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City of South San Francisco
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South San Francisco, CA 94080
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FIRST ADMINISTRATIVE AMENDMENT TO DEVELOPMENT AGREEMENT

By and Between

THE CITY OF SOUTH SAN FRANCISCO,

And

SSF PUC HOUSING PARTNERS, LLC

Former PUC Sites B and C

**FIRST ADMINISTRATIVE AMENDMENT TO DEVELOPMENT AGREEMENT
FORMER PUC SITES B AND C**

This FIRST ADMINISTRATIVE AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR FORMER PUC SITES B AND C (the “**First Administrative Amendment**”) is entered into this ____ day of _____, 2022, by and between the City of South San Francisco, a California municipal corporation (“**City**”), and SSF PUC Housing Partners, LLC, a Delaware limited liability company (“**SSF**”). SSF is individually referred to as a “**Developer**”. Developer and City are, from time to time, referred to individually in this Agreement as a “Party” and collectively as the “Parties.”

R E C I T A L S

This First Administrative Amendment is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. City and Developer are parties to that certain Development Agreement dated January 10, 2020 (“**Development Agreement**”) to facilitate the development of (a) certain publicly-accessible open space improvements on (1) an approximately 3,286 square foot portion and an approximately 8,550 sf portion of existing City-owned property (“**City Open Space Properties**”), and (2) an approximately 33,981 square feet (“sf”) portion of BART-owned property (“**BART Open Space Property**”); (b) portions of the Oak Avenue Phase 1 Extension on (1) an approximately 14,270 sf portion of City-owned property (“**City ROW Property**”), (2) an approximately 7,296 sf portion of BART-owned property (“**BART ROW Property**”), and (3) an approximately 14,350 sf portion of Kaiser-owned property (“**Kaiser ROW Property**”); and (c) certain access easements necessary to construct and operate the Project as defined in the Project Approvals, all within the City of South San Francisco, County of San Mateo, State of California (the “**Site**”).

I. Pursuant to Section 7.2 of the Development Agreement, the City Manager is authorized to approve an Administrative Agreement Amendment to the Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration and pursuant to Section 7.2 of the Development Agreement, the Parties hereto agree to the following:

1. Defined Terms. All capitalized terms used herein shall have the meanings given in the Master Development Agreement, except as expressly otherwise defined in this First Amendment.

2. Enumeration of Specific Amendments. The Development Agreement is hereby modified to incorporate the following amendments. In this Section 2, for clarity, where the amendment revises existing text, double underline text indicates new text; ~~strikeout~~ text indicates a deletion.

2.1 Amendments to Section 3.4 Regarding Off-Site Improvements and Maintenance. Section 3.4 of the Development Agreement is hereby amended as follows:

