

2020-032850

10:43 am 04/10/20 A3 Fee: NO FEE

Count of Pages 6

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City Clerk
City of South San Francisco
400 Grand Avenue
P. O. Box 711
South San Francisco, CA 94083



* \$ R 0 0 0 2 8 4 5 1 8 2 \$ *

Exempt from recording fees per Government Code §§6103, 27383

Space above this line reserved for recorder's use

APNs: 015-023-290; 015-023-300
015-023-200; 015-023-320;
015-023-430; 015-023-190;
015-023-310

**FIRST AMENDMENT TO
SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO
AND
BMR-700 GATEWAY LP, BMR-750, 800, 850 GATEWAY LP,
BMR-900 GATEWAY LP, AND BMR-1000 GATEWAY LP**

SOUTH SAN FRANCISCO, CALIFORNIA

Gateway Business Park Master Plan Project

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

Gateway Business Park Master Plan Project

This FIRST AMENDMENT TO SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE GATEWAY BUSINESS PARK MASTER PLAN PROJECT is dated March 30, 2020 ("First Amendment"). This First Amendment is between BMR-700 Gateway LP ("BMR-700 Gateway"); BMR-750, 800, 850 Gateway LP ("BMR-750, 800, 850 Gateway"); BMR-900 Gateway LP ("BMR-900 Gateway"); and BMR- 1000 Gateway LP ("BMR-1000 Gateway"); 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 wish to amend the Development Agreement as set forth in this First Amendment;
- C. WHEREAS, all proceedings necessary for the valid adoption and execution of this First 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;
- D. WHEREAS, the City Council and the City Planning Commission have found that the Development Agreement, as amended by this First Amendment, is consistent with the objectives, policies, general land uses, and programs specified in the South San Francisco General Plan; and
- E. WHEREAS, on February 26, 2020, the City Council of City adopted Ordinance Number 1595-2020 approving and adopting this First 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. Revised Childcare Replacement Facility Requirement. Section 12(b) of the Development Agreement and Section 1.2.4(b) of Exhibit E-1 to the Development Agreement are each amended and restated in their entirety to read as follows:

- (b) **Childcare Replacement Facility.** To enable City to provide a childcare facility comparable to the former childcare facility that was designated for 850 Gateway Boulevard, envisioned to serve up to 80 to 100 children, the Owners of Phases 2, 3, and 4 collectively shall pay to the City (i) one million dollars (\$1,000,000.00) within 30 days of the First Amendment Effective Date and (ii) six million five hundred thousand dollars (\$6,500,000.00) prior to City's issuance of a temporary certificate of occupancy for Phase 2. The Parties agree that these payments satisfy Owners' childcare facility obligations in light of the present value of the funds to the City for other public projects and the potential renovation of an existing building to provide a space for a replacement childcare facility. Use of the funds is not limited to any specific potential project, and the City may use the initial one million dollars (\$1,000,000) for other public projects and the balance of funds for the provision of any childcare facility, including all costs associated with site acquisition (including, if necessary, eminent domain), environmental review, permitting, and all other expenses and fees, including reasonable attorneys' fees. Compliance with Section 12(b) of the DA and section 1.2.4(b) of Exhibit E-1 shall be deemed to be compliance with condition of approval A-16.b. The "First Amendment Effective Date" is defined as the date that the ordinance approving the First Amendment to this Agreement took effect.

2. Revised Fee Estimate. Exhibit E-2 to the Development Agreement is amended such that the seventh row of the second table is amended and restated to state "Child Care Facility (§ 12(b) of DA)" in the Fee column, "\$7.5 million paid in accordance with § 12(b)" in the Rate and All Phases Fee columns, and "\$0.00" in the Phase 1 Fee column.

3. 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 First Amendment, this First Amendment shall be effective and shall only create obligations for the Parties from and after the date that the ordinance approving this First Amendment takes effect.

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

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

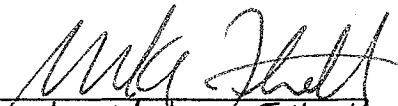
IN WITNESS WHEREOF this Agreement has been executed by the Parties on the day and year first above written.

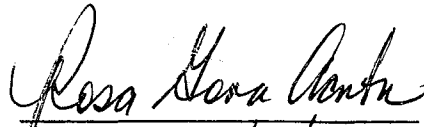
(Signatures appear on the following pages)

CITY:

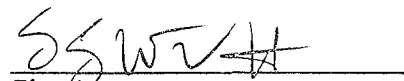
CITY OF SOUTH SAN FRANCISCO

ATTEST:

By: 
Name: Charles Michael Futrell
Its: City Manager


City Clerk 3/31/2020

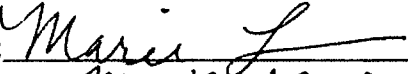
APPROVED AS TO FORM:

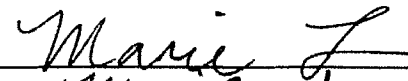

City Attorney

OWNERS:

BMR-700 GATEWAY LP

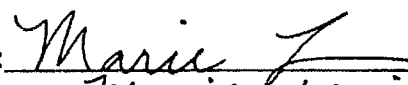
BMR-750, 800, 850 GATEWAY LP

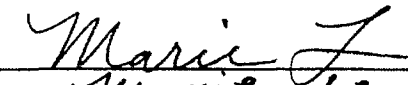
By: 
Name: Marie Lewis
Its: SVP, Legal

By: 
Name: Marie Lewis
Its: SVP, Legal

BMR-900 GATEWAY LP

BMR-1000 GATEWAY LP

By: 
Name: Marie Lewis
Its: SVP, Legal

By: 
Name: Marie Lewis
Its: SVP, Legal

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 Cali)

County of San Diego)

On March 25, 2020 before me, Vicki Collo, a Notary Public, personally appeared Marie Lewis, 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 Vicki Collo

(Seal)

3461691.1

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

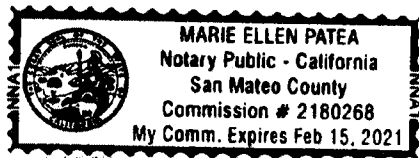
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of San Mateo)
 On March 30, 2020 before me, Marie Ellen Patea, Notary Public
 Date Here Insert Name and Title of the Officer
 personally appeared Charles Michael Futrell
 Name(s) of Signer(s)

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 Marie Ellen Patea
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Gateway Business Park Master Plan
Restated Agreement Document Date: 2/22/2020 Ordinance
 Number of Pages: 5 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____