



City of South San Francisco

P.O. Box 711 (City Hall,
400 Grand Avenue)
South San Francisco, CA

Ordinance: ORD 1522-2016

File Number: 16-214

Enactment Number: ORD 1522-2016

**MOTION TO WAIVE READING AND ADOPT AN ORDINANCE
ADOPTING A DEVELOPMENT AGREEMENT FOR THE
DEVELOPMENT OF A 6.1 ACRE SITE FOR THE 475 ECCLES
AVENUE PROJECT IN THE BUSINESS AND TECHNOLOGY
PARK ZONING DISTRICT.**

WHEREAS, BMR-475 Eccles Avenue LLC (“Applicant”) owns property consisting of approximately six and one-tenth (6.1) acres located at 475 Eccles Avenue of the City of South San Francisco, San Mateo County, California (“Project Site”); and

WHEREAS, Applicant desires to develop the 475 Eccles Avenue Office/Research and Development Campus Project (“Project”) with an office/research and development (“R&D”) campus and recreational open space uses; and

WHEREAS, Applicant seeks approval of Use Permit, Design Review, Alternative Landscape Plan and a Transportation Demand Management (“TDM”) Plan, which would authorize the construction of an office/R&D development at an FAR of 1.0 with up to a total of 262,287 square feet; and

WHEREAS, as part of its application, the Applicant has sought approval of a Development Agreement, which would clarify and obligate several project features and mitigation measures, including payment of existing fees (such as the East of 101 Traffic Impact Fee, Oyster Point Grade Overpass Contribution Fee, East of 101 Sewer Impact Fee, Sewer Capacity Fee, General Plan Maintenance Fee, Childcare Impact Fee, and Public Safety Impact Fee), and certain other fees (including a Transit Station Enhancement Fee and Park-in-Lieu Fee); and

WHEREAS, approval of the Applicant’s proposal is considered a “project” for purposes of the California Environmental Quality Act, Pub. Resources Code, §§ 21000, *et seq.* (“CEQA”); and

WHEREAS, by separate Resolution, the City Council adopted an Environmental Impact Report (“EIR”), Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations on July 27, 2016 in accordance with the provisions of CEQA and the CEQA Guidelines, which analyzed the potential environmental impacts of the Project; and

WHEREAS, the Planning Commission for the City of South San Francisco held a lawfully noticed public hearing on March 3, 2016 to solicit public comment and consider the EIR and the proposed entitlements and take public testimony, at the conclusion of which, the Planning Commission recommended that the City Council adopt the EIR, conditionally approved the entitlements subject to the City Council’s review of the Project, and recommended that the City Council approve the Development Agreement; and

WHEREAS, the City Council held duly noticed public hearings on May 25, 2016 and on July 27,

2016 to consider the Project entitlements and Development Agreement, and take public testimony.

NOW, THEREFORE, 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 and General Plan EIR; the South San Francisco Municipal Code; the Project applications; the 475 Eccles Avenue Project Plans, as prepared by CAS Architects, Inc., dated September 19, 2014; the Preliminary Transportation Demand Management Plan, as prepared by Fehr & Peers, dated February 2016; the 475 Eccles Avenue EIR, including the Draft and Final EIR and all appendices thereto; all site plans, and all reports, minutes, and public testimony submitted as part of the Planning Commission's meeting held on March 3, 2016; all reports, minutes, and public testimony submitted as part of the City Council's duly noticed public hearings on May 25, 2016 and on July 27, 2016; 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:

The foregoing Recitals are true and correct and made a part of this Ordinance.

The proposed Development Agreement (attached as Exhibit A), is incorporated by reference and made a part of this Ordinance, as if set forth fully herein.

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, Sailesh Mehra.

The Development Agreement and proposed Project are consistent with the objectives, policies, general land uses and programs specified in the General Plan by developing a high technology campus in the East of 101 Area, allowing for employee-serving services, and requiring the preparation of a TDM Plan to reduce congestion impacts. Consistent with these policies, the 475 Eccles Avenue Project provides for the phased construction of an office/R&D development at an FAR of 1.0, as well as employee-serving amenities pursuant to a preliminary Transportation Demand Management Plan, subject to the terms of the Project entitlements including the proposed Development Agreement. Approval of the Project, including the proposed Development Agreement, will not impede achievement of General Plan policies.

The City Council has independently reviewed the proposed Development Agreement, the General Plan, the South San Francisco Municipal Code, and applicable state and federal law, including Government Code section 65864, et seq., and has determined that the proposed Development Agreement complies with all applicable zoning, subdivision, and building regulations and with the General Plan. The development contemplated in the Project and Development Agreement is consistent with the Zoning standards. This finding is based upon all evidence in the Record as a whole, including, but not limited to: the City Council's

dent review of these documents, oral and written evidence submitted at the public hearings on the Project, including advice and recommendations from City staff.

The proposed Development Agreement for the Project states its specific duration. This finding is based upon all evidence in the Record as a whole, including, but not limited to: the City Council's independent review of the proposed Development Agreement and its determination that Section 2 of the Development Agreement states that the Development Agreement shall expire twelve (12) years from the effective date of this Ordinance, unless (and then only to the extent) such date is extended pursuant to the terms in Section 2 of the Development Agreement.

The proposed Development Agreement incorporates the permitted uses, density and intensity of use for the property subject thereto, as reflected in the proposed Project (P11-0101), Environmental Impact Report (EIR12-0001), Use Permit (UP11-0011), Design Review (DR11-0039), Transportation Demand Management Plan (TDM11-0001) and Development Agreement (DA13-0001). This finding is based upon all evidence in the Record as a whole, including, but not limited to, the City Council's independent review of the proposed Development Agreement and its determination that the Development Agreement sets forth the Project approvals, development standards, and the documents constituting the Project.

The proposed Development Agreement states the maximum permitted height and size of proposed buildings on the property subject thereto. This finding is based upon all evidence in the Record as a whole, including, but not limited to, the City Council's independent review of the proposed Development Agreement and its determination that the Development Agreement sets forth and incorporates the documents which state the maximum permitted height and size of buildings.

The proposed Development Agreement states specific provisions for reservation or dedication of land for public purposes. This finding is based on all evidence in the Record as a whole, including, but not limited to the City Council's independent review of the Development Agreement and its determination that the Development Agreement sets forth and incorporates the documents that identify any such reservations or dedications of land.

SECTION 2. Approval of Development Agreement.

The City Council of the City of South San Francisco hereby approves the Development Agreement with BMR - 475 Eccles Avenue LLC, attached hereto as Exhibit A and incorporated herein by reference.

The City Council further authorizes the City Manager to execute the 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 thirty (30) days from and after its adoption.

* * * * *

Introduced at a regular meeting of the City Council of the City of South San Francisco, held the 27th day of July, 2016

At a meeting of the City Council on 8/10/2016, a motion was made by Richard Garbarino, seconded by Liza Normandy, that this Ordinance be adopted. The motion passed.