3.4(a) Oak Avenue Extension. Based on the 35% drawings of Oak Avenue Phase 2 Extension provided by City to Developer, the Developer shall undertake design of Oak Avenue Phase 1 Extension and continue to advance design and approval (with BART, Caltrans, etc.) of Oak Avenue Phase 2 Extension concurrent with relevant design progress, but only so far as necessary that reviewing departments can ensure a future design for Oak Avenue Phase 2 Extension is physically feasible. Developer shall design and construct Oak Avenue Phase 1 Extension at its own cost as described in the Project Approvals; provided, however, the City shall not impose requirements that will cause the cost (including actual and reasonable soft and hard costs of design (including design of Oak Avenue Phase 2 Extension), permitting and construction, but excluding any Developer mark up or project management fee) of Oak Avenue Phase 1 Extension (“**Oak Avenue Phase 1 Costs**”) to exceed FIFTEEN MILLION EIGHT HUNDRED AND FIFTY THOUSAND DOLLARS (\$15,850,000) (“**Maximum Oak Avenue Phase 1 Costs**”), and shall cooperate with the Developer to ensure any other governmental agencies’ requirements do not cause the cost to exceed the Maximum Oak Avenue Phase 1 Costs (including, but not limited to, expediting review and approvals of design modification and value engineering if necessary). City and Developer shall have the mutual right to approve the final design, cost and any change orders that will cause the Oak Avenue Phase 1 Costs to exceed TEN MILLION THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$10,350,000) for the Oak Avenue Phase 1 Extension (“**Maximum Oak Avenue Fair Share Contribution**”). Developer shall also pay the City, prior to the deadline set forth in the Schedule of Performance in the PSA, FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000) for final design (beyond 35% level) and construction costs for Oak Avenue Phase II Extension connecting Oak Avenue from Antoinette Lane to El Camino Real (“**Oak Avenue Phase II Extension Payment**”) and Developer shall cooperate with City and provide any necessary easements to allow construction of Oak Avenue Phase II as described in this sentence to the extent such necessary easement do not conflict with Project or frustrate the purpose of this Agreement. Developer shall provide City copies of and shall consult with City regarding all bids received and change orders for Oak Avenue Phase 1 Extension. Developer shall complete construction of Oak Avenue Phase 1 Extension in a manner consistent with the approved plans no later than as set forth in the Schedule of Performance set forth as Exhibit C to the PSA and incorporated herein by reference. With the City’s cooperation, the Developer shall be responsible for and shall use good faith and commercially reasonable efforts to design, implement and construct the Project, including Oak Avenue Phase 1 Extension such that the City’s future construction of Oak Avenue Phase 2 Extension at a later date is feasible. Developer shall not be responsible for the costs for completing designs of Oak Avenue Phase 2 Extension (beyond the initial feasibility determinations described herein) nor any costs of constructing Oak Avenue Phase 2 Extension. If the Oak Avenue Phase 1 Costs exceed the Maximum Oak Avenue Fair Share Contribution, the City will, upon submission of an invoice with substantiating cost invoices from the contractor that are reasonably

acceptable to the City, reimburse the Developer for the Oak Avenue Phase 1 Costs incurred that exceed the Maximum Oak Avenue Fair Share Contribution, in an amount not to exceed FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000). The City shall have the right to pay the amount in excess of the Maximum Oak Avenue Fair Share Contribution, up to an amount not to exceed FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000), in ten equal annual payments over the period of 10 years from the date of acceptance of Oak Avenue Phase 1 Extension by the City. Any outstanding balance due after two years from the date of acceptance of Oak Avenue Phase 1 Extension shall accrue interest at the Local Agency Investment Fund Rate in effect as of two years from the date of acceptance of Oak Avenue Phase 1 Extension.

3.4(c) Mission Road Pedestrian Trail Connection. Developer shall pay to the City TWO HUNDRED THOUSAND (\$200,000) for costs associated with a proposed pedestrian trail connecting Mission Road to the Centennial Trail in the general vicinity of the intersection of Sequoia Avenue and Mission Road (“Mission Road Pedestrian Trail Connection”), no later than issuance of the certificate of occupancy for Building B1 or Building C1, whichever comes first. The Developer shall not be responsible for any other costs associated with the Mission Road Pedestrian Train Connection (including but not limited to design, permitting, construction or maintenance).

3.4(d) Pedestrian Bridge Connection to Centennial Trail. Developer shall design and construct a pedestrian bridge and pathway connecting the Kaiser property to Centennial Trail as shown on Sheets T-3, L1.0, L2.0, L7.0, L8.0, L9.0 of the Entitlement Resubmittal -3 Entitlements Comment Response) September 17, 2019 as amended by replacement sheets dated November 5, 2019 and described in the Project Approvals (“Centennial Trail Bridge”) at the same time as the construction of the Centennial Trail improvements required in the Project Approvals. The City shall not impose requirements that will cause the cost (including actual and reasonable soft and hard costs of design (including design of Centennial Trail Bridge), permitting and construction, but excluding any Developer mark up or project management fee) of the Centennial Trail Bridge (“Centennial Trail Bridge Costs”) to exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) (“Maximum Centennial Trail Bridge Cost”) and shall cooperate with the Developer to ensure any other governmental agencies’ requirements do not cause the cost to exceed the Maximum Centennial Trail Bridge Cost (including, but not limited to, expediting review and approvals of design modification and value engineering if necessary). The design of the Centennial Trail Bridge shall include a pathway width of no more than ten feet and the total width of the bridge shall not exceed twenty feet, and shall be subject to approval by the City Manager, which approval shall not be unreasonably withheld or delayed. With the Developer’s cooperation, the City shall secure control or ownership of any properties necessary for the Developer to construct and maintain the Centennial Trail Bridge, as provided in (f), below. Notwithstanding the Maximum Centennial Trail Bridge Cost, the City may, in its sole discretion, require architectural design enhancements to the Centennial Trail Bridge design and construction provided that the City shall

pay for all Centennial Trail Bridge Costs related to such architectural design enhancements to the extent that such costs would exceed the Maximum Centennial Trail Bridge Cost.

