

**FIRST AMENDMENT TO AGREEMENT REGARDING
THE PURCHASE AND SALE AND DEVELOPMENT
OF REAL PROPERTY BETWEEN THE CITY OF TACOMA &
NORTH AMERICA ASSET MANAGEMENT GROUP, LLC**

THIS FIRST AMENDMENT (this “First Amendment”) is entered into and made effective as of the ____ day of _____, 2016 (“Effective Date”), by and between the **CITY of TACOMA** (“City”), a Washington First-Class municipal corporation, and **NORTH AMERICA ASSET MANAGEMENT GROUP, LLC**, a Washington limited liability company (“NAAM”) (collectively the “Parties”).

RECITALS

1. The City and NAAM entered into that certain “Agreement regarding the Purchase and Sale and Development of Real Property” dated August 18, 2015 (together with this First Amendment the “Agreement”) under which NAAM has contracted to purchase from the City and develop the real property legally described and depicted on Exhibit A (as now revised, the “Property”) as attached hereto and incorporated herein.
2. Pursuant to Section 6.1 and other applicable sections of the Agreement, NAAM previously requested an additional 30 days for its Feasibility Study of the Property which was granted in a mutually executed writing extending the end of the initial 120 day Feasibility Study Period until January 15, 2016.
3. NAAM has now requested an amendment to the Agreement further adjusting upcoming performance dates and development parameters under the Agreement, and the City is willing to make the requested amendment and can do so pursuant to Tacoma Municipal Code 1.06.269 C.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the parties agree as follows:

1. Capitalized terms not otherwise defined herein shall have the meanings previously ascribed in the original Agreement.
2. The Parties hereby agree to the following amendments/modifications to the Agreement:

(a) The legal description of the Property attached to the original Agreement as Exhibit A, is hereby superseded and replaced with the legal description attached to this First Amendment, which hereafter will be the parties’ accepted legal description of the Property.

(b) As a result of the change in area to the Property, the Purchase Price set forth in section 2 of the original Agreement is hereby revised to be \$3,451,228.

(c) As consideration for the extension of time to permit and construct the project, buyer will pay an additional \$250,000 in non-refundable deposit to the City within ten (10) business days of the execution of this First Amendment. An equal payment will be required for further extensions. This additional Deposit amount will be applied to the Purchase Price at closing, but will be forfeit to the City in the event of any Buyer default or failure to close on the purchase.

(d) At Section 7.2 of the Agreement, the opening sentence is hereby modified to read as follows:

No later than April 20, 2016 (the "Financing Feasibility Date"), Buyer must be able to prove to Seller's reasonable satisfaction that Buyer has procured funds/financing sufficient to (a) pay Seller the Purchase Price, and (b) complete Phase I of its proposed project on the Property.

(e) Section 7.2 (a) is hereby deleted and replaced with the following:

Proof that a minimum of \$20 million US Dollars has been transferred to the U.S. and is available for Phase 1. An additional \$5 million U.S. Dollars must be transferred on or before the start of Phase 2 construction; and

(f) Section 7.3 of the original Agreement is hereby deleted and replaced with the following:

"No later than August 5, 2016, Buyer must submit the schematic design for Phase I of its development on the Property in accordance with Buyer's written proposal dated February 28, 2015 as supplemented on March 17, 2015 and June 1, 2016, which is incorporated herein by this reference, and as may be further modified by this First Amendment. The schematic design must comply with the terms and conditions of this Agreement and the Development Covenants and Conditions attached hereto and incorporated herein as Exhibit C. The submitted plan set for Phase 1 must include, at a minimum, the following:

- Construction of a minimum of 180 residential units,
- 200,000 sq. ft. retail space 30,000 sq. ft. of commercial space;
- Of the 200,000 sq. ft. of retail space, a minimum of 4,000 sq. ft. of ground floor commercial/retail space must be constructed along Tacoma Avenue as part of Phase II construction;
- Approximately 380 parking stalls must be constructed underground or within structures; and

When constructed, Phase II must include at a minimum:

- 180 residential units (in addition to those in Phase I; and
- a minimum of 30,000 SF commercial space, with a target of 60,000 SF commercial space depending on market conditions and
- 100 parking stalls.