Yes: 5 Councilmember Normandy, Councilmember Garbarino, Councilmember Matsumoto, Vice Mayor Gupta, and Mayor Addiego

Attest by 

Krista Martinelli



Mark Addiego

DEVELOPMENT AGREEMENT**[Life Science Campus at 475 Eccles Avenue]**

This DEVELOPMENT AGREEMENT FOR THE LIFE SCIENCE CAMPUS AT 475 ECCLES AVENUE is dated _____, 2016 ("Agreement"), between BMR-475 ECCLES AVENUE LLC, A DELAWARE LIMITED LIABILITY COMPANY ("Owner"), 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. Owner and the City are collectively referred to herein as "Parties."

RECITALS

- A. WHEREAS, California Government Code ("Government Code") Sections 65864 through 65869.5 authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property or on behalf of those persons having same; and
- B. WHEREAS, pursuant to Government Code Section 65865, the City has adopted rules and regulations, embodied in Chapter 19.60 of the South San Francisco Municipal Code ("Municipal Code" or "SSFMC"), establishing procedures and requirements for adoption and execution of development agreements; and
- C. WHEREAS, this Agreement concerns property consisting of a six and one-tenth (6.1) acre site located at 475 Eccles Avenue, in the East of 101 Area Plan as shown and more particularly described in Exhibit A, attached (the "Property"); and
- D. WHEREAS, Owner has a legal or equitable interest in the Property subject to this Agreement; and
- E. WHEREAS, Owner has submitted a development proposal to the City that would permit the development of the Property as depicted in the [Project Documents], prepared by CAS Architects, Reed Associates and Kier & Wright attached hereto as Exhibit B; and
- F. WHEREAS, prior to or concurrently with approval of this Agreement, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the City Council, by Resolution No. [____], certified a final environmental impact report covering the Project ("EIR") and adopted written findings, Conditions of Project Approval ("Conditions of Approval") and a Mitigation Monitoring and Reporting Program ("MMRP"), which Conditions of Approval and MMRP are attached as Exhibit C); and
- G. WHEREAS, prior to or concurrently with approval of this Agreement, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the City Council, by Resolution No. [____], approved a conditional use permit to allow Owner to increase the base floor area ratio ("FAR") from five tenths (0.5) to one (1.0) based on an approved "Incentives Program" as provided in Municipal Code Section 20.110.003; and

- H. WHEREAS, all proceedings necessary for the valid adoption and execution of this Agreement have taken place in accordance with Government Code Sections 65864 through 65869.5, the California Environmental Quality Act (“CEQA”), and Chapter 19.60 of the Municipal Code; and
- I. WHEREAS, the City Council and the Planning Commission have found that this Agreement is consistent with the objectives, policies, general land uses and programs specified in the South San Francisco General Plan as adopted on October 13, 1999 and as amended from time to time; and
- J. WHEREAS, on _____, 2016, the City Council adopted Ordinance No. _____ approving and adopting this Agreement and the Ordinance thereafter took effect on _____, 2016.

AGREEMENT

NOW, THEREFORE, the Parties, pursuant to the authority contained in Government Code Sections 65864 through 65869.5 and Chapter 19.60 of the Municipal Code and in consideration of the mutual covenants and agreements contained herein, agree as follows:

1. Effective Date

Pursuant to Section 19.60.140 of the Municipal Code, notwithstanding the fact that the City Council adopts an ordinance approving this Agreement, this Agreement shall be effective and shall only create obligations for the Parties from and after the date that the ordinance approving this Agreement takes effect (“Effective Date”).

2. Duration

This Agreement shall expire twelve (12) years from the Effective Date, but in no event later than December 31, 2028. Notwithstanding the foregoing, if litigation against the Owner (or any of its officers, agents, employees, contractors, representatives or consultants) to which the City also is a party should delay implementation or construction on the Property of the “Project” (as defined in Section 3 below), the expiration date of this Agreement shall be extended for a period equal to the length of time from the time the summons and complaint is served on the defendant(s) until the judgment entered by the court is final, and not subject to appeal; provided, however, that the total amount of time for which the expiration date shall be extended as a result of such litigation shall not exceed five (5) years.

3. Project Description; Development Standards For Project

The project to be developed on the Property pursuant to this Agreement (the “Project”) shall consist of the phased replacement of existing buildings on the 6.1-acre project site and construction of two new buildings and one parking structure, in multiple phases from 2016 to 2028, and exterior landscaping and driveways, and other related improvements, to create a connected, pedestrian-friendly campus-style development, as more particularly described in the Project Documents and as approved by the City Council.

- (a) 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 City Council resolutions required to implement the Project, the EIR dated [_____], this Agreement, and the applicable ordinances in effect as of the Effective Date, except as modified in this Agreement. The Project will be redeveloped in one or two phases, at Owner's election. Each phase of development will adhere to the governing Municipal Code provisions applicable to the Property as of the Effective Date (except as modified by this Agreement), as well as the Conditions of Approval and the MMRP set forth in Exhibit C hereto.
- (b) Subject to Owner's fulfillment of its obligations under this Agreement, upon the Effective Date of this Agreement, the City hereby grants to Owner a vested right to develop and construct on the Property all the improvements for the Project authorized by, and in accordance with, the terms of this Agreement and the applicable ordinances in effect as of the Effective Date.
- (c) Upon such grant of right, no future amendments to the City General Plan, the City Zoning Code, the Municipal Code, or other City ordinances, policies or regulations in effect as of the Effective Date shall apply to the Project, except such future modifications that are not in conflict with and do not prevent implementation of the Project; provided, however, that nothing in this Agreement shall prevent or preclude the City from adopting any land use regulations or amendments expressly permitted herein or otherwise required by State or Federal Law.
- (d) Owner shall cause the Project to be submitted for certification pursuant to the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System of the U.S. Green Building Council or other industry equivalent agency. Owner shall use good faith efforts to achieve a "Silver" (or higher) rating, pursuant to the LEED Green Building Rating System; provided, however, that Owner shall not be in default under this Agreement if, notwithstanding Owner's good faith efforts, the Project does not receive a "Silver" (or higher) rating.

4. Permits for Project

All required permits for the Project ("Project Permits") shall comply with all applicable Uniform Codes, the Municipal Code in effect as of the Effective Date, CEQA requirements (including any required mitigation measures) and Federal and State Laws.

5. Vesting of Approvals

Upon the City's approval of this Agreement, the approval shall be vested in Owner and its successors and assigns for the term of this Agreement, provided that the successors and assigns comply with the terms and conditions of the Agreement, including, but not limited to, submission of insurance certificates and bonds for the grading of the Property and construction of improvements.

