

## **FOURTH AMENDMENT TO AMENDED AND RESTATED EXCLUSIVE NEGOTIATING AGREEMENT**

This FOURTH AMENDMENT TO AMENDED AND RESTATED EXCLUSIVE NEGOTIATING AGREEMENT (“**Fourth Amendment**”) dated for reference purposes as of October \_\_, 2023 (“**Fourth Amendment Effective Date**”) is entered into by and between the Peninsula Health Care District, a political subdivision of the State of California (“**District**”), PMB LLC, a California limited liability company (“**PMB**”), Generations LLC, an Oregon limited liability company (“**Generations**”), and MidPen Housing Corporation, a California nonprofit public benefit corporation. PMB, Generations, and MidPen are referred to collectively herein as “**Developer**” or “**Developers.**” The District and Developer are sometimes referred to individually herein as “**Party**” and collectively as the “**Parties.**”

### **RECITALS**

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

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

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

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

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

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

## **AGREEMENT**

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

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.
2. Extension of Term Sheet Phase. To provide Developer the time needed to prepare and submit a proforma and financing plan for the Project and for the Parties to negotiate the Term Sheets, Section 2.1 of the Restated Agreement is hereby amended to provide that the Term Sheet Phase shall expire on November 13, 2023. All other terms and provisions in Section 2 of the Restated Agreement shall remain in full force and effect.
  - a. Extension Option Periods. For the avoidance of doubt, the Parties agree and acknowledge that Developer has one remaining sixty (60) day Extension Option Period and one remaining thirty (30) day Extension Option Period.
  - b. Mutual Extension. The Developer and the District may mutually agree in writing, to extend the Term Sheet Phase, by an additional sixty (60) calendar days without further amendment to the Restated Agreement. The sixty (60) day mutual extension set forth in this Section 2(b) shall be in addition to the Parties' mutual extension set forth in Section 2 of the Third Amendment that was exercised by the Parties on or about September 11, 2023 as described in Recital E above. Any mutual extensions of the Term Sheet Phase shall require approval of the Board.
3. Miscellaneous.
  - a. Incorporation. This Fourth 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 Fourth Amendment.
  - b. Ratification. To the extent of any inconsistency between this Fourth Amendment and the Restated Agreement, the provisions contained in this Fourth Amendment shall control. As amended by this Fourth Amendment, all terms, covenants, conditions, and provisions of the Restated Agreement shall remain in full force and effect.
  - c. Successors and Assigns. This Fourth 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 Fourth 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 Fourth 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 Fourth Amendment contains the entire agreement between the parties hereto with respect to the subject matter of this Fourth Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Fourth Amendment. No prior drafts of this Fourth Amendment or changes from those drafts to the executed version of this Fourth 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 Fourth Amendment.

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

**DISTRICT**

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

By: [Signature]  
Name: Anna M. Pulido  
Its: Chief Executive Officer

By: [Signature]  
Name: BRUCE CARROLL  
Its: CHAIRMAN

**DEVELOPERS**

PMB LLC,  
a California limited liability company

By: [Signature]  
Name: Jake Rohe  
Its: President

GENERATIONS LLC,  
an Oregon limited liability company

By: [Signature]  
Name: Alexander J. ...  
Its: Authorized Agent

MIDPEN HOUSING CORPORATION,  
a California nonprofit public benefit corporation

DocuSigned by:  
By: Matt Franklin  
Name: Matthew O. Franklin  
Its: President/Chief Executive Officer