

**TOWN CENTER SECOND AMENDMENT TO  
AMENDED AND RESTATED AGREEMENT REGARDING THE PURCHASE AND SALE AND  
DEVELOPMENT OF REAL PROPERTY BETWEEN THE CITY OF TACOMA AND NORTH  
AMERICA ASSET MANAGEMENT GROUP, LLC**

This SECOND AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT REGARDING THE PURCHASE AND SALE AND DEVELOPMENT OF REAL PROPERTY dated October 16<sup>th</sup>, 2017 (this "Second Amendment") is entered into as of \_\_\_\_\_, 2021 between the CITY OF TACOMA, a first class municipal corporation ("City" or "Seller") and NORTH AMERICA ASSET MANAGEMENT GROUP, LLC, a limited liability company of the State of Washington, and its successors and assigns ("Developer" or "Buyer") (City and Developer, together, "Parties").

**RECITALS**

WHEREAS the Parties entered into that certain Purchase, Sale and Development Agreement dated August 18<sup>th</sup>, 2015 ("Original DA"), for the potential purchase and development of the real property, described in City of Tacoma Boundary Line Adjustment No. LU18-0142, recorded on December 27, 2018, as Instrument No. 201812275002 ("BLA"), together with the vacated portions of Fawcett Avenue, as described in Exhibit A and depicted in Exhibit B-1 to this Second Amendment ("Original Property"); and

WHEREAS the Original DA was amended and restated by that certain Amended and Restated Agreement Regarding the Purchase and Sale and Development of Real Property dated October 16, 2017 ("Amended and Restated DA") between the Parties. The Amended and Restated DA replaced and superseded the Original DA and all prior agreements between the Parties; and

WHEREAS the Amended and Restated DA was amended by that certain First Amendment to Amended and Restated Agreement Regarding the Purchase and Sale and Development of Real Property dated December 4, 2019 between the Parties. The Amended and Restated DA, together with the First Amendment and this Second Amendment, may be hereinafter referred to as the "Agreement"; and

WHEREAS Developer purchased from the City and the City sold the Original Property to Buyer subject to the terms and conditions and development requirements/covenants set forth in the Amended and Restated DA, on or about October 16, 2017; and

WHEREAS Developer has proposed the following development project ("Project") on the Property:

"Phase 1A"- construction of Building 2 (substantially complete) on Parcel B of the BLA;

"Phase 1B"- construction of Building 3 on Parcel D of the BLA and Building 4 on Parcel C of the BLA;

"Phase 2A"- construction of Building 5 on Parcels E and F of the BLA and Building 6 on Parcels G and H of the BLA; and

"Phase 2B"- construction of and Building 1 (office towers) and a public plaza ("Public Plaza") on Parcel A of the BLA.

The Project will be known as "Tacoma Town Center" and is more particularly described in Section 7.3 below. A site plan of the Project is depicted in Exhibit B-2 to this Second Amendment.

WHEREAS Developer is requesting the City's approval of its conveyance of Developer's interest in the Original Property, except Parcel B of the BLA, to Developer's 100% owned subsidiary, Tacoma Town Center Parcels, LLC, a Washington limited liability company (Subsidiary). (The Original Property less Parcel B of the BLA may hereinafter be referred to as the "Property" or the "Subject Property"); and

WHEREAS it is the intent of Developer to assign Developer's interest in the Subsidiary (or otherwise transfer or convey the Property) to one or more Washington limited liability companies formed and controlled by Galena Equity Partners LLC, an Idaho limited liability company (collectively, "Galena"). Developer is also requesting the City's approval of this assignment (or other transfer or conveyance of the Property) to Galena; and

WHEREAS Developer is further requesting approval of updated terms for financing, construction, phasing and other items found within this Second Amendment; and

WHEREAS the Parties executed a Public Benefits Agreement ("PBA") on February 2, 2021, which PBA sets forth requirements for Developer and/or any subsequent owner in return for the City initiating a street vacation for that portion of Fawcett Avenue not yet vacated within the proposed development. The PBA is attached to and incorporated into this Second Amendment as Exhibit C, and all requirements shall be met by Developer and/or any subsequent successor in interest; provided, that Developer and/or any subsequent owner may choose to pay in full for the street vacation in lieu of adhering to the PBA; and

WHEREAS, except as expressly modified in this Second Amendment, the remainder of the Amended and Restated DA, together with the First Amendment, shall remain in full force and effect; and

WHEREAS in the event Galena or any one or more of its Washington limited liability companies formed and controlled by Galena do not take title to the Property after the City has approved the assignment of interest, the reacquisition pro-rated Purchase Price of \$45.00/sq ft shall not apply, and the City shall retain its right to reacquire the Property at the pro-rated Purchase price of \$12.37/sq ft as defined in the Amended and Restated Agreement dated October 16, 2017.

NOW THEREFORE, the Parties agree to the following amendments to the Amended and Restated DA and First Amendment:

## AGREEMENT

### **Section 1. Real Property**

*Section 1 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following:* All references to the Property will henceforth refer to the updated Legal Description described in Exhibit A of this Second Amendment, which Exhibit shall supersede and replace all Legal Descriptions in the Amended and Restated DA and the First Amendment.

### **Section 2. Purchase Price**

*The Purchase Price was paid, and Closing occurred on or about October 16, 2017.*

### **Section 3. Additional Consideration**

*Section 3 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following:* The Property shall be subject to the amended Development Covenants and Conditions attached hereto and incorporated herein as Exhibit D ("Covenants"), which supersede and replace the Declaration of Development Covenants and Conditions for the Real Property in and around 21<sup>st</sup> & Jefferson recorded on October 16, 2017 with Pierce County Auditor, number 201710160255. The amended Development Covenants and Conditions shall be recorded against

the Property at closing of the conveyance of the Property from Developer to the Subsidiary and shall be enforceable both separately and together as a part of this Second Amendment.