6. Cooperation Between Parties in Implementation of this Agreement

It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance with the terms of this Agreement. Accordingly, Owner and the City shall proceed in a reasonable and timely manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the terms of this Agreement. The City shall proceed in an expeditious manner to complete all actions required for the development of the Project, including, but not limited to, the following:

- (a) Scheduling all required public hearings by the City Council and City Planning Commission; and
- (b) Processing and checking all maps, plans, permits, building plans and specifications and other plans relating to development of the Property filed by Owner or its nominee, successor or assign as necessary for development of the Property, and inspecting and providing acceptance of or comments on work by Owner that requires acceptance or approval by the City.

Owner, in a timely manner, shall provide the City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause its planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents.

7. Acquisition of Other Property; Eminent Domain

In order to facilitate and insure development of the Project in accordance with the City Council's approval, the City may assist Owner, at Owner's request and at Owner's sole cost and expense, in acquiring any easements or properties necessary for the satisfaction and completion of any off-site components of the Project required by the City to be constructed or obtained by Owner in the City's approval of the Project, in the event Owner is unable to acquire such easements or properties or is unable to secure the necessary agreements with the applicable property owners for such easements or properties. Owner expressly acknowledges that the City is under no obligation to use its power of Eminent Domain.

8. Maintenance Obligations on Property

All of the Property subject to this Agreement shall be maintained by Owner or its successors in perpetuity in accordance with City requirements to prevent accumulation of litter and trash, to keep weeds abated, to provide erosion control, and to comply with other requirements set forth in the Municipal Code, subject to City approval as permitted or required by the Municipal Code.

- (a) If Owner subdivides the property or otherwise transfers ownership of a parcel or building in the Project to any person or entity such that the Owner, or Owner's member, partner, parent, or subsidiary, no longer owns a majority interest in a parcel or building in the Project, Owner shall first establish an Owner's Association and submit Conditions, Covenants and Restrictions ("CC&Rs") to the City for review and approval by the City Attorney not to be unreasonably withheld, conditioned or delayed. Said CC&Rs shall satisfy the requirements of Section 19.36.040 of the Municipal Code.
- (b) Any provisions of said CC&Rs governing the Project relating to the maintenance obligations under this section shall be enforceable by the City.

9. New Taxes

Any subsequently enacted City-wide taxes shall apply to the Property, provided that: (i) the application of such taxes to the Property is prospective; and (ii) the application of such taxes would not prevent development in accordance with this Agreement.

10. 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.

11. Additional Conditions

Owner shall comply with all of the following requirements:

- (a) **Fees.** Owner shall not be responsible for any fees imposed by the City in connection with the development and construction of the Project, except as outlined in Exhibit D attached hereto and incorporated herein. No fee requirements (other than those identified herein) imposed by the City on or after the Effective Date and no changes to existing fee requirements (except those currently subject to periodic adjustments as specified in the adopting or implementing resolutions and ordinances) that occurred on or after the Effective Date, shall apply to the Project. Any application, processing, administrative, legal and inspection fees that are revised during the term of this Agreement shall apply to the Project provided that (i) such fees have general applicability; (ii) the

application of such fees to the Property is prospective; and (iii) the application of such fees would not prevent development in accordance with this Agreement.

- (b) **Transportation Demand Management Plan.** Owner 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

The TDM report will be prepared by an independent consultant, retained by City with the approval of Owner (which approval shall not be unreasonably withheld or delayed) and paid for by Owner, which consultant will work in concert with Owner's TDM coordinator. The TDM report will include a determination of historical employee commute methods, which information shall be obtained by survey of all employees working in the redeveloped buildings on the Property. All non-responses to the employee commute survey will be counted as a drive alone trip. TDM monitoring shall be required and conducted pursuant to South San Francisco Municipal Code, Chapter 20.400, as that Chapter may be revised, amended, or reorganized from time to time.

- 1) TDM Reports: The initial TDM report for each redeveloped building on the Property will be submitted two (2) years after the granting of a certificate of occupancy with respect to the building, and this requirement will apply to all of the redeveloped buildings on the Property except the parking facility. The second and all later reports with respect to each building shall be included in an annual comprehensive TDM report submitted to City covering all of the redeveloped buildings on the Property which are submitting their second or later TDM reports.
- 2) Report Requirements: The goal of the TDM program is to encourage alternative mode usage, as defined in Chapter 20.400 of the South San Francisco Municipal Code. The initial TDM report shall either: (1) state that the applicable property has achieved the Targeted Alternative Mode Usage, based on the number of employees in the redeveloped buildings at the time, providing supporting statistics and analysis to establish attainment of the goal; or (2) state that the applicable property has not achieved the Targeted Alternative Mode Usage, providing an explanation of how and why the goal has not been reached, and a description of additional measures that will be adopted in the coming year to attain the Targeted Alternative Mode Usage.
- 3) Penalty for Non-Compliance: If after the initial TDM report, subsequent annual reports indicate that, in spite of the changes in the TDM plan, the Targeted Alternative Mode Usage is still not being achieved, or if Owner fails to submit such a TDM report at the times described above, City may assess Owner a penalty in the amount of Fifteen Thousand Dollars (\$15,000.00) per year for each percentage point that the actual alternative mode usage is below the Targeted Alternative Mode Usage goal.

- i. In determining whether a financial penalty is appropriate, City may consider whether Owner has made a good faith effort to meet the TDM goals.
 - ii. If City determines that Owner has made a good faith effort to meet the TDM goals but a penalty is still imposed, and such penalty is imposed within the first three (3) years of the TDM plan (commencing with the first year in which a penalty could be imposed), such penalty sums, in the City's sole discretion, may be used by Owner toward the implementation of the TDM plan instead of being paid to City. If the penalty is used to implement the TDM Plan, an Implementation Plan shall be reviewed and approved by the City prior to expending any penalty funds.
 - iii. Notwithstanding the foregoing, the amount of any penalty shall bear the same relationship to the maximum penalty as the completed construction to which the penalty applies bears to the maximum amount of square feet of Office, Commercial, Retail and Research and Development use permitted to be constructed on the Property. For example, if there is 200,000 square feet of completed construction on the Property included within the TDM report with respect to which the penalty is imposed, the penalty would be determined by multiplying Fifteen Thousand Dollars (\$15,000.00) times a fraction, the numerator of which is 200,000 square feet and the denominator of which is the maximum amount of square feet of building construction, excluding parking facilities, permitted on the Property; this amount would then be multiplied by the number of percentage points that the actual alternative mode usage is below the Targeted Alternative Mode Usage goal.
 - iv. The provisions of this section are incorporated as Conditions of Approval for the Project and shall be included in the approved TDM for the Project.
- (c) **EIR.** The Parties will adhere to the Conditions of Approval for the Project and the Mitigations which result from the EIR and MMRP. Entitlement review for future Project phases will be limited in scope, so long as consistent with the EIR and the Project Documents.
- (d) **Climate Action Plan.** The Project shall comply with the *City of South San Francisco Climate Action Plan Adopted February 13, 2014* (the "CAP"). The applicable measures from the CAP are as follows:
- 1) Measure 2.1, Action 5 (provide conduit for future electric vehicle charging installations);

- 2) Measure 3.4, Action 1 (encourage high-albedo surfaces, as identified in voluntary CALGreen standards)
- 3) Measure 4.1, Action 2 (requiring construction of new nonresidential conditioned space 5,000 square feet or more to comply with one of the following standards: (i) Meet a minimum of 50% of modeled building electricity needs with on-site renewable energy sources; (ii) participate in a power purchase agreement to offset a minimum of 50% of modeled building electricity use; (iii) comply with CALGreen Tier 2 energy efficiency requirements to exceed mandatory efficiency requirements by 20% or more.)

