

EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT (“**Agreement**”) dated for reference purposes as of July 1, 2018 (“**Effective Date**”) is entered into by and between the Peninsula Health Care District, a political subdivision of the State of California (“**District**”), and PMB LLC, a California limited liability company (“**PMB**”) and Generations LLC, an Oregon limited liability company (“**Generations**”). PMB and Generations are referred to collectively herein as “**Developer**”. The District and Developer are sometimes referred to individually herein as “**Party**” and collectively as the “**Parties**”.

RECITALS

A. The District owns approximately 6.84 acres of property located between Mills-Peninsula Medical Center and Marco Polo Way in the City of Burlingame (“**City**”) as generally depicted on the diagram attached hereto as Exhibit A-1 (the “**District Site**”).

B. Community Gatepath (“**Gatepath**”) owns 1.15 acres adjacent to the District Site as generally depicted on Exhibit A-2 (“**Gatepath Property**”). The Burlingame School District (“**School District**”) owns 0.33 acres located adjacent to the District Site as generally depicted on Exhibit A-3 (“**School District Property**”). The District is negotiating for the possible acquisition of the Gatepath Property and the School District Property by the District so that they may be developed together with the District Property. The District Site, Gatepath Property, and School District Property are collectively referred to herein as the “**Site**”.

C. On March 17, 2017, the District issued a Request for Proposals (“**RFP**”) from parties interested in (i) entering into a long-term ground lease and developing the Site, in coordination with the District as the property owner, with a project that is generally anticipated to include approximately 400 units of senior housing; 100,000 square feet of senior support services such as rehabilitation and therapy; 250,000 square feet of professional office, research, and conference space; 35,000 square feet of hub, flex space, and community dining; a 30,000 square foot Community Gatepath facility; 15,000 square feet of related amenities; and associated parking and infrastructure improvements (“**Peninsula Wellness Community**” or “**Project**”), (ii) assisting the District in achieving the highest and best use of the Site as developed in a manner that will allow the Site to be used for the wellness and health care needs of the community, and (iii) achieving a reasonable return to the District, in the District’s judgment, in light of the District’s community wellness and health care objectives. The Parties acknowledge and agree that, depending upon Developer’s proposal, and upon District’s review and approval, of the Gatepath / School District Decision as set forth in Section 8.2 below, the definition of the Project and the Site shall automatically be revised, as applicable, to reflect such Gatepath / School District Decision.

D. The District has submitted applications to the City for approval of a master plan to establish zoning and development standards for the Project (“**PWC Master Plan**”). On January 6, 2017, the City issued a Notice of Preparation of an environmental impact report pursuant to the California Environmental Quality Act (“**CEQA**”) for the Project.

E. In response to the RFP, Developer submitted a written project proposal on May 19, 2017. A summary of the Proposal and the concept plan for the Project is attached hereto as Exhibit B and incorporated herein by this reference (“**Developer’s Proposal**”).

F. On September 28, 2017, after considering the Developer’s Proposal and the other proposals the District received in response to the RFP, and after conducting interviews with the parties who submitted the proposals, the Board of Directors for the District (“**Board**”) made a determination that the Developer’s Proposal met the requirements of the RFP, and authorized the negotiation of an exclusive negotiation agreement with Developer to develop, construct, and operate the Project.

G. The District and Developer desire to enter into this Agreement for the purposes of establishing an exclusive negotiating period during which the Parties intend to conduct planning activities for the development of the Project on the Site, negotiate a Project description and a non-binding term sheet (“**Term Sheet**”), and, if successful in negotiating the Term Sheet, thereafter to negotiate a ground lease and disposition and development agreement (“**DDA**”) for the Site to be entered into by and between the District and a joint venture entity to be formed by PMB and Generations and which shall include PMB and Generations as members and be controlled by PMB and Generations (“**Joint Venture Entity**”) as master lessee and developer of the Project. The definition of “controlled by” for purposes of this Recital G, including as it may affect Developer’s right to assign this Agreement, shall be determined during the Term Sheet Phase (as defined below in Section 3.1), subject to the approval of each Party in its sole and absolute discretion, but shall, at a minimum and without limitation, mean that PMB and Generations shall jointly: (i) have power, directly or indirectly, to direct or cause the direction of management and policies of the Joint Venture Entity; and (ii) be responsible for all day-to-day activities, administration, and decision-making of the Joint Venture Entity in connection with this Agreement and the Project.

