

## DISPOSITION AND DEVELOPMENT AGREEMENT

### ACKNOWLEDGEMENT AND WAIVER

This Disposition and Development Agreement Acknowledgement and Waiver (this “**Agreement**”) is dated as of November 2, 2021, and is made by THE CITY OF SAN JOSE, a municipal corporation (the “**City**”) and Museum Place Owner LLC, a Delaware limited liability company (“**Developer**”). City and Developer are each sometimes referred to herein as a “**Party**” and collectively as the “**Parties**”.

### RECITALS

A. Pursuant to that certain Amended and Restated Disposition and Development Agreement effective as of December 3, 2019 between the City and Museum Place Owner LLC, a California limited liability company (“**Developer**”) (as amended or modified from time to time, the “**DDA**”), the City agreed to convey to Developer certain real property located in San Jose, California (the “**Site**”), and Developer agreed to develop the Project at the Site, all as set forth in the Development Agreement.

B. On March 11, 2020, the World Health Organization declared the novel coronavirus (COVID-19) a global pandemic. On March 24, 2020, Developer provided notice to the City under Section 705(a) of the DDA of enforced delays allowing for an extension of time to meet obligations under the DDA based on the pandemic (the “**705(a) Extension**”). On November 30, 2020, Developer provided notice to the City under Section 705(b) of the DDA of enforced delays allowing for such an extension based on economic conditions (the “**705(b) Extension**”). The City has acknowledged Developer’s extensions and the parties desire to confirm a two-year extension to the Schedule of Performance as a result of these conditions.

C. The Parties have worked through the pandemic to move the Project forward, including the evaluation of the Project’s environmental impacts and relevant entitlements (the “**Entitlements**”). The Parties anticipated taking the Entitlements to a Director’s Hearing for potential Project approval on September 13, 2021.

D. In connection with the transfer of the Site to the Developer pursuant to the DDA, First American Title Insurance Company provided preliminary title information reflecting that a portion of Site within the current Park Avenue right-of-way to be transferred to the Developer pursuant to the DDA is not owned by the City and cannot be insured by First American Title Insurance Company without further action by the City (the “**Title Defects**”).

E. After First American Title Insurance Company notified the Parties of its determination regarding the Title Defects, the Parties explored strategies that would allow the Project to continuing moving forward while the Title Defects are resolved, including without limitation the City granting a legal right to occupy any affected right-of-way through an encroachment permit (to allow for construction of the Project) and confirming the status of Developer’s investor under the DDA (so that financing of the Project can move forward while the Title Defects are resolved).

F. In order to finance the development of the Site, Developer has partnered with third-parties to provide equity financing for the benefit of the project, including Project Museum Place LLC, a

Delaware limited liability company (“**Developer Parent**”) issuing preferred equity interests to Acore Capital Mortgage, LP, a Delaware limited partnership (“**Investor**”), under that certain Amended and Restated Limited Liability Company Agreement of Developer Parent dated February 12, 2020 (as the same may be amended or modified from time to time, the “**Developer Parent Operating Agreement**”).

G. In connection with the foregoing recitals, the parties desire to acknowledge and clarify certain terms of the DDA in connection with the Title Defects, Developer’s financing, and agreed-upon force majeure delays.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **Development Agreement.** The DDA is in full force and effect. The DDA constitutes the entire agreement between the City and Developer with respect to the matters contemplated therein, including, without limitation, the Site and the construction of the Project thereon.

2. **No Defaults.** Except for delays in performance that have been extended under the 705(a) Extension and/or the 705(b) Extension, neither the City nor Developer is in default under the DDA, and the City has no knowledge of the existence of any event which, with the giving of notice, the passage of time, or both, would constitute a default by the City or Developer under the DDA. To the City’s knowledge, there are no outstanding offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the DDA. There are no payments due and payable from Developer to the City under the DDA which have not been paid.

3. **Schedule of Performance; Extension.** The parties confirm that all dates for Developer’s performance in the DDA, including the Schedule of Performance in Attachment No. 4 to the DDA, are extended for a period of two (2) years from the dates stated in the DDA as a result of the conditions set forth in the 705(a) Extension and 705(b) Extension. In addition, the City confirms that Developer shall be granted one (1) year of additional time under the Schedule of Performance pursuant to Section 108(4) of the DDA. Developer shall have the right to obtain one additional year of time pursuant to Section 108(4).