To comply with this Measure 4.1, Action 2, the Project must demonstrate that it is projected to achieve the CAP target of a 50% or 20% reduction (or offset) below the energy demand that would result if the Project were built under the assumptions used in the CAP's Adjusted Business As Usual (ABAU) projections.

- 4) Measure 4.1, Action 3 (install conduit to accommodate wiring for solar); and
- 5) Measure 6.1, Action 2 (Revitalize implementation and enforcement of the Water Efficient Landscape Ordinance by undertaking one of the following: (i) establishing a variable-speed pump exchange for water features; (ii) limiting turf area in commercial and large multi-family projects; (iii) restricting hours of irrigation to occur between 3:00 a.m. and two hours after sunrise; (iv) installing irrigation controllers with rain sensors; (v) landscaping with native, water-efficient plants; (vi) installing drip irrigation systems; (vii) reducing impervious surfaces.

12. Indemnity

Owner agrees to indemnify, defend (with counsel selected by the City subject to the reasonable approval of Owner) and hold harmless the City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by Owner, or any actions or inactions of Owner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Owner shall have no indemnification obligation with respect to gross negligence or willful misconduct of the City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any public improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement agreement or maintenance bond).

13. Interests of Other Owners

Owner has no knowledge of any reason why Owner, and any other persons holding legal or equitable interests in the Property as of the Effective Date, will not be bound by this Agreement.

14. Assignment

- (a) Right to Assign. Owner may at any time or from time to time transfer its right, title or interest in or to all or any portion of the Property. In accordance with Government Code Section 65868.5, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to Owner. As a condition precedent to any such transfer, Owner shall require the transferee to acknowledge in writing that transferee has been informed, understands and agrees that the burdens and benefits under this Agreement relating to such transferred property shall be binding upon and inure to the benefit of the transferee.
- (b) Notice of Assignment or Transfer. No transfer, sale or assignment of Owner's rights, interests and obligations under this Agreement shall occur without prior written notice to the City and approval by the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed. The City Manager shall consider and decide the matter within ten (10) days after Owner's notice, provided all necessary documents, certifications and other information evidencing the ability of the transferee's ability to perform under this Agreement, are provided to the City Manager.
- (c) Exception for Notice. Notwithstanding Section 14(b), Owner may at any time, upon notice to the City but without the necessity of any approval by the City, transfer the Property or any part thereof and all or any part of Owner's rights, interests and obligations under this Agreement to: (i) any subsidiary, affiliate, parent or other entity which controls, is controlled by or is under common control with Owner, (ii) any member or partner of Owner or any subsidiary, parent or affiliate of any such member or partner, or (iii) any successor or successors to Owner by merger, consolidation, non-bankruptcy reorganization or government action. As used in this subsection, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through the ownership of voting securities, partnership interest, contracts (other than those that transfer Owner's interest in the property to a third party not specifically identified in this subsection) or otherwise.
- (d) Release Upon Transfer. Upon the transfer, sale, or assignment of all of Owner's rights, interests and obligations under this Agreement pursuant to Section 14(a), Section 14(b) or Section 14(c) of this Agreement, Owner shall be released from the obligations under this Agreement, with respect to the Property, or portion thereof, transferred, sold, or assigned, arising subsequent to the date of the City Manager's approval of such transfer, sale, or assignment or the effective date of

such transfer, sale or assignment, whichever occurs later; provided, however, that if any transferee, purchaser or assignee approved by the City Manager expressly assumes any right, interest or obligation of Owner under this Agreement, Owner shall be released with respect to such rights, interests and assumed obligations. In any event, the transferee, purchaser or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications and other necessary information prior to City Manager approval, where such approval is required as set forth in Section 14(b), above.

- (e) Owner's Right to Retain Specified Rights or Obligations. Notwithstanding Section 14(a) and Section 14(c), Owner may withhold from a sale, transfer or assignment of this Agreement certain rights, interests and/or obligations which Owner shall retain, provided that Owner specifies such rights, interests and/or obligations in a written document to be appended to or maintained with this Agreement and recorded with the San Mateo County Recorder prior to or concurrently with the sale, transfer or assignment. Owner's purchaser, transferee or assignee shall then have no interest in or obligations for such retained rights, interests and obligations and this Agreement shall remain applicable to Owner with respect to such retained rights, interests and/or obligations.
- (f) Time for Notice. Within ten (10) days of the date escrow closes on any such transfer, Owner shall notify the City in writing of the name and address of the transferee. Said notice shall include a statement as to the obligations, including any mitigation measures, fees, improvements or other conditions of approval, assumed by the transferee. Any transfer which does not comply with the notice requirements of this Section and Section 14(b) shall not release the Owner from its obligations to the City under this Agreement until such time as the City is provided notice in accordance with Section 14(b).

15. Insurance

- (a) Commercial General Liability Insurance. At all times that Owner is constructing any portion or phase of the Project, or any improvement related to any portion or phase of the Project, Owner shall maintain in effect a policy of commercial general liability insurance with a per-occurrence combined single limit of not less than [ten million dollars (\$10,000,000.00)]. With the exception of workers' compensation and employer's liability, this insurance shall include City as an additional insured to the extent liability is caused by work or operations performed by or on behalf of Owner.
- (b) Workers Compensation Insurance. At all times that Owner is constructing any portion or phase of the Project, or any improvement related to any portion or phase of the Project, Owner shall maintain Worker's Compensation insurance for all persons employed by Owner for work at the Project site. Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Owner agrees to indemnify the City for

any damage resulting from Owner's failure to maintain any such required insurance.

