

SECOND AMENDMENT TO AMENDED AND RESTATED EXCLUSIVE NEGOTIATING AGREEMENT

This SECOND AMENDMENT TO AMENDED AND RESTATED EXCLUSIVE NEGOTIATING AGREEMENT (“**Second Amendment**”) dated for reference purposes as of January 4, 2023 (“**Second 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 (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. Developer is in the process of preparing a detailed proforma and financing plan for Developer’s revised PWC 3.0 site plan.

D. To allow the Developer additional time to prepare the detailed proforma and financing plan, while still ensuring Developer continues to advance the Project in the interim, the parties desire to further amend the Restated Agreement to extend the Term Sheet Phase and certain milestones in the Schedule of Performance, 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, while ensuring continued advancement by Developer of the Project in the interim, Section 2.1 of the Restated Agreement is hereby amended to provide that the Term Sheet Phase shall expire on May 17, 2023. All other terms and provisions in Section 2 of the Restated Agreement shall remain in full force and effect.
3. Amendment to Schedule of Performance Completion Dates. The District agrees to extend the completion dates for Developer's submittal of certain scopes of work in the Schedule of Performance. The revised completion dates for these scopes of work are identified in Exhibit 1 to this Second Amendment. The Schedule of Performance attached to the Restated Agreement as Exhibit D is hereby deleted and replaced by Exhibit 1 hereto.
4. Miscellaneous.
 - a. Incorporation. This Second 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 Second Amendment.
 - b. Ratification. To the extent of any inconsistency between this Second Amendment and the Restated Agreement, the provisions contained in this Second Amendment shall control. As amended by this Second Amendment, all terms, covenants, conditions, and provisions of the Restated Agreement shall remain in full force and effect.
 - c. Successors and Assigns. This Second 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 Second 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 Second 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 Second Amendment contains the entire agreement between the parties hereto with respect to the subject matter of this Second Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Second Amendment. No prior drafts of this Second Amendment or changes from those drafts to the executed version of this Second 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 Second Amendment.

Exhibit 1
Amended Schedule of Performance

Exhibit 1
Schedule of Performance to Second Amendment to Amended and Restated Exclusive Negotiating Agreement for Developer's Work

Scope of Work	Completion Date
<p>Communications Protocol: In cooperation with the District, prepare a communications protocol for efficient communication with the District to keep the District regularly informed throughout the Negotiation Period. The communications protocol shall provide a meeting matrix with meeting frequency and attendance requirements, and propose a framework for keeping the District apprised of Developer communications with community stakeholders, neighboring businesses, District partners, and potential tenants for the Project.</p>	<p>Complete</p>
<p>Conceptual Developer Organizational Chart: Provide a conceptual entity organizational chart associated with Project delivery and Developer's structure and governance, including the legal and financial relationship between MidPen and the Developer, documents relating to Developer's composition, any operating agreements or formation documents regarding the business relationship between PMB and Generations (including the entities to serve as lessees and developers) and operator(s) of the Peninsula Wellness Community (such as MidPen), and the responsibilities designated to key personnel within each organization. The development team shall be responsible for management level leadership, reviewing Project progress, and assisting Developer and the District in achieving the development of the Project. The Parties acknowledge that Developer's proposal for legal organizational structure of the Project will be influenced by the final scope of the Project including any debt and equity partners.</p>	<p>Developer Submittal Complete Conceptual Developer Organizational Chart subject to ongoing discussion during Term Sheet Phase</p>
<p>Preliminary Project Schedule: Develop and submit a preliminary schedule identifying proposed Project milestones, including a critical path schedule identifying elements that have a sequential relationship and those that can be pursued concurrently.</p>	<p>Complete</p>

