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Ordinance adopting a Third Amendment to the Second Amended and Restated Development Agreement (DAA21-0003) between the City of South San Francisco and BMR Gateway of Pacific I LP, BMR Gateway of Pacific II LP, BMR Gateway of Pacific III LP, and BMR Gateway of Pacific IV LP for the Gateway Business Park Master Plan Project to make minor modifications.

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WHEREAS, the Owners and Applicants are BMR-Gateway of Pacific I LP, formerly known as BMR-700 Gateway LP; BMR-Gateway of Pacific II LP, formerly known as BMR-750, 800, 850 Gateway LP; BMR-Gateway of Pacific III LP, formerly known as BMR-900 Gateway LP; and BMR-Gateway of Pacific IV LP, formerly known as BMR-1000 Gateway LP; all of which are Delaware limited partnerships

WHEREAS, BMR – Gateway/Oyster LP, a predecessor of the Owners, received entitlements for the phased removal and replacement of existing buildings on the 22.6-acre project site and construction of five to six new buildings and two to four parking structures, in five phases, to be located at the corner of Gateway and Oyster Point Boulevards (700, 750, 800, 850, 900, and 1000 Gateway Boulevard), in the Gateway Specific Plan Area (“Gateway Business Park Master Plan Project”) including Phase 4 (“GOP 4”); and

WHEREAS, on February 10, 2010, after conducting all proceedings and making all findings necessary for the valid adoption and execution of a development agreement for the Property in accordance with Government Code Sections 65864 through 65869.5, the California Environmental Quality Act (“CEQA”), and Chapter 19.60 of the Municipal Code, the City Council adopted Ordinance No. 1423-2010, approving and adopting a development agreement for the property at 700-1000 Gateway Boulevard (“Property”); and

WHEREAS, on May 8, 2013, the City Council adopted Ordinance No. 1471-2013 concerning a First Amended and Restated Development Agreement between City and Applicant (“First Amended DA”); and

WHEREAS, on June 27, 2018, the City Council adopted Ordinance No. 1599-2018 concerning a Second Amended and Restated Development Agreement between City and BMR Gateway of Pacific I LP, BMR Gateway of Pacific II LP, BMR Gateway of Pacific III LP, and BMR Gateway of Pacific IV LP to allow for minor modifications to the agreement, including acknowledgement of the transfer and assignment of the separate parcels to the respective affiliates, acknowledgement of lot line adjustment between Phases 1 and 2, and confirmation that each property owner holds the compliance burdens, obligations, and responsibilities for its respective parcel of property under the Second Amended and Restated Development Agreement; and

WHEREAS, on February 26, 2020 the City adopted Ordinance No. 1595-2020 adopting a First Amendment to the Second Amended and Restated Development Agreement which substituted payment of a fee that will enable the City to build a childcare facility in lieu of having the applicants construct or open a replacement childcare facility on or within one mile of the project site; and

WHEREAS, on October 14, 2020, the City adopted Ordinance No. 1606-2020 adopting a Second

Amendment to the Second Amended and Restated Development Agreement which extended the duration of the Development Agreement and added parks and recreation fee requirements; and

WHEREAS, the City has approved modifications to GOP 4 to allow for a transfer of density from the adjacent property, resulting in an expansion of up to 120,221 square feet configured in four additional floors on the GOP 4 North building (“GOP 4 Density Transfer Project” or “Project”); and

WHEREAS, the GOP 4 site is subject to the following plans, regulations and entitlements: (a) the Business Commercial land use designation in the General Plan, (b) the Gateway Specific Plan enacted in 1981 by Ordinance 868-81, (c) the Gateway Specific Plan Zoning District regulations, (d) the Gateway Business Park Master Plan, as revised by City Council Resolution No. 44-2013 (“GOP Master Plan”), (e) the GOP Phase 4 Precise Plan approved by Planning Commission Resolution No. 2859-2020 (“GOP 4 Precise Plan”), and (f) a Development Agreement as most recently amended by Ordinance 1606-2020 approving the Second Amendment to the Second Amended and Restated Development Agreement Between the City of South San Francisco and certain BMR Gateway of Pacific entities (“GOP Development Agreement”); and technical modifications to all these are required to enable a transfer of density to the GOP 4 site; and

