



SAN RAFAEL
THE CITY WITH A MISSION

Agenda Item No: 7.b

Meeting Date: March 15, 2021

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Economic Development

**Prepared by: Danielle O'Leary,
Director of Economic Development & Innovation**

City Manager Approval: _____

TOPIC: AMENDMENT OF AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH GOLDSTONE MANAGEMENT, INC.

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDMENT NO. 2 TO EXTEND THE AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH GOLDSTONE MANAGEMENT, INC. REGARDING REDEVELOPMENT OF 1009 AND 1001 FOURTH STREET, 924-926 THIRD STREET, AND THE THIRD STREET AND LOOTENS PLAZA PARKING GARAGE

RECOMMENDATION:

Adopt the resolution approving and authorizing the City Manager to execute an Amendment No. 2 to extend the Agreement to Negotiate Exclusively with Goldstone Management, Inc., retroactively from March 6, 2021.

BACKGROUND:

The City entered into an Agreement to Negotiate Exclusively (ENA) with Goldstone Management Inc. ("Developer"), on December 7th, 2019. The ENA provides, among other things, for the parties to negotiate a proposed Disposition and Development Agreement ("DDA") pursuant to which Developer would acquire the City-owned public parking garage located near the southeast intersection of Third Street and Lootens Plaza (the "City Parcel") and develop on the City Parcel and certain adjacent parcels owned by Developer a mixed-use residential/retail development project. The adjacent parcels owned by Developer include the three contiguous parcels at 1009 4th St, 1001 4th St, and 924-926 3rd St. improved with three commercial structures and an approximately 30-space, street level parking lot (the "Developer Parcels").

Under the ENA, the Developer proposes to acquire an ownership interest in the City Parcel and to merge the City Parcel with the Developer Parcels, demolish existing structures, and build upon the entire site a mixed-use residential/retail development, including a market hall style food emporium ("Project"). A new, fully automated parking garage ("Automated Multi-Use Garage") would replace the 171 public parking spaces located in the existing parking structure on the City Parcel and provide additional private parking to serve the retail and residential components of the proposed Project.

FOR CITY CLERK ONLY

File

Council Meeting:

Disposition:

In June 2020 in response to the COVID-19 pandemic, City and Developer entered into Amendment No. 1 to ENA extending the negotiating period by six months. As permitted under the ENA, the negotiating period was further extended by the City Manager for an additional 3 months in December 2020. The terms of the ENA as so amended stipulate that the Negotiation Period would not exceed thirty (30) months. The Negotiation Period includes a Preliminary Stage (15 months) and a DDA Stage (15 months). The primary purpose of the Preliminary Stage is to determine whether an automated parking garage appears to be feasible and attempt to agree upon a Term Sheet setting forth the key terms of a DDA.

Successful completion of the Preliminary Stage would result in a Preliminary Stage Feasibility Confirmation and would allow the commencement of the DDA stage.

PHASE 1 - PRELIMINARY STAGE PROGRESS:

- Since the Effective Date of the ENA on December 7th, 2019, a preliminary parking plan (a description of the project parking plan and a design, operation, and service description of the automated parking system by U-Tron, the vendor) has been submitted. In April of 2020, additional background studies were submitted to the City, including Developer's feasibility estimates, an appraisal of the parking garage, and a project parking requirement analysis.
- The City has since engaged with Watry Design, Inc. to assist with the peer review of the automated parking plan. The City has continued to work with outside legal counsel, Burke, Williams & Sorensen, LLP, and the City's financial consultant, Keyser Marston Associates, in reviewing the submitted plans and studies.
- Economic Development has collaborated with various other City departments, including the Community Development Department, Department of Public Works, and Parking Services to ensure the proposal is consistent with City goals, policies, and requirements.

ANALYSIS:

Developer requested and paid for an independent City appraisal of the Lootens garage to help them develop their parking feasibility study and project pro-forma analysis. The contract extension provided time for the City to conduct an independent appraisal for the Lootens parking garage.

The City, through its outside legal counsel, contracted with Chapman & Associates, and an appraisal was conducted and completed in mid-January 2021. The Developer received the City's appraisal and provided comments back to the City in late February.

AMENDMENT:

The Developer is requesting an additional (3) three-month Preliminary Stage Negotiating Period extension to conduct negotiations, prepare and submit the parking feasibility study, and develop the Project pro-forma analysis needed for the parties to make a determination as to Project feasibility. The parties will also increase the budget for Preliminary Stage Costs that Developer is obligated to reimburse to City and Developer will augment its existing Preliminary Stage Deposit by depositing with City an additional sum of \$15,000. All other terms of the ENA not specifically modified by the amendment will remain in full force and effect.

In short, the Negotiation Period will now last (33) months (three additional months from the 30 months under the existing ENA, as previously amended) and moves the Preliminary Stage target

date from March 6, 2021 to June 6, 2021. The DDA Stage duration remains at fifteen (15) months, with a new target date of September 6, 2022.

Administrative Extension:

Amendment No. 2 also authorizes the City Manager to approve further administrative extensions of the Negotiating Period not to exceed an additional 90-days in total, if the City Manager determines in his sole discretion that the parties have made substantial progress toward meeting the performance milestones identified in the ENA.

FISCAL IMPACT:

City staff has been monitoring and providing regular oversight over the Developer submitted deposit of \$50,000. To ensure City's costs are not exceeded during the Preliminary Stage, Developer has agreed to augment this deposit by an additional \$15,000 to cover additional City costs anticipated to be incurred during the extended Preliminary Stage of the Negotiating Period. Therefore, there will be no fiscal impact to the City if the amendment to the ENA is approved.

OPTIONS:

1. Adopt the resolution approving Amendment No. 2 to the ENA as proposed.
2. Request further information.

RECOMMENDED ACTION:

Adopt the resolution approving and authorizing the City Manager to execute Amendment No. 2 to the ENA with Goldstone Management, Inc.

ATTACHMENTS:

1. Formal Request for ENA Extension, Dated March 3, 2021
2. Amendment No.2 to Agreement Negotiate Exclusively with Goldstone Management, Inc.
3. Resolution approving Amendment No. 2 to ENA
4. Original ENA Agreement to Negotiate with Goldstone Management, Inc. (December 2019)
5. Amendment No.1 to Agreement to Negotiate Exclusively with Goldstone Management, Inc. (June 2020)
6. ENA Resolution 14802 Amendment No. 1 (June 2020)
7. Administrative Extension Memo (December 2020)



Ragghianti|Freitas LLP

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Client File No: 7588:1

March 3, 2021

VIA EMAIL ONLY: PAUL.JENSEN@CITYOFSANRAFAEL.ORG

Paul Jensen, Community Development Department Director
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

**RE: Proposed Extension of Exclusive Negotiating Agreement with Goldstone
Management (San Rafael Marketplace)**

Dear Paul:

Per our recent discussions, I am writing on behalf of our client Goldstone Management, Inc. ("Goldstone") to submit a formal request that you bring an item for consideration before the San Rafael City Council to extend the end of the Preliminary Stage of the "Agreement to Negotiate Exclusively" ("the ENA") between the City and Goldstone for a period of six months. In light of the ongoing public health crisis under the COVID-19 outbreak, we believe that it is necessary to extend the Preliminary Stage of the negotiation period contemplated under the ENA for a period of six months. Under these challenging and unprecedented circumstances, the process of conducting basic negotiations and submitting and having the City peer review performance milestones outlined in the ENA simply cannot proceed at the pace that was anticipated under the ENA, and we believe that a second extension is warranted. While the ENA does allow for administrative extensions to be authorized by the City Manager, we think that it is in the interest of both parties to preserve these potential administrative extensions in the event of additional unforeseen delays. As we have demonstrated, however, Goldstone remains firmly committed to completing the negotiation process outlined under the ENA and has made considerable progress in completing performance milestones outlined under the ENA. Goldstone looks forward to memorializing a Disposition and Development Agreement with the City, and constructing the project as soon as economic conditions permit.



Ragghianti|Freitas LLP

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Since the Effective Date of the ENA on December 7, 2019, Goldstone has worked diligently with its consultants and experts to prepare and deliver the work product and background studies necessary to complete the Preliminary Stage milestones identified under the ENA. On April 7, 2020, we provided the City with background studies and information intended to assist the City in conducting feasibility analyses and peer review of the parking, engineering, construction and cost analyses anticipated under the ENA. The documents included an "Appraisal of Parking Garage (assumed to be Vacant)," PSG File #847263, prepared by Property Sciences and dated February 9, 2020; the "Report: Feasibility Estimate, San Rafael Parking Lot, Goldstone Management Company," prepared by Turner and Townsend and dated January 30, 2020; and the "Parking Analysis for the Proposed San Rafael Market Hall Project," prepared by Abrams Associates and dated March 27, 2020. On Friday, May 1, 2020, we furnished the City with a full Parking Plan to enable the City to evaluate the operation and joint use of the proposed automated parking structure, comprising both technical feasibility and cost analyses completed by U-Tron and Michael Zucker and Associates, as well as a basic outline of proposed ownership and operational details as required under Section 2.1 of the ENA. On February 24, 2021, we provided detailed comments to the appraisal prepared on behalf of the City by Chapman & Patton.

All of these studies are intended to assist the Parties in reaching and later memorializing conceptual agreement on the Preliminary Stage tasks set forth under the ENA.

In short, Goldstone is committed to continuing this process and finalizing a Preliminary Stage Feasibility Confirmation as outlined under the ENA. In light of the challenges of the continued regional shelter in place orders, the City, on December 22, 2020 provided an administrative extension until March 6, 2021. However, we request that the City Council approve a simple amendment to the ENA to further extend the end of the Preliminary Stage **from March 6, 2021, until September 6, 2021**. We ask that you make appropriate arrangements to have this calendared as an item for consideration at the City Council's first meeting in March. We have attached a proposed draft amendment to this letter for your Counsel's review.

Please let me know if you have any questions or concerns. We look forward to working with you and your staff to move this exciting project forward for the City.

Very Truly Yours,



Eric Sternberger



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Enclosure

cc: Danielle O'Leary, Director of Economic Development and Innovation
Simon Vuong, Economic Development Coordinator
Gerald J. Ramiza, Burke, Williams and Sorensen, LLP
Client

AMENDMENT NO.2 TO AGREEMENT TO NEGOTIATE EXCLUSIVELY

This Amendment No. 2 ("Amendment") to that certain "Agreement to Negotiate Exclusively," by and between the City of San Rafael, a municipal corporation ("City"), and Goldstone Management, Inc. ("Goldstone") ("the ENA"), is effective on the Effective Date identified on the signature page. Together, City and Goldstone may be referred to as "the Parties."

RECITALS

A. On November 18, 2019, City adopted a resolution approving and authorizing the City Manager to execute the ENA to govern the phases of negotiations for the Parties to negotiate and execute a Disposition and Development Agreement ("DDA") for Goldstone to acquire a City-owned public parking garage and develop a mixed-use residential/retail development project at the southeast intersection of Third Street and Lootens Plaza in the City of San Rafael ("the Project"). Pursuant to the authorization conferred by the November 18, 2019 resolution, the City executed the ENA with an effective date of December 7, 2019.

B. Under the terms of the ENA, the Parties outlined a series of phased negotiations towards memorializing the terms of a DDA, which require that the parties execute a Preliminary Stage Feasibility Confirmation no later than six months following the Effective Date, or June 7th, 2020.

C. In early 2020, following an initial outbreak in Wuhan, China in December of 2019, a pandemic outbreak of the SARS-COV-2 virus spread globally, reaching all 50 of the United States ("the COVID-19 Outbreak"). In March of 2020, to prevent spread of the viral outbreak, the Marin County Health and Human Services Department issued a shelter in place order, which is ongoing.