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<p>Community Outreach and Public Relations Plan: Prepare and submit for District review and approval a proposed community outreach and public relations plan (“Outreach and PR Plan”) that describes Developer’s proposed community outreach strategy and plan during the Negotiation Period. The Outreach and PR Plan shall include a description of Developer’s proposed public relations program, including community and stakeholder outreach, and informing the public, the Board, and applicable regulatory agencies about the Project. The Outreach and PR Plan shall also include (i) a budget for the community outreach efforts; (ii) a strategy for community and public outreach for the Project and keeping regulatory agencies apprised of the Project; (iii) a proposed schedule for presentations to community groups, stakeholders, regulatory agencies during the Negotiation Period; and (iv) a proposal for keeping the District informed during the Negotiation Period. During the Negotiation Period, Developer shall conduct various outreach efforts to communicate with, and receive input from, community stakeholders, including but not limited to, residents, business and property owners within, and adjacent to, the Site to ensure that the development of the Project reflects reasonable community interests and desires. Developer and District acknowledge that the Outreach and PR Plan and strategy may be modified as negotiations and discussions regarding the Project proceed.</p>	<p>Complete</p>
<p>Land Use Approval & CEQA Schedule: Meet with the City of Burlingame and any other appropriate agency or authority that Developer determines will have discretionary review authority over the Project as proposed by Developer. Prepare and submit to the District for review and approval a schedule for processing and obtaining all necessary land use entitlements for the Project, including any necessary design review approvals, and completing the associated environmental review under CEQA (the “Entitlement Schedule”).</p>	<p>Developer Submittal Complete Entitlement Schedule to be updated pursuant to Section 8.1 of the Restated Agreement</p>
<p>Engagement of Technical Consultants for CEQA Studies & Commencement of Work on Technical Studies. Developer shall provide written confirmation to District that Developer has: (a) engaged technical consultants to prepare technical studies required to</p>	<p>Complete</p>

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<p>support CEQA application to the City, (b) caused its consultants to commence work on those studies.</p>	
<p>Submittal of Project Applications:</p> <p>Stage 1 (CEQA Application): Submit CEQA applications and related documents identified in the Entitlement Schedule to the City of Burlingame. Submittal of CEQA applications shall be subject to Board review and approval pursuant to <u>Section 8.1</u> of the ENA.</p> <p>Stage 2 (Planning, Entitlement, Design Applications): Submit all planning, entitlement, and design review applications identified in the Entitlement Schedule to the City of Burlingame. Submittal of the foregoing applications shall be subject to Board review and approval pursuant to <u>Section 8.1</u> of the ENA.</p>	<p><u>Stage 1 (CEQA Application):</u> Complete</p> <p><u>Stage 2 (Planning, Entitlement, Design Applications):</u> February 28, 2023</p>
<p>Preliminary Due Diligence Investigation: Complete due diligence investigation of any Project or Site information provided by District or procured by Developer and issue a letter to District with any objections or required clarifications. The due diligence investigation shall include the review of a preliminary title report and any underlying documents relating to the exceptions referred to in the preliminary report, inspections, inquiries and investigations regarding the market conditions, the financial and physical condition of the Site, environmental matters, zoning and governmental compliance, financing and such other matters relating to the Site and the Project.</p>	<p>180 days from Effective Date</p> <p>The Developer has completed its Preliminary Due Diligence as contemplated under the ENA and the Schedule of Performance. The parties acknowledge that additional due diligence may be warranted as the Project progresses.</p>
<p>Healthcare Partnerships and Services: Developer agrees and acknowledges that the District will require the Project to provide significant health care services to District residents.</p> <p><u>Step 1:</u> Developer shall engage with Sutter Health (“Sutter”) to evaluate potential partnerships between Developer and Sutter regarding potential occupancy of some portion of</p>	<p><u>Step 1 Date:</u> Ongoing</p> <p><u>Step 2 Date:</u> Prior to expiration of Term Sheet Phase.</p>

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<p>the Project. Developer shall provide advance notice to District of all discussions with Sutter and shall provide a reasonable opportunity for District to participate in any such discussions. On or before the Step 1 Date, Developer shall submit to District in writing Developer's proposal for inclusion of any Sutter-affiliated uses in the Project or, alternatively, Developer's proposal for further engagement by Developer, if any, with Sutter.</p> <p><u>Step 2:</u> Developer shall host a minimum of two (2) meetings at which the Board, Developer and prospective health care provider partners and prospective users (other than Sutter), identified by Developer and the District, shall have the opportunity to continue discussions regarding the development of the Project. These introductory meetings may include presentations by Developer of its preliminary development concept and strategy for the Project and opportunity for feedback by Developer, District, prospective health care providers, and other attendees regarding Developer's proposed planning, programming, design and development of the Project.</p> <p>Developer shall participate in District and Board meetings throughout Step 1 and Step 2, as needed, to refine the Developer's development concept and strategy for the Project, to provide the Board with additional information, as necessary, regarding the programming, entitlement, and financing approach for the Project and any additional matters necessary for the Parties to proceed with negotiation of the Term Sheet</p> <p><u>Step 3:</u> Developer to submit for Board review and approval a draft exclusive negotiating agreement (or similar agreement) with its proposed partner to provide health services office uses within the proposed Center for Community Health.</p> <p><u>Step 4:</u> Provide the District written confirmation of approval of an exclusive negotiating agreement (or similar agreement) by Developer's proposed partner to provide health services office uses within the Center for Community Health.</p>	<p><u>Step 3 Date:</u> Complete</p> <p><u>Step 4 Date:</u> Within five (5) days of approval by the health services office partner.</p>
<p>Proposed HUB Programming and Square Footage. Prepare and submit for review and approval by the Board a programming plan and proposed conceptual design, including square footage for the HUB. Developer anticipates meeting regularly in the weeks prior to</p>	<p>Complete</p> <p>Proposed HUB Programming and Square Footage subject to</p>