#### **Section 4. Earnest Money**

##### **4.1. Deposit**

The requirements of Section 4.1 of the Amended and Restated DA were satisfied or waived in connection with Developer's acquisition of the Original Property on or about October 16, 2017.

##### **4.2. Grant Match Contribution for S. 21<sup>st</sup> Street Improvements**

Section 4.2 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following:

The City acknowledges receipt from Developer of \$750,000 to be used for the design and construction of the S. 21<sup>st</sup> Street improvements between Jefferson and Tacoma Avenues. The City agrees that the S. 21<sup>st</sup> Street improvements will include all frontage improvements to S. 21<sup>st</sup> Street that would be required under applicable development regulations as a condition of development of the Property (the "Required Improvements") as proposed by the Developer at the time of execution of the Amended and Restated Agreement.

#### **Section 5. Title to Property**

The requirements of this Section of the Amended and Restated DA were satisfied or waived in connection with Developer's acquisition of the Original Property on or about October 16, 2017.

#### **Section 6. Buyer's Feasibility**

The requirements of this Section 6 of the Amended and Restated DA were satisfied or waived in connection with Developer's acquisition of the Original Property on or about October 16, 2017.

#### **Section 7. Seller's Conditions Precedent.**

The first phrase of Section 7 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: All of the following conditions precedent must be achieved/completed prior to the City's approval of Developer's conveyance of the Property to the Subsidiary and Developer's subsequent assignment of Developer's interest in the Subsidiary (or other transfer or conveyance of the Property) to Galena:

##### **7.1 City Council Approval.**

Section 7.1 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: This Second Amendment, and the transactions contemplated herein, are subject to Tacoma City Council approval prior to closing thereof. If Tacoma City Council approval is not obtained, this Second Amendment will automatically terminate, and all documents and other funds deposited will be returned to Developer, and neither party will have any further rights or obligations under this Second Amendment, except as otherwise provided for in this Second Amendment. Nothing in this Paragraph 7.1 will obligate the City to obtain Tacoma City Council approval beyond the ordinary course of the City's procedure.

##### **7.2 Buyer Financing.**

Section 7.2 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: Prior to Tacoma City Council action, Developer and its subsidiaries or proposed successors in interest must have permits ready to be issued for Building 4 of Phase 1B and be able to prove to the City's reasonable satisfaction that they have (a) procured sufficient funds/financing to enable the completion of Phase 1B of the Project on the Property; and (b) have obtained non-binding commitments/term sheets for equity financing for Phase 2A and have submitted a financing plan detailing the sources and uses of funds to complete Phase 2A. Proof of having obtained the required permits and financing shall include the following:

**7.2.1** The building permit for Building 4 must be issued or be ready to be issued;

**7.2.2** Developer must show the City reasonable evidence of equity and debt financing for Phase 1B of the Project and equity financing for Phase 2A. The total cost of Phase 1B is estimated at **\$82.5 million (\$80 million building construction cost, infrastructure and part of the Public Benefits)** which includes Buildings 3 and 4 and all associated on-site and off-site improvements. The total cost of Phase 2A is estimated at **\$87.5 million (\$85 million building construction cost, infrastructure and part of the Public Benefits)**, which includes Buildings 5

and 6 and all associated on-site and off-site improvements. Financing shall consist of approximately 50% equity from successors in interest, a bond/equity fund and/or other reliable sources and 50% construction debt. Reasonable evidence of financing may include:

- Equity (executed non-binding commitments/term sheets from investors and/or financiers, cash, bonds, other forms of liquidity exclusively for the use of this project), and
- Debt (approved construction loan for this project, executed non-binding term sheets from a lender for Phase 1B, including executed loan application and agency agreement to arrange financing).

Project costs are determined by construction costs plus soft costs based on the permitted Project. Equity from other reputable sources may be substituted for all or a portion of the financing based on the City's approval. In the event a lender does not provide a construction loan commitment prior to Developer's conveyance of the Property to the Subsidiary, Galena will be required to submit evidence of the loan commitment for Phase 1B within 90 days of acquiring Developer's interest in the Subsidiary or acquiring title to the Property. Furthermore, the site development and shoring permits for Phase 1B and building permit for Building 3 must be issued within 90 days of acquiring Developer's interest in the Subsidiary or acquiring title to the Property. **If either Developer or Galena does not meet this requirement, the City shall have the right to reacquire the entire Property at the pro-rated Purchase Price of \$45.00/sq ft;**

**7.2.3** Developer must show the City reasonable evidence of equity and debt financing for Phase 2A of the Project by July 31, 2022. Reasonable evidence of financing must include firm financing commitments/term sheets reasonably sufficient to complete Phase 2A.

**7.2.4** Developer must show the City reasonable evidence of equity and debt financing for Phase 2B of the Project by July 31, 2023. Reasonable evidence of financing must include firm commitments/term sheets reasonably sufficient to complete Phase 2B. The total cost of Phase 2B is estimated at **\$94 million (\$90 million building construction cost, infrastructure and part of the Public Benefits)**, which includes Building 1, the Public Plaza and all associated on-site and off-site improvements. Project costs are determined by construction costs plus soft costs based on the permitted Project. **If either Developer or Galena does not meet this requirement, the City shall have the right to reacquire the portion of the Property on which Phase 2B will be built (Parcel A) at the pro-rated Purchase Price of \$45.00/sq ft;**

**7.2.5** At the time of transfer of control of the Property to Galena, anticipated to occur by June 30, 2021, NORTH AMERICA ASSET MANAGEMENT GROUP, LLC must provide a wire transfer or check made payable to the City of Tacoma in the amount of \$250,000 to comply with 50 percent of its minimum public art contractual obligation of \$500,000 as provided in Section 8.3.13 of this Second Amendment to the Amended and Restated DA.