D. In light of the ongoing public health crisis under the COVID-19 Outbreak, the Parties extended the Preliminary Stage of the negotiation period contemplated under the ENA for a period of six months pursuant to Amendment No. 1 to Agreement to Negotiate Exclusively.

E. Due to the continuing public health crisis, on December 22, 2020, the City provided an administrative extension to the Preliminary Stage of the negotiation period until March 6, 2021.

F. In light of the continuing public health crisis under the COVID-19 Outbreak, and the progress made by the Parties in spite of the pandemic, the Parties wish to extend the Preliminary Stage of the negotiation period contemplated under the ENA for a period of six months, to September 6, 2021.

NOW, THEREFORE, the City and Goldstone, for the mutual consideration described herein, agree as follows:

1. INCORPORATION BY REFERENCE. Unless otherwise specified, all subsequent references to the ENA are deemed to mean the original ENA as modified by this Amendment. This Amendment incorporates the ENA by reference, except and only to the extent that any terms or conditions of the ENA are specifically modified by this Amendment. All terms and conditions in the ENA that are not specifically modified by this Amendment remain in full force and effect.

2. AMENDMENT. The first two sentences of Section 1.2 of the ENA, "Negotiation Period Duration," are hereby amended to read as follows [NOTE: none of the remaining sentences of Section 1.2 is modified by this Amendment]:

"1.2 Negotiation Period Duration.

(a) The negotiations shall be conducted in two stages, the combined duration of which shall not exceed thirty-three (33) months, plus extensions, if any, as provided in subsection (b) below. ("**Negotiation Period**"). The "**Preliminary Stage**" of the Negotiation Period shall commence on the Effective Date and expire on September 6, 2021, subject to potential extension as provided in subsection (b) below, or on the date the Parties execute a Preliminary Stage Feasibility Confirmation (defined below) whichever is earlier."

3. ENTIRE AGREEMENT. The ENA, as modified by this Amendment, constitutes the entire integrated understanding between the Parties concerning the Project. This Amendment supersedes all prior negotiations, agreements and understandings regarding the ENA, whether written or oral. The documents incorporated by reference into this Amendment are complementary; what is called for in one is binding as if called for in all, except and only to the extent otherwise specified. If any provision in an exhibit to this Amendment conflicts with or is inconsistent with a provision in the body of this Amendment, the provisions in the body of this Amendment will control over any such conflicting or inconsistent provisions.

4. SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of Goldstone and City. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and authorized assigns.

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective on the Effective Date set forth below.

CITY:

CITY OF SAN RAFAEL, a California municipal
corporation

ATTEST:

By: _____
Jim Schutz, City Manager

Lindsay Lara, City Clerk

Date: _____
("Effective Date")

APPROVED AS TO FORM:

Robert Epstein, City Attorney

CONSULTANT:
Goldstone Management, Incorporated

By: _____
Paul Goldstone, President

By: _____

AMENDMENT NO. 2 TO AGREEMENT TO NEGOTIATE EXCLUSIVELY

This Amendment No. 2 (“Amendment”) to that certain “Agreement to Negotiate Exclusively” by and between the City of San Rafael, a municipal corporation (“City”), and Goldstone Management, Inc. (“Developer”), is effective on the Amendment Date identified on the signature page. City and Developer may be referred to individually herein as a “Party”, and collectively as the “Parties”.

RECITALS

A. On November 18th, 2019, City adopted a resolution approving and authorizing the City Manager to execute an Agreement to Negotiate Exclusively to govern the phases of negotiations for the Parties to negotiate and present to the City Council for approval a proposed Disposition and Development Agreement (“DDA”) for Developer to acquire a City-owned public parking garage and develop a mixed-use residential/retail development project at the southeast intersection of Third Street and Lootens Plaza in the City of San Rafael as more particularly described therein. Pursuant to the authorization conferred by the November 18th 2019 resolution, the City executed the Agreement to Negotiate Exclusively with an effective date of December 7th, 2019 (the “Original Agreement”). The Original Agreement has been amended by an Amendment No. 1 to Agreement to Negotiate Exclusively dated June 9, 2020. The Original Agreement as amended by Amendment No. 1 is referred to herein as the “ENA”.

B. Under the terms of the ENA, the Parties outlined a series of phased negotiations towards memorializing the terms of a DDA, which required that the Parties make a determination as to feasibility of the proposed Project, and if the Project is mutually determined to be feasible, execute a Preliminary Stage Feasibility Confirmation no later than twelve months following the Effective Date, or December 7th, 2020, subject to further administrative extension as provided in the ENA.

C. In December 2020, the Developer requested, and the City Manager authorized, a one-time (90) day administrative extension, for the City to conduct an independent -appraisal of the City Parcel to facilitate the negotiations and assist Developer in the preparation of its financial pro-forma analysis and parking feasibility study.

D. In mid-January 2021, City received the preliminary results of the independent appraisal and shared those findings with Developer. City and Developer now desire to: (i) further extend the Preliminary Stage by an additional three months, (ii) authorize additional discretionary administrative extensions not to exceed 90 days in total, (iii) increase the budgeted amount of Preliminary Stage Costs, and (iv) augment Developer’s Preliminary Stage Deposit, all as provided herein, so the Parties can continue the negotiations and Developer can further develop its financial *pro-forma* and prepare and submit additional information regarding the proposed Automated Multi-Use Garage.

NOW, THEREFORE, the City and Developer, for the mutual consideration described herein, agree as follows:

AGREEMENTS:

1. INCORPORATION BY REFERENCE. Unless otherwise specified, all subsequent references to the ENA are deemed to mean the ENA, as further modified by this Amendment. This Amendment incorporates the ENA by reference, except and only to the extent that any terms or conditions of the ENA are specifically modified by this Amendment. All terms and conditions in the ENA that are not specifically modified by this Amendment remain in full force and effect.

2. AMENDMENT OF SECTION 1.2. Section 1.2 of the ENA, “Negotiation Period Duration,” is hereby amended and restated in its entirety to read as follows:

“1.2 Negotiation Period Duration.

(a) The negotiations shall be conducted in two stages, the combined duration of which shall not exceed thirty-three (33) months, plus extensions, if any, as provided in subsection (b) below (“**Negotiation Period**”). The “**Preliminary Stage**” of the Negotiation Period shall commence on the Effective Date and expire eighteen (18) months thereafter, subject to potential extension as provided in subsection (b) below, or on the date the Parties execute a Preliminary Stage Feasibility Confirmation (defined below) whichever is earlier. During the Preliminary Stage, the Parties shall work together in good faith to assess whether the proposed Automated Multi-Use Garage is feasible from a technical, financial, and operational perspective, and to negotiate a proposed DDA Term Sheet (defined below). If, on or before expiration of the Preliminary Stage, either Party determines in its sole and absolute discretion that the proposed Automated Multi-Use Garage is impractical or infeasible or otherwise does not meet its needs and objectives, or that the key terms of a DDA Term Sheet as proposed by the other Party are unacceptable to such Party, then the Party making such determination may terminate this Agreement by written notice to the other Party. If, however, on or before expiration of the Preliminary Stage each Party determines in its sole and absolute discretion that the proposed Automated Multi-Use Garage appears to be feasible and is likely to meet such Party’s needs and objectives and that the DDA Term Sheet is acceptable to such Party, then the Parties shall memorialize the achievement of such milestones in writing (“**Preliminary Stage Feasibility Confirmation**”) and, in such event, the Parties shall proceed to the DDA Stage (defined below) of the Negotiation Period. If the Parties have not executed a Preliminary Stage Feasibility Confirmation by the expiration of the Preliminary Stage (as it may be extended as provided for in subsection (b) below), then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except for those obligations which by their terms survive expiration or termination hereof. The “**DDA Stage**” of the Negotiation Period shall commence, if at all, on the effective date of the Preliminary Stage Feasibility Confirmation and expire fifteen (15) months thereafter, subject to potential extension as provided in subsection (b) below. Commencement of the DDA Stage shall also be contingent upon Developer delivering the DDA Stage Deposit to City as provided in Section 3.3 below. During the DDA Stage, the Parties will endeavor to negotiate and draft a comprehensive DDA and undertake the other DDA Stage tasks described in the Schedule of Performance.

(b) The Preliminary Stage and/or DDA Stage of the Negotiation Period may each be extended from time to time if the City Manager determines in his or her sole discretion

that the Parties have made substantial progress toward meeting the performance milestones identified in this Agreement and in the Schedule of Performance to merit such extension. However, the cumulative total of all such extensions granted by the City Manager shall not exceed ninety (90) days.”

3. AMENDMENT OF SECTION 3.2. The first sentence of Section 3.2 of the ENA, “Preliminary Stage Costs”, is hereby amended and restated in its entirety to read as follows:

“Developer’s obligation to reimburse City Costs incurred during the Preliminary Stage (“Preliminary Stage Costs”) will be capped at \$65,000 Thousand Dollars (\$65,000).”

4. INCREASE IN AMOUNT OF PRELIMINARY STAGE DEPOSIT. Concurrently with its execution of this Amendment, Developer shall augment the Preliminary Stage Deposit by delivering to City immediately available funds in the amount of \$15,000 (the “Additional Preliminary Stage Deposit”). From and after the Amendment Date, all references to “Preliminary Stage Deposit” in the ENA, as amended by this Amendment, shall be deemed to refer to the original Preliminary Stage Deposit, plus the Additional Preliminary Stage Deposit.

5. ENTIRE AGREEMENT. The ENA, as further modified by this Amendment, constitutes the entire integrated understanding between the Parties concerning the Project. This Amendment supersedes all prior negotiations, agreements and understandings regarding the ENA, whether written or oral. The documents incorporated by reference into this Amendment are complementary; what is called for in one is binding as if called for in all, except and only to the extent otherwise specified. If any provision in an exhibit to this Amendment conflicts with or is inconsistent with a provision in the body of this Amendment, the provisions in the body of this Amendment will control over any such conflicting or inconsistent provisions.

6. SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of Developer and City. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and authorized assigns.

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective on the Amendment Date set forth below.

