

To allow retail space to be leased  
\* medical office

### THIRD AMENDMENT TO GROUND LEASE

THIS THIRD AMENDMENT TO GROUND LEASE ("Third Amendment") is entered into this 26 day of April, 2005, by and between the Redevelopment Agency of the City of San Jose ("Landlord"), a public body, corporate and politic, established and operating pursuant to the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, et seq.), and Japantown Development, L.P. ("Tenant"), a California limited partnership.

#### RECITALS

A. Landlord and Tenant entered into that certain Ground Lease dated May 1, 1997 ("Original Ground Lease"), that certain First Amendment to Ground Lease dated August 13, 1997 ("First Amendment"), and that certain Second Amendment to Ground Lease dated March 15, 2000 ("Second Amendment"). The Original Ground Lease, the First Amendment and the Second Amendment shall be referred to collectively as the "Lease". Unless otherwise indicated, all capitalized terms used in this Third Amendment shall have the same meaning as those set forth in the Lease.

B. The parties desire to amend the Lease to revise the provision regarding leasing obligations with respect to the Retail Improvements.

#### AGREEMENT

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. Section 304 of the Lease is hereby deleted in its entirety and the following is substituted therefor:

"3. [\$304] Leasing Obligations.

a. In its leasing of the Residential Units, Tenant shall comply at all times with the requirements of the Affordability Restrictions. Tenant shall use its best efforts, consistent with good management practices for similar quality developments, to cause all tenant space in the Residential Improvements to be leased to occupants appropriate to a development of the highest quality comparable to that of other market-rate residential projects in San Jose that are similar in design, density and amenities, and to keep all Residential Improvements continuously leased.

b. In its leasing of the Retail Improvements, Tenant shall use its best efforts, consistent with good retailing

practices for similar first-class pedestrian-oriented retail shopping environments in major cities of the United States, to cause the Retail Space to be leased to a diversified group of Retail Uses (as defined below) appropriate to a first-class pedestrian-oriented retail shopping environment, with an emphasis towards the particular needs of the residential occupants of Miraido Village. Landlord shall have the right to approve or disapprove any prospective subtenant which approval or disapproval shall be limited to the (i) experience or lack of experience of such subtenant in operating a retail establishment, (ii) the quality of merchandise and/or products of such subtenant and (iii) the operating standards of such subtenant, the extent to which the proposed tenant will contribute to a first-class pedestrian-oriented shopping environment. Tenant shall use its best efforts, consistent with good retailing practices for similar first-class pedestrian-oriented retail shopping environments, to keep all Retail Space continuously leased in accordance with the standards of this Subsection.

c. "Retail Use" shall mean the offering for sale of items of retail merchandise generally offered for sale in similar first-class pedestrian-oriented retail shopping environments in major cities in the United States, consistent with good retailing practices for such first-class pedestrian-oriented retail shopping environments, giving recognition to the particular needs of residential occupants of Miraido Village. Retail Use shall include food service establishments, but fast food service establishments shall not be permitted uses without the prior written approval of the Agency's Executive Director, which approval shall be within the sole discretion of the Executive Director. For purposes of this Section, "fast food service establishments" shall include any food service establishment which does not provide seated meal service where such meal is ordered from, and delivered to, your table by a waiter or waitress excluding any food service establishment which has minimal cooking facilities on the premises (e.g. a deli, sandwich shop, coffee shop, or bakery/bagei shop). Retail Use shall also include service-oriented businesses, including neighborhood services such as repair services, travel agencies, laundrettes and dry cleaning establishments. Office oriented service businesses, such as financial institutions and medical or dental offices, shall not be permitted uses without the prior written approval of the Agency's Executive Director, which approval shall be within the sole discretion of the Executive Director. Any written request by Tenant for approval of any such use shall be acted upon by the Executive Director within ten (10) business days after the Executive Director has all information necessary to evaluate Tenant's request or such request shall be deemed approved. Any use approved by the

Executive Director hereunder shall be a permitted use under the applicable zoning for the Premises."

2. In the event of a conflict between the terms and provisions of this Third Amendment and the terms and provisions of the Lease, the terms and provisions of this Third Amendment shall control. In all other respects, the Lease shall remain unchanged and in full force and effect.

3. This Third Amendment may be signed in counterparts, all copies of which, when taken together, shall comprise one fully-executed document.

4. The effective date of this Third Amendment is the date of final execution of this Third Amendment by both parties hereto, as first hereinabove set forth.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Third Amendment as of the date first hereinabove written.