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:

AGREEMENT

1. Exclusive Right to Negotiate; Good Faith Negotiations; Representatives.

1.1 Exclusive Right. The Parties agree and acknowledge that, for the duration of the Negotiation Period (as defined in Section 2), the District shall negotiate exclusively with Developer in accordance with the terms of this Agreement for the preparation of a Term Sheet and DDA. The District agrees not to solicit any other proposals or negotiate with any party other than Developer with respect to the subject of the negotiations set forth herein.

1.2 Good Faith Negotiations. The District and Developer agree to negotiate the terms of the Term Sheet and related transaction documents for the Project, including the DDA and ground lease(s), diligently and in good faith, and shall follow reasonable negotiation procedures, including meetings, telephone calls, and correspondence. Notwithstanding the foregoing, the

Parties acknowledge and agree that (i) it is possible the Parties may not be able to reach a mutually acceptable agreement that achieves the Parties' respective objectives, including but not limited to a reasonable return to the District, in the District's judgment, in light of the District's community wellness and health care objectives, and (ii) in the event the Parties are unable to reach a mutually acceptable agreement this Agreement shall terminate in accordance with the terms hereof.

1.3 District and Developer Representatives. Developer has designated the following representatives to negotiate agreements with the District: Jake Rohe, Partner and SVP Development of PMB, and Chip Gabriel, CEO of Generations, and their respective designees. The District has designated the following representatives to negotiate agreements with the Developer: District CEO, Cheryl Fama, and her designees, and the Board.

2. Negotiation Period. The "**Negotiation Period**" shall consist of two (2) phases: (i) the Term Sheet Phase, and (ii) the DDA Phase, each as defined in this Section 2.

2.1 Term Sheet Phase. The first phase of the Negotiation Period (the "**Term Sheet Phase**"), shall commence on the Effective Date and expire three hundred and ninety (390) days thereafter unless extended as provided in this Section 2. During the Term Sheet Phase, Developer shall complete and submit to the District scopes of work for each component of Developer's work (together, "**Developer's Work**") as set forth in the schedule of performance attached hereto as Exhibit C and incorporated herein by reference ("**Schedule of Performance**"). Each component of Developer's Work shall be delivered to the District by Developer on or before the applicable completion date identified in the Schedule of Performance. Concurrent with Developer's performance of its obligations during the Term Sheet Phase, the Parties shall work together in good faith to negotiate and present to the Board for consideration and approval on or before the expiration of the Term Sheet Phase, a mutually acceptable Term Sheet addressing the matters described in Section 3. Developer shall have the right, in Developer's sole and absolute discretion, to elect to extend the time for performance for any component of the Developer's Work set forth in the Schedule of Performance by written notice to District, provided that each such extension shall be for a period of sixty (60) days (each, an "**Extension Option Period**") and there shall be no more than two (2) Extension Option Periods during the Term Sheet Phase. If Developer elects to exercise any Extension Option Period, then the effect of such exercise shall be to extend (i) the applicable component in the Schedule of Performance, (ii) all subsequent components, and (iii) the then current expiration date of the Term Sheet Phase by the Extension Option Period. If the Term Sheet Phase, as the same may be extended by Developer, expires without the Parties reaching agreement in writing on a Term Sheet, the Negotiation Period and this Agreement shall terminate automatically unless the Parties, each in their sole and absolute discretion, mutually agree in writing to amend this Agreement to further extend the Term Sheet Phase. Upon the termination of this Agreement due to expiration of the Term Sheet Phase without the Parties reaching agreement on a Term Sheet, the Performance Deposit (as defined in Section 7) shall be returned to Developer so long as Developer is not in default, and neither Party shall have any further rights or obligations under this Agreement, except as otherwise expressly provided herein.

2.2 DDA Phase. If the Parties reach agreement on a mutually acceptable Term Sheet prior to expiration of the Term Sheet Phase, as the Term Sheet Phase may be extended pursuant

to Section 2.1, the Negotiation Period shall be extended automatically to include the second phase of the Negotiation Period (“**DDA Phase**”). The DDA Phase shall commence on the date the Board approves the Term Sheet and shall expire two hundred and seventy (270) days thereafter. During the DDA Phase, the Parties shall work together in good faith to negotiate and present to the Board for consideration and approval, on or before the expiration of the DDA Phase, a DDA incorporating the terms set forth in the Term Sheet. If the Parties have not executed a DDA prior to the expiration of the DDA Phase, either Party may terminate this Agreement upon ten (10) business days’ written notice to the other Party, the Performance Deposit shall be retained by the District unless the District is in default (in which case the Performance Deposit shall be refunded to Developer pursuant to Section 11.2 below), and neither Party shall have any further rights or obligations under this Agreement, except as otherwise provided herein. If a DDA is executed by the District and Developer, this Agreement shall terminate upon such execution of the DDA, and all rights and obligations of the Parties shall be as set forth in the executed DDA, except as otherwise expressly provided herein.