DATED: _____, 2021
("Amendment Date")

CITY:

CITY OF SAN RAFAEL, a California
municipal corporation

By: _____
Jim Schutz, City Manager

ATTEST:

Lindsay Lara, City Clerk

APPROVED AS TO FORM:

By: _____
Robert Epstein, City Attorney

DATED: _____, 2021

DEVELOPER:

GOLDSTONE MANAGEMENT INC., a
California corporation

By: _____
Name: Paul Goldstone
Title: President

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDMENT NO. 2 TO EXTEND THE AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH GOLDSTONE MANAGEMENT, INC. REGARDING REDEVELOPMENT OF 1009 AND 1001 FOURTH STREET, 924-926 THIRD STREET, AND THE THIRD STREET AND LOOTENS PLAZA PARKING GARAGE

WHEREAS, the City of San Rafael owns the real property and parking garage located at Third Street and Lootens Plaza ("City Parcel"); and

WHEREAS, the City adopted a goal to "provide a vibrant Downtown" in "our Vision of Downtown" in 1993, which was later incorporated into the goals of the General Plan as Goal 6. General Plan Goal 6 includes the following implementation policies:

- NH 16 to substantially expand Downtown's economic success and increase opportunities for retail, office and residential development;
- NH 22 to create a popular and attractive residential environment that contributes to the activity and sense of community in Downtown; and
- NH 34 to encourage activities that will promote the Fourth Street Retail Core as being "Alive after Five"; and

WHEREAS, one of the City Council goals is to provide neighborhood and economic vitality by supporting the development of key Downtown sites, and the City Council's Economic Development Committee has adopted "support development of key sites such as 1001-1009 Fourth Street" as one of its eight priorities; and

WHEREAS, Goldstone Management, Inc. ("Developer") has proposed redeveloping the City Parcel and adjoining properties that Developer owns at 1009 and 1001 Fourth Street and 924-926 Third Street, into a proposed mixed-use residential/retail development, including a market hall-style food emporium and a fully automated parking garage ("Project"); and

WHEREAS, Developer and City are parties to an Agreement to Negotiate Exclusively with an effective date of December 7, 2019, as amended by an Amendment No. 1 to Agreement to Negotiate Exclusively dated June 9, 2020 (as so amended, the "ENA"); and

WHEREAS, the ENA provides for a Preliminary Stage of the Negotiation Period (as such terms are defined in the ENA) which, after extensions, was to expire on March 6, 2021; and

WHEREAS, Developer has requested that the City further extend the Preliminary Stage of the Negotiation Period by an additional 3 months with the potential for additional administrative extensions not to exceed 90 days in total; and

WHEREAS, the staff report accompanying this Resolution provides additional information about the request and rationale for the extension request due to the COVID-19 outbreak, and Developer's request for a City-prepared appraisal to assist with project pro-forma analysis and parking garage feasibility determination; and

WHEREAS, while City and Developer have made progress towards completing the milestones to be achieved during the Preliminary Stage, additional time is needed for the parties to make their respective feasibility determinations regarding the proposed Project, including the

proposed Automated Multi-Use Garage, and, therefore, staff recommends that the City Council approve the attached Amendment No. 2 to the ENA; and

WHEREAS, Developer has agreed to augment its Preliminary Stage Deposit by depositing with City an additional \$15,000 to pay the additional costs anticipated to be incurred by City during the extended Preliminary Stage negotiations; and

WHEREAS, amending the ENA is not committing the City to grant any land use approvals for the proposed Project or to approve any further agreement with the Developer;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of San Rafael as follows:

1. The City Council hereby finds and determines that the above recitals are true, correct and incorporated herein.

2. The City Council hereby approves and authorizes the City Manager to sign on behalf of the City Amendment No. 2 to the ENA in substantially the form submitted to the City Council in connection with the consideration of this Resolution, subject to such minor changes as the City Manager and City Attorney may approve, provided, however, that nothing in this Resolution or the conduct of the negotiations pursuant to the ENA, as amended, shall be deemed to commit the City to approve any land use approvals for the proposed Project or to approve any further agreement with the Developer.

3. The City Council authorizes and directs the City Manager and his designees to take such steps as are reasonable and necessary to ensure performance of the City's obligations under the ENA, as further amended by Amendment No. 2, and to carry out the terms and conditions of the ENA, as so amended.

4. This Resolution shall take immediate retroactive effect upon adoption.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael held on the 15th day of March 2021, retroactive to March 6, 2021, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

AGREEMENT TO NEGOTIATE EXCLUSIVELY

THIS AGREEMENT TO NEGOTIATE EXCLUSIVELY ("**Agreement**") dated for reference purposes as of 12/7 2019 ("**Effective Date**"), is entered into by and between the City of San Rafael, a municipal corporation ("**City**"), and Goldstone Management Inc., a California corporation ("**Developer**"). City and Developer are sometimes referred to individually herein as a "**Party**", and collectively as the "**Parties**".

R E C I T A L S:

A. City owns that certain real property designated as APN: 011-263-22 ("**City Parcel**") located near the southeast corner of Third Street and Lootens Plaza in downtown San Rafael, as depicted on the "**Site Map**" attached hereto as Exhibit A. The City Parcel is improved with an existing 171-space two-story public parking garage.

B. Developer owns three parcels immediately adjacent to the City Parcel, designated as APNs 011-263-18 (1009 4th Street, San Rafael), 011-263-04 (1001 4th Street, San Rafael) and 011-263-16 (924-926 3rd Street, San Rafael) (the "**Developer Parcels**" and, collectively with the City Parcel, the "**Site**") as depicted on the Site Map. The Developer Parcels are improved with three commercial structures and an approximately 30-space, street level parking lot.

C. Developer proposes to acquire an ownership interest in the City Parcel, and to effect a voluntary merger of the City Parcel with the Developer Parcels in order to clear the existing improvements and build upon the Site a mixed-use residential/retail development, including a market hall style food emporium and a fully automated parking garage ("**Automated Multi-Use Garage**") that would replace the 171 public parking spaces located in the existing parking structure on the City Parcel and provide additional private parking to serve the retail and residential components of the proposed Project (collectively, the "**Project**").

D. City and Developer desire to enter into this Agreement setting forth the terms under which City and Developer will diligently and in good faith endeavor to accomplish the following: (1) during a Preliminary Stage (defined below) of negotiations, for the Parties to (i) determine, each in its sole and absolute discretion, whether an automated parking garage of the type proposed by Developer appears to be feasible from a financial, design and operational perspective and to otherwise meet the City's and Developer's respective parking objectives, and (ii) attempt to agree upon a Term Sheet setting forth the key terms of a DDA (defined below) with respect to the Site and proposed Project; and (2) if, and only if, the Parties memorialize their successful completion of the Preliminary Stage of the negotiations via a Preliminary Stage Feasibility Confirmation, for the Parties to proceed to a DDA Stage of negotiations during which the Parties would negotiate and draft a comprehensive Disposition and Development Agreement ("**DDA**") setting forth the terms under which City would transfer the City Parcel to Developer and Developer would develop the proposed Project, including the Automated Multi-Use Garage, on the Site and Developer and its successors and assigns, at its and their expense, would agree to operate the Automated Multi-Use Garage and provide ongoing public parking in perpetuity for

the benefit of City and the public in accordance with agreed upon pricing requirements to be set forth under the terms of the DDA.

A G R E E M E N T S:

CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1. **NEGOTIATION PERIOD**

1.1 Good Faith Negotiations. City and Developer, acknowledging that time is of the essence, agree for the Negotiation Period set forth in Section 1.2 below, to negotiate diligently and in good faith and endeavor to perform the tasks and due diligence necessary for successful completion of the Preliminary Stage, and if the Preliminary Stage conditions are satisfied, for the Parties to endeavor to complete the DDA Stage tasks which, if successfully concluded, would culminate in presentation of a comprehensive DDA to the City Council for its consideration and potential approval. City agrees, for the Negotiation Period, not to negotiate with, solicit offers or proposals regarding, or respond to inquiries from (other than to notify the inquiring party, person or entity that City is subject to an agreement to negotiate exclusively), any other person or entity regarding the conveyance of the City Parcel and/or the development of the Site or any portion thereof. A DDA resulting from the negotiations hereunder shall become effective only if and after such DDA has been considered and approved by the City Council at a duly noticed public meeting called for such purpose. If a DDA is executed by City and Developer, the DDA shall thereafter govern the rights and obligations of the Parties.

1.2 Negotiation Period Duration.

(a) The negotiations shall be conducted in two stages, the combined duration of which shall not exceed twenty-one (21) months, plus extensions, if any, as provided in subsection (b) below ("**Negotiation Period**"). The "**Preliminary Stage**" of the Negotiation Period shall commence on the Effective Date and expire six (6) months thereafter, subject to potential extension as provided in subsection (b) below, or on the date the Parties execute a Preliminary Stage Feasibility Confirmation (defined below) whichever is earlier. During the Preliminary Stage, the Parties shall work together in good faith to assess whether the proposed Automated Multi-Use Garage is feasible from a technical, financial, and operational perspective, and to negotiate a proposed DDA Term Sheet (defined below). If, on or before expiration of the Preliminary Stage, either Party determines in its sole and absolute discretion that the proposed Automated Multi-Use Garage is impractical or infeasible or otherwise does not meet its needs and objectives, or that the key terms of a DDA Term Sheet as proposed by the other Party are unacceptable to such Party, then the Party making such determination may terminate this Agreement by written notice to the other Party. If, however, on or before expiration of the Preliminary Stage each Party determines in its sole and absolute discretion that the proposed Automated Multi-Use Garage appears to be feasible and is likely to meet such Party's needs and objectives and that the DDA Term Sheet is acceptable to such Party, then the Parties shall memorialize the achievement of such milestones in writing ("**Preliminary Stage Feasibility Confirmation**") and, in such event, the Parties shall proceed to the DDA Stage (defined below) of the Negotiation Period. If the Parties have not executed a Preliminary Stage Feasibility

Confirmation by the expiration of the Preliminary Stage (as it may be extended as provided for in subsection (b) below), then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except for those obligations which by their terms survive expiration or termination hereof. The “**DDA Stage**” of the Negotiation Period shall commence, if at all, on the effective date of the Preliminary Stage Feasibility Confirmation and expire fifteen (15) months thereafter, subject to potential extension as provided in subsection (b) below. Commencement of the DDA Stage shall also be contingent upon Developer delivering the DDA Stage Deposit to City as provided in Section 3.3 below. During the DDA Stage, the Parties will endeavor to negotiate and draft a comprehensive DDA and undertake the other DDA Stage tasks described in the Schedule of Performance.

(b) Extensions. The Preliminary Stage and/or DDA Stage of the Negotiation Period may each be extended from time to time if the City Manager determines in his or her sole discretion that the Parties have made substantial progress toward meeting the performance milestones identified in this Agreement and in the Schedule of Performance to merit such extension. However, the cumulative total of all such extensions granted by the City Manager shall not exceed ninety (90) days.

2. NEGOTIATION PERIOD TASKS AND PERFORMANCE MILESTONES.

2.1 Preliminary Stage Tasks. During the Preliminary Stage of the Negotiation Period, Developer, in addition to undertaking the other Preliminary Stage tasks set forth in the Schedule of Performance, will retain Abrams Associates, as its parking consultant, to prepare for City review and input a detailed plan describing all aspects of operation and joint use of the proposed Automated Multi-Use Garage (“**Parking Plan**”), including:

- (a) The proposed design of the Automated Multi-Use Garage, including the proposed automated parking solutions,
- (b) City’s access, use and/or ownership or other rights with respect to the public space portions of the Automated Multi-Use Garage,
- (c) Plans for ensuring the ongoing operation and maintenance of the public parking portions of the Automated Multi-Use Garage, and of the Automated Multi-Use Garage as a whole,
- (d) Funding of long term operation and maintenance costs,
- (e) Method of establishing and adjusting public parking rates to ensure those rates will be consistent with public parking rates in other City owned garages and lots,
- (f) Designation of flex spaces, if any, which are publicly available during regular daytime and early evening business hours but revert to residential use at night.

City will retain Watry Design, Inc. or such other parking consultant as City may select as its parking consultant, the costs of which shall be included in City Costs (defined below) and

reimbursed by Developer, to peer review Developer's Parking Plan and advise City on changes or adjustments that may be required to meet City's needs.