### **7.3 Development Plans**

Section 7.3 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: Prior to Tacoma City Council action, Developer must submit the amended schematic design for Phase 1B, which must comply with the terms and conditions of this Second Amendment and the Development Covenants and Conditions attached hereto and incorporated herein as Exhibit D, and must include at a minimum the following:

**7.3.1** A total of no less than 600 residential units shall be constructed as part of the Project. No less than 600 units shall be required in Phases 1A and B and Phase 2A (combined) with 16,000 sf of mixed-use commercial space (office/retail). A minimum of 98 units shall be made available as affordable housing to those at or below 80% AMI;

**7.3.2** A minimum of 450 parking stalls for Phases 1A and B and Phase 2A (combined);

**7.3.3** Phase 2B shall require a minimum of 200,000 sf of office space, 20,000 sf of commercial retail/service space and a public plaza. At least 150 parking stalls shall be constructed.

**7.3.6** Gross Floor Area Ratio (FAR) for the Project *in total*, excluding below grade spaces, shall be at least 2.0. With the prior written approval of the City Manager, substitution of Project elements between Phases 1A, 1B, 2A and 2B may be allowed, provided that the total Project size and approximate gross building square footage, including parking, is not less than 570,000 sf. The foregoing are minimum requirements only. Developer or Galena may add square footage to the Project where feasible and is encouraged to do so.

#### **7.4 Construction Plan/Schedule**

Section 7.4 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: Developer or Galena, as applicable, shall adhere to the following construction schedule regarding completion of the Project on the Property. All dates are on or before the specific timeline. For purposes of this Second Amendment, “commencing construction” shall mean that Developer, or its agents, employees or contractors have begun vertical construction work involving the foundation or the structure of the buildings to be constructed as part of the Project. Construction is deemed to be complete at the time a Temporary or Final Certificate of Occupancy is issued. Phase 1A consisting of Building 2 located at SW 23<sup>rd</sup> and Jefferson was issued a Temporary Certificate of Occupancy on March 3, 2021.

**Phases 1B, 2A and 2B property acquisition by Galena:** Anticipated to occur by June 30, 2021

##### **Phase 1B (Buildings 3 and 4)**

Commence construction of Building 3 (Permit ready): September 30, 2021

Commence construction of Building 4 (Permit ready): July 31, 2021

Complete construction of Building 3: September 30, 2023

Complete construction of Building 4: July 31, 2023

##### **Phase 2A (Buildings 5 and 6)**

Commence construction of Building 5 (Submit for building permit January 31, 2022): September 30, 2022

Commence construction of Building 6 (Submit for building permit January 31, 2022): September 30, 2022

Complete construction of Building 5: September 30, 2023

Complete construction of Building 6: September 30, 2023

##### **Phase 2B (Building 1 and Public Plaza)**

Commence design of Building 1 and Public Plaza: July 31, 2021

Apply for building and site development permits: July 31, 2023

Commence construction of Building 1: September 30, 2023

Commence construction of Public Plaza: September 30, 2023

Complete construction of Building 1: May 31, 2025

Complete construction of Public Plaza: May 31, 2025

*Construction commencement and completion dates for the Project are subject to change based on the City's timely completion of increased capacity of and related improvements to the City's storm drain system required or appropriate to accommodate the Project.*

#### **7.5 Feasibility**

The requirements of this Section 7.5 of the Amended and Restated DA were satisfied or waived in connection with Developer's acquisition of the Original Property on or about October 16, 2017.

#### **7.6 Permits**

**7.6.1** The requirements of this section have been previously satisfied or waived.

**7.6.2** Subsection 7.6.2 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: The design of the Public Plaza within the Project must be submitted for review and approval in concept as part of the site development permit process for Phase 2B. In order to receive approval, the design must show how it meets the requirements and/or is consistent with the options described in the PBA attached hereto as Exhibit C. In the event Developer, Subsidiary and/or Galena choose to pay in full for the street vacation in lieu of adhering to the PBA, the Public Plaza design must be submitted to the City for review and approval.

**7.6.3** This Subsection 7.6.3 of the Amended and Restated DA and the paragraph immediately below it remain in effect, subject to this Second Amendment.

## **Section 8. Closing**

### **8.1 Closing**

The requirements of this Section 8.1 of the Amended and Restated DA were satisfied or waived in connection with Developer's acquisition of the Original Property on or about October 16, 2017.

### **8.2 Closing Costs and Prorations**

The requirements of this Section 8.2 of the Amended and Restated DA were satisfied or waived in connection with Developer's acquisition of the Original Property on or about October 16, 2017.

### **8.3 Representations and Warranties**

8.3.1 The requirements of this Subsection 8.3.1 of the Amended and Restated DA have been previously satisfied or waived.

8.3.2 The requirements of this Subsection 8.3.2 of the Amended and Restated DA have been previously satisfied or waived.

8.3.3 The requirements of this Subsection 8.3.3 of the Amended and Restated DA have been previously satisfied or waived.

8.3.4 The requirements of this Subsection 8.3.4 of the Amended and Restated DA have been previously satisfied or waived.

8.3.5 The requirements of this Subsection 8.3.5 of the Amended and Restated DA have been previously satisfied or waived.

8.3.6 The requirements of this Subsection 8.3.6 of the Amended and Restated DA have been previously satisfied or waived.

8.3.7 The requirements of this Subsection 8.3.7 of the Amended and Restated DA have been previously satisfied or waived.

8.3.8 Subsection 8.3.8 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: Additional phases of construction and modifications to the schedule may be approved by the City Manager upon written request by Developer or Galena with reasonable justification provided, especially in cases where the Project is delayed due to prolonged construction of public infrastructure improvements that affect site development. Approval shall not be unreasonably withheld.

