Phase One of development, Developer agrees to provide at least 10 percent of residential units at affordable rents. During Phase Two of development, Developer agrees to provide at least 15 percent of residential units at affordable rents. The entire affordable housing obligation set forth in this paragraph shall be satisfied by construction of the dwelling units onsite, and Developer acknowledges that none of this affordable housing obligation can be satisfied by payment of an in-lieu fee. This affordable housing commitment shall be memorialized in a separate Affordable Housing Agreement in a form acceptable to the City.”

3. Counterparts; Facsimile Signatures.

This Amendment may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument. The signatures of any party or parties on this Amendment transmitted by facsimile shall be deemed the same as an original signature and shall be binding on the party transmitting the same.

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4. Modification.

Except as modified above the terms and conditions of the Development Agreement shall remain unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this Amendment and the terms of the Original Development Agreement, the terms of this Amendment shall control.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

ATTEST:

NORA PIMENTEL, MMC
Assistant City Clerk

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

“CITY”

**TOD BROKAW, LLC
a California limited liability company**

By: H/S Brokaw, LLC,
a California limited liability company
Its: Manager

By: _____
Name: Derek K. Hunter, Jr.
Its: Manager

By: _____
Name: Edward D. Storm
Its: Manager