DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NOS. 28154 AND 28662, WHICH ORDINANCES APPROVED A DEVELOPMENT AGREEMENT, AND A FIRST AMENDMENT THERETO, RESPECTIVELY, WITH NOVELLUS SYSTEMS, INC. RELATIVE TO THE DEVELOPMENT OF REAL PROPERTY IN NORTH SAN JOSE, TO AMEND PROVISIONS CONTAINED IN THE DEVELOPMENT AGREEMENT IN CONNECTION WITH CERTAIN PARKLAND OBLIGATIONS AND TO AUTHORIZE THE CITY CLERK TO EXECUTE A SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. This Ordinance is adopted under the authority of California Government Code Section 65868 and pursuant to the provisions of City of San Jose ("City") Ordinance No. 24297 (the "Enabling Ordinance"), both of which provide for the ability to adopt and amend development agreements and set forth procedures and requirements for the consideration of those agreements.

SECTION 2. This Ordinance hereby incorporates by reference as though fully set forth herein that certain "Second Amendment to Development Agreement By and Among City of San José and Novellus Systems, Inc., Vista Montana Park Homes, LLC, and Equity-Tasman Apartments, LLC," relative to the development of certain real property located in North San José, which Second Amendment is attached hereto as Exhibit A (the "Second Amendment"), together with the Original Development Agreement (as defined in Section 3 below) and the First Amendment (defined in Section 3 below). The Original Development Agreement as previously amended by the First Amendment and further amended by the Second Amendment are sometimes referred to herein collectively as the "Amended Development Agreement."

SECTION 3. The City Council finds that the following are the relevant facts concerning the proposed Second Amendment:

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A. That certain "Development Agreement By and Between the City of San José and Novellus Systems, Inc., Relative to the Development of Certain Real Properties Located in the City of San José" was approved by City under City Ordinance No. 28154 and entered into by City and Novellus Systems, Inc., a California corporation ("DEVELOPER"), as of December 20, 2007 (the "Original Development Agreement").

B. DEVELOPER, together with Vista Montana Park Homes, LLC, a Delaware limited liability company, and Equity-Tasman Apartments, LLC, a Delaware limited liability company, both of whom are successors in interest to DEVELOPER, requested a First Amendment to the Original Development Agreement (the "First Amendment") to extend certain deadlines set forth in the Original Development Agreement, and said First Amendment was approved by City under City Ordinance No. 28662, which First Amendment the parties entered into as of February 2, 2010.

C. All parties to the Second Amendment believe it is desirable and in the best interests of all said parties to provide for the best possible opportunities for the projects envisioned by the Amended Development Agreement to be successfully and effectively undertaken in the manner set forth in the Amended Development Agreement.

D. With the exception of the provisions pertaining to parkland obligations that are amended as a part of the Second Amendment, the terms and conditions of the Original Development Agreement as amended by the First Amendment would remain in full force and effect, such that no changes in the general plan designations, area plans, or analyses completed pursuant to the California Environmental Quality Act of 1970 ("CEQA") and pertaining to the Original

Development Agreement and First Amendment would be affected by the terms of the Second Amendment.

E. Amendments to the parkland obligations as set forth in the Second Amendment are reflected in the planned development rezonings applicable to the properties described in the Amended Development Agreement, and development of the real properties described in the Amended Development Agreement will be subject to and may be developed in accordance with the VESTED ELEMENTS set forth in the Amended Development Agreement, including, without limitation Planned Development Rezoning File No. PDC11-006 and Planned Development Rezoning File No. PDC11-007.

SECTION 4. This Council, based upon analysis of the facts set forth above, finds and concludes that the amendment of the parkland obligations as set forth in the Second Amendment will not adversely impact the parties to the Second Amendment, nor the development of the real properties located in North San Jose that are the subject of, and as set forth in, the Amended Development Agreement.

SECTION 5. The City Council hereby adopts the following as its findings required by Section 12 of the Enabling Ordinance:

A. Development of the real properties that are the subject of the Amended Development Agreement, in accordance with the conditions of the Amended Development Agreement, will continue to promote and provide for orderly growth and development of said real properties in accordance with the policies set forth in the City's General Plan, as described in the Amended Development Agreement.

B. The Amended Development Agreement remains consistent with the General Plan, area plans, and CEQA clearances issued for the projects described in the Original Development Agreement in that none of those elements have changed nor are proposed to change under the Second Amendment.