8.3.9 This Subsection 8.3.9 of the Amended and Restated DA remains in effect, subject to this Second Amendment.

8.3.10 This subsection 8.3.10 of the Amended and Restated DA remains in effect, subject to this Second Amendment.

8.3.11 This Subsection 8.3.11 of the Amended and Restated DA remains in effect, subject to this Second Amendment.

8.3.12 This Subsection 8.3.12 of the Amended and Restated DA remains in effect, subject to this Second Amendment.

8.3.13 Public Art. Subsection 8.3.13 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: In accordance with the PBA, attached thereto as Exhibit C, the City of Tacoma intends to initiate the vacation of Fawcett Avenue between S. 21st and S. 23rd Streets, unless Developer, Subsidiary and/or Galena opt to pay for the vacation in lieu of adhering to the PBA. Regardless of the outcome of the street vacation and which party funds the vacation, Developer will invest a minimum of 1% of Phase 1A and B construction costs or \$500,000, whichever is lower, in the public art component of the Project in addition to the amount of \$50,000 pledged in Section 3(b) of the PBA (which amount shall be payable in installments as provided below).

### **Public Art Payment Schedule**

Payment for the public art component of the Project to the City of Tacoma shall be made as follows with estimated dates of deliverables:

- \$250,000 at the time of transfer of control of the Property to Galena: Anticipated to occur by June 30, 2021
- \$100,000 upon approval of artists' final design and plan for commissioning additional artwork: April 30, 2022
- \$100,000 upon completion of artist selection for additional art opportunities: April 30, 2023
- \$50,000 upon approval of final designs for additional art opportunities: December 31, 2023
- \$50,000 upon completion and installation of art projects: April 30, 2024.

These funds will be used to pay for arts project administration, lead artists' planning and design, fabrication of discrete signature artwork by local artists and craftsmen, installation of artwork, and all associated costs that will result in integrating public art into the Tacoma Town Center Project.

(i) Administration. The City of Tacoma Office of Arts & Cultural Vitality shall manage the public art components including contracting, managing artist selection, project management, implementation and communications.

(ii) Design Team, Planning and Signature Artwork. In 2018, NAAM, Project designers, community members and an Arts Commission representative selected Kenji Stoll and Christopher Jordan in a competitive process as the lead artists for the Tacoma Town Center Project. Lead artists shall work with the City and the design team to produce design ideas and create public art for public spaces within the development. Spaces shall include but not be limited to Fawcett Avenue between S. 21st and S. 23rd Streets, the prominent corner of S. 21st Street and Jefferson Avenue and other public right-of-way locations.

(iii) Additional Discrete Artwork Integrated into Public Spaces: Lead artists shall assist in determining potential locations and opportunities for additional artwork in publicly accessible places and shall participate on the artist selection panel. The City of Tacoma Arts Administrator or designee shall manage artist selection. Tacoma-based Black, Indigenous and People of Color (BIPOC) artists will be prioritized in the selection. Two representatives may be appointed by the Developer to participate in the artist selection for additional artwork opportunities and design review panels for all artwork. Panels will also include community stakeholders, design team members and a representative from the Tacoma Arts Commission. Staff from the City of Tacoma Office of Arts & Cultural Vitality will facilitate the panels.

(iv) To the extent this Section 8.3.13 and Section 3 of the PBA conflict, this Section 8.3.13 shall supersede and control the PBA.

**8.3.14** *This subsection of the Amended and Restated DA is hereby deleted in its entirety.*

#### **8.4 Conditions Subsequent to Closing – City’s Rescission Right**

*Section 8.4 of the Amended and Restated DA (as amended by the First Amendment) is hereby deleted in its entirety and replaced with the following:* The City has shall have the right to rescind conveyance of the Property under the following circumstances (“Rescission Right”):

**8.4.1 Phase 1B and Phase 2A.** If neither Developer nor Galena “commence construction” of the Phase 1B and/or Phase 2A Project in accordance with this Second Amendment and does not complete it in accordance with the construction schedule detailed in Section 7.4, the City shall retain its discretionary right to reacquire the entire Property at the pro-rated Purchase Price of \$45.00/sq ft.

For purposes of this Second Amendment, “commencing construction” shall mean that Developer or Galena, or its agents, employees or contractors, have begun vertical construction work involving the foundation or the structure of the buildings to be constructed as part of the Project. Site preparation, grading, excavation and mobilization alone are not sufficient to “commence construction” and prevent the City’s Rescission Right from accruing. If neither Developer nor Galena commence construction of each building of the Phase 1B and Phase 2A Project by the date set forth above in the Construction Schedule referenced in Section 7.4 of this Second Amendment, and the City has not given written notice of its intent to exercise the Rescission Right by the 180<sup>th</sup> day after the construction start date for each building, then the City shall be deemed to have waived its right to exercise the Rescission Right as of such 180<sup>th</sup> day.

In the event that neither Developer nor Galena substantially complete each building of the Phase 1B and/or Phase 2A Project by the date set forth in the Construction Schedule referenced in Section 7.4 of this Second Amendment, or if at any time during construction of the Phase 1B and/or Phase 2A Project, Developer ceases construction for six (6) months or more and fail to cure such cessation within ninety (90) days of the City’s delivery of written notice of its intent to exercise the Rescission Right, the City shall have the right to reacquire the Property at the pro-rated Purchase Price of \$45.00/sq ft. Upon completion of any phase of the Project, the City’s Rescission Right shall terminate with respect thereto.

**8.4.2 Phase 2B.** If neither Developer nor Galena provide reasonable evidence of financing for Phase 2B (as provided in Section 7.2.5 of this Second Amendment) and/or

commence construction of Phase 2B as required under this Second Amendment and does not complete it in accordance with the construction schedule detailed in Section 7.4 of this Second Amendment, the City shall retain its discretionary right to reacquire the portion of the Property on which such delinquent phase is intended to be built at the pro-rated Purchase Price of \$45.00/sq ft. (By way of example, if Developer timely completes construction for Phase 2A but not Phase 2B, then the City's reacquisition right shall only apply to Parcel A in Phase 2B.) Notwithstanding the foregoing triggering events in Section 8.4 of this Second Amendment, if either Developer or Galena cures its failure to commence construction or its cessation of construction prior to ninety (90) days of issuance of the City's Notice of Intent to rescind, the City's Rescission Right shall be held in abeyance pending completion of Phase 1B and/or Phase 2, as applicable. Upon completion of any phase of the Project, the City's Rescission Right shall terminate with respect thereto.

