

**THIRD AMENDMENT
TO DISPOSITION AND DEVELOPMENT AGREEMENT**

This Third Amendment to the Disposition and Development Agreement (“**Third Amendment**”) is entered into effective as of _____, 2020 (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”) and Hisense REUS, LLC, a California limited liability company (“**Developer**”). City and Developer are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. The City of South San Francisco is the owner of certain real property located in the City of South San Francisco, California, known as County Assessor’s Parcel Numbers (“**APN**”) 012-334-130 (200 Linden Avenue), 012-334-160 (216 Baden Avenue), 012-334-040 and 012-334-030 (212 Baden Avenue), as more particularly described in Exhibit A to the DDA (the “**Property**”).

B. On September 6, 2017, the City Council adopted Resolution No. 104a-2017, approving a Disposition and Development Agreement between the City and Hisense REUS, LLC (“**DDA**”) for the development of 97 residential condominium units and approximately 6,200 square feet of commercial retail space on the Property (“**Project**”), as more specifically described in the Project entitlements.

C. On June 27, 2018, Developer and City agreed to amend the DDA and entered into the First Amendment to the DDA.

D. On September 27, 2018, Developer and City agreed to further amend the DDA and entered into the Second Amendment to the DDA.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties herein contained, the City and Developer agree as follows:

AMENDMENT TO AGREEMENT

1. **Recitals**. The foregoing recitals are true and correct and hereby incorporated herein.
2. **Defined Terms**. All capitalized terms not defined herein shall have the meanings ascribed to them in the DDA.
3. **Section 2 of Exhibit B, Memorandum of Disposition and Development Agreement**. Section 2 of Exhibit B to the DDA is hereby amended to read as follows with additions in double underline and deletions in ~~strikethrough~~:
 2. Schedule for Construction. Among other conditions, the DDA provides that, by ~~not later than within sixty (60) days following the conveyance of the Property to Developer, and in no event later than June 30, 2018~~ December 15, 2018 (unless such date is extended by mutual agreement of the Parties), Developer shall commence

construction of the Project on the Property and shall complete construction of the Project ~~within eighteen (18) months following commencement of construction~~ in no event later than December 31, 2020 (unless such date is extended by mutual agreement of the Parties or pursuant to one additional six (6) month extension by the mutual agreement of Developer and the City Manager in writing). The Project will be subject to certain maintenance obligations pursuant to the terms of the DDA and an Affordable Housing Agreement, which shall be executed by City and Developer and recorded in Official Records of San Mateo County substantially concurrently herewith.

4. **Exhibit D, Development Schedule.** Exhibit D to the DDA is hereby amended to read as follows with additions in double underline and deletions in ~~strikethrough~~:

Deadline	Obligation
60 days from DDA execution	City Council approves all entitlements for the Project
60 days from entitlements	Open Escrow
60 days from entitlements	Demo and grading permit submitted to City
60 days from entitlements	First draft of Financing Plan submitted to City
180 days from entitlements	Building permit submittal
5 days before Close of Escrow	Final Financing Plan (includes final proforma and funding sources Final Construction Contract Executed Developer to provide construction contract, evidence of insurance, performance and payment bonds, Permits Bonds, guarantees etc. payment of 1/2 permit and impact fees
Close of Escrow	10 days after City determines that CDs are 90% complete
Within 60 days following Closing Date <u>No later than December 15, 2018</u>	Developer to commence Project construction
Within 18 months following project construction commencement <u>No later than December 31, 2020 (unless such date is extended by mutual agreement of the Parties or pursuant to one additional six (6) month extension by the mutual agreement of Developer and the City Manager in writing)</u>	Developer to Complete Project Construction

5. **Enforced Delay – COVID-19.** The Parties acknowledge that, as of the Effective Date, California and San Mateo County orders and declarations (“**Pandemic Orders**”) have been issued relating to the COVID-19 pandemic. While these Pandemic Orders currently permit Project construction to continue and other pandemic-related impacts have not resulted in Project construction delay, it is difficult to predict at this time how and to what extent further Pandemic Orders or other pandemic-related impacts such as global supply chain effects on materials may affect each Party’s ability to perform its obligations under the DDA.

Therefore, the Parties acknowledge and agree that Developer is not obligated to provide notice to City pursuant to Section 11.2 of the DDA of an enforced delay event at this time. However, should further Pandemic Orders or pandemic-related impacts affect Developer’s ability to perform its obligations under the DDA, Developer shall have thirty (30) days from the date of that event to notify City of the enforced delay pursuant to Section 11.2 of the DDA and the City shall have ten (10) days to potentially reject such notice after receipt.

6. **Effect of Third Amendment.** Except as expressly modified by this Third Amendment, the DDA, First Amendment and Second Amendment shall continue in full force and effect according to its terms, and Developer and City hereby ratify and affirm all their respective rights and obligations under the DDA, including but not limited to Developer’s indemnification obligations as set forth in Section 10.1 of the DDA. In the event of any conflict between the Third Amendment and the Second or First Amendment or the DDA, the provisions of this Third Amendment shall govern.
7. **Binding Agreement.** This Third Amendment shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the parties hereto. Any reference in this Third Amendment to a specifically named party shall be deemed to apply to any successor, administrator, executor, or assign of such party who has acquired an interest in compliance with the terms of this Third Amendment or under law.
8. **Counterparts.** This Third Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute the same document.
9. **California Law.** This Third Amendment shall be governed by and interpreted in accordance with the laws of the State of California.
10. **Invalidity.** Any provision of this Third Amendment that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be deemed severed from this

Third Amendment, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof.

11. **Headings**. The headings used in this Third Amendment are for convenience only and shall be disregarded in interpreting the substantive provisions of this Third Amendment.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, this Third Amendment has been entered into by and between Developer and City as of the date and year first above written.

CITY

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

DEVELOPER:

Hisense REUS, LLC,
A California limited liability company

By: _____
Its: Managing Member

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