

THIRD AMENDMENT TO EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This Third Amendment to the Exclusive Negotiating Rights Agreement (this “**Third Amendment**”) is made effective as of April 23, 2021 (“**Effective Date**”) by and between the **CITY OF SOUTH SAN FRANCISCO**, a municipal corporation (“**City**”), and **ENSEMBLE INVESTMENTS, LLC**, a California Limited Liability Company (“**Developer**”). City and Developer are each referred to as (“**Party**”) or collectively referred to as the (“**Parties**”).

RECITALS

WHEREAS, the City is the owner of certain real property (the “**Property**”) located in the City of South San Francisco, California, known as County Assessor’s Parcel Number (“**APN**”) 015-010-970, and more particularly shown as Parcel 6 on Parcel Map 17-0002 recorded on September 25, 2017, attached hereto as Exhibit A, and incorporated herein by this reference; and,

WHEREAS, at its meeting on April 11, 2018, the City approved an Exclusive Negotiating Rights Agreement (“**ENRA**”) and directed staff to commence negotiating the terms of the project development and property disposition; and,

WHEREAS, the initially proposed development proposal, as described in Exhibit B of the ENRA, included a development proposal for a ground lease transaction for ground-up construction of a 243-room full service upper upscale hotel brand; and,

WHEREAS, the Parties entered into the First Amendment to the ENRA on November 25, 2019; and

WHEREAS, the Parties entered into the Second Amendment to the ENRA on November 24, 2020; and **WHEREAS**, the City and Developer wish to extend the ENRA in order to finalize business terms, as described in Exhibit B of this Third Amendment, and extend the duration of time of the ENRA for an additional thirty-days; and,

WHEREAS, City and Developer now desire to amend certain provisions of the ENRA, as set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and incorporating all of the above as though set forth in full herein and in consideration of all the recitals, conditions and agreements contained herein, **the parties agree to amend the ENRA as follows**:

1. **Amendment to ENRA**. Section 3(a) of the ENRA is hereby deleted in its entirety and replaced with the following:

THIRD AMENDMENT TO ENRA

- a. The term of this Agreement (“**Term**”) commences on the Effective Date and will terminate on May 24, 2021, unless extended or earlier terminated as provided herein.
- b. The Term of this Agreement may be extended for up to a maximum of two separate thirty (30) day periods in the discretion of the City Manager, or his/her designee.

2. **Additional Extension Payment.** In consideration for the right to exclusively negotiate during the term extension provided by this Third Amendment, Ensemble will pay an additional extension payment of \$10,000. This payment will be immediately applied to Ensemble’s financial contributions toward soft costs associated with the Harbormaster Spit (“Spit”) redevelopment.

3. **General Provisions.** Each party hereto has received independent legal advice from its attorneys with respect to the advisability of executing this Third Amendment and the meaning of the provisions hereof. The provisions of this Third Amendment shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. Except as expressly amended pursuant to this Third Amendment, the terms and provisions of the Agreement shall remain unmodified and shall continue in full force and effect, and Buyer and Seller hereby ratify and affirm all their respective rights and obligations under the Agreement. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement. In the event of any conflict between this Third Amendment and the Agreement, this Third Amendment shall govern. The terms and provisions of this Third Amendment, together with the Agreement, shall constitute all of the terms and provisions to which Buyer and Seller have agreed with respect to the transaction governed hereby, and there are no other terms and provisions, oral or written, that apply to the Agreement and/or the Property other than as set forth in the Agreement as modified by this Second Amendment. The provisions of this Third Amendment shall apply to, be binding upon, and inure to the benefit of the parties hereto and to their respective successors and assigns. This Third Amendment may be executed in multiple counterparts, all of which shall constitute an original, and all of which together shall constitute a single instrument. Counterparts of this Third Amendment executed and delivered by facsimile, email or other means of electronic delivery shall constitute originals for all purposes.

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the Effective Date.

SIGNATURES ON FOLLOWING PAGES.

THIRD AMENDMENT TO ENRA

CITY

DocuSigned by:
Mike Futrell
By: _____
6852134787CA4DB...
Mike Futrell
City Manager

ATTEST:

DocuSigned by:
Rosa Gomez Acosta
By: _____
5908B15FF63F418...
Rosa Gomez Acosta
City Clerk



DS

APPROVED AS TO FORM:

DocuSigned by:
Claire Lai
By: _____
951A604E45D4468...
Claire Lai
City Attorney

DEVELOPER

DocuSigned by:
Conrad Garner
By: _____
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APPROVED AS TO FORM:

DocuSigned by:
Frank Petrilli
By: _____
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Frank Petrilli
Counsel for Ensemble Investments

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Exhibit A

Site Map

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Exhibit B

REVISED DEVELOPMENT PROPOSAL

Type of land use agreement	Purchase and Sale Agreement and Development Agreement, with a fee simple sale
Proposed land cost	TBD
Extension Payment	\$10,000
Duration of Extension	30 days
Development Type	Ground-up construction hotel
Hotel Brand	<p>Full service, upper upscale or upscale hotel with:</p> <ul style="list-style-type: none"> • Complementary services for hotel guests and the public, which may include restaurants, cafes, day spas, and similar • Meeting and conference space • Nationally-recognized brand with competitive travel rewards program • Customizable design like other upper upscale or upscale hotel brands
Proposed Height of Hotel	Initial proposal included 9 floors, but additional due diligence would occur
Proposed Number of Rooms	One full service hotel with 341 rooms
Proposed Food and Beverage	Initial proposal included not less than 4,000 SF, but additional due diligence would occur
Proposed Meeting Space	Initial proposal included not less than 11,500 SF, but additional due diligence would occur

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Proposed Project Amenities	Initial proposal included common area and open space of no less than 1.5 acres, but additional due diligence would occur
Parking	TBD
Performance Milestones for:	<ul style="list-style-type: none">• Negotiation of a Purchase and Sale Agreement• Negotiation of a Development Agreement• Master Schedule

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