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015-023-430; 015-023-190;
015-023-310

**SECOND AMENDMENT TO
SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO
AND
BMR-GATEWAY OF PACIFIC I LP, BMR-GATEWAY OF PACIFIC II LP,
BMR-GATEWAY OF PACIFIC III LP, AND BMR-GATEWAY OF PACIFIC IV LP**

SOUTH SAN FRANCISCO, CALIFORNIA

Gateway Business Park Master Plan Project

**SECOND AMENDMENT TO
SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Gateway Business Park Master Plan Project

This SECOND AMENDMENT TO SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE GATEWAY BUSINESS PARK MASTER PLAN PROJECT is dated _____, 2020 (“Second Amendment”). This Second Amendment is between BMR-Gateway of Pacific I LP, formerly known as BMR-700 Gateway LP (“BMR-Gateway of Pacific I”); BMR-Gateway of Pacific II LP, formerly known as BMR-750, 800, 850 Gateway LP (“BMR-Gateway of Pacific II”); BMR-Gateway of Pacific III LP, formerly known as BMR-900 Gateway LP (“BMR-Gateway of Pacific III”); and BMR-Gateway of Pacific IV LP, formerly known as BMR-1000 Gateway LP (“BMR-Gateway of Pacific IV”); all of which are Delaware limited partnerships (collectively “Owners” and individually “Owner”), on the one hand, and the CITY OF SOUTH SAN FRANCISCO, a municipal corporation organized and existing under the laws of the State of California (“City”), on the other hand. Each Owner and the City are individually referred to herein as a “Party” and collectively referred to herein as “Parties.”

RECITALS

- A. WHEREAS, Owners and City are parties to that certain Second Amended and Restated Development Agreement (Gateway Business Park Master Plan Project) by and between the Owners and City, dated August 31, 2018, and recorded in the Official Records of San Mateo County on September 7, 2018, as Document Number 2018-070317 (“Development Agreement”);
- B. WHEREAS, Owners and City entered into a First Amendment to the Development Agreement, dated March 30, 2020, and recorded in the Official Records of San Mateo County on April 10, 2020, as Document Number 2020-032850 (“First Amendment”);
- C. WHEREAS, in connection with the City’s consideration of a Precise Plan for development of Phase 4 of the Gateway Business Park Master Plan Project, Owners and City again wish to amend the Development Agreement as set forth in this Second Amendment;
- D. WHEREAS, all proceedings necessary for the valid adoption and execution of this Second Amendment have taken place in accordance with California Government Code sections 65864 through 65869.5, the California Environmental Quality Act, and Chapter 19.60 of the City’s Municipal Code;
- E. WHEREAS, the City Council and the City Planning Commission have found that the Development Agreement, as amended by the First Amendment and this Second Amendment, is consistent with the objectives, policies, general land uses, and programs specified in the South San Francisco General Plan; and

- F. WHEREAS, on _____, 2020, the City adopted Ordinance Number ____-2020 approving and adopting this Second Amendment, and such ordinance took effect 30 days later.

AGREEMENT

NOW, THEREFORE, the Parties, pursuant to the authority contained in Government Code Sections 65864 through 65869.5 and Chapter 19.60 of the City's Municipal Code, and in consideration of the mutual covenants and agreements contained herein, agree as follows:

1. **Extended Duration.** Section 2 of the Development Agreement is amended and restated in its entirety to read as follows:

This Agreement shall expire on December 31, 2030. Notwithstanding the foregoing, if litigation against an Owner (or any of its officers, agents, employees, contractors, representatives or consultants) to which the City also is a party should delay implementation or construction on such Owner's parcel of Property of the "Project" (as defined in Section 3 below), the expiration date of this Agreement as applicable to that Owner's parcel and obligations of such Owner shall be extended for a period equal to the length of time from the time the summons and complaint is served on the defendant(s) until the judgment entered by the court is final, and not subject to appeal; provided, however, that the total amount of time for which the expiration date shall be extended as a result of such litigation shall not exceed five (5) years.

2. **Updated Park Fee Requirement.** Section 12(a)(2) of the Development Agreement and Section 1.3.1 of Exhibit E-1 to the Development Agreement are each amended and restated in their entirety to read as follows:

Parks and Recreation Impact Fee (SSFMC, Chapter 8.67; Ordinance 1520-2016). The City has adopted a "Parks and Recreation Impact Fee" to maintain park service levels and provide adequate parks and recreational services and facilities to residents of the city. An Owner shall pay the Parks and Recreation Impact Fee, as described in Chapter 8.67 of Title 8 of the Municipal Code, to the extent applicable to the phase of the Project to be developed by such Owner.

3. **Updated Fee Estimate.** Exhibit E-2 to the Development Agreement is amended such that the tenth row of the second table counting from the top is amended and restated to state "Parks and Recreation Impact Fee (Section 12(a)(2) of DA)" in the Fee Category column, "\$1.12 per GSF" in the Rate column, ["_____"] in the All Phases Fee columns, and ["\$528,463.04"] in the Phase 1 Fee column.

4. **Effective Date.** Pursuant to Section 19.60.140 of the City's Municipal Code, notwithstanding the fact that the City Council adopted an ordinance approving this Second Amendment, this Second Amendment shall be effective and shall only create obligations for the Parties from and after the date that the ordinance approving this Second Amendment takes effect.

5. Full Force and Effect. As amended by the First Amendment and this Second Amendment, the Development Agreement shall remain in full force and effect.

6. Counterparts. This Second Amendment may be executed in multiple originals, each of which is deemed an original, and may be signed in counterparts.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the day and year first above written.

(Signatures appear on the following pages)

CITY:

CITY OF SOUTH SAN FRANCISCO

ATTEST:

By: _____
Name: _____
Its: City Manager

City Clerk

APPROVED AS TO FORM:

City Attorney

OWNERS:

BMR-GATEWAY OF PACIFIC I LP

BMR-GATEWAY OF PACIFIC II LP

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

BMR-GATEWAY OF PACIFIC III LP

BMR-GATEWAY OF PACIFIC IV LP

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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