

**ARJAX RAILROAD ASSOCIATES II, LLC  
c/o EBL&S PROPERTY MANAGEMENT, INC.  
200 SOUTH BROAD STREET  
SUITE 415  
PHILADELPHIA, PA 19102  
(215) 790-4700**

January 23, 2014

City Clerk, City of San Mateo  
City Hall  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403  
ATTN.: Rory Walsh, Director of  
Community Development

With a Copy to:  
City Attorney  
City Hall  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403  
ATTN.: Shawn Mason, Esq., City Attorney

**Re: Station Park Green Development Agreement: (1) Annual Review; and  
(2) Request for Planning Commission Hearing**

Dear Mr Walsh:

**Introduction**

ARJAX Railroad Associates II, LLC ("ARJAX" or "Developer") hereby respectfully submits this letter and the Annual Review Matrix, which is attached hereto as **EXHIBIT A**, to demonstrate its good-faith compliance with the Development Agreement by and between the City of San Mateo (the "City") and ARJAX relative to the development known as Station Park Green, executed on February 24, 2011, and recorded on March 4, 2011, as Instrument No. 2011-026486 in the Official Records of San Mateo County (the "Development Agreement"). Further, by this letter ARJAX respectfully requests the scheduling of a hearing before the City's Planning Commission in order to demonstrate that ARJAX has sufficiently followed the terms of the Development Agreement so as to carry out the intent of the parties in entering into it.

**Annual Review**

ARJAX has not proceeded with construction of its mixed-use, transit-oriented project authorized by the Development Agreement (the "Project"), which it may undertake at any time before expiration of the term of the Development Agreement (the "Term"). Regardless, ARJAX has provided all contributions toward the development of significant public infrastructure and other improvements in excess of what ARJAX could otherwise be legally required to provide (the "Public Benefits") under the schedule required by the Development Agreement (the "Timing of Public Benefits").

Under Section 65865.1 of the California Government Code and Section 8(a) of the City's Development Agreement Resolution (Reso. No. 120 [1990]), the City's Planning Commission must review development agreements at least every 12 months, at which time the applicant must be required to demonstrate good-faith compliance with its terms. Accordingly, Article 8, Section A, of the Development Agreement provides in relevant part:

*[A]t least once every 12 months during the Term, Developer shall contact the City and request the scheduling of a hearing before the Planning commission in order to demonstrate that Developer has sufficiently followed the terms of this Agreement so as to carry out the intent of the Parties in entering into it ("Good Faith Compliance").*

### **Intent of the Parties**

The intent of the parties to the Development Agreement is summarized in Recital M of the Development Agreement as follows, which is a part of the agreement:

*In exchange for providing [the Public Benefits, Developer receives assurance from City that Developer shall be entitled to proceed with development of the Project and provision of the Public Benefits .....*

Thus, the City approved and consented to construction of the Project at any time during the Term, but only on condition that, among other things, "(2) Developer complies with its obligations with respect to Public Benefits."

### **Timing of Public Benefits**

The Timing of Public Benefits is set out as Exhibit B to the Development Agreement. As indicated in the Annual Review Matrix, which is attached hereto as **EXHIBIT A**, ARJAX has remitted the required \$200,000 in cash contributions listed as item numbers 2 and 3. As to item number 1, there had been some confusion amongst the Parties about the timing for ARJAX's grant of a surface easement for purposes of a Class I bike facility and landscaping strip along the southeasterly frontage of the project site and Concar Drive (the "Multi-Use Path"). This has been resolved. On December 16, 2013, ARJAX and the City entered into a Grant of Multi-Use Path Easement and Agreement, which was recorded three days later.

### **Conclusion**

ARJAX continues to comply in good faith with the terms and conditions of the Development Agreement. Further, in accordance with Section 8 of the Development Agreement, we respectfully request that the review of such compliance by the Planning Commission be made in accordance with law.

Please let me know if you have any questions or require further documentation. Thank you.

Very truly yours,



David Simon  
Vice President

cc: Ron Munekawa, Chief of Planning  
Alan Talansky, ARJAX  
Jared Eigerman, Esq.

Station Park Green Development Agreement Matrix

Requirement	Development Agreement Section	Trigger	Status
Public Benefits			
Grant by Developer of a surface easement for the purposes of a Class I bike facility and landscaping strip along the southeasterly frontage of the Property with Concar Drive.	3.A.1.a	The later of expiration of all statutes of limitation applicable to any covered actions and final resolution of all covered actions	Developer has complied with requirement
Contribution of \$627,000 to help fund or reimburse the City for the design and construction of the portion of the Complete Street project along the South Delaware frontage of the Property	3.A.1.b	No later than upon demolition of the existing Kmart building	No action required at this time. Developer will be prepared to comply when trigger occurs.
Contribution to City of \$200,000 to help fund or reimburse the City for pedestrian and bicycle improvements in the immediate area	3.A.1.c.iii	6 and 18 Months after the Execution date of the Development Agreement	Developer has complied with requirement
Contribution of \$60,000 to help fund, or reimburse the City for, the planting and two (2) years of maintenance for trees in the 19th Avenue Park neighborhood.	3.A.1.d	No later than upon demolition of the existing Kmart building	No action required at this time. Developer will be prepared to comply when trigger occurs.
Development, operation and maintenance of a community room of at 3,000 sq. ft. available to the San Mateo community free of charge	3.A.1.e	No later than upon issuance of a certificate of occupancy for the first building at the third of the following blocks MU-1, MU-2 and MU-3	No action required at this time. Developer will be prepared to comply when trigger occurs.
Relocation and underground of existing utility lines within the public right-of-way of Concar Dr. along property frontage	3.A.1.f	No later than upon issuance of a certificate of occupancy for the first building at the third of the following blocks MU-1, MU-2 and MU-3	No action required at this time. Developer will be prepared to comply when trigger occurs.
Compliance with City's Below Rate Market Housing Program (program in place at date of DA execution)	3.A.1.g	Signing of Development Agreement	Developer has complied with requirement
Join the City's Transportation Management Association	3.A.2	Signing of Development Agreement	Developer has complied with requirement
Meet and confer with developers of PA 09-009 (Hines) to pursue shared parking opportunities between the two developments.	3.A.3	Signing of Development Agreement	No action required at this time. Developer will be prepared to comply when trigger occurs.
Provide the US Green Building Council Letter dated March 24, 2008 confirming Stage 1 approval at the Gold level under the Pilot Version for Neighborhood Development Rating System (LEED ND)	3.A.4	Signing of Development Agreement	Developer has complied with requirement
Developer waives its right to request a density bonus	3.A.5	Signing of Development Agreement	Developer has complied with requirement