LANDLORD:

REDEVELOPMENT AGENCY  
OF THE CITY OF SAN JOSE

APPROVED AS TO FORM:

Gom Murtha  
Senior Associate Counsel

or Harry S. Mavrogenes  
Executive Director

TENANT:

JAPANTOWN DEVELOPMENT, L.P.,  
a California limited partnership

By A.F. Evans Company, Inc.,  
a California corporation,  
its general partner

By: Arthur F. Evans

## THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

## MEMORANDUM

TO: REDEVELOPMENT AGENCY BOARD	FROM: HARRY S. MAVROGENES EXECUTIVE DIRECTOR
SUBJECT SEE BELOW	DATE: APRIL 26, 2005

SUBJECT: MIRAIDO VILLAGE 3<sup>rd</sup> AMENDMENT GROUND LEASE

RECOMMENDATION

It is recommended that the Redevelopment Agency Board approve the Third Amendment to the Ground Lease with Japantown Development L.P., clarifying the allowed uses for the ground floor retail space in Miraido Village; and authorizing the Executive Director to approve other uses, on a case by case basis, if the proposed use is allowed under the zoning in effect at that time.

BACKGROUND

In May 1997 the Redevelopment Agency Board approved a Disposition and Development Agreement and a Ground Lease with Japantown Development Limited Partnership ("Tenant") that provided for the development of a mixed use facility on the southeast corner of 7<sup>th</sup> and Jackson Streets. The Miraido development ("Project") includes 109 apartments, a community room, and 12,528 sq. ft. of retail space. The ground lease is for a term of 59 years with four 10-year options. The apartments are a mix of very low income, low income, and market rate residences. Funding for the project included HUD tax-exempt bond funds, Agency funds, and developer equity.

In Fall 2004, Tenant sought approval by the Agency to lease 3,500 square feet of long-standing vacant ground floor retail space fronting Jackson Street to a physician for medical office use rather than retail or restaurant uses. Upon review of the existing Ground Lease and its Operation and Maintenance Requirements, it was determined that the Ground Lease does not expressly provide that a medical office use is a "retail use". Retail uses are permitted without Landlord's consent under the Ground Lease.

Under the Ground Lease, retail space may be leased "to occupants appropriate to a development of the highest quality comparable to other market-rate residential projects in San Jose". With respect to subletting, the Ground Lease provides that the tenant has the right, without Landlord's consent, to sublet any part of the retail improvements for retail uses as defined under the Ground Lease. Unfortunately the Ground Lease does not contain an express definition of "retail use". The Operation and Maintenance Requirements of the Ground Lease state that the Landlord shall have the right to approve or disapprove any prospective subtenant of the Retail Improvements with Landlord's approval or disapproval limited to (i) the quality of the merchandise and/or services, and (ii) the potential for disturbance of other occupants. The determination of allowable retail uses is further complicated by the fact that the PD permit for the project allows retail uses permitted in the C-1 zone. This zone, since reclassified as The Pedestrian Commercial (CP) zone, does allow medical office uses.

Upon review of the Ground Lease, Agency staff and the Tenant believe that the best course of action is to clarify the intent of the parties on what is an allowable retail use and to provide the Executive Director the ability to approve certain other uses.

#### ANALYSIS

To support and strengthen the retail district of Japantown, the Agency seeks to attract and encourage active retail uses in ground floor commercial spaces that increase customer traffic and provide additional patronage for the surrounding retail businesses. Active retail uses are allowed in the proposed third amendment but less active uses, such as financial institutions or medical offices must be approved in writing by the Executive Director on a case by case basis. The ability for limited exceptions to approved retail uses reflects the fact that the Project has some commercial space that has never been leased. Staff believes that this provision for some flexibility in commercial uses is warranted; provided that the overall retail goals for the area are not undermined.

Specifically, the Agency is supportive of the Tenant's proposed subletting of the long standing vacant ground floor retail space to an established physician for medical office use. In general, medical offices are a good companion use to the surrounding active retail spaces as they draw potential customers to the area, creating additional retail activity. Ideally, the Agency would seek to have medical office uses located in secondary retail spaces close to a main retail corridor along Jackson Street, or in the second story space above prime ground floor retail space,

drawing people but not occupying any streetfront retail locations. However, in Japantown there are few upstairs locations and there is a successful history of small medical office uses on Jackson Street amidst the restaurants and retail stores. Given the long vacant status of the space and the expected general increase in customer traffic, Agency staff recommends that the Agency Board approve the proposed Third Amendment to the Ground Lease which will clearly defined retail uses and allow the Executive Director to approve certain non-retail uses which are permitted under current applicable zoning. Upon approval of the third amendment, the Executive Director will allow the Tenant to proceed with its plan for a medical office use in one of the 3,500 sq. ft. ground floor retail bays.

#### COORDINATION


The proposed amendment has been coordinated with Agency's General Counsel.

#### FISCAL IMPACT

The proposed action is not expected to materially change the projected net income of the project enough to trigger commencement of Ground Lease payments to the Agency. To date, no payments have been made to the Agency under the Ground Lease and no Ground Lease payments are forecast in the foreseeable future.

#### CEQA

Negative Declaration; PDC03-056



HARRY S. MAVROGENES  
Executive Director