

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of South San Francisco
400 Grand Avenue
South San Francisco, CA
94080 Attn: City Clerk

APNS: 015-010-240, -910, -920,
015-010-930, -940, -950

(Space Above This Line for Recorder's Use Only)

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “**Second Amendment**”) is made as of this ____ day of April 2022, by and between the **CITY OF SOUTH SAN FRANCISCO**, a municipal corporation (the “**City**”), and **KR OYSTER POINT DEVELOPER, LLC**, a Delaware limited liability company (“**Developer**”), with reference to the following facts and circumstances (the City and Developer are sometimes referred to herein collectively as the “**Parties**”, and each individually as a “**Party**”):

RECITALS :

A. City and Oyster Point Ventures, LLC, a Delaware limited liability company (“**OPV**”), entered into a Development Agreement effective March 23, 2011 (Recorder’s Document No. 2011-034324) (“**Development Agreement**”), to facilitate the redevelopment of that certain real property owned and to be acquired by OPV as Developer thereunder consisting of approximately 46 acres within the City of South San Francisco, County of San Mateo, State of California (“**Project Site**”). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. City, OPV and Oyster Point Development, LLC a Delaware limited liability company (“**OPD**”), entered into an Assignment and Assumption Agreement dated August 18, 2016 (County of San Mateo Recorder’s Document No. 2016-082622), under which OPV assigned, and OPD assumed, all of OPV’s rights and obligations under the Development Agreement. Thereafter, City, OPD, and Developer entered into a Consent, Assignment and Assumption of Development Agreement dated June, 1, 2018 (County of San Mateo Recorder’s Document No. 2018-043311), under which OPD assigned, and Developer assumed, all of OPD’s rights and obligations under the Development Agreement, as amended on the date hereof.

C. The Parties entered into the First Amendment to Development Agreement on April 28, 2021 (County of San Mateo Recorder’s Document No. 2021-107760) (“**First Amendment**”).

D. Developer is developing the Property as a life sciences campus which is expected to include ten research, development and office buildings, comprising a total of approximately 2.5 million gross square feet of development (“**Project**”). The Project is being developed in four phases.

E. The Project Site currently consists of five assessor parcels created pursuant to Tract Map No. [REDACTED] recorded in 20___. Phase 1 of the Project is located within its own Assessor’s Parcel (015-010-950). As part of the development of Phases 2 through 4, the Developer has and will continue to apply for lot line adjustments such that, at buildout, each phase of development will be located within its own Assessor’s Parcel (each a “Phased Parcel”). Developer may, but currently has no plans, to subdivide a Phased Parcel within the Project Site in a manner that results in each building being on its own Assessor’s Parcel.

F. Each building in the Project does not have a separate parking structure. Consequently, the Parties wish to provide in this Second Amendment that to the extent that the Developer seeks to subdivide parcels within the boundaries of the Project Site in a manner that results in each building being on its own Assessor’s Parcel and such new Assessor’s Parcel does not have sufficient parking for the building thereon, the Developer shall record appropriate reciprocal easements or other similar instruments to provide all affected buildings with approximately proportionate parking and access rights with respect to each newly created Assessor’s Parcel.

G. The City intends to issue City of South San Francisco Community Facilities District No. 2021-01 (Public Facilities and Services) Special Tax Bonds (Oyster Point), Series 2022 in a principal amount not to exceed \$25 million to fund contemplated improvements in the Oyster Point Community Facilities District. The Parties understand and agree that the obligations of Developer to record reciprocal parking easements (or similar equivalent instruments) provided in this Second Amendment are a necessary precondition to the City’s issuance of said bonds.

H. Because this Second Amendment does not substantially affect any of the stated categories in Section 10.02(a) of the Development Agreement, this Second Amendment qualifies as an Administrative Agreement Amendment pursuant to Section 10.02(a) of the Development Agreement.

I. The Parties now desire to amend the Development Agreement pursuant to the terms of this Amendment and pursuant to Government Code section 65868.

A G R E E M E N T :

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Incorporation**. The foregoing recitals are true and correct and are incorporated herein by this reference and expressly made a part of this Second Amendment for all purposes.

References to any Recital in this Second Amendment shall be deemed to include this reference and incorporation.

2. **Section 4.05—Recordation of Reciprocal Easements for Parking.** The following language is hereby added as a new Section 4.05 of the Development Agreement:

“In the event that the Developer seeks to subdivide parcels within the boundaries of the Project Site in a manner that results in each building being on its own Assessor’s Parcel and such new Assessor’s Parcel does not have sufficient parking for the building thereon, the Developer shall record appropriate reciprocal easements (or other similar equivalent instruments) to provide all affected buildings with approximately proportionate parking and access rights with respect to each newly created Assessor’s Parcel.”

3. **Conflict.** In the event of a conflict between terms and condition of this Second Amendment and the terms and conditions of the Development Agreement, the terms and conditions of this Amendment shall control.

4. **No Further Modification.** Except as set forth in this Second Amendment, all other terms and provisions of the Development Agreement, as amended by the First Amendment, are hereby ratified and confirmed and shall be and remain unmodified and in full force.

5. **Recording.** Developer shall cause this Second Amendment to be recorded in the Official Records of San Mateo County, California, and shall promptly provide conformed copies of the recorded Amendment to City.

6. **Applicable Law/Venue.** This Second Amendment shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Second Amendment shall be brought only in the Superior Court of the County of San Mateo, State of California.

7. **Interpretation.** All parties have been represented by counsel in the preparation and negotiation of this Second Amendment, and this Second Amendment shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Second Amendment. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (d) “or” is not exclusive; and (e) “includes” and “including” are not limiting.

8. **Headings.** Section headings in this Second Amendment are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Amendment.

9. **Severability.** Except as otherwise provided herein, if any provision(s) of this Second Amendment is (are) held invalid, the remainder of this Second Amendment shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

10. **Counterparts**. This Second Amendment may be executed in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts, when taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Second Amendment as of the day and year first above written.

CITY OF SOUTH SAN FRANCISCO

By: _____
Charles Michael Futrell, City Manager

ATTEST:

By: _____
Rosa Govea Acosta, City Clerk

APPROVED AS TO FORM:

By: _____
Sky Woodruff, City Attorney

[SIGNATURES CONTINUED ON NEXT PAGE.]

[SIGNATURE PAGE CONTINUED]

KR OYSTER POINT DEVELOPER, LLC,
a Delaware limited liability company

By: Kilroy Realty, L.P.
a Delaware limited partnership,
its Sole Member

By: Kilroy Realty Corporation,
a Maryland Corporation,
its General Partner

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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