WHEREAS, the City Council has granted or indicated an intent to grant all such modifications, pursuant to Resolutions ____ (General Plan amendment and repeal of the Specific Plan), ____ (GOP Master Plan and the GOP 4 Precise Plan amendments) and Ordinance ____ (Gateway Specific Plan Zoning District regulations amendments); and

WHEREAS, Applicant submitted an application requesting a Third Amendment to the Second Amended and Restated Development Agreement to address approval of the GOP 4 Density Transfer Project; and

WHEREAS, the Airport Land Use Commission has reviewed the proposed legislative enactments associated with the GOP 4 Density Transfer Project and found them consistent with the Airport Land Use Compatibility Plan; and

WHEREAS, on June 2, 2022, the Planning Commission for the City of South San Francisco held a lawfully noticed public hearing, solicited public comment, considered the Third Amendment to the Second Amended and Restated Development Agreement, took public testimony, and recommended approval of the Third Amendment to the Second Amended and Restated Development Agreement; and

WHEREAS, the Council has considered the GOP 4 Density Transfer Project, including the Third Amendment to the Second Amended and Restated Development Agreement under the California Environmental Quality Act, Pub. Resources Code §21000, et seq. (“CEQA”), as set forth in Resolution [____-2022]; and,

WHEREAS, the City Council held a duly noticed public hearing on ____, 2022 to consider the Third Amendment to the Second Amended and Restated Development Agreement, and take public testimony.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of South San Francisco does hereby ordain as follows:

SECTION 1. Findings.

That based on the entirety of the record before it, which includes without limitation, the California Environmental Quality Act, Public Resources Code §21000, et seq. (“CEQA”) and the CEQA Guidelines, 14 California Code of Regulations §15000, et seq.; the South San Francisco General Plan, General Plan Environmental Impact Report; the South San Francisco Municipal Code; 2009 EIR, and associated Mitigation Monitoring and Reporting Programs; 2018 Addendum; 2020 Addendum; 2022 Supplemental EIR; the Project applications; the BMR GOP Phase 4 Density Transfer Project Plans, as prepared by Flad Architects, dated June 8, 2020; all site plans, and all reports, minutes, and public testimony submitted as part of the Planning Commission’s duly noticed June 2, 2022 meeting; all site plans, reports, minutes, and public testimony submitted as part of the City Council’s duly noticed public hearing on __, 2022; and any other evidence (within the meaning of Public Resources Code §21080(e) and §21082.2), the City Council of the City of South San Francisco hereby finds as follows:

- A. The foregoing recitals are true and correct and made a part of this Ordinance.
- B. The Exhibit attached to this Ordinance, the proposed Third Amendment to the Second Amended and Restated Development Agreement (Exhibit A), is incorporated by reference and made a part of this Ordinance, as if set forth fully herein.
- C. The documents and other material constituting the record for these proceedings are located at the Planning Division for the City of South San Francisco, 315 Maple Avenue, South San Francisco, CA 94080, and in the custody of Chief Planner.
- D. The Third Amendment to the Second Amended and Restated Development Agreement, attached hereto as Exhibit A, sets for the duration, property, project criteria, and other required information identified in Government Code section 65865.2. Based on the findings in support of the Project, the City Council finds that the Third Amendment continues to further the previously vested project for a campus-style development of office and R&D buildings and is consistent with the objectives, policies, general land uses and programs specified in the South San Francisco General Plan, the Gateway Specific Plan Zoning District Regulations, the Gateway Business Park Master Plan and all GOP Precise Plans.
- E. The Third Amendment to the Second Amended and Restated Development Agreement is compatible with the uses authorized in, and the regulations prescribed for the land use district in which the real property is located. The subject site is physically suitable for the type and intensity of the land use being proposed. The General Plan, as amended in connection with the GOP 4 Density Transfer Project, specifically contemplates the proposed type of project and the

suitability of the site for development was analyzed thoroughly in the environmental document prepared for the Project.

F. The Third Amendment to the Second Amended and Restated Development Agreement is in conformity with public convenience, general welfare and good land use practice.