C. The Amended Development Agreement remains consistent with City's Zoning Code (Title 20 of the San José Municipal Code), and the real properties described in the Amended Development Agreement remain consistent with the zoning designations applicable to them, as those designations are more particularly described in the Second Amendment.

D. Development of the real properties described in the Amended Development Agreement in the manner set forth in the Amended Development will continue to meet important goals of the City such as furtherance of City's Greenprint vision in the North San José Area.

SECTION 6. The City Council hereby approves the Second Amendment in substantially the form attached hereto as Exhibit A and hereby authorizes and directs the City Clerk to execute the Second Amendment in substantially the form approved by

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this Ordinance on behalf of the City of San Jose within a reasonable period of time after this Ordinance becomes effective.

PASSED FOR PUBLICATION of title this day of , 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk

RD:JVP/RG:RPH
07/14/2011

EXHIBIT A

RECORDING REQUESTED
BY CITY OF SAN JOSE:

When Recorded, Return To:
CITY of San José
200 East Santa Clara Street
San José, CA 95113
Attn: CITY Clerk, 2nd Floor West Wing

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT BY AND AMONG CITY OF SAN JOSE AND NOVELLUS SYSTEMS, INC., VISTA MONTANA PARK HOMES, LLC, AND EQUITY-TASMAN APARTMENTS, LLC

This Second Amendment to Development Agreement ("Second Amendment") is made effective as of August __, 2011 by and among the City of San José, a municipal corporation ("CITY") on the one hand, and Novellus Systems, Inc., a California corporation ("NOVELLUS"), Vista Montana Park Homes, LLC, a Delaware limited liability company ("VISTA MONTANA") and Equity-Tasman Apartments, LLC, a Delaware limited liability company ("EQUITY-TASMAN"), on the other hand, with reference to the following facts:

A. CITY and NOVELLUS entered into a development agreement (the "Development Agreement") as of the 20th day of December, 2007 concerning the development of those certain real properties located in the North San José area, including properties referred to therein as the RESIDENTIAL PROPERTY, the CAMPUS INDUSTRIAL PROPERTY, the COMMUNITY PARK PROPERTY, and the NEIGHBORHOOD PARK PROPERTY, all as more particularly described and defined in

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the Development Agreement. Such Development Agreement was recorded by the Santa Clara County Clerk-Recorder on December 21, 2007 (Document No. 19690723). Each capitalized term used in this Second Amendment, but not defined herein, shall have the meaning ascribed to it in the Development Agreement.

B. NOVELLUS has provided CITY with documents evidencing that NOVELLUS made a partial assignment of its rights and obligations under the Development Agreement to VISTA MONTANA and EQUITY-TASMAN. The assignment is evidenced by that certain Assignment and Assumption Agreement (the "Assignment") between NOVELLUS and VISTA MONTANA and EQUITY-TASMAN executed on the 21st day of December, 2007 and to which CITY is not a party. The Assignment contains a schedule of allocated rights and obligations under the Development Agreement, as amended, pursuant to which the parties thereto have allocated and assigned all rights and obligations in the portions of the Development Agreement to VISTA MONTANA and EQUITY-TASMAN. The Assignment does not affect the rights or obligations of CITY or NOVELLUS as against each other under the Development Agreement, including, without limitation, NOVELLUS' obligations in connection with the NEIGHBORHOOD PARK PROPERTY and COMMUNITY PARK PROPERTY and the provisions of Section 1.C.(2) of the Development Agreement.

C. CITY, NOVELLUS, VISTA MONTANA, and EQUITY-TASMAN entered into a First Amendment to the Development Agreement (the "First Amendment") as of the 3rd day of November, 2009 extending various deadlines in the Development Agreement to provide the best possible opportunities for the projects that were assigned to VISTA MONTANA and EQUITY-TASMAN through the Assignment and that were envisioned by the Development Agreement to be successfully undertaken, in light of existing economic and market conditions. The First Amendment was recorded by the Santa Clara County Clerk-Recorder on March 9, 2010 (Document No. 20633886).

D. Simultaneously with the execution of this Second Amendment, the parties are entering into a Parkland Agreement, a copy of which is attached hereto as **REVISED EXHIBIT E,** pursuant to the provisions of Chapter 19.38 of the San José Municipal Code (Parkland Dedication Ordinance"), in order for NOVELLUS, VISTA MONTANA, and EQUITY-TASMAN to satisfy their parkland dedication obligation and provide certain extraordinary park benefits to the CITY as set forth in the Parkland Agreement.