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<p>this milestone with District staff, District consultants, and Developer's anticipated service partners to exchange information about the District's desired HUB programming.</p>	<p>continuing discussions during Term Sheet Phase</p>
<p>Preliminary Conceptual Design and Project Description. Prepare and submit for District review and approval Preliminary Conceptual Design documents and proposed Project Description that consists of drawings, plans, and other necessary documents illustrating the scale and relationship of Project components that will include, but not be limited to, a site plan, preliminary building layout and floor plans, sections and elevations, a development plan that includes the proposed land uses; program of uses; phasing plan; infrastructure plan; constructability analysis and cost estimates for the Project; and key milestones for design, development, construction and completion.</p>	<p>Complete</p>
<p>Final Conceptual Design and Project Description: Prepare and submit for District review and approval:</p> <p>(1) Final Conceptual Design documents that consist of drawings, plans, and other necessary documents illustrating the scale and relationship of Project components that will include, but not be limited to, a site plan, preliminary building layout and floor plans, sections and elevations and any other documents that Developer proposes including in the Submittal of Project Applications to the City. The Conceptual Design submittal shall include a development plan that includes the proposed land uses; program of uses; phasing plan; infrastructure plan (including analysis of existing site infrastructure and proposed improvements relating to circulation, traffic/transportation, parking); constructability analysis and cost estimates for the Project; and key milestones for design, development, construction and completion; and</p> <p>(2) Project Description that provides information regarding the proposed development of the Site, including but not limited to the Project's development program and characteristics, including the proposed number of residential units and development square footage for the hub and related components of the Project; a description of the Project's objectives; and the existing and proposed land uses on the Site.</p>	<p>Complete</p>

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<p>Project Economics: Prepare and submit for District review:</p> <p>(1) a detailed proforma, and financing plan that demonstrates the financial feasibility to develop and complete the Project. The pro forma shall include all financial considerations and requirements including sources of funds and method of calculating returns to the Developer and ground lease revenues and cash flow participation to the District, as well as projected revenues to the Developer and the District. Market assumptions, including absorption and rents shall be documented in a market study, and the basis for all financial assumptions shall be sourced and explained in a narrative supporting the financial analysis; and</p> <p>(2) an implementation strategy that includes (i) Developer's organizational plan, marketing program, and public benefit plan, and (ii) an overview of how the Project will commence, function, manage risk, and raise capital, based on preliminary assessments of infrastructure cost, phasing, environmental issues, market analysis, economic and financial modeling, and other technical studies.</p> <p>The District reserves the right to request reasonable additional information and data from Developer necessary for the review and evaluation of Developer's proforma, financing plan, and implementation strategy. Developer agrees to provide such additional information or data as requested in a timely manner.</p>	<p>February 22, 2023</p> <p>Project Economics to be updated throughout the Term Sheet Phase</p>
<p>Project Development Schedule: Prepare and submit for District review a Project Development Schedule identifying milestones for detailed design, development, and construction of the Project. The Project Development Schedule shall include financing milestones; submittal, processing, and approval of implementing City approvals (for example, subdivision maps, design review, etc.); Project phasing, commencement and completion of infrastructure; commencement and completion of Project buildings and associated improvements; and commencement of operations within the Project. The Project Development Schedule shall include submittal dates, District review times, and review and approval timelines for any approving agency, utility, or similar body. Developer shall</p>	<p>30 days after Submittal of Project Applications (Planning/Entitlement/Design Application)</p>

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regularly update the Project Development Schedule to reflect milestone dates set forth in the Entitlement Schedule.	
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