- (c) Evidence of Insurance. Prior to commencement of any construction of any portion or phase of the Project, or any improvement related to any portion or phase of the Project, Owner shall furnish the City satisfactory evidence of the insurance required in subsections (a) and (b).
- 1) In the event of a reduction (below the limits required in this Agreement) or cancellation in coverage, or an adverse material change in insurance coverage and limits required in this Agreement, Owner shall, prior to such reduction, cancellation or change, provide at least ten (10) days' prior written notice to the City, regardless of any notification by the applicable insurer. If the City discovers that the policies have been cancelled or reduced below the limits required in this Agreement and no notice has been provided by either insurer or Owner, said failure shall constitute a material breach of this Agreement.
 - 2) In the event of a reduction (below the limits required by this Agreement) or cancellation in coverage, Owner shall have five (5) days in which to provide evidence of the required coverage during which time no persons shall enter the Property to construct improvements thereon, including construction activities related to the landscaping and common improvements. Additionally, no persons not employed by existing tenants shall enter the Property to perform such work until such time as the City receives evidence of substitute coverage.
 - 3) If Owner fails to obtain substitute coverage within ten (10) days, the City may obtain, but is not required to obtain, substitute coverage and charge Owner the cost of such coverage plus an administrative fee equal to ten percent (10%) of the premium for said coverage.
- (d) The insurance shall include the City, its elective and appointive boards, commissions, officers, agents, employees and representatives as additional insureds on the policies.

16. Covenants Run With the Land

The terms of this Agreement are legislative in nature, and apply to the Property as regulatory ordinances. During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, and any interest therein, whether by sale, operation of law or other manner, and they shall inure to the benefit of the Parties and their respective successors.

17. Conflict With State or Federal Law

In the event that State or Federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified (in accordance with Section 18 set forth below) or suspended as may be necessary to comply with such State or Federal laws or regulations. Notwithstanding the foregoing, Owner shall have the right to challenge, at its sole cost, in a court of competent jurisdiction, the law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, this Agreement shall remain unmodified and in full force and effect.

18. Procedure for Modification Because of Conflict With State or Federal Laws

In the event that State or Federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such State or Federal law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with Chapter 19.60 of the Municipal Code.

19. Periodic Review

- (a) During the term of this Agreement, the City shall conduct “annual” and/or “special” reviews of Owner’s good faith compliance with the terms and conditions of this Agreement in accordance with the procedures set forth in Chapter 19.60 of the Municipal Code. The City may recover reasonable costs incurred in conducting said review, including staff time expended and reasonable attorneys’ fees.
- (b) At least five (5) calendar days prior to any hearing on any annual or special review, the City shall mail Owner a copy of all staff reports and, to the extent practical, related exhibits. Owner shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council or, if the matter is referred to the Planning Commission, then before said Commission. Following completion of any annual or special review, the City shall give Owner a written Notice of Action, which Notice shall include a determination, based upon information known or made known to the City Council or the City’s Planning Director as of the date of such review, whether Owner is in default under this Agreement and, if so, the alleged nature of the default, a reasonable period to cure such default, and suggested or potential actions that the City may take if such default is not cured by Owner.

20. Amendment or Cancellation of Agreement

This Agreement may be further amended or terminated only in writing and in the manner set forth in Government Code Sections 65865.1, 65867.5, 65868, 65868.5 and Chapter 19.60 of the Municipal Code.

21. Agreement is Entire Agreement

This Agreement and all exhibits attached hereto or incorporated herein contain the sole and entire agreement between the Parties concerning Owner's entitlements to develop the Property. The Parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof, except representations set forth herein, and each Party acknowledges that it has relied on its own judgment in entering this Agreement. The Parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other.

22. Events of Default

Failure by either Party to perform any material term or provision of this Agreement shall constitute a default. Owner shall also specifically be in default under this Agreement upon the happening of one or more of the following events:

- (a) If a warranty, representation or statement made or furnished by Owner to the City is false or proves to have been false in any material respect when it was made; or,
- (b) A finding and determination by the City made following an annual or special review under the procedure provided for in Government Code Section 65865.1 and Chapter 19.60 of the Municipal Code that, upon the basis of substantial evidence, Owner has not complied in good faith with the terms and conditions of this Agreement; or,
- (c) Owner fails to fulfill any of its obligations set forth in this Agreement and such failure continues beyond any applicable cure period provided in this Agreement. This provision shall not be interpreted to create a cure period for any event of default where such cure period is not specifically provided for in this Agreement.

23. Procedure Upon Default

- (a) Upon the occurrence of an event of default, either Party may terminate or modify this Agreement in accordance with the provisions of Government Code Section 65865.1 and of Chapter 19.60 of the Municipal Code, provided Section 23(e) has been complied with.
- (b) The City shall not be deemed to have waived any claim of defect in Owner's performance if, on annual or special review, the City does not propose to terminate this Agreement.

- (c) No waiver or failure by the City or Owner to enforce any provision of this Agreement shall be deemed to be a waiver of any provision of this Agreement or of any subsequent breach of the same or any other provision.
- (d) Any actions for breach of this Agreement shall be decided in accordance with California law. The remedy for breach of this Agreement shall be limited to specific performance and attorneys' fees as provided in Section 24(a).
- (e) The non-defaulting Party shall give the defaulting Party written notice of any default under this Agreement, and the defaulting Party shall have thirty (30) days after the date of the notice to cure the default or to reasonably commence the procedures or actions needed to cure the default; provided, however, that if such default is not capable of being cured within such thirty (30) day period, the defaulting Party shall have such additional time to cure as is reasonably necessary.

24. Attorneys' Fees and Costs

- (a) Action by Party. If legal action by either Party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorneys' fees and court costs.
- (b) Action by Third Party. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project approvals, the Parties shall cooperate in defending such action. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse the City for all reasonable court costs and attorneys' fees expended by the City in defense of any such action or other proceeding or payable to any prevailing plaintiff/petitioner.

25. Severability

If any material term or condition of this Agreement is for any reason held by a final judgment of a court of competent jurisdiction to be invalid, and if the same constitutes a material change in the consideration for this Agreement, then either Party may elect in writing to invalidate this entire Agreement, and thereafter this entire Agreement shall be deemed null and void and of no further force or effect following such election.

26. No Third Parties Benefited

No person other than the City, Owner, or their respective successors is intended to or shall have any right or claim under this Agreement, this Agreement being for the sole benefit and protection of the Parties and their respective successors. Similarly, no amendment or waiver of any provision of this Agreement shall require the consent or acknowledgment of any person not a party or successor to this Agreement.

27. Binding Effect of Agreement

The provisions of this Agreement shall bind and inure to the benefit of the Parties originally named herein and their respective successors and assigns.

28. Relationship of Parties

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Owner and that Owner is not an agent of the City. The Parties do not intend to create a partnership, joint venture or any other joint business relationship by this Agreement. The City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Owner joint venturers or partners. Neither Owner nor any of Owner's agents or contractors are or shall be considered to be agents of the City in connection with the performance of Owner's obligations under this Agreement.

29. Bankruptcy

The obligations of this Agreement shall not be dischargeable in bankruptcy.