G. The Third Amendment to the Second Amended and Restated Development Agreement will not be detrimental to the health, safety and general welfare because the amendment promotes flexibility in planning within strict limitations, without increasing overall density.

H. The Third Amendment to the Second Amended and Restated Development Agreement will not adversely affect the orderly development of property or the preservation of property valued because the amendment improves the property's campus-like environment and is consistent with surrounding R&D and office uses.

SECTION 2. Approval of Development Agreement

A. The City Council of the City of South San Francisco hereby approves the Third Amendment to the Second Amended and Restated Development Agreement with BMR Gateway of Pacific I LP, BMR Gateway of Pacific II LP, BMR Gateway of Pacific III LP, and BMR Gateway of Pacific IV LP, attached hereto as Exhibit A and incorporated herein by reference.

B. The City Council further authorizes the City Manager to execute the Third Amendment to the Second Amended and Restated Development Agreement, on behalf of the City, in substantially the form attached as Exhibit A, and to make revisions to such Agreement, subject to the approval of the City Attorney, which do not materially or substantially increase the City's obligations thereunder.

SECTION 3. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of South San Francisco hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 4. Publication and Effective Date.

Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this

Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This Ordinance shall become effective upon the later of: (a) the effective date of the text changes to the General Plan reference in Resolution ____, (b) the effective date of the repeal of the Gateway Specific Plan enacted in that same Resolution, (c) the effective date of the zoning text amendments enacted in Ordinance ____, (d) the effective date of the GOP Master Plan and GOP 4 Precise Plan amendments adopted in Resolution ____, or (e) thirty (30) days from and after the adoption of this Ordinance..

EXHIBIT A

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

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

**THIRD AMENDMENT TO
SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO
AND
BMR GATEWAY OF PACIFIC I LP, BMR GATEWAY OF PACIFIC II LP,
BMR GATEWAY OF PACIFIC III LP, AND BMR GATEWAY OF PACIFIC IV LP**

**SOUTH SAN FRANCISCO, CALIFORNIA
Gateway Business Park Master Plan Project**

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

Gateway Business Park Master Plan Project

This THIRD AMENDMENT TO SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE GATEWAY BUSINESS PARK MASTER PLAN PROJECT is dated _____, 2022 (“Third Amendment”). This Third Amendment is between BMR Gateway of Pacific I LP, formerly known as BMR-700 Gateway LP (“BMR Gateway of Pacific I”); BMR Gateway of Pacific II LP, formerly known as BMR-750, 800, 850 Gateway LP (“BMR Gateway of Pacific II”); BMR Gateway of Pacific III LP, formerly known as BMR-900 Gateway LP (“BMR Gateway of Pacific III”); and BMR Gateway of Pacific IV LP, formerly known as BMR-1000 Gateway LP (“BMR Gateway of Pacific IV”); 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 entered into a First Amendment to the Development Agreement, dated March 30, 2020, and recorded in the Official Records of San Mateo County on April 10, 2020, as Document Number 2020-032850 (“First Amendment”);
- C. WHEREAS, Owners and City entered into a Second Amendment to the Development Agreement, dated October 14, 2020, and recorded in the Official Records of San Mateo County on July 19, 2021, as Document Number 2022-107511 (“Second Amendment”);
- D. WHEREAS, the City has granted the following approvals for the Project, among others: the Gateway Business Park Master Plan, most recently amended by Resolution ____; the Phase 1 Precise Plan approved by City Council Resolution 44-2013, the Phase 2 and Phase 3 Precise Plans approved by Planning Commission Resolution 2835-2018, and the Phase 4 Precise Plan most recently amended by Resolution ____; and the City has certified the Gateway Business Park Master Plan Project Environmental Impact Report (SCH #2008062059), as supplemented by the Gateway of the Pacific 4 Density Transfer Project Supplemental Environmental Impact Report (also SCH #2008062059); and
- E. WHEREAS, in connection with the City’s amendments to entitlements for development of Phase 4 of the Gateway Business Park Master Plan Project, Owners and City again wish to amend the Development Agreement as set forth in this Third Amendment;

- F. WHEREAS, all proceedings necessary for the valid adoption and execution of this Second 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;
- G. WHEREAS, the City Council and the City Planning Commission have found that the Development Agreement, as amended by the First Amendment, Second Amendment and this Second Amendment, is consistent with the objectives, policies, general land uses, and programs specified in the South San Francisco General Plan; and
- H. WHEREAS, on _____, 2022, the City adopted Ordinance Number ____-2022 approving and adopting this Third Amendment, and such ordinance took effect as specified therein.