3.4(f) Acquisition of Off-Site Property Rights and Developer Deposit. With the Developer's cooperation and assistance in terms of preparing property descriptions and engineering drawings, ~~the City shall be responsible for securing the rights or ownership for all of the following~~ the City shall attempt to acquire by negotiated purchase, or in its sole and absolute discretion, elect to acquire the following property interests by exercise of its power of eminent domain:

(i) the BART ROW Property, the Kaiser ROW Property necessary and other property interests necessary to complete Oak Avenue Phase 1 Extension as such property interests are shown on Sheets X-0, X-1, X-1.1, X-2, X-3, X-4, and X-5 of the Entitlement Resubmittal -3 Entitlements Comment Response) September 17, 2019 as amended by replacement sheets dated November 5, 2019 and described in the Project Approvals ("Oak Avenue ROW Properties").

(ii) any properties necessary for the Developer to construct and maintain all of the Off-Site Improvements, including all park and open space and trail improvements as required under this Agreement ("Off-Site Property Rights Agreements").

Developer shall upon written request from the City, pay the City up to a maximum of FIVE HUNDRED THOUSAND (\$500,000) ("Maximum Off-Site Acquisitions Deposit Amount") for actual costs (including appraisals, title fees, preparation of property conveyance documents, litigation expenses, etc.) incurred by the City to acquire the Oak Avenue ROW Properties and Off-Site Property Rights Agreements hereunder. Developer shall make an initial payment to the City of TWO HUNDRED AND FIFTY THOUSAND (\$250,000) not later than sixty days after Close of Escrow (as defined in the PSA) and shall make further deposits upon written request from the City up to the Maximum Off-Site Acquisitions Deposit Amount. City will retain the amounts paid in a separate line item account ("Off-Site Property Acquisition Deposit Account") and shall only use such funds for actual costs incurred to acquire the properties provided herein. City shall provide Developer quarterly reports showing the amount of funds used from the Off-Site Property Acquisition Deposit Account and property interests acquired. Any unused funds remaining in the Off-Site Property Acquisition Deposit Account at the commencement of construction of Oak Avenue Phase 1 Extension shall be refunded to the Developer. However, notwithstanding any provision in this Agreement to the contrary, the City shall not have any obligation to acquire the Oak Avenue ROW Properties or the properties necessary for the Developer to construct and maintain all of the Off-Site Improvements. If the City is unable to acquire said property rights, Developer will have the option not to construct the Oak Ave Phase I Extension or Off-Site Improvements.

3. Interpretation. The Development Agreement shall be construed as having been modified by this First Amendment. Except as expressly modified by this First Amendment, the Development Agreement remains unmodified, and is in full force and effect. In the case of conflict between the provisions hereof and the terms of the Development Agreement, the provisions hereof shall control.

4. Effective Date and Recordation. The "Effective Date" of this First Amendment shall be the later of the dates on which the City and Developer execute this First Amendment, which shall then be recorded in the official records of San Mateo County.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, City and Developers have executed this First Administrative Amendment as of the date first written above.

CITY

**CITY OF SOUTH SAN FRANCISCO,
a municipal corporation**

By:_____

Name: Mike Futrell
City Manager

ATTEST:

By:_____

City Clerk

APPROVED AS TO FORM:

By:_____

City Attorney

DEVELOPER

SSF PUC HOUSING PARTNERS, LLC,

a Delaware limited liability company

By: _____
Name:
Title:

[Notary Acknowledgment Required]

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 _____)

On _____ before me _____ (insert
name and title of the officer) 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)

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 _____)

On _____ before me _____ (insert
name and title of the officer) 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)