In addition to the Parking Plan related tasks and other Preliminary Stage tasks described in the Schedule of Performance, during the Preliminary Stage of the Negotiation Period, Developer and City will endeavor to negotiate and draft a mutually acceptable term sheet ("**Term Sheet**") setting forth the key terms for inclusion in the proposed DDA. The Term Sheet will address, among other things, the following:

- i) Transfer value of the City Parcel and the existing improvements thereon based on a fair market value appraisal methodology agreeable to the Parties;
- ii) Details of the proposed Project land use and operational characteristics, generally consisting of a European-style Market Hall facility with numerous and varied food vendors selling both prepared food and specialty groceries;
- iii) Details of the proposed Project structures, in plan and elevation, along with conceptual renderings;
- iv) A budget for the anticipated amount of City Costs (defined below) to be incurred during the DDA Stage, if the Parties proceed to such stage (collectively, "**Anticipated DDA Stage Costs**"), all of which shall be paid by Developer, and the amount and form of a security deposit ("**DDA Stage Deposit**") guaranteeing Developer's payment of same;
- v) Details of Developer's proposed use of Lauren's Place, the public civic plaza and right of way adjacent to the City parcel and Developer's Parcels, for outdoor seating as well as access and potential ingress and egress into the proposed Market Hall facility via grant of easement or license or encroachment permit as the parties may mutually determine;
- vi) Agreed-upon timelines for entitlements and documentation necessary for commencement of construction;
- vii) Conditions precedent for close of escrow, including identification of all land use approvals, building permits, and construction contracts with a general contractor that Developer will have to obtain;
- viii) Financing details, including any debt and equity financing that Developer may have to obtain, and appropriate evidence of debt and equity commitments that Developer will need to provide to City's financial consultant prior to City's consideration of a DDA for approval and prior to closing;
- ix) City remedies, including reverter rights, if Developer fails to timely commence or complete construction of the proposed Project by specified dates;

- x) City remedies if Developer or its successors or assigns fails to continuously operate and maintain the public portions of the Automated Multi-Use Garage following initial construction thereof;
- xi) Prevailing wage requirements for all stages of construction;
- xii) Details of the parking agreement between City and Developer that would govern the Automated Multi-Use Garage;
- xiii) Outline of the City entitlement process to be administered and processed separately from the DDA, the costs of which will be borne exclusively by Developer; and
- xiv) Physical and environmental investigation and Site testing.

2.2 DDA Stage Tasks. If the Parties proceed to the DDA Stage of the Negotiation Period, then City and Developer, in addition to undertaking the other DDA Stage tasks as set forth in the Schedule of Performance, will endeavor to negotiate and draft a mutually acceptable DDA, including ancillary agreements, to be considered for approval by the City Council prior to expiration of the Negotiation Period.

3. **DEVELOPER PAYMENT OF CITY COSTS.**

3.1 General. Subject to the terms set forth below, Developer shall be responsible for paying all City Costs (defined below) incurred in connection with the implementation of this Agreement, including: (a) during the Preliminary Stage, the City Costs associated with evaluation of the feasibility of the Automated Multi-Use Garage and the negotiation and drafting of the DDA Term Sheet, and (b) during the DDA Stage, the City Costs associated with the negotiation and drafting of the proposed DDA and preparation of an appropriate California Environmental Quality Act ("CEQA") document addressing the environmental impacts of the proposed Project. As used in this Agreement, "**City Costs**" means and includes all of City's reasonable out-of-pocket costs and expenses paid to third-party consultants and attorneys, including City's outside legal counsel, Burke Williams & Sorensen LLP; City's financial consultant, Keyser Marston Associates, Inc., and City's parking consultant, Watry Design, Inc., and, if applicable, planning and CEQA consultants, in connection with evaluation of the proposed Automated Multi-Use Garage; negotiation and drafting of a DDA Term Sheet; drafting, negotiation and production of the DDA and ancillary agreements; preparation of an appropriate CEQA document; and other work product as required to implement the Project.

3.2 Preliminary Stage Costs. Developer's obligation to reimburse City Costs incurred during the Preliminary Stage ("**Preliminary Stage Costs**") will be capped at Fifty Thousand Dollars (\$50,000). Concurrently with Developer's execution of this Agreement, Developer shall deliver to City cash or other immediately available funds in the amount of Fifty Thousand Dollars (\$50,000) ("**Preliminary Stage Deposit**") as security for Developer's obligation to pay Preliminary Stage Costs as provided herein. Developer's obligation to reimburse all such Preliminary Stage Costs shall survive the expiration or termination of this Agreement with respect to any and all Preliminary Stage Costs incurred on or before the date which is ten (10)

days following the date of such expiration or termination, provided, however, that in no event will Developer's liability for Preliminary Stage Costs exceed the amount of the Preliminary Stage Deposit then held by City.

3.3 DDA Stage Costs. As provided for under Section 2.1, subsection iv above, Developer and City shall endeavor to reach mutual agreement on a budget for the Anticipated DDA Stage Costs and the amount and form of a DDA Stage Deposit as Preliminary Stage milestones. Concurrently with the Parties execution of the Preliminary Stage Feasibility Confirmation, Developer shall deliver to City cash or other immediately available funds in the full amount of the DDA Stage Deposit as security for Developer's obligation to pay City Costs incurred during the DDA Stage as provided in this Section 3. If City determines that in order to carry out its DDA Stage obligations under this Agreement, the DDA Stage City Costs will exceed the Anticipated DDA Stage Costs, City shall give written notice to Developer, which written notice (each, an "**Additional DDA Stage Cost Notice**") shall include detailed projections, prepared in good faith to the best of the City's ability, of all future City Costs to be incurred during the remainder of the DDA Stage. Upon receipt of an Additional DDA Stage Cost Notice, Developer shall then have ten (10) days to approve or disapprove in writing City's request for approval of the increase in Anticipated DDA Stage Costs. If Developer approves an Additional DDA Stage Cost Notice, Developer's approval shall be accompanied by delivery of additional DDA Stage Deposit funds in the amount of the additional anticipated City Costs as approved by Developer. If Developer has disapproved or failed to provide written approval of such request to City within such ten (10) day period, this Agreement may be terminated by City upon five (5) days' written notice to Developer. If City terminates this Agreement as provided in this Section 3.3, City shall promptly return the unexpended and uncommitted portion of the DDA Stage Deposit (including any augmentations of same), if any, to Developer and, except for those obligations which by their terms survive termination hereof, neither Party shall have any further rights against or liability to the other Party under this Agreement. The approval of any proposed increase in Anticipated DDA Stage Costs shall be deemed an amendment of this Agreement. Developer's obligation to pay for all such DDA Stage City Costs shall survive the expiration or termination of this Agreement with respect to any and all City Costs incurred on or before the date which is ten (10) days following the date of expiration or termination as set forth herein, provided, however, that in no event will Developer's liability for DDA Stage City Costs exceed the amount of the DDA Stage Deposit, including any augmentations of same, then held by City.

3.4 Developer Acknowledgments. Developer acknowledges and agrees that if it fails to timely approve a requested augmentation of the Anticipated DDA Stage Costs budget or timely augment the DDA Stage Deposit as provided above, City shall have no obligation to continue incurring any City Costs or continue negotiating in connection with the proposed Project or DDA and City may terminate this Agreement upon written notice to Developer as provided in Section 3.3 above. Developer further covenants that if City ceases negotiation of the DDA or refuses to continue incurring City Costs as a result of Developer's failure to approve such requested augmentation of the Anticipated DDA Stage Costs budget or augment the DDA Stage Deposit as described above, Developer shall not directly or indirectly initiate any litigation against City or its officials, employees, agents, contractors or volunteers in connection with such City action.

3.5 City Right to Draw on Deposits. Subject to the limitations set forth above, City may pay all City Costs from the Preliminary Stage Deposit or DDA Stage Deposit (including any augmentations of same) as applicable as such City Costs are incurred. The Preliminary Stage Deposit and DDA Stage Deposit shall be the sole and exclusive remedy of the City for any and all City Costs. City shall transmit to Developer monthly a copy of each invoice, bill or other evidence that City has incurred as City Costs, including itemized invoices and receipts for any reimbursable expenses. City's legal and advisory services invoices shall be redacted as necessary to preserve attorney-client privilege.

3.6 Close Out Period. In the event that either City or Developer terminates this Agreement, then (i) City shall cease incurring City Costs with respect to the proposed Project, other than Project close out expenses which City may continue to incur for up to ten (10) days following expiration or termination of this Agreement ("**Close Out Period**"); (ii) Developer shall remain obligated to pay all City Costs incurred prior to the effective date of expiration or termination, and Project close out expenses incurred during such Close Out Period, solely to the extent of the Preliminary Stage Deposit or DDA Stage Deposit (including any augmentations of same) held by City on the date this Agreement is terminated; and (iii) Developer shall have no responsibility to pay or reimburse City for any City Costs incurred with respect to the proposed Project after the date of expiration or termination other than Project close out expenses incurred during the Close Out Period.

4. RIGHT OF ENTRY.

4.1 Access Agreement and City Reports. City shall provide Developer reasonable access to all portions of the City Parcel and improvements thereon for the purpose of obtaining data and making surveys and tests necessary to evaluate the development potential of the City Parcel and otherwise to conduct the land use due diligence relating to the Project as contemplated hereunder, including, without limitation, the right to make borings to investigate the soils and environmental condition of the City Parcel. Said right of access shall be memorialized via an access agreement in a form reasonably acceptable to City. Developer acknowledges and agrees that any engineering, environmental reports and related data (collectively, "**City Reports**"), if any, provided by City will be and are furnished without warranty of any kind and on the express condition that Developer will make its own independent verification of the accuracy, reliability and completeness of such information as Developer deems appropriate, and that Developer will not rely on the City Reports. Developer shall determine the appropriate scope of investigation of the physical and environmental conditions of the City Parcel and existing improvements thereon. All costs of said investigation, including a Phase 1 and Phase 2 environmental site assessment (if required), and geotechnical and soils investigations, if any, shall be paid and borne by Developer at its sole cost and expense and shall not be considered part of City Costs.

5. ADDITIONAL DEVELOPER RESPONSIBILITIES

5.1 Full Disclosure. Developer shall provide to City (a) the names of its principals, officers and/or those with managerial authority, joint venturers, negotiators, development managers, consultants and directly-involved managerial employees (collectively, "**Developer**

Parties”); and (b) all other material information concerning Developer reasonably requested by City. Any material change in the identity of the Developer Parties shall be subject to the approval of City, which shall not be unreasonably withheld.

5.2 Project Cost and Revenue Documentation. Upon request by City, Developer shall provide City or its designees with development and operating assumptions related to Project costs and revenues by category, including detailed information regarding extra-ordinary Project costs, if any, attributable to the Automated Multi-Use Garage or other individual Project components and full disclosure regarding the potential methods of financing to be used in the acquisition of the City Parcel and development of the proposed Project. Developer acknowledges that detailed information regarding such development and operating assumptions will be necessary in order for City and its financial consultants to evaluate the financial terms of the proposed DDA.

5.3 Progress Reports. Developer shall keep City advised as to the status of all work to be undertaken by or on behalf of Developer as described in the Schedule of Performance. Within ten (10) days following City’s request, which may be made from time to time during the Negotiation Period, Developer shall submit to City a written progress report advising City on the status of all work being undertaken by or on behalf of Developer.

6. CITY’S RESPONSIBILITIES

6.1 City Assistance and Cooperation. City shall cooperate with Developer by providing full disclosure regarding any existing condition of the City Parcel or the improvements thereon. City shall share with Developer any studies and information received as part of City’s own parking and traffic flow studies as they relate to the Site or the proposed Project.

7. GENERAL PROVISIONS

7.1 No Brokerage Fees. City shall not be liable for any real estate commission or brokerage fees which may arise from the proposed transfer of the City Parcel or any portion thereof or interest therein. Developer represents and warrants to City that it has not engaged any broker, agent or finder in connection with the acquisition or development of the City Parcel. Developer shall be solely responsible for payment of all costs and fees payable to Developer’s Broker. Developer further agrees to indemnify, defend and hold City harmless from any claim by any other broker, agent or finder retained by, or alleged to have been retained by, Developer. Developer’s indemnity obligations under this Section 7.1 shall survive expiration or termination of this Agreement.