E. CITY, NOVELLUS, and VISTA MONTANA now desire to further amend the Development Agreement to attach the revised Parkland Agreement as **REVISED EXHIBIT E** to the Development Agreement (as revised by the First Amendment and this Second Amendment) setting forth the terms, conditions, and obligations of NOVELLUS, VISTA MONTANA, and EQUITY-TASMAN relating to the NEIGHBORHOOD PARK

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PROPERTY and COMMUNITY PARK PROPERTY, while recognizing that the neither the Assignment nor this Second Amendment shall affect the rights and obligations of CITY and NOVELLUS as against each other under the Development Agreement.

F. Those certain amendments to the Development Agreement related to the Parkland Agreement, set forth in **REVISED EXHIBIT E** to the Development Agreement described above, required amendments to rezoning approvals previously issued in connection with the PROPERTIES, which further rezonings have been approved by the City Council and the parties desire to make those recent rezonings VESTED ELEMENTS under the Development Agreement pursuant to the terms of this Second Amendment.

NOW THEREFORE, in consideration of the mutual conditions and covenants contained in the Development Agreement, as amended, including those amendments herein, CITY, NOVELLUS, VISTA MONTANA, and EQUITY-TASMAN hereby further amend the Development Agreement as follows:

1. RECITAL N of the Development Agreement is hereby amended in its entirety to read as follows:

   "N. NOVELLUS, VISTA MONTANA and EQUITY-TASMAN also will incur unusually substantial costs to develop, or to cause or facilitate the development of the NEIGHBORHOOD PARK PROPERTY and the COMMUNITY PARK PROPERTY as set forth in the Parkland Agreement attached hereto as **REVISED EXHIBIT E**. The substantial benefits as described in **REVISED EXHIBIT E** collectively are anticipated to be in excess of NOVELLUS, VISTA MONTANA AND EQUITY-TASMAN's parkland obligation for the Project's residential units under Planned Development Zoning File Nos. PDC07-054 and PDC07-055 pursuant to CITY's Parkland Dedication Ordinance ("PDO") and Park Impact Ordinance ("PIO"), and which collectively are public improvements and facilities that will provide extraordinary benefit to the public; and"

2. **EXHIBIT E**, "IMPROVEMENTS" of the Development Agreement is hereby deleted in its entirety and replaced with **REVISED EXHIBIT E**, entitled "PARKLAND AGREEMENT", as attached hereto and incorporated into this Second Amendment by this reference.

3. The parties to this Second Amendment acknowledge that Planned Development Rezoning PDC11-007 adopted by the City Council on August 2, 2011 amended Planned Development Rezoning PDC07-054, and Planned Development Rezoning PDC11-006 adopted by the City

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Council on August 2, 2011 amended Planned Development Rezoning PDC07-055, and that Planned Development Rezonings PDC07-054 and PDC07-055 were VESTED ELEMENTS under the original Development Agreement. As of the effective date of this Second Amendment set forth above, Planned Development Rezoning PDC11-007 and Planned Development Rezoning PDC11-006 shall be VESTED ELEMENTS under the Development Agreement, as amended to date and subject to the additional terms and conditions:

a. Planned Development Rezoning PDC11-006 shall be treated under the Development Agreement, as amended, in the same manner as described for and replaces Planned Development Rezoning PDC07-055; and

b. Planned Development Rezoning PDC11-007 shall be treated under the Development Agreement, as amended, in the same manner as described for and replaces Planned Development Rezoning PDC07-054.

4. Except as expressly modified by this Second Amendment, all of the terms, provisions and conditions contained within the Development Agreement, as amended by the First Amendment, shall remain in full force and effect. In the event of any direct conflict between this Second Amendment and the Development Agreement or First Amendment, this Second Amendment shall govern and control the agreement of the parties.

5. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

APPROVED AS TO FORM:

By:
_____
Senior Deputy City Attorney

CITY

CITY OF SAN JOSE, a municipal corporation

By: _____

DENNIS D. HAWKINS, CMC
CITY Clerk

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NOVELLUS

NOVELLUS SYSTEMS, INC., a California corporation

By: _____

Its _____

SIGNATURES CONTINUE ON NEXT PAGE

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SIGNATURES CONTINUE FROM PREVIOUS PAGE

EQUITY-TASMAN

EQUITY-TASMAN APARTMENTS LLC, a Delaware limited liability company

By: ERP Operating Limited Partnership, an Illinois limited partnership, its managing member

By: Equity Residential, a Maryland real estate investment trust, its general partner

By: _____

Name: _____

Title: _____

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EXHIBIT A

REVISED EXHIBIT E
PARKLAND AGREEMENT

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