

FIRST AMENDMENT TO EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This First Amendment to the Exclusive Negotiating Rights Agreement (this "First Amendment") is made effective as of 11/25, 2019 ("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"), dated as of 11/25/19 (the "Effective Date"). 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") 015-010-600, and more particularly shown as Parcel 6 on Parcel Map 17-0002 recorded on September 25, 2017, attached hereto as Exhibit A to the Exclusive Negotiating Rights Agreement ("ENRA"), and incorporated herein by this reference; and,

WHEREAS, at its meeting on April 11, 2018 the City approved an ENRA with Developer 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 to the ENRA, included a development proposal which included a ground lease transaction for ground-up construction of a 243 room full service upper upscale hotel brand; and,

WHEREAS, in order to attract additional capital interest into the project, Developer is proposing to modify the development proposal, attached hereto as Exhibit B of this Amendment, and extend the duration of time of the ENRA for an additional six months after the Amendment effective date; 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 language.** All references to LDDA in the ENRA shall be revised to refer to a disposition agreement that is mutually acceptable to the parties.

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

a. The term of this Agreement (“Term”) commences on the Effective Date of the Agreement, and will terminate six months after the effective date, or 5/25/20 unless extended or earlier terminated as provided herein.

3. **Amendment to Deposit.** Section 5(a) of the ENRA is hereby deleted in its entirety and replaced with the following:

a. In consideration for the right to exclusively negotiate under this Agreement, Developer has paid to City a deposit in the amount of One Hundred Thousand Dollars (\$100,000), which if a disposition agreement is executed, the deposit will be credited toward the purchase price payable under the final negotiated disposition agreement (“Deposit”). City has deposited the Deposit in an interest bearing account of the City and any interest, when received by City, will become part of the Deposit.

During the term of this Agreement, Developer will reimburse City for all reasonable staff and City consultant time incurred in preparing the disposition agreement, and any related documents for the disposition of Hotel Site to Developer (“Payment”). City will continue to deposit the Payment in an interest bearing account of City and any interest, when received by City, will become part of the Payment. The Payment may be drawn upon by City to reimburse staff, City Attorney, and City consultant costs for preparing the disposition agreement and any related documents, at their standard published hourly rates. Should the full amount of the Payment be exhausted during the Term of this Agreement, City may require the Developer to provide additional funds necessary to reimburse staff and consultant costs expended in connection with preparation of the disposition agreement and any related documents. Documentation of City’s rate schedule for staff, staff time spent, and consultant costs will be retained by City and provided to Developer upon request.

4. **Additional Extension Payment.** In consideration for the right to exclusively negotiate during the term extension provided by this First Amendment, City will require a non-reimbursable extension payment of \$10,000.

a. **Administrative Extension Payment.** At the discretion of the City Manager, the ENRA may approve up to two administrative extensions of 90 days each, for an amount of \$25,000 per extension granted.

5. **General Provisions.** Each party hereto has received independent legal advice from its attorneys with respect to the advisability of executing this First Amendment and the meaning of the provisions hereof. The provisions of this First

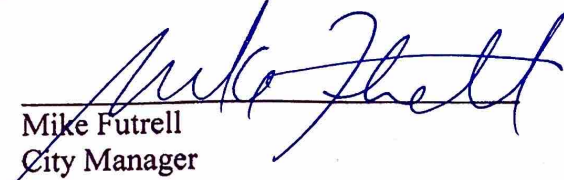
FIRST AMENDMENT TO ENRA

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 First 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 First Amendment and the Agreement, this First Amendment shall govern. The terms and provisions of this First 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 First Amendment. The provisions of this First Amendment shall apply to, be binding upon, and inure to the benefit of the parties hereto and to their respective successors and assigns. This First 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 First 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 First Amendment as of the Effective Date.

SIGNATURES ON FOLLOWING PAGES.

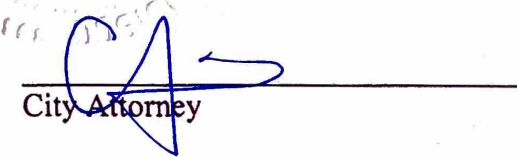
CITY

By: 
Mike Futrell
City Manager

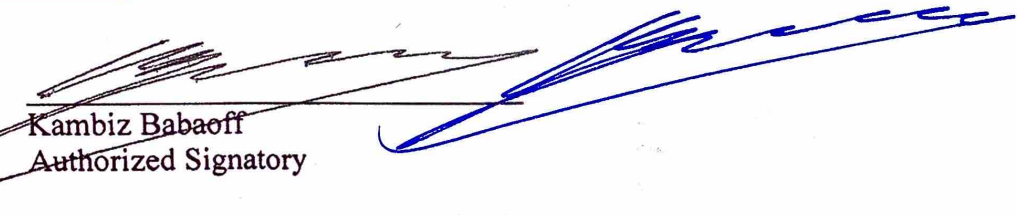
ATTEST:

By: 
City Clerk 1/24/2020

APPROVED AS TO FORM:

By: 
City Attorney

DEVELOPER

By: 
Kambiz Babaoff
Authorized Signatory

APPROVED AS TO FORM:

By: _____
Counsel for Ensemble Investments

Exhibit A

Property

Exhibit B

REVISED DEVELOPMENT PROPOSAL

Type of land use agreement	Development Agreement, with a fee simple sale
Proposed land cost	TBD
Extension Payment	\$10,000
Duration of Extension	6 months
Administrative Extensions	2 administrative extensions of 90 days each, at a cost of \$25,000 each
Development Type	Ground-up construction hotel
Hotel Brand	<p>Full service, upper upscale or upscale hotel with:</p> <ul style="list-style-type: none"> • Complimentary 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	9 floors
Proposed Number of Rooms	One full service hotel with 341 rooms
Proposed Food and Beverage	Not less than 4,000 SF
Proposed Meeting Space	Not less than 11,500 SF
Proposed Project Amenities	Common area and open space of no less than 1.5 acres

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Parking	TBD
Performance Milestones for:	<ul style="list-style-type: none">• Negotiation of a Development Agreement• Developer will apply for a Precise Plan, pursuant to the Oyster Point Specific Plan and DDA• Pursue project entitlement• Master Schedule