

FIFTH AMENDMENT TO AMENDED AND RESTATED EXCLUSIVE NEGOTIATING AGREEMENT

This FIFTH AMENDMENT TO AMENDED AND RESTATED EXCLUSIVE NEGOTIATING AGREEMENT (“**Fifth Amendment**”) dated for reference purposes as of January __, 2024 (“**Fifth Amendment Effective Date**”) is entered into by and between the Peninsula Health Care District, a political subdivision of the State of California (“**District**”), PMB LLC, a California limited liability company (“**PMB**”), Generations LLC, an Oregon limited liability company (“**Generations**”), and MidPen Housing Corporation, a California nonprofit public benefit corporation. PMB, Generations, and MidPen are referred to collectively herein as “**Developer**” or “**Developers.**” The District and Developer are sometimes referred to individually herein as “**Party**” and collectively as the “**Parties.**”

RECITALS

A. The District and the Developer are parties to that Amended and Restated Exclusive Negotiating Agreement, dated as of October 21, 2021, as amended by that certain First Amendment to Amended and Restated Exclusive Negotiating Agreement, dated July 22, 2022, and as amended by that certain Second Amendment to Amended and Restated Exclusive Negotiating Agreement, dated January 9, 2023 (collectively, the “**Restated Agreement**”). The Restated Agreement amended and restated the Original ENA in its entirety, established terms and provisions to ensure coordination and cooperation between the District and each Developer to negotiate a Term Sheet during the Term Sheet Phase and a Ground Lease and DDA during the DDA Phase, and memorialized other agreements of the Parties in connection with the Project. All capitalized terms used but not defined herein shall have the meanings given to them in the Restated Agreement.

B. On or about June 23, 2022, the Board adopted Resolution No. 2022-11 authorizing Developer to initiate the entitlement process with the City of Burlingame based on Developer’s revised PWC 3.0 site plan attached to Resolution No. 2022-11.

C. Pursuant to the Restated Agreement, Developer is required to prepare and submit to the District a detailed proforma and financing plan that demonstrates the financial feasibility to develop and complete the Project. On August 7, 2023, Developer submitted an updated proforma and financing plan for Developer’s revised PWC 3.0 site plan. The District is reviewing and considering the Developer’s updated proforma and financing plan. In addition to the Project’s proforma and financing plan, the Parties are in the process of negotiating key issues related to the design, development, and programming of the Project.

D. On or about August 14, 2023, the Developer exercised its thirty (30) day Extension Option Period, extending the Term Sheet Phase from August 15, 2023 to September 14, 2023 pursuant to Section 2.1.1 of the Restated Agreement.

E. On or about September 11, 2023, by letter acknowledged and agreed by the District through its Chief Executive Officer and Developer, the Parties mutually agreed to exercise their thirty (30) day extension of the Term Sheet Phase from September 14, 2023 to October 14, 2023 pursuant to Section 2 of the Third Amendment to the Restated Agreement.

F. On or about November 13, 2023, the Developer exercised its thirty (30) day Extension Option Period, extending the Term Sheet Phase from November 13, 2023 to December 13, 2023.

G. By letter dated December 11, 2023, the Parties mutually agreed to extend the Term Sheet Phase from December 13, 2023 to February 12, 2024 pursuant to Section 2(b) of the Fourth Amendment to the Restated Agreement.

H. To allow the Developer additional time to prepare the detailed proforma and financing plan and for the Parties to continue negotiating the Term Sheets, the Parties desire to further amend the Restated Agreement to extend the Term Sheet Phase, in accordance with the terms set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and approved, the District and Developer hereby mutually agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.
2. Extension of Term Sheet Phase. To provide Developer the time needed to prepare and submit a proforma and financing plan for the Project and for the Parties to negotiate the Term Sheets, Section 2.1 of the Restated Agreement is hereby amended to provide that the Term Sheet Phase shall expire on May 13, 2024. All other terms and provisions in Section 2 of the Restated Agreement shall remain in full force and effect.
 - a. Extension Option Periods. For the avoidance of doubt, the Parties agree and acknowledge that Developer has one remaining sixty (60) day Extension Option Period.
 - b. Mutual Extension. The Developer and the District may mutually agree in writing, to extend the Term Sheet Phase, by an additional ninety (90) calendar days without further amendment to the Restated Agreement. Any mutual extensions of the Term Sheet Phase shall require approval of the Board.
3. Miscellaneous.
 - a. Incorporation. This Fifth Amendment constitutes a part of the Restated Agreement and any reference to the Restated Agreement shall be deemed to include a reference to the Restated Agreement as amended by this Fifth Amendment.
 - b. Ratification. To the extent of any inconsistency between this Fifth Amendment and the Restated Agreement, the provisions contained in this Fifth Amendment shall control. As amended by this Fifth Amendment, all terms, covenants, conditions, and provisions of the Restated Agreement shall remain in full force and effect.

- c. Successors and Assigns. This Fifth Amendment shall be binding upon and inure to the benefit of the respective successors and assigns of the District and the Developer.
- d. Counterparts. This Fifth Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same document, binding on all parties hereto notwithstanding that each of the parties hereto may have signed different counterparts. This Fifth Amendment may be signed electronically via DocuSign or similar software, and delivery of pdf copies of signatures via email shall be deemed delivery of originals.
- e. Integration. This Fifth Amendment contains the entire agreement between the parties hereto with respect to the subject matter of this Fifth Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Fifth Amendment. No prior drafts of this Fifth Amendment or changes from those drafts to the executed version of this Fifth Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party hereto or any other person, and no court or other body shall consider those drafts in interpreting this Fifth Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this Fifth Amendment as of the Fifth Amendment Effective Date.

DISTRICT

PENINSULA HEALTH CARE DISTRICT,
a political subdivision of the State of California

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

DEVELOPERS

PMB LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

GENERATIONS LLC,
an Oregon limited liability company

By: _____
Name: _____
Its: _____

MIDPEN HOUSING CORPORATION,
a California nonprofit public benefit corporation

By: _____
Name: _____
Its: _____