7.2 Notices. Any approval, disapproval, demand or other notice which either Party may desire to give to the other Party under this Agreement must be in writing and may be given by any commercially acceptable means, including personal delivery, or overnight courier, to the Party to whom the notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by notice.

To City: City of San Rafael
1400 Fifth Avenue, Room 203
San Rafael, CA 94901
Attention: Jim Schutz, City Manager

With a copy to: City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, CA 94901
Attention: Robert Epstein, City Attorney

With a copy to: Burke, Williams & Sorensen, LLP
1901 Harrison St., Suite 900
Oakland, CA 94612
Attention: Gerald J. Ramiza

To Developer: 82 Shattuck Square
Berkeley, CA 94704
Attention: Paul Goldstone

Any notice shall be deemed received on the date of delivery if delivered by personal service, three (3) business days after mailing if sent by first class mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via overnight courier.

7.3 Limitations of this Agreement. By its execution of this Agreement, City is not committing itself to or agreeing to undertake: (i) disposition of the City Parcel to Developer; or (ii) any other acts or activities requiring the subsequent independent exercise of discretion by City or any agency or department thereof. This Agreement does not constitute a disposition of property by City. Execution of this Agreement by City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any DDA, including Automated Multi-Use Garage parking agreement, and all proceedings and decisions in connection therewith. In addition, nothing in this Agreement shall be construed to limit the application of CEQA to any DDA or the proposed Project or control the actions of City in meeting its CEQA obligations. In fulfilling its obligations under CEQA, City shall act independently, reserving full and complete discretion with respect to any such CEQA approvals without reference to this Agreement. City shall not be liable, in any respect, to Developer for its action or inaction in fulfilling its CEQA obligations. City will not consider the approval of any DDA or the proposed Project, unless and until it has fully reviewed and considered the environmental impacts in accordance with CEQA. City is not, and shall not be considered to be, obligated by this Agreement, or otherwise, to approve the proposed Project or any DDA, or any changes to the foregoing, or any other agreement. After CEQA review, City is not obligated, by this Agreement or otherwise, to adopt findings of

overriding considerations for approval of or to take any other action in support of the proposed Project or any DDA or any changes to the foregoing, nor is City precluded from rejecting the DDA and/or proposed Project or from imposing mitigation measures as a condition of approval, which measures mitigate or avoid direct or indirect environmental effects of the proposed Project. If City rejects the DDA or proposed Project, this Agreement shall automatically terminate and, except for those obligations which by their terms survive termination hereof, neither Party shall have any further rights or obligations hereunder.

7.4 Integration. This Agreement contains the entire understanding between the Parties relating to the matters set forth herein. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

7.5 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

7.6 Severability. If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

7.7 No Assignment. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer. Accordingly, except as otherwise expressly provided below, Developer may not transfer or assign any or all of its rights or obligations under this Agreement except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole absolute discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void. Notwithstanding the foregoing, the Parties acknowledge that Developer intends to form a new special purpose entity to develop the proposed Project and to enter into the proposed DDA. Developer may assign its rights and obligations under this Agreement to an affiliate company or a new special-purpose entity, provided Paul Goldstone retains full management and control of the assignee entity or entities.

7.8 Successors and Assigns. Subject to the limitations on assignment set forth in Section 7.7 above, this Agreement shall be binding upon, and inure to the benefit of, the Parties, their heirs, executors, personal representatives, nominees, successors and assigns.

7.9 Indemnity. Developer shall indemnify, defend (with counsel reasonably acceptable to City), protect and hold City, and its officers, employees, elected officials, agents and representatives, harmless from, all third-party claims, demands, damages, defense costs or liability of any kind or nature arising directly or indirectly from the implementation of this Agreement, including any City Parcel investigation and/or acquisition activities under Section 4 above, including damages to property or injuries to persons, accidental death, and reasonable

attorneys' fees and costs, whether such activities or performance thereof be by Developer or its employees, agents, contractors or subcontractors and whether such damage shall accrue or be discovered before or after expiration or termination of this Agreement. Developer's indemnity obligations under this Section 7.9 shall not extend to claims, demands, damages, defense costs or liability for property damage, bodily injury or death, to the extent (i) occasioned by the sole negligence or willful misconduct of City or its officers, employees, elected officials, agents or representatives; or (ii) related to the discovery or disturbance by Developer or its contractors, subcontractors or agents during due diligence of any pre-existing hazardous materials or hazardous substances on the City Parcel. Developer's obligations under this Section 7.9 shall survive the expiration or other termination of this Agreement.

7.10 Confidentiality. Any information provided by Developer to City, including financial statements, pro formas and other financial projections (whether in written, graphic, electronic or any other form), that is clearly marked as "CONFIDENTIAL/PROPRIETARY INFORMATION" ("**Confidential Information**") shall be subject to the provisions of this Section 7.10. Subject to the terms of this Section, City shall use good faith diligent efforts to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253 *et seq.*) or other applicable local, state or federal law (collectively, "**Public Disclosure Laws**"). Notwithstanding the preceding sentence, City may disclose Confidential Information to its officials, employees, agents, attorneys and advisors, but only to the extent necessary to carry out the purpose for which the Confidential Information was disclosed.

Developer acknowledges that City has not made any representations or warranties that any Confidential Information received from Developer will be exempt from disclosure under any Public Disclosure Laws. In the event the City's legal counsel determines that the release of the Confidential Information is required by Public Disclosure Laws, or order of a court of competent jurisdiction, City shall notify Developer of City's intention to release the Confidential Information. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, City may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released. Developer further acknowledges that in connection with City Council's consideration of any DDA as contemplated by this Agreement, City will need to present a summary of Developer's financial projections, including anticipated costs of development, anticipated project revenues, and returns on cost and investment.

If any litigation is filed seeking to make public any Confidential Information, City and Developer shall cooperate in defending the litigation, and Developer shall pay City's reasonable out-of-pocket costs of defending such litigation and shall indemnify City against all costs and attorneys' fees awarded to the plaintiff in any such litigation. Alternatively, Developer may elect to disclose the Confidential Information rather than defend the litigation. Developer's obligations under this Section 7.10 shall survive the expiration or termination of this Agreement.

The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (a) is now, or hereafter becomes, through no act or failure to act on the part of City or its representatives, generally known or available; (b) is known by the City

at the time of receiving such information as evidenced by City's public records; (c) is hereafter furnished to City by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by City without any breach of this Agreement and without any use of or access to Developer's Confidential Information as evidenced by City's records; (e) is not clearly marked "CONFIDENTIAL/PROPRIETARY INFORMATION" as provided above (except where Developer notifies City in writing, prior to any disclosure of the Confidential Information, that omission of the "CONFIDENTIAL/PROPRIETARY INFORMATION" mark was inadvertent), or (f) is the subject of a written permission to disclose provided by Developer to City.

7.11 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Site, including the City Parcel, or proposed Project with respect to this Agreement or any dispute or act arising from it. The provisions of this Section shall survive the expiration or other termination of this Agreement.

7.12 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by both parties, shall constitute a binding agreement.

7.13 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms.

7.14 Authority. If Developer is a corporation, limited liability company, partnership, trust, association or other entity, Developer and each person executing this Agreement on behalf of Developer does hereby covenant and warrant that (a) Developer is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Developer has and is duly qualified to do business in California, (c) Developer has full corporate, partnership, trust, association or other power and authority to enter into this Agreement and to perform all of Developer's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Developer is duly and validly authorized to do so. City and each person executing this Agreement on behalf of City does hereby covenant and warrant that (i) City is a municipal corporation duly established and validly existing under the laws of the State of California, (ii) City has full power and authority to enter into this Agreement and to perform all of City's obligations hereunder, and (iii) each person (and all of the persons if more than one signs) signing this Agreement on behalf of City is duly and validly authorized to do so.

7.15 Limitation of Remedies. In the event of an uncured default by either Party under this Agreement, the non-defaulting Party's exclusive remedy is to terminate this Agreement. In no event shall either Party have the right, and each Party expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, or lost profits) in the event of a default by the other Party under this Agreement.

7.16 Governing Law. This Agreement, and the interpretation and enforcement thereof, shall be governed by the laws of the State of California without regard to conflicts of law principles.

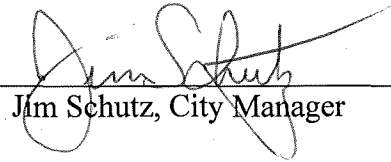
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set opposite their signatures. The effective date of this Agreement shall be the date this Agreement is signed by City.

CITY:

CITY OF SAN RAFAEL, a California
municipal corporation

DATED: 12/07, 2019

By:


Jim Schutz, City Manager

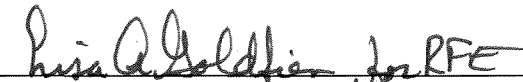
ATTEST:



Lindsay Lara, City Clerk

APPROVED AS TO FORM:

By:


Robert Epstein, City Attorney

DATED: _____, 2019

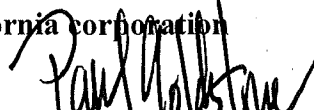
DEVELOPER:

GOLDSTONE MANAGEMENT INC., a
California corporation

By:

Name:

Title:


Paul Goldstone
President

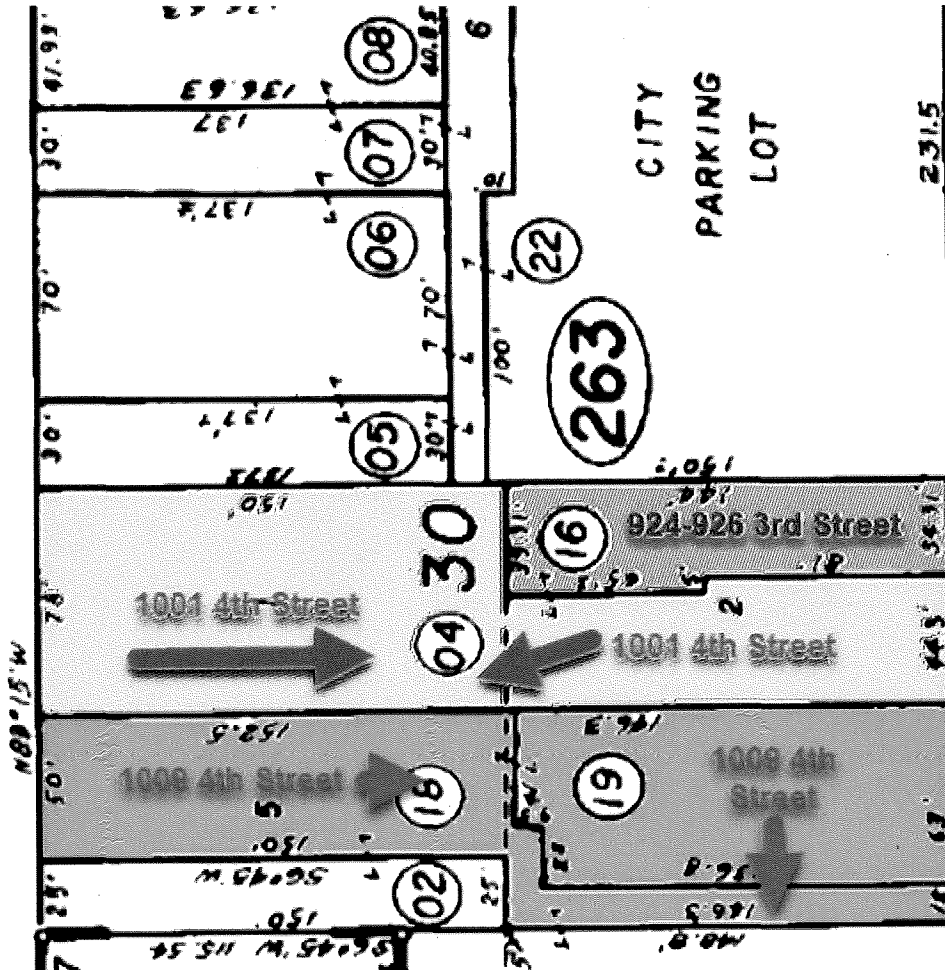
By:

Name:

Title:

DIAGRAM AND LEGAL DESCRIPTIONS OF THE CITY PARCEL AND DEVELOPER PARCELS

1001 4th Street
1009 4th Street
924-926 3rd Street



1001 4th Street, San Rafael, CA 94901

The land referred to in this Commitment is described as follows:

PARCEL ONE:

OAK #4838-4809-9222 v7

ALL THAT PORTION OF LOT ONE (1), BLOCK THIRTY (30) IN THE ORIGINAL TOWNSITE OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT:
COMMENCING AT A POINT ON THE SOUTHERLY LINE OF FOURTH STREET, DISTANT THEREON 301.3 FEET EASTERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE SOUTH LINE OF FOURTH STREET WITH THE EASTERLY LINE OF "A" STREET RUNNING THENCE WESTERLY ALONG THE SOUTHERLY LINE OF FOURTH STREET 77-½ FEET MORE OR LESS TO THE EASTERLY LINE OF LOT CONVEYED BY JACOB ALBERT, ET UX, TO HOWARD C. SPARROW, ET AL, BY DEED DATED JANUARY 11, 1928, RECORDED IN BOOK 138 OF OFFICIAL RECORDS, AT PAGE 217; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF SAID LOT, 150 FEET AND 5 INCHES; THENCE EASTERLY IN A STRAIGHT LINE 77-½ FEET MORE OR LESS TO A POINT ON WESTERLY LINE EXTENDED OF THE TRACT CONVEYED BY OLIVER OLSON, ET UX, TO DORA T. BURNETT, BY DEED DATED NOVEMBER 3, 1922, RECORDED IN BOOK 8 OFFICIAL RECORDS AT PAGE 33, DISTANT ON SAID LINE 151 FEET SOUTHERLY FROM POINT OF COMMENCEMENT; THENCE NORTHERLY ALONG SAID LINE 151 FEET TO A POINT OF COMMENCEMENT.

PARCEL TWO:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THIRD STREET DISTANT THEREON 224.6 FEET EASTERLY FROM THE INTERSECTION OF THE EASTERLY LINE OF "A" STREET WITH Form No. 1068-2 Commitment No.: 2103-5032124 ALTA Commitment Page Number: 4 First American Title THE NORTHERLY LINE OF THIRD STREET; THENCE NORTH 9° 51' EAST 147.02 FEET; THENCE SOUTH 79° 55' EAST 38.86 FEET ALONG THE SOUTHERLY LINE OF PARCEL 1 ABOVE DESCRIBED; THENCE SOUTH 9° 41' WEST 65.86 FEET; THENCE SOUTH 80° 09' EAST 5 FEET; THENCE SOUTH 9° 41' WEST 81 FEET TO THE NORTH LINE OF THIRD STREET; THENCE WEST AND ALONG THE NORTH LINE OF THIRD STREET 44.3 FEET TO THE POINT OF BEGINNING; BEING A PORTION OF LOT 2 IN BLOCK 30 AS LAID DOWN AND DELINEATED UPON THAT CERTAIN MAP ENTITLED, "PLAT OF THE TOWNSITE OF THE CITY OF SAN RAFAEL", FILED OCTOBER 14, 1873 IN RACK 2, PULL 4, MARIN COUNTY RECORDS.

PARCEL THREE:

COMMENCING AT A POINT IN THE NORTHERLY LINE OF THIRD STREET DISTANT 161.6 FEET EASTERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF THIRD STREET WITH THE EASTERLY LINE OF "A" STREET; RUNNING THENCE NORTHERLY AND PARALLEL TO THE EASTERLY LINE OF "A" STREET 136.8 FEET, THENCE EASTERLY AT A RIGHT ANGLE A DISTANCE OF 22 FEET, THENCE NORTHERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE EASTERLY LINE OF "A" STREET A DISTANCE OF 9.5 FEET, THENCE EASTERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE NORTHERLY LINE OF THIRD STREET, A DISTANCE OF 33 FEET, THENCE SOUTHERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE EASTERLY LINE OF "A" STREET A DISTANCE OF 146.3 FEET, THENCE WESTERLY AT A RIGHT ANGLE ALONG THE NORTHERLY

EXHIBIT A

LINE OF THIRD STREET A DISTANCE OF 55 FEET TO THE POINT OF COMMENCEMENT.

PARCEL FOUR:

COMMENCING AT A POINT ON THE NORTHERLY LINE OF THIRD STREET DISTANT 224.6 FEET EASTERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF THIRD STREET WITH THE EASTERLY LINE OF "A" STREET (SAID POINT ALSO BEING THE SOUTHWESTERLY CORNER OF LOT 2, BLOCK 30, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PLAT OF THE TOWNSITE OF THE TOWN OF SAN RAFAEL", FILED OCTOBER 14, 1873 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MARIN), AND RUNNING THENCE WESTERLY ALONG THE NORTHERLY LINE OF THIRD STREET A DISTANCE OF 8 FEET TO THE SOUTHEASTERLY CORNER OF THE PARCEL CONVEYED BY WALTER R. CASTRO, ET UX, TO ALA SARA WINTER, BY DEED RECORDED SEPTEMBER 16, 1944 IN BOOK 469 OF OFFICIAL RECORDS, AT PAGE 52, ALSO BEING THE SOUTHEASTERLY CORNER OF PARCEL 3 ABOVE, THENCE NORTHERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE EASTERLY LINE OF "A" STREET A DISTANCE OF 146.3 FEET ALONG THE EASTERLY LINE OF SAID PARCEL, THENCE EASTERLY AT A RIGHT ANGLE RUNNING PARALLEL WITH THE NORTHERLY LINE OF THIRD STREET, A DISTANCE OF 8 FEET TO THE WESTERLY LINE OF SAID LOT 2 IN BLOCK 30, ALSO BEING THE SOUTHWESTERLY CORNER OF PARCEL 1 ABOVE, THENCE SOUTHERLY AT A RIGHT ANGLE RUNNING PARALLEL TO THE EASTERLY LINE OF "A" STREET A DISTANCE OF 146.3 FEET TO THE POINT OF COMMENCEMENT.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS PURPOSES AS PROVIDED FOR IN THAT DEED EXECUTED BY ALA SARA WESS TO MATTHEW E. HAZELTINE, ET UX, RECORDED APRIL 9, 1954 IN BOOK 860 OF OFFICIAL RECORDS, AT PAGE 70, MARIN COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THIRD STREET DISTANT THEREON 75 FEET WESTERLY FROM THE SOUTHWESTERLY CORNER OF LOT 2, IN BLOCK 30, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PLAT OF THE TOWNSITE OF THE CITY OF SAN RAFAEL", FILED FOR RECORD OCTOBER 14, 1873 IN RACK 2 OF MAPS AT PULL 4, MARIN COUNTY Form No. 1068-2 Commitment No.: 2103-5032124 ALTA Commitment Page Number: 5 First American Title RECORDS, SAID POINT ALSO BEING THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL CONVEYED TO ALA SARA WINTER BY THE DEED RECORDED SEPTEMBER 16, 1944 IN BOOK 469 OF OFFICIAL RECORDS, AT PAGE 52, MARIN COUNTY RECORDS; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID WINTER PARCEL 136.8 FEET; THENCE EASTERLY AT A RIGHT ANGLE 12 FEET TO A POINT ON THE EASTERLY LINE OF THAT CERTAIN PARCEL CONVEYED TO HAZELTINE BY THE DEED RECORDED APRIL 9, 1954 IN BOOK 860 OF OFFICIAL RECORDS, AT PAGE 70, MARIN COUNTY RECORDS; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID HAZELTINE PARCEL 136.8 FEET TO A POINT ON THE NORTHERLY LINE OF

EXHIBIT A

THIRD STREET, THENCE WESTERLY ALONG SAID NORTHERLY LINE 12 FEET TO THE POINT OF BEGINNING.

APN: 011-263-04 (Affects: Parcel One) and 011-263-19 (Affects: Parcels Two, Three and Four)

1009 4th Street, San Rafael, CA 94901

Legal Description

The land referred to in this Report is situated in the County of Marin, City of San Rafael, State of California, and is described as follows:

Beginning at a point in the Northerly line of Third Street at the intersection thereof with the Easterly line of that certain parcel of land described in Deed from Michael Butler, a widower, to Martha Jane Prior, recorded November 23, 1923 in Liber 30 of Official Records at Page 407; running thence Northerly along said Easterly line, 81 feet to the Northeasterly corner thereof; running thence Westerly along the Northerly line of said parcel of land so described in Deed to Prior, 3 feet to a point in the Easterly line of that certain parcel of land described in Deed from M. Butler, a widower, to Martha Jane Prior, recorded January 23, 1922 in Liber 235 of Deeds at Page 390; running thence Northerly along the Easterly line of said parcel of land described in Deed to Prior, secondly above referred to, 65.86 feet to a point in the Northerly line of Lot 2 in Block 30, as shown on the Map hereinafter referred to; running thence Easterly along said Northerly line of Lot 2 in Block 30, 39.44 feet to the Northeasterly corner thereof; running thence Southerly along the Easterly line of said Lot 2 in Block 30, 149 feet to a point in the Northerly line of Third Street; running thence Westerly along said Northerly line of Third Street, 34.3 feet to the point of beginning. Being a portion of Lot 2 in Block 30, as shown upon that certain Map entitled, "Plot of the Townsite of the Town of San Rafael", filed in the Office of the County Recorder of the County of Marin, State of California, October 14, 1873 in Book 1 of Maps, Pull 4.

APN: 011-263-18 and APN: 011-263-19

924-926 3rd Street, San Rafael, CA 94901

Legal Description

The land referred to in this Report is situated in the County of Marin, City of San Rafael, State of California, and is described as follows:

Beginning at a point in the Northerly line of Third Street at the intersection thereof with the Easterly line of that certain parcel of land described in Deed from Michael Butler, a widower, to Martha Jane Prior, recorded November 23, 1923 in Liber 30 of Official Records at Page 407; running thence Northerly along said Easterly line, 81 feet to the Northeasterly corner thereof; running thence Westerly along the Northerly line of said parcel of land so described in Deed to Prior, 3 feet to a point in the Easterly line of that certain parcel of land described in Deed from M. Butler, a widower, to Martha Jane Prior, recorded January 23, 1922 in Liber 235 of Deeds at Page 390; running thence Northerly along the Easterly line of said parcel of land described in Deed to Prior, secondly above referred to, 65.86 feet to a point in the Northerly line of Lot 2 in Block 30, as shown on the Map hereinafter referred to; running thence Easterly along said Northerly line of Lot 2 in Block 30, 39.44 feet to the Northeasterly corner thereof; running thence Southerly along the Easterly line of said Lot 2 in Block 30, 149 feet to a point in the

EXHIBIT A

Northerly line of Third Street; running thence Westerly along said Northerly line of Third Street, 34.3 feet to the point of beginning.

Being a portion of Lot 2 in Block 30, as shown upon that certain Map entitled, "Plot of the Townsite of the Town of San Rafael", filed in the Office of the County Recorder of the County of Marin, State of California, October 14, 1873 in Book 1 of Maps, Pull 4.