3. Terms to Be Negotiated. On or before the expiration of the Term Sheet Phase, as the same may be extended pursuant to Section 2.1, the Parties shall work together in good faith to negotiate a Term Sheet that shall include, without limitation, the following matters:

3.1. The formation, subject to the Parties’ respective approvals in their sole and absolute discretion, of a Joint Venture Entity and/or affiliates or subsidiaries to serve as master developer and/or master ground lessee for the Project or portions thereof, including potentially by condominiumization, subdivision, or such similar structure as may be proposed by Developer.

3.2. General terms and conditions of the master ground lease(s), including the structure and amounts of master ground lease payments, profit participation to be paid by Developer to the District, limitations on transfer, subleasing, and remedies, subdivision and/or common interest development formation, and conditions precedent to the District’s execution thereof.

3.3. Schedule of performance, including milestones for Developer’s application and processing of post-master plan approvals (design review, etc.), phasing of development, and Developer’s commencement and completion of buildings, infrastructure, and improvements.

3.4. Developer’s financing, construction, and operations plan, methods of financing the construction, installation, and long-term maintenance of buildings, infrastructure, and improvements.

3.5. Requirements for Developer to reimburse third party and consultant costs incurred by the District in connection with the review and processing of the DDA, land use entitlements, and permit applications.

3.6. Depending on the Gatepath / School District Decision (as defined in Section 8.2 below), strategy for the completion of any Gatepath Site and/or School District Site transaction and integration of Gatepath Site and/or School District Site into the Project.

3.7. Timing and conditions precedent to the District's execution of ground leases for the Project.

3.8. Framework and process for the review and approval of master plan design guidelines and individual building design and architecture plans submitted by Developer to the District.

3.9. Developer obligations relating to mitigation measures, conditions of approval, and other exactions imposed by the City or other agencies in connection with the development and operation of the Project.

3.10. Performance and completion security, indemnity and insurance requirements, and remedies in the event of failure of conditions precedent and/or default at various stages by the parties, including the amount of liquidated damages and deposits required to secure performance of Developer obligations.

3.11. Ownership of plans, drawings, and specifications prepared by or on behalf of Developer in the event of termination of the DDA or any ground lease.

3.12. Any other issues that the Parties mutually agree to negotiate.

4. Reimbursement of District Costs; Budget; Performance Deposit.

4.1. Reimbursement of District Costs. In the event that a DDA is executed by the District and Developer, Developer shall reimburse the District for third party expenses actually and reasonably incurred by the District from the Effective Date through the Negotiation Period, including but not limited to (i) cost of financial consultants, environmental consultants, planners and engineers to review infrastructure plans, development plans, and financial feasibility of the Project, and (ii) planning and entitlement costs, including compliance with CEQA and District review and consideration of permits and approvals for the Project or any other applications for federal, state, local and other regulatory agency permits and approvals, including all costs associated with environmental review and processing related approvals with respect to the Project (but specifically excluding overhead expenses of the District or staff time) (collectively, "**District Costs**"). The District shall document the District Costs incurred during the Negotiation Period in sufficient detail to permit the Developer to confirm who performed the services, the nature of the work performed, and the costs incurred, including providing the invoices therefor. In the event that a DDA is not executed by the District and Developer, Developer shall have no obligation to reimburse the District for the District Costs, in which event such District Costs shall be borne solely by the District.

4.2. District's Anticipated Cost Budget. The anticipated budget for District Costs is Five Hundred Fifty Thousand Dollars (\$550,000.00), ("**Anticipated District Cost Budget**") as further set forth in Exhibit D and as may be modified from time to time pursuant to Section 4.3.