30. Mortgagee Protection: Certain Rights of Cure

- (a) Mortgagee Protection. This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement or a memorandum of this Agreement is recorded with the San Mateo County Recorder, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, invalidate, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees ("Mortgagees"), who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.
- (b) Mortgagee Not Obligated. No foreclosing Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of any improvements required by this Agreement, or to pay for or guarantee construction or completion thereof. The City, upon receipt of a written request therefor from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Owner under this Agreement, provided that all defaults by Owner hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee thereafter shall comply with all of the provisions of this Agreement.
- (c) Notice of Default to Mortgagee. If the City receives notice from a Mortgagee requesting a copy of any notice of default given to Owner hereunder and specifying the address for service thereof, the City shall deliver to the Mortgagee

concurrently with service thereof to Owner, all notices given to Owner describing all claims by the City that Owner has defaulted hereunder. If the City determines that Owner is in noncompliance with this Agreement, the City also shall serve notice of noncompliance on the Mortgagee, concurrently with service thereof on Owner. Until such time as the lien of the Mortgage has been extinguished, the City shall:

- 1) Take no action to terminate this Agreement or exercise any other remedy under this Agreement, unless the Mortgagee shall fail, within thirty (30) days of receipt of the notice of default or notice of noncompliance, to cure or remedy or commence to cure or remedy such default or noncompliance; provided, however, that if such default or noncompliance is of a nature that cannot be remedied by the Mortgagee or is of a nature that can only be remedied by the Mortgagee after such Mortgagee has obtained possession of and title to the Property, by deed-in-lieu of foreclosure or by foreclosure or other appropriate proceedings, then such default or noncompliance shall be deemed to be remedied by the Mortgagee if, within ninety (90) days after receiving the notice of default or notice of noncompliance from the City, (i) the Mortgagee shall have acquired title to and possession of the Property, by deed-in-lieu of foreclosure, or shall have commenced foreclosure or other appropriate proceedings, and (ii) the Mortgagee diligently prosecutes any such foreclosure or other proceedings to completion.
 - 2) If the Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings by reason of any process or injunction issued by any court or by reason of any action taken by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Owner, then the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition.
- (d) Performance by Mortgagee. Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Agreement, to do any act or thing required of Owner under this Agreement, and to do any act or thing not in violation of this Agreement, that may be necessary or proper in order to prevent termination of this Agreement. All things so done and performed by a Mortgagee shall be as effective to prevent a termination of this Agreement as the same would have been if done and performed by Owner instead of by the Mortgagee. No action or inaction by a Mortgagee pursuant to this Agreement shall relieve Owner of its obligations under this Agreement.
- (e) Mortgagee's Consent to Modifications. Subject to the sentence immediately following, the City shall not consent to any amendment or modification of this Agreement unless Owner provides the City with written evidence of each Mortgagee's consent, which consent shall not be unreasonably withheld, to the amendment or modification of this Agreement being sought. Each Mortgagee

shall be deemed to have consented to such amendment or modification if it does not object to the City by written notice given to the City within thirty (30) days from the date written notice of such amendment or modification is given by the City or Owner to the Mortgagee, reasonable evidence of the delivery of which notice shall be provided to the City if given only by Owner.

31. Estoppel Certificate

Either Party from time to time may deliver written notice to the other Party requesting written certification that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and constitutes a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and monetary amount, if any, of the default. A Party receiving a request hereunder shall endeavor to execute and return the certificate within ten (10) days after receipt thereof, and shall in all events execute and return the certificate within thirty (30) days after receipt thereof. However, a failure to return a certificate within ten (10) days shall not be deemed a default of the Party's obligations under this Agreement and no cause of action shall arise based on the failure of a Party to execute such certificate within ten (10) days. The City Manager shall have the right to execute the certificates requested by Owner hereunder. The City acknowledges that a certificate hereunder may be relied upon by permitted transferees and Mortgagees. At the request of Owner, the certificates provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form, and Owner shall have the right to record the certificate for the affected portion of the Property at its cost.

32. Force Majeure

Notwithstanding anything to the contrary contained herein, either Party shall be excused for the period of any delay in the performance of any of its obligations hereunder, except the payment of money, when prevented or delayed from so doing by certain causes beyond its control, including, and limited to, major weather differences from the normal weather conditions for the South San Francisco area, war, acts of God or of the public enemy, fires, explosions, floods, earthquakes, invasions by non-United States armed forces, failure of transportation due to no fault of the Parties, unavailability of equipment, supplies, materials or labor when such unavailability occurs despite the applicable Party's good faith efforts to obtain same (good faith includes the present and actual ability to pay market rates for said equipment, materials, supplies and labor), strikes of employees other than Owner's, freight embargoes, sabotage, riots, acts of terrorism and acts of the government (other than City) and/or a material adverse change in the financial and commercial real estate demand markets, conditions which indicate an insufficient economic return, including resource scarcities that make construction prohibitively expensive and/or the inability of Owner to obtain funds for the Project, due to the financial marketplace, (other than Owner's inability to obtain financing related to Owner's financial condition) and are beyond the control or without the fault of the party

claiming an extension of time. The Party claiming such extension of time to perform shall send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

33. Rules of Construction and Miscellaneous Terms

- (a) The singular includes the plural; the masculine gender includes the feminine; “shall” is mandatory, “may” is permissive.
- (b) Time is and shall be of the essence in this Agreement.
- (c) Where a Party consists of more than one person, each such person shall be jointly and severally liable for the performance of such Party’s obligation hereunder.
- (d) The captions in this Agreement are for convenience only, are not a part of this Agreement and do not in any way limit or amplify the provisions thereof.
- (e) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California in effect on the date thereof.
- (f) This Agreement may be executed in multiple originals, each of which is deemed an original, and may be signed in counterparts.

34. Exhibits

Exhibits to this Agreement, including the following, are all incorporated into this Agreement by reference, as if set forth fully herein.

Exhibit A — Legal Description and Map of Property

Exhibit B — Project Documents

Exhibit C — Conditions of Approval and EIR Mitigation and Monitoring Program

Exhibit D — Applicable City Laws/Fees

35. Notices

All notices required or provided for under this Agreement shall be in writing and delivered in person (to include delivery by courier) or sent by certified mail, postage prepaid, return receipt requested or by overnight delivery service. Notices to the City shall be addressed as follows:

City Clerk
P.O. Box 711
South San Francisco, CA 94083

Notices to Owner shall be addressed as follows:

BMR-475 Eccles Avenue LLC
17190 Bernardo Center Drive
San Diego, CA 92128
Attn: Vice President, Real Estate Legal

A party may change its address for notice by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the day and year first above written.

CITY:

CITY OF SOUTH SAN FRANCISCO

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

OWNER:

BMR-475 ECCLES AVENUE LLC

By: _____
Its: _____

Exhibit A

Legal Description and Map of Property

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

LOT 8, BLOCK 15, AS DESIGNATED ON THE MAP ENTITLED "SOUTH SAN FRANCISCO INDUSTRIAL PARK", UNIT NO. 3-B, SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 24, 1965, IN BOOK 62 OF MAPS AT PAGES 3, 4, 5, 6, 7 AND 8.