APN: 011-263-16

EXHIBIT A

BEGINNING at a point on the Northerly line of Third Street, San Rafael, California, distant thereon westerly 52.37 feet from its intersection with the westerly line of Lootens Place in Block 30, San Rafael Townsite Map, made by H. Austin, and recorded October 14, 1873 on Rack 1, Pull 4, Marin County Records, running thence along said Third Street line westerly 231.23 feet, thence at right angles northerly 150 feet, more or less, to the southerly line of an alley, thence at right angles easterly and along the southerly line of said alley 100.0 feet, thence at right angles southerly 10.0 feet, thence easterly along said alley line 65.0 feet to corner of lot conveyed by Donald Sutherland to Effie C. Burtchaell, by deed dated March 11, 1881, and recorded in Libre "V" of Deeds at page 354, Marin County Records, thence southerly along the westerly line of said Burtchaell lot 40.0 feet to the southwest corner of the said Burtchaell lot; thence easterly along the southerly line of the said Burtchaell lot 57.63 feet; thence southerly parallel to the westerly line of Lootens Place 103.14 feet to the point of beginning.

THAT portion of Lot No. 6, in Block No. 30 of the Townsite of San Rafael, in the City of San Rafael, County of Marin, State of California, as per plat of the Townsite filed for record October 14, 1873 in the office of the County Recorder of the County of Marin, State of California, described as follows to-wit:

BEGINNING at a point on the Westerly line of Lootens Place distant 157 feet southerly from the point of intersection of said Westerly line of Lootens Place with the southerly line of Fourth Street, before widening, said point of beginning being the point of intersection of said westerly line of Lootens Place with the Southerly line of an alley 20 feet in width; thence Westerly along said Southerly line of said alley 110 feet; thence southerly at right angles 40 feet, thence Easterly parallel with said alley 112 feet to said westerly line of Lootens Place, thence Northerly along said last mentioned line 40 feet to the point of beginning.

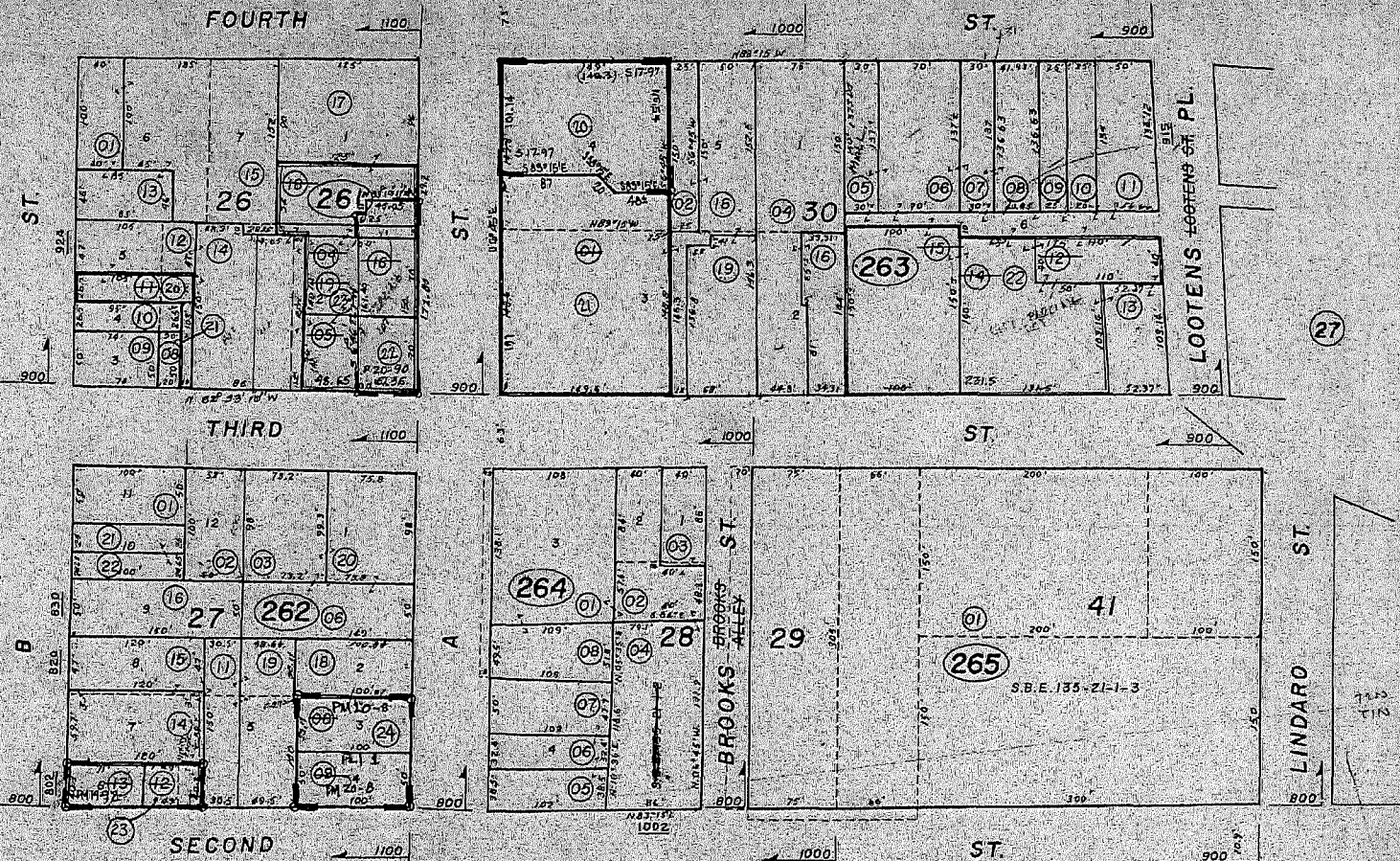
BEGINNING at a point in the westerly line of Lootens Place distant 40.0 feet southerly along said line from the southerly line of a 20.0 foot lane leading from Lootens Place westerly into Block 30, as said streets and block are shown on Map of San Rafael Townsite, said point of beginning being also the southeast corner of that certain parcel of land conveyed by Donald Sutherland to Effie C. Burtchaell in Deed dated March 11, 1881 and recorded in Libre "V" of Deeds at page 354, Marin County Records, and running thence southerly along the westerly line of Lootens Place 103.14 feet to the intersection of said last mentioned line with the northerly line of Third Street, as shown on the herein mentioned map, thence westerly along said line of Third Street, 52.37 feet, thence northerly and parallel to the westerly line of Lootens Place 103.14 feet, more or less, to the Southerly line of the property herein mentioned as being described in Libre "V" of Deeds at page 354, Marin County Records, thence easterly along the southerly line of said parcel so described 52.37 feet to the point of beginning. BEING a portion of that certain property in Block 30, described in Deed dated September 18, 1926 from C. A. Chaquette and Ernestine M. Chaquette, his wife, to Anton Christensen, recorded in the office of the County Recorder of the County of Marin, State of California, on September 25, 1926 in Volume 105, Official Records at page 129.

BEGINNING at the point of intersection of the westerly line of Lootens Place with the southerly boundary line of the lands described in Deed from Donald Sutherland to Marie E. Sweetser recorded in Liber 25 of Deeds at page 217; running thence westerly along the northerly line of an Alleyway referred to in said Deed and its continuation westerly to the westerly line of Lot 6, Block 30, as shown upon Plat of the Townsite of San Rafael; running thence southerly along the last named line to a point in the northerly line of the lands described in Deed to W. A. Powning recorded in Liber 98 of Deeds at page 194, running thence easterly along the northerly line of said lands conveyed to Powning, a distance of 100 feet; to its northeasterly corner; running thence southerly along the easterly line of said lands conveyed to Powning 10 feet, more or less, to the northwesterly corner of the lands described in Deed to Anton Christensen recorded in Liber 105 of Official Records at page 129; running thence easterly along the northerly line of said lands conveyed to Christensen, 65 feet, more or less, to the northwesterly corner of the lands described in Deed to George LeCam, et al, recorded in Liber 10 of Official Records at page 69, running thence easterly along the northerly line of said lands conveyed to LeCam, et al, a distance of 110.00 feet to the westerly line of Lootens Place, running thence northerly along the westerly line of Lootens Place, a distance of 20 feet, more or less, to the point of beginning.

FOR SAN PEDRO, SANTA MARGARITA Y LAS GALLINAS RANCHO

Tax Area Code
8-00 8-000
8-023

11-26



THIS PAGE REVISED and/or CHECKED	
Date	By
3-6-87	PLR

Bk.13
CJ

Subsequent to 3-14-83 refer
to preceding page 26

Townsite of San Rafael, Rack I Pull 4

NOTE—Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

CITY OF SAN RAFAEL
Assessor's Map Bk. 11 -Pg. 26
County of Marin, Calif.

CITY OF SAN RAFAEL
Assessor's Map Bk.11 -Pg. 26
County of Marin, Calif.

EXHIBIT B

SCHEDULE OF PERFORMANCE

	<i>Preliminary Stage (6 months)</i>	
1.	Concurrent with execution of Agreement	Developer deposits Preliminary Stage Deposit with City
2.	Promptly following Effective Date	Developer retains its parking consultant
3.	Within 120 days of the Effective Date	Developer submits Parking Plan to City for review
4.	Prior to expiration of Preliminary Stage	City and Developer discuss differences in Parking Plan analysis and endeavor to reach consensus
5.	Promptly following Effective Date	Developer and City commence negotiation and drafting of Term Sheet
6.	Prior to expiration of Preliminary Stage	Developer and City reach agreement on principal business terms of a proposed DDA as evidenced by a non-binding Term Sheet.
7.	Prior to expiration of Preliminary Stage	Developer and City memorialize successful completion of all Preliminary Stage tasks by executing a Preliminary Stage Feasibility Confirmation or Agreement terminates as provided in Section 1.2.
	<i>DDA Stage (15 months)</i>	
	*DDA Stage applicable only if Developer and City have memorialized successful completion of all Preliminary Stage tasks.	

EXHIBIT B

8.	Upon execution of Preliminary Stage Feasibility Confirmation	Developer deposits DDA Stage Deposit with City
9.	Within 30 days following commencement of DDA Stage	Developer and City prepare a CEQA project description
10.	Prior to expiration of DDA Stage	City's CEQA consultant prepares the CEQA document
11.	Prior to expiration of DDA Stage and, in any event, prior to City Council's consideration of a DDA	Developer and City negotiate and draft a proposed DDA

EXHIBIT B

AMENDMENT NO.1 TO AGREEMENT TO NEGOTIATE EXCLUSIVELY

This Amendment No. 1 ("Amendment") to that certain Agreement to Negotiate Exclusively ("ENA") by and between the City of San Rafael, a municipal corporation ("City"), and Goldstone Management, Inc. ("Developer"), is effective on the Amendment Date identified on the signature page. City and Developer may be referred to individually herein as a "Party", and collectively as the "Parties."

RECITALS

A. On November 18th, 2019, City adopted a resolution approving and authorizing the City Manager to execute the ENA to govern the phases of negotiations for the Parties to negotiate and present to the City Council for approval a proposed Disposition and Development Agreement ("DDA") for Developer to acquire a City-owned public parking garage and develop a mixed-use residential/retail development project at the southeast intersection of Third Street and Lootens Plaza in the City of San Rafael as more particularly described therein. Pursuant to the authorization conferred by the November 18th 2019 resolution, the City executed the ENA with an effective date of December 7th, 2019.

B. Under the terms of the ENA, the Parties outlined a series of phased negotiations towards memorializing the terms of a DDA, which require that the Parties make a determination as to feasibility of the proposed Project, and if the Project is mutually determined to be feasible, execute a Preliminary Stage Feasibility Confirmation by no later than six months following the Effective Date, or June 7th, 2020.

