

## FOURTH AMENDMENT TO EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This Fourth Amendment to the Exclusive Negotiating Rights Agreement (this “**Fourth Amendment**”) is made effective as of July 22, 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 which included 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 Parties entered into the Third Amendment to the ENRA on April 23, 2021; and

**WHEREAS**, the City and Developer wish to extend the ENRA in order to finalize additional business terms, as described in Exhibit B of this Fourth Amendment, and extend the duration of time of the ENRA for an additional sixty-five 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:

- a. The term of this Agreement (“**Term**”) commences on the Effective Date of the Agreement, and will terminate sixty-five days after the effective date, or September 25, 2021 unless extended or earlier terminated as provided herein.
- b. The Term of this Agreement may be extended for up to a maximum of one separate thirty (30) day period in the discretion of the City Manager, or his/her designee.

2. **General Provisions.** Each party hereto has received independent legal advice from its attorneys with respect to the advisability of executing this Fourth Amendment and the meaning of the provisions hereof. The provisions of this Fourth 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 Fourth 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 Fourth Amendment and the Agreement, this Fourth Amendment shall govern. The terms and provisions of this Fourth 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 Fourth Amendment. The provisions of this Fourth Amendment shall apply to, be binding upon, and inure to the benefit of the parties hereto and to their respective successors and assigns. This Fourth 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 Fourth 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 Fourth Amendment as of the Effective Date.

**SIGNATURES ON FOLLOWING PAGES.**

**CITY**

By: \_\_\_\_\_  
Mike Futrell  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**DEVELOPER**

By: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Counsel for Ensemble Investments

**Exhibit A**

Site Map

**Exhibit B**

**DEVELOPMENT PROPOSAL**

Type of land use agreement	Purchase and Sale Agreement and Development Agreement, with a fee simple sale
Proposed land cost	TBD
Duration of Extension	65 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"> <li>• Complimentary services for hotel guests and the public, which may include restaurants, cafes, day spas, and similar</li> <li>• Meeting and conference space</li> <li>• Nationally-recognized brand with competitive travel rewards program</li> <li>• Customizable design like other upper upscale or upscale hotel brands</li> </ul>
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

FOURTH AMENDMENT TO ENRA

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"><li>• Negotiation of a Purchase and Sale Agreement</li><li>• Negotiation of a Development Agreement</li><li>• Master Schedule</li></ul>