

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement ("First Amendment") is entered into by and between BAYSIDE AREA DEVELOPMENT, LLC (collectively known as "Developer") and the CITY OF SOUTH SAN FRANCISCO, a municipal corporation ("City") on this ____ day of _____, 2020.

RECITALS

- A. WHEREAS, Developer and City are parties to that certain Development Agreement by and between Developer and City, dated January 11, 2013, and recorded in the Official Records of San Mateo County on February 5, 2013, as Document Number 2013-019601 ("Development Agreement");
- B. WHEREAS, Developer and City wish to amend the Development Agreement as set forth in this First Amendment;
- C. WHEREAS, all proceedings necessary for the valid adoption and execution of this First 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;
- D. WHEREAS, the City Council and the City Planning Commission have found that the Development Agreement, as amended by this First Amendment, is consistent with the objectives, policies, general land uses, and programs specified in the South San Francisco General Plan; and
- E. WHEREAS, on _____, 2020 the City Council considered the proposed First Amendment and adopted Ordinance No. _____ approving and adopting this First Amendment, and such ordinance took effect 30 days later.

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. **Revised Project Description.** The first paragraph of Section 3 of the Development Agreement is hereby amended to read as follows:

2. **Project Description; Development Standards For Project**

The project to be developed on the Property pursuant to this Agreement (the "Project") shall consist of (i) ~~two (2)~~ one (1) office / research and development buildings, with five (5) floors, containing approximately 129,919 square feet each ~~with a ground floor and second story containing in the aggregate approximately~~

~~52,768 square feet of occupiable space per building and one (1) floor of partially subterranean parking accommodating approximately 66 parking spaces per building, (ii) surface a three (3) level parking garage that will accommodate approximately 156,364 parking spaces, and (iii) related improvements, all as provided in the Plan Set and as approved by the City Council. The Project, as described in this paragraph, as amended by the First Amendment, results in an increase in square footage of approximately 25,000 square feet compared to the initially approved project for 328 Roebling ("Incremental Increase").~~

2. **Bicycle and Pedestrian Impact Fees.** Developer hereby agrees that the Bicycle and Pedestrian Impact Fee, as approved and adopted by the City Council through the adoption of Ordinance No. 1539-2017 (which took effect on August 14, 2017), shall apply to the Incremental Increase. Bicycle and Pedestrian 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 the Incremental Increase, and shall be payable prior to the issuance of such building permit. Section 13 of the Original Agreement shall not be amended except to the extent necessary to give effect to this Section.
3. **Commercial Linkage Fees.** Developer 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 Incremental Increase. 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 the Incremental Increase, and shall be payable prior to the issuance of such building permit. Section 13 of the Original Agreement shall not be amended except to the extent necessary to give effect to this Section.
4. **Community Facilities District Participation.** Developer 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 328 Roebling Avenue Property or such annual tax rate that applies to similarly situated Life Sciences projects in the East of 101 Area (Owner acknowledges that the name of the IA-CFD might change prior to submission to property owners for approval, and that Developer's agreement in this paragraph will apply to the community facilities district regardless of name, as long as the rate applicable to Developer complies with this paragraph.) In the event an IA-CFD is not formed, the Property or Project shall not be subject to any additional development fee, assessment or tax, except as provided for in Sections 11, 12, and 13 of the Agreement.
5. **Effect of First Amendment.** Except as expressly modified by this First Amendment, the Development Agreement 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 Development Agreement, including but not limited to Developer's indemnification obligations as set forth in Section 14 of the Development Agreement. In the event of any conflict between the First Amendment or the Development Agreement, the provisions of this First Amendment shall govern.

6. **Binding Agreement.** This First 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 First 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 First Amendment or under law.
7. **Recordation.** The City shall record a copy of this First Amendment within ten (10) days following execution by all parties.
8. **Counterparts.** This First 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 First Amendment shall be governed by and interpreted in accordance with the laws of the State of California.
10. **Invalidity.** Any provision of this First Amendment that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be deemed severed from this First 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 First Amendment are for convenience only and shall be disregarded in interpreting the substantive provisions of this First Amendment.

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

[SIGNATURES ON THE FOLLOWING PAGE]

CITY OF SOUTH SAN FRANCISCO

DEVELOPER

Bayside Area Development, LLC,
a Delaware limited liability company

Mike Futrell, City Manager

By: _____
[NAME AND TITLE]

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
Rosa Govea Acosta, City Clerk

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