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. Project Description Amendment. Section 3(a) of the Development Agreement is amended as follows:

The permitted uses, the density and intensity of uses, the maximum heights, locations and total area of the proposed buildings, the development schedule, the provisions for vehicular access and parking, any reservation or dedication of land, any public improvements, facilities and services, and all environmental impact mitigation measures imposed as approval conditions for the Project shall be exclusively those provided in the Master Plan as amended (Exhibit B), the and Phase 1 Precise Plan approved by City Council Resolution 44-2013, the Phase 2 and Phase 3 Precise Plans approved by Planning Commission Resolution 2835-2018, the Phase 4 Precise Plan as amended by Resolution _____, the Gateway Business Park Master Plan Project Environmental Impact Report (SCH #2008062059), the Gateway of Pacific 4 Density Transfer Project Supplemental Environmental Impact Report (which describes the GOP 4 Density Transfer Project and which also has SCH#2008062059), this Agreement, and the applicable ordinances in effect as of the 2013 Effective Date, except as modified in this Agreement. The Project is not subject to the Gateway Specific Plan as that Plan has been repealed by City Council Resolution No. _____. The Project will be redeveloped in multiple phases. Each new phase of development will adhere to the governing Municipal Code provisions applicable to the Property as of the 2013 Effective Date (except as modified by this Agreement), as well as the development guidelines set forth in the Gateway Master Plan Development Standards, including the implementation of access, service and parking needs to support each new phase of redevelopment. During each particular redevelopment phase, each Owner will maintain existing access, service and parking needs to support existing improvements located on portions of the Property, yet to be

redeveloped during subsequent phases. Plan details for subsequent phases will be submitted to the City for appropriate review and approval, in the form of future Precise Plans.

2. Vesting Provisions Amendment. Section 5 of the Development Agreement is amended as follows:

~~Upon the City's approval of the Master Plan as amended, the Phase 1, 2 and 3 Precise Plans, the Phase 4 Precise Plans as amended, this Agreement, and approval of any future phase Precise Plans amendments thereto each such approval~~ shall be vested in each Owner and its successors and assigns for the term of this Agreement with respect to such Owner's parcel of Property, provided that the successors and assigns comply with the terms and conditions of all of the foregoing, including, but not limited to, submission of insurance certificates and bonds for the grading of the Property and construction of improvements.

3. Community Facilities District Participation Amendment. Section 11 of the Development Agreement is amended to add the following underlined text:

11. Assessments. Nothing herein shall be construed to relieve the Property from common benefit assessments levied against it and similarly situated properties by the City pursuant to and in accordance with any statutory procedure for the assessment of property to pay for infrastructure and/or services that benefit the Property. Each Owner hereby agrees to participate in the yet to be formed South San Francisco Industrial Area Community Facilities District (IA-CFD) at an annual tax rate equivalent to the lesser of no more than \$1.00 per gross project square foot on the Property or such annual tax rate that applies to similarly situated Life Sciences projects in the East of 101 Area. (Each Owner acknowledges that the name of the IA-CFD might change prior to submission to property owners for approval, and that each Owners' agreement in this paragraph will apply to the community facilities district regardless of name, as long as the rate applicable to each Owner complies with this paragraph.)

