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City Clerk, Fresno, California
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BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADOPTING THE FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF FRESNO AND JOHN ALLEN COMPANY, LLC., A CALIFORNIA LIMITED LIABILITY COMPANY, DCTN3 388 FRESNO CA, LLC., A DELAWARE LIMITED LIABILITY COMPANY, AND DCTN3 389 FRESNO CA, LLC., A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THE PROVISIONS OF SECTION 65864 ET SEQ. OF THE GOVERNMENT CODE.

WHEREAS, pursuant to the provisions of Government Code sections 65864, et seq., the City of Fresno is authorized to enter into and amend a development agreement with any person having a legal or equitable interest in real property for the development of the property; and,

WHEREAS, the City of Fresno ("City"), on the one hand, and JOHN ALLEN COMPANY, LLC, a California limited liability company DCTN3 388 FRESNO CA, LLC, a Delaware limited liability company, and DCTN3 389 FRESNO CA, LLC, a Delaware limited liability company, (collectively "Developer") on the other hand, are parties to that certain Development Agreement, dated as of July 7, 2011, that was recorded in the

1 of 7

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: _____



Ordinance No.

Official Records of Fresno County, California (the "Official Records") on August 4, 2011, as Document No. 20110103082 (the "Original Development Agreement"); and

WHEREAS, the Original Development Agreement pertains to the development of the Marketplace Project (as defined in the Original Development Agreement), located on approximately 74.38 acres of land within the City of Fresno, referred to as the Marketplace Project Area (as defined in the Original Development Agreement); and,

WHEREAS, collectively Developer holds fee title to the Marketplace Project Area; and,

WHEREAS, approval of the Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project will allow continued development of the Marketplace Project through an extension of time of the Original Development Agreement and any amendments thereto, as well as minor modifications to the Marketplace Project; and,

WHEREAS, the City, as Lead Agency, certified Environmental Impact Report (SCH#2008011003) for the Marketplace Project on December 16, 2010 (the "Original EIR"); and,

WHEREAS, the City, as Lead Agency, has determined that only minor modifications and clarifications have been made to the project through this Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project and that none of the conditions described in CEQA Guidelines Sections 15162 or 15163 (the "CEQA Guideline Sections") or California Public Resources Code §21166, which govern the need for the preparation of a subsequent environmental impact report, negative declaration or a supplement to the EIR, have occurred. Accordingly the City has prepared an Addendum to the Original EIR, dated _____; and,

WHEREAS, the Planning Commission of the City of Fresno held a public hearing on the 6th day of June 2018 to consider the Addendum, Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project, and the associated Conditional Use Permit, and recommended approval to the Council of the City of Fresno through Resolution Nos. _____, _____, and _____; and,

WHEREAS, The Council of the City of Fresno, on the 14th day of June 2018 received the recommendations of the Planning Commission and City staff as specifically detailed in the Report to the City Council for this Ordinance approving the Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project by and between the City of Fresno and Developer dated _____.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1: The Council in a prior action taken on June 14, 2018, made all of the necessary findings pursuant to CEQA and the CEQA Guidelines to approve the Addendum to the Original EIR (Environmental Impact Report SCH#2008011003) dated _____, for purposes of the Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project and the Associated CUP.

SECTION 2. Council finds in its independent judgment, based upon its review of the Addendum to the Original EIR (Environmental Impact Report SCH#2008011003) and dated _____, and the entire administrative record, including but not limited to the Staff reports, the oral and documentary evidence submitted to Council and the Planning Commission, that the Proposed Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project is part of the project assessed under

the Addendum to the Original EIR (Environmental Impact Report SCH#2008011003) and dated _____.

SECTION 3. Council finds that the Addendum to the Original EIR (Environmental Impact Report SCH#2008011003) dated _____, is appropriate pursuant to the evidence and findings provided in the Staff Report to Council dated June 14, 2017.

SECTION 4. Council finds, in accordance with Section 65864 et. seq. of the California Government Code, and pursuant to the evidence and findings provided in the Staff Report to Council dated June 14, 2018 that:

(a) The Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project Development Agreement is being adopted pursuant to this Ordinance and is subject to referendum.

(b) The provisions of the Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project are consistent with the Fresno General Plan. Further, the Development Agreement is consistent with the purpose of the Development Code to promote growth in an orderly and sustainable manner, and to promote and protect the public health, safety, peace, comfort, and general welfare. Approval of the Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project will allow the completion of the originally proposed project and will provide for orderly development in the Marketplace Project Area.

(c) The Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project will provide substantial public benefit by establishing services and desirable uses in proximity to residential uses.

SECTION 5. Council finds that the Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project complies with the California Government Code, the Fresno Municipal Code, and other applicable ordinances, standards, policies and regulations of the City of Fresno pursuant to the evidence and findings provided in the Staff Report to Council dated June 14, 2018.

SECTION 6. Council finds that the Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project furthers the public health, safety and welfare and will not be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the Subject Property, pursuant to the evidence and findings provided in the Staff Report to the City Council dated June 14, 2018.

SECTION 7. The Council finds that the construction of public facilities required in conjunction with the development is adequate to serve the development pursuant to the findings provided in the Staff Report to the City Council dated June 14, 2018.

SECTION 8. Council finds that the Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project provides for clear and substantial public benefit to the City of Fresno and residents pursuant to the evidence and findings provided in the Staff Report to Council dated June 14, 2018.

SECTION 9. Council hereby adopts and approves the Agreement titled "Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project,"

attached hereto as "Exhibit A," in substantially the same form as that presented to Council in the Staff Report to Council dated June 14, 2018, and authorizes the City Manager and/or his or her designee to finalize and execute the Proposed Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project, subject to City Attorney's Office approval as to form, on behalf of the City of Fresno.

SECTION 10. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2018.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2018
Mayor Approval/No Return: _____, 2018
Mayor Veto: _____, 2018
Council Override Vote: _____, 2018

YVONNE SPENCE, MMC
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Talia Kolluri Date
Supervising Deputy City Attorney

Attachments: Exhibit A