C. In early 2020, following an initial outbreak in Wuhan, China in December of 2019, a pandemic outbreak of the SARS-COV-2 virus spread globally, reaching all 50 of the United States (the "COVID-19 Outbreak"). In March of 2020, to prevent spread of the viral outbreak, the Marin County Health and Human Services Department issued a shelter in place order, which has been extended through May 31, 2020.

D. In light of the ongoing public health crisis under the COVID-19 Outbreak, the Parties wish to extend the Preliminary Stage of the negotiation period contemplated under the ENA for a period of six months. Additionally, the Parties wish to amend the list of items identified under the "Term Sheet" under Section 2.1 of the ENA to require that Developer submit a *pro forma* financial feasibility analysis for the Project as one of the performance milestones required prior to determination of Project feasibility and execution of a Preliminary Stage Feasibility Confirmation.

NOW, THEREFORE, the City and Developer, for the mutual consideration described herein, agree as follows:

AGREEMENTS

1. INCORPORATION BY REFERENCE. Unless otherwise specified, all subsequent references to the ENA are deemed to mean the original ENA as modified by this Amendment.

This Amendment incorporates the ENA by reference, except and only to the extent that any terms or conditions of the ENA are specifically modified by this Amendment. All terms and conditions in the ENA that are not specifically modified by this Amendment remain in full force and effect.

2. AMENDMENT OF SECTION 1.2. The first two sentences of Section 1.2 of the ENA, "Negotiation Period Duration," are hereby amended and restated to read as follows [NOTE: none of the remaining sentences of Section 1.2 is modified by this Amendment]:

"1.2 Negotiation Period Duration.

(a) The negotiations shall be conducted in two stages, the combined duration of which shall not exceed twenty-seven (27) months, plus extensions, if any, as provided in subsection (b) below. ("**Negotiation Period**"). The "**Preliminary Stage**" of the Negotiation Period shall commence on the Effective Date and expire twelve (12) months thereafter, subject to potential extension as provided in subsection (b) below, or on the date the Parties execute a Preliminary Stage Feasibility Confirmation (defined below) whichever is earlier."

3. AMENDMENT OF SECTION 2. Section 2.2 of the ENA, "DDA Stage Tasks," is hereby renumbered as Section 2.3. A new Section 2.2, "Project *Pro Forma*," is hereby added to Section 2, to read as follows:

"2.2 Project *Pro Forma*. In addition to the other Preliminary Stage tasks described in this Agreement and Schedule of Performance, prior to expiration of the Preliminary Stage of the Negotiation Period, Developer shall submit to the City for review a Project *Pro Forma*, demonstrating the financial feasibility of the Project under identified assumptions regarding interest rates, the availability of Project lending capital and construction costs, and including basic information regarding Project revenues and costs, sources and uses of funds, cash flow under basic accrual accounting, and any other information reasonably requested by City."

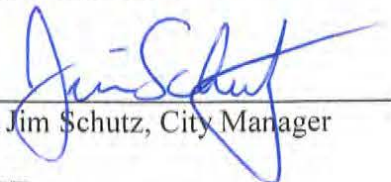
4. ENTIRE AGREEMENT. The ENA, as modified by this Amendment, constitutes the entire integrated understanding between the Parties concerning the Project. This Amendment, together with the ENA, supersedes all prior negotiations, agreements and understandings regarding the Site and proposed Project, whether written or oral. The documents incorporated by reference into this Amendment are complementary; what is called for in one is binding as if called for in all, except and only to the extent otherwise specified. In the event of any conflict between the provisions of this Amendment and the ENA, the provisions of this Amendment shall control.

5. SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of Developer and City. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and authorized assigns.

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective on the Amendment Date set forth below.

CITY:

CITY OF SAN RAFAEL, a California municipal corporation

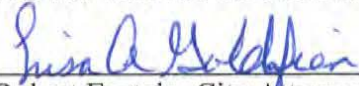
By: 
Jim Schutz, City Manager

ATTEST:


for Lindsay Lara, City Clerk


Date: June 9, 2020
("Amendment Date")

APPROVED AS TO FORM:


for Robert Epstein, City Attorney

DEVELOPER:

GOLDSTONE MANAGEMENT, INC., a California corporation

By: 
Paul Goldstone, President

Dated: 5-18, 2020

RESOLUTION NO. 14802

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AN AMENDMENT TO EXTEND THE AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH GOLDSTONE MANAGEMENT INC. REGARDING REDEVELOPMENT OF 1009 AND 1001 FOURTH STREET, 924-926 THIRD STREET, AND THE THIRD STREET AND LOOTENS PLACE PARKING GARAGE

WHEREAS, the City of San Rafael owns the real property and parking garage located at Third Street and Lootens Place ("City Parcel"); and

WHEREAS, the City adopted a goal to "provide a vibrant Downtown" in "our Vision of Downtown" in 1993, which was later incorporated into the goals of the General Plan 2020 as Goal 6. General Plan Goal 6 includes the following implementation policies:

- NH 16 - to substantially expand Downtown's economic success and increase opportunities for retail, office and residential development;
- NH 22 - to create a popular and attractive residential environment that contributes to the activity and sense of community in Downtown; and
- NH 34 - to encourage activities that will promote the Fourth Street Retail Core as being "Alive after Five"; and

WHEREAS, one of the City Council goals is to provide neighborhood and economic vitality by supporting the development of key Downtown sites, and the City Council's Economic Development Committee has adopted "support development of key sites such as 1001-1009 Fourth Street" as one of its eight priorities; and

WHEREAS, Goldstone Management, Inc. ("Developer") has proposed redeveloping the City Parcel and adjoining properties that Developer owns at 1009 and 1001 Fourth Street and 924-926 Third Street, into a mixed-use residential/retail development, including a market hall-style food emporium and a fully automated parking garage ("Project"); and

WHEREAS, Developer entered into an exclusive negotiating agreement ("ENA") with the City dated December 7, 2019 to acquire the City Parcel, and in combination with the Developer's adjacent parcels that have already been assembled, to create a significant mixed-use development, provide much needed housing, entertainment, and food services in the form of a Market Hall, create a strong economic driver that will benefit Downtown businesses, and re-establish the focal point of the Downtown area; and

WHEREAS, due to the COVID-19 outbreak, Developer has requested a six-month extension to the Preliminary Stage of the ENA and the staff report accompanying this Resolution provides additional information about the rationale for the extension; and

WHEREAS, staff engaged the law firm of Burke, Williams & Sorensen, LLP to evaluate the extension request and Watry Design Inc. to review a preliminary parking plan, and their preliminary analysis indicates that the submitted documentation is evidence of progress under the Preliminary Stage for the City to consider further negotiations regarding the potential Project; therefore staff recommends that the City Council approve the requested amendment to the ENA; and

WHEREAS, funds have been appropriated in the Economic Development Department budget for the current Burke, Williams & Sorensen, LLP, Keyser Marston Associates, Inc., and Watry Design, Inc. contracts for consulting services during the extended term of the ENA; and

WHEREAS, the City Council intends and understands that amending the ENA is not committing the City to grant any land use approvals for the Project or to approve any further agreement with the Developer; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of San Rafael as follows:

1. The City Council hereby finds and determines that the above recitals are true, correct and incorporated herein.

2. The City Council hereby approves and authorizes the City Manager to execute on behalf of the City an amendment to the ENA in substantially the form submitted to the City Council in connection with the consideration of this Resolution, subject to such minor changes as the City Manager and City Attorney may approve, provided, however, that nothing in this Resolution or the amendment of the ENA shall be deemed to commit the City to approve any land use approvals for the Project or to approve any further agreement with the Developer.

3. The City Council authorizes and directs the City Manager and his designees to take such steps as are reasonable and necessary to performance of the City's obligations under the amendment to the ENA and to carry out the terms and conditions of the ENA.

4. This Resolution shall take immediate effect upon adoption.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael held on the 1st day of June 2020, by the following vote:

AYES: COUNCILMEMBERS: Bushey, Colin, Gamblin, McCullough & Mayor Phillips

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



LINDSAY LARA, City Clerk



MEMORANDUM – GOLDSTONE ENA ADMINISTRATIVE EXTENSION

To: Jim Schutz, City Manager

From: Danielle O’Leary, Director of Economic Development and Innovation
Simon Vuong, Economic Development Coordinator

Date: Wednesday, December 2, 2010

Subject: Administrative Extension of Agreement to Negotiate Exclusively (ENA) for the Goldstone Project

Reference: Agreement to Negotiate Exclusively (ENA)
Amendment No.1 to ENA

Background:

On December 7, 2019, an Agreement to Negotiate Exclusively (ENA) was entered between the City and the Goldstone Team (Developer) to discuss and negotiate in good faith the specifics of a market-hall style mixed-use residential and retail project with automated parking in exchange for a City parking garage. Since then, City staff, including staff from Economic Development, Community Development, Public Works, Parking Services, as well as city consultants, have been hard at work to deliberate some key items of the project, chiefly the design and access of the automated parking system and how that relates to the proposed shared parking. The pandemic that started earlier this year has delayed the timeframe for negotiations, and an extension was approved (Amendment No.1), moving the expiration date of the preliminary stage six (6) months, from June 6, 2020 to December 7, 2020.

Progress and Status:

At this point in time, we have been meeting in a smaller Parking Subgroup to refine the critical details of how the parking will function, as the feasibility of the parking will be essential to making the project a reality. There are some questions, specifically regarding building height and parking ratio, that still need to be clarified as the City continues to move forward in reviewing and approving the Downtown Precise Plan. Because of this, the request from the Developer for an appraisal has not yet been completed as the development parameters are not set. Since the Downtown Precise Plan has not been approved, staff and city consultants believe it would be prudent to wait until the Downtown Precise Plan has been approved and key site parameters are solidified, including building height, density, and parking ratio, before moving much further along with the preliminary stage of the ENA. The City is also still waiting for a more

comprehensive parking plan and are working within the Parking Subgroup to outline a more definitive submittal schedule. However, the Developer is insisting on an appraisal before the submittal of a parking plan, even a basic one using the underlying zoning (understanding that it may change), to be paid by the Developer and not to exceed \$9,000. A scope of work for the appraisal was previously obtained for approximately \$22,000, and we are in the midst of renegotiating another scope of work for a lower fee.

Request:

For the above reasons, the prolonged negotiations with the Developer have made adhering to the new December 7, 2020 deadline difficult to meet, and staff believes it is necessary for an Administrative Extension to be granted to continue the negotiations.

The City Manager may exercise an Administrative Extension of the ENA totaling no more than ninety (90) days if he determines that both parties have made substantial progress toward meeting the performance milestones identified in the ENA. City staff is requesting the City Manager extend the ENA, which is set to expire on December 7, 2020, an additional ninety (90) days to March 6, 2021. Additional time is warranted to further the conversations that the Parking Subgroup have undertaken and conduct an appraisal, and we are confident extra time will yield more fruitful conversations.

It is likely that staff will return to City Council to extend the ENA a second time via an Amendment No. 2, prior to the expiration of this Administrative Extension, due to the uncertain timeline of the adoption of the Downtown Precise Plan.

If the City Manager approves of the Administrative Extension, please sign and date below and return to the Economic Development Department. If there are any questions regarding this extension of agreement, please contact Danielle O'Leary x3460 or Simon Vuong at x3134. Thank you.

Approved on December 7, 2020
Month, Date, Year


JIM SCHUTZ
City Manager

Enclosed:

1. Agreement to Negotiate Exclusively (ENA), Executed December 7, 2019
2. Amendment No.1 to ENA, Executed June 6, 2020

****Return to Economic Development****
When Completed