PARCEL TWO:

A PORTION OF LOT 7, BLOCK 15, AS DESIGNATED ON THE MAP ENTITLED "SOUTH SAN FRANCISCO INDUSTRIAL PARK, UNIT NO. 3-B, SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 24, 1965, IN BOOK 62 OF MAPS AT PAGES 3, 4, 5, 6, 7 AND 8. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED OF TRUST FROM WILLIAM VOLKER & COMPANY OF SAN FRANCISCO, INCORPORATED, TO CROCKER CITIZENS NATIONAL BANK, RECORDED IN BOOK 4722, OF OFFICIAL RECORDS, PAGE 366, SAN MATEO COUNTY RECORDS; THENCE FROM A TANGENT WHICH BEARS 77° 40' 40" W, ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 363,74 FEET, THROUGH A CENTRAL ANGLE OF 0°19'42" AN ARC DISTANCE OF 2.08 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, 561.00 FEET FROM THE NORTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG SAID PARALLEL LINE, N 39° 56' 25" W, 13.95 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID PARCEL, THENCE ALONG SAID SOUTHWESTERLY LINE, S 47° 00' 31' E, 15.03 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM SAID PARCELS ONE AND TWO WATER RIGHTS AS CONVEYED TO CALIFORNIA WATER SERVICE COMPANY, A CALIFORNIA CORPORATION BY DEED RECORDED MAY 14, 1965, BOOK 4952, PAGE 630, OFFICIAL RECORDS.

PARCEL THREE:

AN EASEMENT FOR ACCESS TO LIGHT AND AIR OVER PORTION OF LOT 25, BLOCK 15, AS SHOWN ON THE MAP ENTITLED "SOUTH SAN FRANCISCO INDUSTRIAL PARK UNIT NO. 3", FILED FOR RECORD ON JULY 11, 1958, IN VOLUME 49 OF MAPS AT PAGES 25 TO 28 INCLUSIVE, RECORDS OF SAN MATEO COUNTY, CALIFORNIA, AS GRANTED IN DEED FROM CABOT, CABOT AND FORBES CALIFORNIA PROPERTIES, INC. TO WILLIAM VOLKER AND COMPANY OF SAN FRANCISCO, INC., RECORDED APRIL 1, 1964 IN BOOK 4679, PAGE 528, OFFICIAL RECORDS, AND AS SHOWN ON MAP OF SOUTH SAN FRANCISCO INDUSTRIAL PARK NO. 3-B HEREIN MENTIONED.

PARCEL FOUR:

AN EASEMENT FOR RAILROAD PURPOSES OVER A PORTION OF LOT 9, IN BLOCK 15, AS DESIGNATED ON THE MAP ENTITLED "SOUTH SAN FRANCISCO INDUSTRIAL PARK, UNIT NO. 3-B, SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 24, 1965, IN BOOK 62 OF MAPS AT PAGES 3, 4, 5, 6, 7 AND 8. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT 9; THENCE FROM SAID POINT OF BEGINNING N 50° 03' 35" E 200.00 FEET; THENCE S 39° 51' 25" E 5.00 FEET; THENCE S 50° 03' 35" W 20.00 FEET; THENCE S 43° 21' 35" W 60.00 FEET; THENCE S 37° 25' 16" W 123.40 FEET; THENCE N 39° 56' 25" W 39.00 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT IS APPURTENANT TO PARCEL ONE ABOVE, AND WAS CREATED BY THAT CERTAIN DEED RECORDED AUGUST 31, 1964 IN BOOK 4788, PAGE 71, OFFICIAL RECORDS OF SAN MATEO COUNTY, CALIFORNIA.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR VEHICULAR TRAFFIC OVER THE FOLLOWING DESCRIBED PORTION OF SAID LOT 7:

BEGINNING AT THE MOST EASTERLY CORNER OF LOT 7, BLOCK 15, AS SHOWN ON THAT CERTAIN MAP ENTITLED "SOUTH SAN FRANCISCO INDUSTRIAL PARK UNIT NO. 3-B", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, IN BOOK 62 OF MAPS, AT PAGE(S) 3 THROUGH 8, SAID POINT OF COMMENCEMENT BEING THE COMMON CORNER OF LOT 7 AND LOT 8, BLOCK 15, ON THE NORTHWESTERLY LINE OF ECCLES AVENUE AS SAID LOTS AND AVENUE IS SHOWN UPON SAID MAP; THENCE NORTH 47° 00' 31" WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT 7, A DISTANCE OF 203.63 FEET; THENCE SOUTH 2° 00' 31" EAST 28.28 FEET TO A LINE PARALLEL WITH AND DISTANT 20.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLES FROM SAID NORTHEASTERLY LINE; THENCE SOUTH 47° 00' 31" EAST ALONG SAID PARALLEL LINE 88.00 FEET; THENCE SOUTH 17° 00' 31" EAST 73.33 FEET TO THE SAID NORTHWESTERLY LINE OF ECCLES AVENUE; THENCE ALONG A CURVE TO THE RIGHT FROM A TANGENT BEARING OF NORTH 67° 24' 15" EAST, HAVING A RADIUS OF 363.74 FEET, A CENTRAL ANGLE OF 19° 16' 26" AND AN ARC LENGTH OF 65.22 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF LOT 7, BLOCK 15, AS DESIGNATED ON SAID MAP DESCRIBED IN THAT CERTAIN QUITCLAIM DEED, DATED July 28, 1964, FROM CABOT, CABOT & FORBES CALIFORNIA PROPERTIES, INC. TO WILLIAM VOLKER & COMPANY OF SAN FRANCISCO INC., RECORDED AUGUST 31, 1964, IN BOOK 4788, PAGE 73, OFFICIAL RECORDS OF THE COUNTY OF SAN MATEO.

SAID EASEMENT TO BE APPURTENANT TO AND USED JOINTLY BY THE OWNERS OF LOTS 7 AND 8, BLOCK 15, THEIR HEIRS, SUCCESSORS AND ASSIGNS.

Exhibit B

Project Documents

Exhibit C

Conditions of Approval and EIR Mitigation and Monitoring Program

Exhibit D

Applicable City Laws/Fees

Development Agreement, by and between
the City of South San Francisco and BioMed Realty Trust, LLC

EXHIBIT D – APPLICABLE LAWS/FEEES

1. CURRENT SOUTH SAN FRANCISCO LAWS

Developer shall comply with the following City regulations and provisions applicable to the Property as of the Effective Date (except as modified by this Agreement).

1.1 **South San Francisco General Plan.** The Developer will develop the Project in a manner consistent with the objectives, policies, general land uses and programs specified in the South San Francisco General Plan, as adopted on October 13, 1999 and as amended from time to time.

1.2 **East of 101 Area Plan.** The Developer will develop the Project in a manner consistent with the objectives, policies, general land uses and programs specified in the South San Francisco East of 101 Area Plan, as adopted in July, 1994.