**8.4.3** The reconveyance of the Property pursuant to this Rescission Right shall be realized no later than ninety (90) days following City's notice of exercise of the Rescission Right. If either Developer or Galena commences construction or completes construction within the ninety (90) day notice of exercise of the Rescission Right at any time prior to reconveyance, City's notice shall lapse. The Parties agree that the reconveyance of the Property pursuant to City's Rescission Right is self-executing and that Developer shall execute a reconveyance deed to City upon presentation by City. If Developer fails to reconvey the Property to City as provided in this Section 8.4, then Developer shall pay to City liquidated damages in the amount of \$1000.00 per day until the Property is reconveyed as required in this section. The parties agree that City's damages in the event of such delay are difficult to measure and such liquidated damages are a reasonable estimate of the damages that City will suffer for Developer's delay in reconveying the Property as provided herein. Developer is entitled to specific performance of this Rescission Right.

Developer shall pay all transfer and excise taxes (to the extent not exempt under WAC 458-61A-209 or otherwise) in connection with such reconveyance. The deed will be in substantially the same form as used to convey the Property to Developer. Upon such reconveyance to City, no encumbrances shall exist on title other than those that existed when title transferred to Developer, those consented to by City in writing (except any Mortgage, which shall not be a permitted encumbrance) and those that were recorded as part of the closing of the acquisition of the Property. Developer shall be responsible for obtaining the release of any Mortgage. If City exercises the Rescission Right, Developer and Galena shall be released from further obligations under this Second Amendment, except those that by their terms expressly survive termination. If either Developer or Galena commences construction prior to City's exercise of the Rescission Right, the Rescission Right shall terminate. At Developer's request, upon commencement of construction, City shall provide written confirmation to a Mortgagee that commencement of construction has occurred to satisfy a condition of a Mortgagee to advance funds under a construction loan.

**8.5 Post Closing Restriction on Transfer.** Subsection 8.5 of the Amended and Restated DA (as amended by the First Amendment) is hereby deleted in its entirety and replaced with the following: The City's decision to allow transfer of the Property to Developer is expressly predicated on Developer's obligation to develop the Property. Land banking or other speculative retention of the Property in a vacant state for purpose of resale is prohibited. Developer agrees that the City must approve in writing and at its sole discretion the transfer by Developer of any portion of the Property prior to receipt of a Certificate of Occupancy for the portion proposed to be transferred. In addition, no sale by Developer of any completed buildings with Certificates of Occupancy and associated portions of the Property shall be allowed until all of Phases 1A and 1B are completed.

## **Section 9. Condition of the Property**

The requirements of this Section 9 of the Amended and Restated DA were satisfied or waived in connection with Developer's acquisition of the Original Property on or about October 16, 2017.

**Section 10. Casualty Loss**

The requirements of this Section 10 of the Amended and Restated DA were satisfied or waived in connection with Developer's acquisition of the Original Property on or about October 16, 2017.

**Section 11. Possession**

The requirements of this Section 11 of the Amended and Restated DA were satisfied in connection with Developer's acquisition of the Original Property on or about October 16, 2017.

**Section 12. Default**

The first phrase of Section 12 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: Any Party's failure to keep, observe or perform any of its duties or obligations under this Second Amendment or its subsequent amendments shall be a default hereunder including without limitation any of the following specific events:

12.1 Subsection 12.1 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: The failure of Developer to substantially comply with all requirements set forth in this Second Amendment.

12.2 Subsection 12.2 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: Conversion of the Property or Required Improvements to any use other than the uses Permitted in this Second Amendment.

12.3 This Subsection 12.3 of the Amended and Restated DA remains in effect, subject to this Second Amendment.

12.4 This Subsection 12.4 of the Amended and Restated DA remains in effect, subject to this Second Amendment.

12.5 This Subsection 12.5 of the Amended and Restated DA remains in effect, subject to this Second Amendment.

12.6 This Subsection 12.6 of the Amended and Restated remains in effect, subject to this Second Amendment.

12.7 Subsection 12.7 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: Any sale, assignment or other transfer in violation of this Agreement, unless specifically authorized by the City.  
The paragraph below Subsection 12.7 remains in effect, subject to this Second Amendment.

**Section 13. Remedies.**

Subsection 13 of the Amended and Restated DA remains in effect, subject to this Second Amendment.

**Section 14. Notices and Approvals.**

Subsection 14 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following:

**14.1 Notices.** Any notice under this Second Amendment must be in writing and be personally delivered, delivered by recognized overnight courier service, or given by mail. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

City: Community and Economic Development Department  
**Attn: Director**  
City of Tacoma  
747 Market Street, Room 900  
Tacoma, WA 98402  
Phone: 253-591-5139

Developer: North America Asset Management Group, LLC  
Attn: Luo Xun Kun  
1550 140th Avenue NE, Suite 201  
Bellevue, WA 98005  
Phone: 206-548-9984

*With a copy to: Galena Equity Partners LLC  
Attn: Bill Truax, Dan Fullmer  
PO Box 1158  
Boise, ID 83701-1158*

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail.

**14.2 Approvals.** All Approvals by the City of Tacoma referenced in this Second Amendment are administrative approvals to granted or withheld by the City Manager or designee.

**Section 15. Counterparts.**

Subsection 15 of the Amended and Restated DA is hereby deleted in its entirety and replaced with the following: This Second Amendment may be executed in any number of counterparts by the Parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Electronic signatures shall be fully binding and effective for all purposes.

**Sections 16-28**

Sections 16 through 28 of the Amended and Restated DA remain in effect, subject to this Second Amendment.

This Second Amendment amends the Amended and Restated DA, the First Amendment and the PBA. To the extent that this Second Amendment and the Amended and Restated DA, the First Amendment, the PBA and/or the Covenants conflict, this Second Amendment shall supersede and control the Amended and Restated DA, the First Amendment, the PBA, and the Covenants.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date set forth above.