4. **Financing Status.** The City acknowledges that Developer plans to finance the Project through a combination of debt and equity financing that will be phased between development, demolition of the existing improvements and site excavation, and commencement of vertical construction and completion of the remainder of the Project. The City acknowledges Developer’s phased financing and waives any requirements of the DDA that complete project financing for the entire project be in place prior to Developer’s demolition of the existing improvements so long as adequate financing is in place for each phase as it is developed.

5. **Recognition of Equity Investors.** In connection with the Developer’s phased financing, the City recognizes Investor as a preferred member under the Developer Operating Agreement with certain rights under the Developer Operating Agreement. The Parties confirm that the DDA allows the acquisition of the interests in Developer Parent and the exercise by Investor

of (a) the right to approve certain major decisions of Developer Parent (and indirectly Developer), (b) the right to assume control over Developer Parent (and indirectly Developer) upon an Event of Default (as defined in the Developer Parent Operating Agreement), and (c) the right to acquire all of the equity interest in Developer Parent upon an Event of Default (collectively, the “**Investor Rights**”), and that the exercise of such Investor Rights would not result in any violation of the DDA and that such change in control and/or acquisition of equity interests would be permitted pursuant to Sections 107 and 703 of the DDA and would be deemed to constitute a Permitted Transfer were they to occur. The Parties further confirm that Investor would be required to give prompt notice to the City following Investor’s acquisition of the equity interest in Developer Parent pursuant to the exercise of the Investor Rights set forth in (c) above. The City acknowledges that future equity financing partners may obtain rights similar to Investor in the Developer Parent or other parent entities of the Developer, and that such future financing partners shall be treated similarly to the Investor as described above. The City agrees to execute additional recognition and/or estoppel agreements reasonably requested by Developer and Developer’s financing partners.

6. **Investor’s Right to Cure.** The Parties confirm that the DDA allows Investor, and other future financing partners, to have the same rights as Developer to receive notice of any breach or default by Developer, and the same rights to cure such breaches or defaults, as if Investor and other future financing partners were a Permitted Mortgagee, pursuant to Section 403C of the DDA.

7. **Title Defects.** The parties waive any conditions for the Close of Escrow or deadline obligations under the Schedule of Performance until the City resolves the Title Defects. The City will use its best efforts to resolve the Title Defects to Developer’s satisfaction and to cooperate with the Developer to commence construction on the Site prior to such resolution, including without limitation the following: (1) transferring the balance of the site via meets and bounds description upon entitlement approval; (2) issuing an encroachment permit to allow construction of the project over the right of way, as required per the project plans; (3) obtaining a court judgment concluding that the City owns the remainder of the site in a form that allows the title company to provide title insurance; (4) transferring the remainder of the site to Developer; and (5) approving and recording the Final Map.

8. **Defined Terms.** All capitalized terms used and not defined herein shall have the meanings given to such terms in the DDA.

9. **Miscellaneous.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of California (without giving effect to such state’s principles of conflicts of law). This Agreement may be relied upon by, and shall inure to the benefit of, the Investor, and shall be binding upon the City and its successors and assigns. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same original. Unless otherwise prohibited by law or policy of a Party, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto as of the day and year first above written.

**THE CITY:**

**CITY OF SAN JOSE**, a municipal corporation

× Sarah Zarate  
Sarah Zarate (11/2/2021)

**Email:** sarah.zarate@sanjoseca.gov

By: \_\_\_\_\_

Name: Sarah Zarate

Title: Director - Administration, Policy, and  
Intergovernmental Relations

APPROVED AS TO FORM

× Cameron Day  
Cameron Day (11/2/2021)

**Email:** cameron.day@sanjoseca.gov

\_\_\_\_\_  
Cameron Day

Deputy City Attorney

*[Signatures Continue on Following Page]*

**DEVELOPER:**

**MUSEUM PLACE OWNER LLC,**  
a Delaware limited liability company

By: Project Museum Place LLC, its Manager

By: Museum Place QOF LLC, its Manager

By: SJ Development Holdings LLC, its Manager

By: SJ Development Manager, Inc., its Manager

By:  Andrew Jacobson  
ajacobson@westbankcorp.com (11/2/2021)  
**Email:** ajacobson@westbankcorp.com

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Name: Andrew Jacobson  
Title: Vice President