1.3 **South San Francisco Municipal Code.** The Developer shall construct the Project in a manner consistent with the South San Francisco Municipal Code provisions, as applicable to the Project as of the Effective Date (except as modified by this Agreement).

2. FEES, TAXES, EXACTIONS, DEDICATION OBLIGATIONS, AND ASSESSMENTS

Developer agrees that Developer shall be responsible for the payment of the following fees, charges, exactions, taxes, and assessments (collectively, “Assessments”). From time to time, the City may update, revise, or change its Assessments. Further, 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. Except as indicated below, the amount paid for a particular Assessment, shall be the amount owed, based on the calculation or formula in place at the time payment is due, as specified below.

2.1 **Administrative/Processing Fees.** The Developer shall pay the applicable application, processing, administrative, legal and inspection fees and charges, as currently adopted pursuant to City’s Master Fee Schedule and required by the City for processing of land use entitlements, including without limitation, General Plan amendments, zoning changes, precise plans, development agreements, conditional use permits, variances, transportation demand management plans, tentative subdivision maps, parcel maps, lot line adjustments, general plan maintenance fee, demolition permits, and building permits.

2.2 Impact Fees (Existing Fees). Except as modified below, existing impact fees shall be paid for net new square footage at the rates and at the times prescribed in the resolution(s) or ordinance(s) adopting and implementing the fees.

2.2.1 East of 101 Traffic Impact Fee (Resolution 84-2007). East of 101 Traffic Impact fees shall be paid for each Phase of the Project, in accordance with the resolution adopted by the City Council at their meeting of May 23, 2007, and shall be determined based on the application of the formula in effect at the time the City issues each building permit, and shall be payable prior to the issuance of such building permit.

2.2.2 Oyster Point Grade Overpass Contribution Fee (Resolutions 102-96 & 152-96). Oyster Point Grade Overpass Contribution fees shall be paid for each Phase of the Project, and shall be determined by the City Engineer, based on the application of the formula in effect at the time the City issues each building permit, and shall be payable prior the issuance of such building permit for each phase.

The fee will be calculated upon reviewing the information shown on the applicant's construction plans and the latest Engineering News Record San Francisco Construction Cost Index at the time of payment. The Engineering News Record San Francisco construction cost index figure contained in the Oyster Point Grade Overpass Contribution fee calculation is revised each month to reflect local inflation changes in the construction industry.

2.2.3 East of 101 Sewer Impact Fee (Resolution 97-2002). The City of South San Francisco has identified the need to investigate the condition and capacity of the sewer system within the East of 101 area. The existing sewer collection system was originally designed many years ago to accommodate warehouse and industrial use and is now proposed to accommodate uses, such as offices and biotech facilities, with a much greater sewage flow. These additional flows, plus groundwater infiltration into the existing sewers, due to ground settlement and the age of the system, have resulted in pumping and collection capacity constraints.

The Developer shall pay the East of 101 Sewer Impact Fee, as adopted by the City Council at their meeting of October 23, 2002. Sewer Impact fees shall be paid for each Phase of the Project, and shall be determined based on the application of the formula in effect at the time the City issues each building permit, and shall be payable prior to the issuance of such building permit. The East of 101 Sewer Impact Fee is determined to be \$4.25 per net new square foot of development.

2.2.4 Child Care Impact Fee (SSFMC, ch. 20.310; Ordinance 1301-2001). Prior to receiving a Building Permit for each Phase of the Project, the Owner shall pay the City's Childcare Fee, as described in South San Francisco Municipal Code Chapter 20.310.

2.2.5 Public Safety Impact Fee. (Resolution 97-2012) Prior to receiving a building permit for each Phase of the Project, the Developer shall pay the Public Safety Impact Fee, as set forth in Resolution No. 97-2012, adopted on December 10, 2012 to assist the City's Fire Department and Police Department with funding the acquisition and maintenance of Police

and Fire Department vehicles, apparatus, equipment, and similar needs for the provision of public safety services.

2.2.6 Sewer Capacity Charge. (Resolution 39-2010) Prior to receiving a building permit for Tenant Improvements in each Phase of the Project, the Developer shall pay the Sewer Capacity Charge, as set forth in Resolution No. 39-2010.

2.2.7 General Plan Maintenance Fee (Resolution 74-2007).

2.3 Other Exactions.

2.3.1 Park-in-Lieu Fee. The City is evaluating a “Park In-Lieu Fee” to support the creation of additional public open space in lieu of requiring that applicants avail one-half an acre per 1,000 new employees, to the public in the East of 101 area. Owner shall pay a Park In-Lieu Fee of \$4.78 per square foot of development, excluding parking structures. The fee payable may be reduced if the City adopts such a Park In-Lieu Fee applicable to developments in the East of 101 area similar to the Life Science Campus at 475 Eccles Avenue Project and the amount owed per square foot under that Park In-Lieu Fee is less than \$4.78 per square foot in which case Owner shall pay the amount set forth in the Park In-Lieu Fee applicable to developments in the East of 101 area, rather than the \$4.78 per square foot fee. Owner shall receive a credit to offset a portion of the Park In-Lieu Fee, for development of private open space created within the Life Science Campus at 475 Eccles Avenue Project. Owner’s credit shall be identical to the credit, if any, allowed under the Park In-Lieu Fee program, if implemented, except that (i) in no case, shall owner receive a credit offsetting less than 25% of Owner’s required fee, or more than 50% of Owner’s required fee; and (ii) in no case shall zoning or building code required open areas, including but not limited to the ten-percent landscaping requirement (SSFMC, § 20.300.007(F)(1)(a)) and setbacks, be counted towards any offsetting credit. Owner shall pay the Park In-Lieu Fee once per phase, upon issuance of the first tenant improvement permit for each phase, based upon the total square footage approved for development for that phase.

2.3.2 Transit Station or Ferry Terminal Enhancement Contribution. Owner shall pay an in-lieu fee to be used for enhancing, enlarging, repairing, restoring, renovating, remodeling, redecorating, maintaining, and/or refurbishing the Caltrain Station located at 590 Dubuque Avenue, the Oyster Point Ferry terminal and/or their associated facilities. The in-lieu fee shall be in the amount of one dollar per square foot of building area excluding parking structures for each phase of development and shall be payable in two (2) equal installments per phase. One-half (1/2) of the in-lieu fee shall be payable substantially concurrently with, but not later than, the issuance of the building permit for the shell of the building, and one-half (1/2) of the in-lieu fee shall be payable prior to the issuance of a Certificate of Occupancy for the shell of the building.

2.4 User Fees.

2.4.1 Sewer Service Charges (assessed as part of property tax bill)

2.4.2 Stormwater Charges (assessed as part of property tax bill)

3. BUSINESS LICENSE TAX MODIFICATIONS

In the event that the City's business license tax is modified and duly approved by voters, and any subsequent tax modifications become applicable to the properties on the Project during the term of this Agreement, Developer shall be responsible to pay the applicable business license tax amounts, as modified.

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