**CITY OF TACOMA**

**ATTEST**

\_\_\_\_\_  
Elizabeth A. Pauli  
City Manager

\_\_\_\_\_  
Doris Sorum  
City Clerk

Department Approval:

\_\_\_\_\_  
Jeff Robinson  
Community and Economic Development Department  
Director

Approved as to form:

\_\_\_\_\_  
Deputy City Attorney

**NORTH AMERICA ASSET MANAGEMENT GROUP, LLC**

\_\_\_\_\_  
By: Luo Xun Kun  
Its: Managing Member

*ACKNOWLEDGED AND AGREED:*

**TACOMA TOWN CENTER PARCELS, LLC**

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

*ACKNOWLEDGED AND AGREED:*

**GALENA EQUITY PARTNERS LLC**

\_\_\_\_\_  
By: William Truax, Manager

DRAFT

**EXHIBIT A**

**Legal Description of the Property**

Parcels A, C through H, of City of Tacoma Boundary Line Adjustment No. LU18-0142, recorded December 27, 2018 under [recording number 201812275002](#);

Parcel A together with that portion of vacated Fawcett Avenue adjoining, as would attach by operation of law, vacated under City of Tacoma Ordinance No. 28616, recorded under [recording no. 202009020035](#), in Pierce County, Washington.

Situate in the City of Tacoma, County of Pierce, State of Washington.

DRAFT

**EXHIBIT B-1**  
**Survey of Property**

DRAFT

**EXHIBIT B-2**  
**Site Plan of Project**

DRAFT

**EXHIBIT C**

**Public Benefits Agreement**

DRAFT

EXHIBIT D

Development Covenants and Conditions

DEVELOPMENT COVENANTS AND CONDITIONS

When Recorded Return To:

City of Tacoma  
Public Works Department  
Real Property Services  
747 Market Street, Room 737  
Tacoma WA 98402-3701

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Document Title: DEVELOPMENT COVENANTS AND CONDITIONS  
Reference No.  
Grantor: North America Asset Management Group, LLC; Tacoma Town Center Parcels, LLC; Galena Equity Partners LLC  
Grantee: CITY OF TACOMA  
Legal Description: Assessor's Tax Parcel Numbers: 2021100011, 2021100040, 2021100050, 2021100060, 2021100070, 2021100080, 2021100090, 2021100100, 2021100110, 2021100120, 2021100130, 2021100140, 2021110130, 2021110120, 2021110091, 2021110061, 2021110050, 2021110040, 2021110030, 2021110020, 2021110010, 2021080011, 2021090020, 2021090031, 2021090090, 2021090100, 2021090111, 0320092000, 0320092005, and 2021090011.

DECLARATION OF DEVELOPMENT COVENANTS AND CONDITIONS FOR THE REAL PROPERTY IN AND AROUND 21<sup>ST</sup> & JEFFERSON

The City of Tacoma, a Washington State municipal corporation (the "City"), and North America Asset Management Group, LLC, a Washington limited liability company ("NAAM"), Tacoma Town Center Parcels, LLC, a Washington limited liability company ("TTC") and Galena Equity Partners LLC, an Idaho limited liability company ("Galena") (NAAM, TTC, and Galena, collectively the "Developer") have agreed pursuant to that certain Town Center Second Amendment to Amended and Restated Agreement Regarding the Purchase and Sale and Development of Real Property dated \_\_\_\_\_, 2021 (the "Second Amendment"), to the terms and conditions for the sale/disposition and development of certain real property located in and around 21<sup>st</sup> and Jefferson in the City of Tacoma identified by the Pierce County Tax Parcel nos. captioned above, and as legally described in Exhibit A of the Second Amendment (the "Property"), by this reference incorporated herein. Any capitalized terms not defined herein shall have the meaning set forth in the Second Amendment, except as the context otherwise requires.

The City's primary purpose in approving the sale/disposition and development of the Property to TTC and/or Galena is to see it redeveloped and returned to productive use within a reasonable time as agreed to by the City. To that end, this Development Covenants and Conditions ("Covenant") is an integral part of the consideration for the sale/disposition and development of the Property. By this Covenant, TTC and/or Galena agree to use the Property for the purpose of developing the Property into a mixed use development of no less than 600 residential units, 36,000 square feet of commercial retail/service space, 200,000 sf of office space, together with at least 600 parking stalls that must be constructed underground or within structures in the Project substantially in conformance with NAAM's proposal dated February 28, 2015, as supplemented on March

17, 2015, and with amendments to the Development Agreement (the “Designated Development Use”).

This Covenant supersedes and replaces that certain Declaration of Development Covenants and Conditions for the Real Property in and around 21<sup>st</sup> & Jefferson recorded on October 16, 2017, as Instrument No. 201710160255 (the “Original Declaration”).

In light of the foregoing, and as consideration for the conveyance of the Property, the City and Developer hereby covenant and agree as follows (this “Covenant”):

**I. Developer Covenants.**

**A. Designated Purpose.** Developer covenants to use and develop the Property for the Designated Development Use as set forth herein and in the Second Amendment. To the extent that the City’s approved Development Plans deviate from the Second Amendment, the Development Plans shall control and Developer shall develop the Property in conformance with the Development Plans.