4. Transportation Demand Management Plan Amendment. Section 12(c) of the Development Agreement is amended as follows:

Transportation Demand Management Plan. Owners of any phases(s) of the Project containing any redeveloped building (other than parking facilities) for which a certificate of occupancy has been issued shall prepare an annual Transportation Demand Management (TDM) report, and submit same to City, to document the effectiveness of the TDM plan in achieving the goal of 35% alternative mode usage by employees within the Project when the Project is built out to a 1.0 FAR or less, or a graduated scale between 35% and 40% alternative mode usage ("Targeted Alternative Mode Usage") when the Project is built out at between a 1.0 and 1.25 FAR or greater. The Targeted Alternative Mode Usage will be determined as follows:

FAR

Alternative Mode Usage

| | |
|------------------------|-----|
| <1.0 | 35% |
| 1.01 – 1.12 | 38% |
| ≥1.13— 1.25 | 40% |

5. Fees Applicable to Expansion Square Footage: A new section (g) is added to Section 12 of the Development Agreement as follows:

(g) Fees Applicable to Expansion Square Footage Resulting From GOP 4 Density Transfer Project. The following fees shall be applicable to any square footage in excess of 1.25 FAR that is developed pursuant to Section 2.2 of the Master Plan, as that section was amended pursuant to the GOP 4 Density Transfer Project.

1. Citywide Transportation Fees. The Owner of GOP 4 hereby agrees that the Citywide Transportation Fee, as approved and adopted by the City Council through the adoption of Resolution 120-2020 (which took effect on November 23, 2020), shall apply to the additional square footage approved for the GOP 4 Density Transfer Project. Citywide Transportation Fee shall be determined based on the application of the formula in effect as of the time the City issues the respective building permit for Phase 4 and shall be payable prior to the issuance of such building permit.

2. Commercial Linkage Fees. The Owner of GOP 4 hereby agrees that the Commercial Linkage Impact Fee, as approved and adopted by the City Council through the adoption of Ordinance No. 1560-2018 (which took effect on November 1, 2018), shall apply to the additional square footage approved for the GOP 4 Density Transfer Project. Commercial Linkage Impact Fees shall be determined based on the application of the formula in effect as of the time the City issues the respective building permit for Phase 4 and shall be payable prior to the issuance of such building permit.

3. Library Impact Fees. The Owner of GOP 4 hereby agrees that the Library Impact Fee, as approved and adopted by the City Council through the adoption of Resolution No. 121-2020 (which took effect on November 23, 2020), shall apply to the additional square footage approved for the GOP 4 Density Transfer Project. Library Impact Fees shall be determined based on the application of the formula in effect as of the time the City issues the respective building permit for Phase 4 and shall be payable prior to the issuance of such building permit.

8. Exhibit Amendments. The exhibits to the Development Agreement are amended as follows:

- a. Exhibit B, the Gateway Business Park Master Plan, is amended to incorporate the modifications enacted by Resolution ____.

- b. Exhibit C, the Gateway Business Park Phase 1 Precise Plan is deleted and is replaced with the phrase “Exhibit C has been deleted.”
 - c. Exhibit D-2, the Gateway Business Park Master Plan Project EIR Mitigation and Monitoring Program, is amended to add the Gateway of Pacific 4 Density Transfer Project Supplemental EIR Mitigation and Monitoring Program, which imposes additional mitigation applicable to the expansion approved for the GOP 4 Density Transfer Project.
 - d. Exhibit E, Applicable City Fees, is amended to add the following text just before the heading “Exhibit E-1”. “Exhibits E-1 and E-2 reference fees and fee estimates for the Project as originally approved at an FAR of 1.25. Additional fees shall be due for any square footage in excess of 1.25 FAR that is developed pursuant to Section 2.2 of the Master Plan in the same proportionate amounts as specified in this Exhibit E for the original square footage. In addition, additional fees shall be due as set forth in Section 12(g) of the Agreement.”
9. 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 Third Amendment, this Third Amendment shall be effective and shall only create obligations for the Parties from and after the date that the ordinance approving this Third Amendment takes effect.
10. Full Force and Effect. As amended by the First Amendment, the Second Amendment, and this Third Amendment, the Development Agreement shall remain in full force and effect.
11. Counterparts. This Third 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: _____
Its: City Manager

City Clerk

APPROVED AS TO FORM:

City Attorney

OWNERS:

BMR GATEWAY OF PACIFIC I LP

BMR GATEWAY OF PACIFIC II LP

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

BMR GATEWAY OF PACIFIC III LP

BMR GATEWAY OF PACIFIC IV LP

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

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 _____)
)
County of _____)

On _____, before me, _____, a Notary Public, 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)