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 Phase I and Phase II may be allowed, provided that the total project size and approximate gross building square footage including parking is not less than 570,000SF.

The foregoing are minimum requirements only. Buyer may add square footage to the project where feasible, and is encouraged to do so.

(g) The first paragraph of Section 7.6 is changed to read as follows:

Permits. Buyer shall have either obtained a site development permit for its project on the Property or reasonable assurance of its issuance from the City, and Buyer shall have submitted its shell and core design no later than November 30, 2016. The design of the Fawcett Avenue "Pedestrian Plaza" must be submitted to and approved by the City as part of the work order and site developments permit process. In order to receive approval, the design must show how the non-motorized uses and limited vehicular and emergency access will be accommodated. The "Pedestrian Plaza" permits must be in a state of ready to issue prior to conveyance of the Property as established within amended Section 8.1. This condition shall be considered a condition precedent to closing as contained within Section 7 of the Agreement.

(h) The first sentence of Section 8.1 is hereby revised to read as follows:

Closing. This transaction will be closed in escrow by the Title Company acting as escrow agent ("Escrow Agent"). The Closing will be held at the office of the Title Company on or before that date which is ten (10) days after the end of the Feasibility Study Period and the above conditions (at Section 7) are either satisfied or waived by Buyer and Seller whichever is later, but in no event later than December 16, 2016 (the "Closing Date").

(i) Subsection 8.3.1 is hereby revised to read as follows:

8.3.1 Buyer shall begin site work for Phase I of its project no later than sixty (60) days after Closing on the purchase of the Property, and

commence construction, as set forth in Section 8A, no later than May 1, 2017;

(j) Subsection 8.3.3 is hereby revised to read as follows:

8.3.3 Total construction timeline is not to exceed 37 months from commencement of construction, but in any event, completion of Phase I shall be no later than December 31, 2018, and completion of Phase II shall be no later than January 30, 2021;

(k) The first full paragraph of Section 8A is hereby revised to read as follows:

First, if Buyer fails to “commence construction” of Phase I of the project on the Property in accordance with subsection 8.3.1 above, Seller shall have the discretionary right to rescind the sale of the Property by refunding the Purchase Price to Buyer.

Second, if Buyer fails to commence construction of Phase II within 6 months of completion of Phase I, Seller shall have the discretionary right to rescind the sale of the Phase II Property by reacquiring the Phase II Property for a pro-rated (by square footage) refund of the Purchase Price paid by NAAM for the Property at closing together with any costs associated with making the Phase II Property separately conveyable.

(l) The Parties hereby make the following revisions to Exhibit C - DEVELOPMENT COVENANTS AND CONDITIONS of the Agreement:

(i) Subsection B. (1) is hereby revised to read as follows:

(1) Developer shall begin site work for Phase I of its project no later than sixty (60) days after Closing on the purchase of the Property, and commence construction, as set forth in Section 8A of the PSA, no later than May 1, 2017.

(ii) Subsection B. (3) is hereby revised to read as follows:

(3) Developer must substantially complete Phase I of the project on the Property by December 31, 2018 in accordance with subsection 8.3.3 of the PSA.

(iii) Section C of Exhibit C is hereby revised to read as follows:

C. Construction Completion. Developer covenants to complete construction of Phase I no later than December 31, 2018, and completion of Phase II no later than January 30, 2021.

3. All other terms and conditions of the Agreement, shall remain unchanged and in full force and effect, unaltered by this First Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment effective as of the Effective Date first written above.

CITY OF TACOMA NORTH AMERICA ASSET MANAGEMENT GROUP, LLC

T.C. Broadnax, City Manager
Approved:

Luo Xun Kun, Managing Member

Ricardo Noguera, Director
Community and Economic
Development Department

Andrew K. Cherullo,
Finance Director

Attest:

Approved as to form:

Doris Sorum, City Clerk

Deputy City Attorney