**B. Construction Commencement/Completion.**

**(i) Phase 1B, Phase 2A and Phase 2B property acquisition by Galena:** Anticipated to occur by June 30, 2021;

**(ii) Phase 1B (Buildings 3 and 4)**

Commence construction of Building 3 (Permit ready): September 30, 2021

Commence construction of Building 4 (Permit ready): July 31, 2021

Complete construction of Building 3: September 30, 2023

Complete construction of Building 4: July 31, 2023

**(iii) Phase 2A (Buildings 5 and 6)**

Commence construction of Building 5 (Submit for building permit January 31, 2022): September 30, 2022

Commence construction of Building 6 (Submit for building permit January 31, 2022): September 30, 2022

Complete construction of Building 5: September 30, 2023

Complete construction of Building 6: September 30, 2023

**(iv) Phase 2B (Building 1 and Public Plaza)**

Commence design of Building 1 and Public Plaza: July 31, 2021

Apply for building and site development permits: July 31, 2023

Commence construction of Building 1: September 30, 2023

Commence construction of Public Plaza: September 30, 2023

Complete construction of Building 1: May 31, 2025

Complete construction of Public Plaza: May 31, 2025

*Construction commencement and completion dates for the Project are subject to change based on the City’s timely completion of increased capacity of and related improvements to the City’s storm drain system required or appropriate to accommodate the Project.*

**(v) Additional phases of construction and modification to the schedule may be considered and must be approved by the City Manager or Designee upon written request by TTC and/or Galena with justification provided, especially in cases where the project is delayed due to prolonged construction of public infrastructure improvements. Approval shall not be unreasonably withheld.**

**C. Gross Floor Area Ratio.** Developer covenants that Gross Floor Area Ratio (FAR) *in total* for the Project, excluding below grade spaces, shall be at least 2.0.

**D. Equity in Contracting (f/k/a SBE) and LEAP Participation.** In constructing its Project on the Property, Developer agrees to participate in the City of Tacoma's Equity in Contracting (f/k/a SBE) and LEAP program as outlined in Exhibit A hereto.

**E. Local Improvement District.** Developer hereby covenants to not oppose the formation of any Local Improvement District ("LID") in which Developer, as the owner of the Property, is considered a benefitted owner.

**F. Development Team.** Developer has agreed to employ architects, engineers and construction firms, contractors and subcontractors that have a minimum of five (5) years' experience in the Tacoma/Pierce Seattle/King County areas in Washington in constructing its Project on the Property, and shall identify a Project manager to oversee all aspects of the Project and coordinate with City planning, permitting and development staff;

**G. Local Staffing.** In constructing its Project on the Property, Developer shall promote hiring staff from the Tacoma/Pierce County area.

**I. Public Art.** In accordance with the Public Benefits Agreement, Exhibit C of the Second Amendment, the City of Tacoma intends to initiate the vacation of Fawcett Avenue between S. 21st and S. 23rd Streets, unless Developer (that is, any of NAAM, TTC or Galena) opts to pay for the vacation in lieu of adhering to the PBA. Regardless of the outcome of the street vacation and which party funds the vacation, Developer will invest a minimum of 1% of Phase 1A and B construction costs or \$500,000, whichever is lower, to complete the public art component of the Project in addition to the amount of \$50,000 pledged in Section 3(b) of the PBA (which amount shall be payable in installments as provided below).

#### **Public Art Payment Schedule**

Payment for the public art component of the Project to the City of Tacoma shall be made as follows with estimated dates of deliverables:

- \$250,000 at the time of transfer of control of the Property to Galena: Anticipated to occur by June 30, 2021
- \$100,000 upon approval of artists' final design and plan for commissioning additional artwork: April 30, 2022
- \$100,000 upon completion of artist selection for additional art opportunities: April 30, 2023
- \$50,000 upon approval of final designs for additional art opportunities: December 31, 2023
- \$50,000 upon completion and installation of art projects: April 30, 2024.

These funds will be used to pay for arts project administration, lead artists' planning and design, fabrication of discrete signature artwork by local artists and craftspersons, installation of artwork, and all associated costs that will result in integrating public art into the Tacoma Town Center Project.

(i) Administration. The City of Tacoma Office of Arts & Cultural Vitality shall manage the public art components including contracting, managing artist selection, Project management, implementation and communications.

(ii) Design Team, Planning and Signature Artwork. In 2018, NAAM, Project designers, community members and an Arts Commission representative selected Kenji Stoll and Christopher Jordan in a competitive process as the lead artists for the Tacoma Town Center Project. Lead artists shall work with the City and the design team to produce design ideas and create public art for public spaces within the development. Spaces shall

include but not be limited to Fawcett Avenue between S. 21st and S. 23rd Streets, the prominent corner of S. 21st Street and Jefferson Avenue and other public right-of-way locations.

(iii) **Additional Discrete Artwork Integrated into Public Spaces:** Lead artists shall assist in determining potential locations and opportunities for additional artwork in publicly accessible places and shall participate on the artist selection panel. The City of Tacoma Arts Administrator or designee shall manage artist selection. Tacoma-based Black, Indigenous and People of Color (BIPOC) artists will be prioritized in the selection. Two representatives may be appointed by the Developer to participate in the artist selection for additional artwork opportunities and design review panels for all artwork. Panels will also include community stakeholders, design team members and a representative from the Tacoma Arts Commission. Staff from the City of Tacoma Office of Arts & Cultural Vitality will facilitate the panels.

(iv) To the extent this Section I(l) and Section 3 of the PBA conflict, this Section I(l) shall supersede and control the PBA.

## **II. City Covenants.**

The City covenants to work cooperatively with Developer to meet the construction commencement deadline and subsequent construction completion deadlines set forth herein and in the Second Amendment and to assist Developer in order to achieve the following:

1. Compliance with development requirements and standards,
2. Design approval,
3. Building permit issuance, and
4. Issuance of certificate of occupancy upon Project completion.

## **III. Indemnification of the City.**

A. Developer covenants to indemnify, defend, and hold the City harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with Developer's development activity, construction activity, or other liability arising in any manner out of its activities on the Property, including the construction of improvements on the Property, as well as any act or omission of Developer or its members, agents, employees, representatives, contractors, subcontractors, successors, assigns or invitees, on or with respect to the Property. The City shall not be entitled to such indemnification to the extent that such claim, liability, loss, damage, cost or expense is caused by the negligence or willful misconduct of the City.

B. Promptly following receipt of notice, the City shall give Developer written notice of any claim for which Developer has indemnified the City hereunder, and the relevant party shall thereafter vigorously defend such claim on behalf of the City. Failure to give prompt notice to Developer shall not constitute a bar to the indemnification hereunder unless such delay has prejudiced Developer in the defense of such claim. If Developer is required to defend any action or proceeding pursuant to this Section to which action or proceeding the City is made a party, the City shall be entitled to appear, defend or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent the City is indemnified under this section, Developer shall bear the cost of the City's defense, including reasonable attorneys' fees and costs. No settlement of any non-monetary claim shall be made without the City's written approval, not to be unreasonably withheld.

C. Developer agrees to include in each construction contract for construction of its Project or other work on the Property that if there is liability for damage or injury during construction, each contractor waives immunity under the Workers' Compensation Laws of the State of Washington, Title 51 RCW, for claims brought by its employees against the City. Further, each contractor shall agree to indemnify and hold the City harmless for damages attributable to the contractor's negligence.

D. The City shall indemnify, defend, and hold Developer harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with the City's negligence or other legally culpable conduct in performing its obligations under this Covenant.

#### IV. Miscellaneous Provisions.

A. No Joint Venture. It is not intended by this Covenant to, and nothing contained in this Covenant shall, create any partnership or joint venture or create the relationship of principal and agent between Developer (or among NAAM, TTC and Galena) and the City, or any of their successors in interest.

B. Enforcement and Remedies. In the event of any violation of any of the provisions of this Covenant by the parties, the non-violating party shall have the right to enforce the violated covenant by any appropriate proceedings at law or in equity, including the right to apply to a court of competent jurisdiction for an injunction against such violation, or for specific performance. Any remedies specifically provided herein are non-exclusive and are in addition to all other remedies available to the non-violating party at law or in equity.

C. Covenants to Run With the Land. The City and Developer hereby declare their express intent that the covenants and conditions set forth in this Covenant shall run with the land, and shall bind all successors in title to the Property. This Covenant supersedes and replaces that certain Declaration of Development Covenants and Conditions for the Real Property in and around 21<sup>st</sup> & Jefferson recorded on October 16, 2017, as Instrument No. 201710160255. The covenants and conditions set forth herein shall bind any of NAAM, TTC, Galena and their successors and assigns only during the period of time and with respect to the portion of the Property such party holds title.

D. Governing Law and Choice of Venue. This Covenant shall be governed by the laws of the State of Washington without regard to any principles of Conflicts of Laws. Any action brought regarding this Covenant shall be brought in the Superior Court for the State of Washington in Pierce County.

E. Agreement; Amendments. This Covenant supersedes and replaces the Original Declaration. To the extent that this Covenant and the Second Amendment conflict, the Second Amendment shall supersede and control this Covenant. This Covenant may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the Official Records of Pierce County, Washington.

F. Severability. If any provision of this Covenant shall be found invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Covenant shall not in any way be affected or impaired thereby.

G. Recording. This Covenant shall be recorded in the real property records of Pierce County, Washington.

IN WITNESS WHEREOF, Developer has hereunto set its hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF TACOMA

ATTEST

\_\_\_\_\_  
Elizabeth A. Pauli  
City Manager

\_\_\_\_\_  
Doris Sorum  
City Clerk

Department Approval:

\_\_\_\_\_  
Jeff Robinson  
Community and Economic Development Department  
Director

Approved as to form:

\_\_\_\_\_  
Deputy City Attorney

**NORTH AMERICA ASSET MANAGEMENT GROUP, LLC**

\_\_\_\_\_  
By: Luo Xun Kun  
Its: Managing Member

**TACOMA TOWN CENTER PARCELS, LLC**

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

**GALENA EQUITY PARTNERS LLC**

\_\_\_\_\_  
By: William Truax, Manager

**Exhibit A to Covenants and Conditions**

**CITY OF TACOMA LEAP & EQUITY IN CONTRACTING (f/k/a SBE) PARTICIPATION**

Developer agrees to comply with the City of Tacoma's Local Employment and Apprenticeship Training Program (LEAP) and Equity in Contracting ("EIC"; f/k/a Small Business Enterprise) program by attempting to ensure that all contractors performing work on the Project make their best efforts to comply with the program requirements. In an effort to develop relationships with the local community and promote the local work force and subcontracting businesses, Developer will notify each contractor and Bidders of the LEAP and EIC requirements and strongly encourage participation in the programs.

- I. LEAP Utilization Goal: The City of Tacoma's LEAP program has established two requirements that may be satisfied concurrently:
  - a. Local Employment Requirement: 15% of total labor hours must be provided by:
    - i. Residents of the City of Tacoma
    - ii. Residents of the Economically Distressed Areas of the Tacoma Public Utilities Service Area
  - b. Apprentice Utilization Requirement: 15% of total labor hours must be provided by Apprentices affiliated with Washington State Apprenticeship and Training Council approved programs who are:
    - i. Residents of any county of the Tacoma Public Utilities Service Area
- II. EIC Annual Goal: The City of Tacoma's EIC program has established annual subcontracting goals of:
  - a. 10% Minority Business Enterprise (MBE)
  - b. 8% Women Business Enterprise (WBE)
  - c. 7% Small/Disadvantaged Business Enterprise (SBE/DBE)

Contractors that agree to comply with the City of Tacoma LEAP and EIC programs must track the local hire and apprentice hours worked, and EIC contracts awarded under Developer's Project. It shall be the responsibility of the contractors that qualify for and are participating in each respective program to supply the City of Tacoma with data, in such form as prescribed by the City, that shows reasonable evidence of compliance with LEAP and EIC. A final participation tracking report shall be prepared by the City of Tacoma upon completion of the Project.

LEAP and EIC can assist contractors in identifying qualified workers and subcontractors in meeting their business and workforce needs as identified in their respective bid submittals and scopes of work.

**Program Contacts:**

LEAP <http://www.cityoftacoma.org/leap> Carol Wolfe  
[cwolfe@cityoftacoma.org](mailto:cwolfe@cityoftacoma.org)  
253-591-5384

EIC <https://www.cityoftacoma.org/cms/One.aspx?portalid=169&pageid=26616>  
Carol Wolfe  
[cwolfe@cityoftacoma.org](mailto:cwolfe@cityoftacoma.org)  
253-591-5384