4.3. Budget Increase. The Parties acknowledge and agree that the Anticipated District Cost Budget is preliminary and may require modification by the District from time to time. Accordingly, the Anticipated District Cost Budget may be increased from time to time

with the prior written consent of Developer, which consent shall not be unreasonably withheld, conditioned or delayed. The District shall track the amount of District Costs actually incurred in relation to the Anticipated District Budget and shall provide Developer with written notice if any increase in the Anticipated District Budget is required (“**Budget Modification Notice**”). Within ten (10) days of receiving a Budget Modification Notice, Developer may request additional information from the District, or provide the District with written comments, if any, regarding the Budget Modification Notice. The District shall reasonably attempt to respond to the Developer’s comments or request for additional information within seven (7) days of receiving such written comments or requests for additional information. If Developer disapproves or otherwise fails to approve a Budget Modification Notice within thirty (30) days following receipt of said Budget Modification Notice, or such other time mutually agreed to by the Parties, the District shall have no obligation to negotiate further in connection with the proposed Term Sheet or DDA, incur any further District Costs, or continue to process any pending or new Project applications or approvals until such time as Developer approves the Budget Modification Notice. The approval of any Budget Modification Notice shall be deemed an amendment to this Agreement, and Developer shall not be responsible for any District Costs in excess of the Anticipated District Cost Budget (as increased by Developer’s approval of a Budget Modification Notice pursuant to this Section 4.3) without Developer’s express prior written consent.

5. District Cooperation. Within forty-five (45) days following the Effective Date, the District shall make available all public record studies and documents in the District’s possession as necessary for Developer to perform its due diligence investigation of the Site. During the term of this Agreement, the District agrees to provide to Developer all available non-privileged reports, studies and documents pertaining to the Project in the District’s possession or control, and to cooperate with the Developer in completing the milestones in the Schedule of Performance by supplying in a timely manner the necessary information and documents concerning the development potential of the Project. Developer acknowledges and agrees that the District makes no representations or warranties whatsoever regarding the completeness or accuracy of any information provided to Developer, and the Developer must perform its own independent analysis.

6. Right of Entry. During the term of this Agreement or any extension thereof, Developer, its representatives, consultants, contractors and employees (“**Developer Parties**”) shall have the right to enter any portion of the Site under the District’s control to conduct its due diligence investigation of the Site. Prior to conducting any inspections or testing, Developer shall deliver to District a certificate of insurance naming District as an additional insured evidencing that Developer has procured commercial general liability insurance in the amount of at least Two Million Dollars (\$2,000,000) and an aggregate limit of at least Five Million Dollars (\$5,000,000) covering any occurrence or accident arising in connection with the presence of Developer or Developer Parties on the Property. Developer hereby indemnifies and holds District harmless from and against any and all costs, loss, damages or expenses of any kind or nature arising out of or resulting from any entry and/or activities upon the Site by Developer or Developer Parties; provided, however, such indemnification obligation shall not be applicable to (i) Developer’s mere discovery of any pre-existing adverse physical condition at the Site or other information concerning the Site, except to the extent Developer or Developer Parties aggravate such pre-existing condition, or (ii) costs, loss, damages or expenses caused by the gross negligence or

willful misconduct of the District or the District's employees, agents or contractors. The provisions of this Section 6 shall survive the termination of this Agreement.

7. Deposit. Within seven (7) days after execution of this Agreement, Developer shall deliver to the District a deposit in the amount of Two Hundred Thousand Dollars (\$200,000) ("**Performance Deposit**") which shall be held by the District until the execution of the DDA. If this Agreement terminates because the Parties fail to reach agreement on a mutually acceptable Term Sheet prior to expiration of the Term Sheet Phase, as such period may be extended pursuant to Section 2.1, and provided there is no uncured default by Developer, then upon the expiration of the Term Sheet Phase, as extended, the District shall promptly refund the Performance Deposit and any interest earned thereon to the Developer. If the Parties proceed to the DDA Phase and this Agreement is terminated because the Parties fail to reach agreement on a DDA prior to expiration of the DDA Phase, and provided there is no uncured default by the District upon the expiration of the DDA Phase, the Performance Deposit and any interest earned thereon shall be retained by the District. Upon execution of the DDA by the Parties, the disposition of the Performance Deposit shall be as set forth in the DDA. Notwithstanding the foregoing, the terms of Section 11.1.3 shall apply in the event of a default by Developer, and the terms of Section 11.2.2 shall apply in the event of a default by District.

8. Planning, Entitlements and CEQA Review; Acquisition of Gatepath Site and/or School District Site; Developer's Consultants.

8.1. Planning, Entitlements and CEQA Review. Developer acknowledges that the District has commenced environmental review of the Project pursuant to CEQA. The District shall provide Developer with copies of any reports and studies it has conducted to date under CEQA. Upon execution of this Agreement, Developer acknowledges and agrees that Developer shall be responsible for CEQA compliance, and processing any planning and entitlement approvals, at Developer's sole cost. Developer further acknowledges and agrees that the Board shall retain full review and approval authority over the planning, entitlement and CEQA processes, and all planning, entitlement, and CEQA applications and documents identified in the Entitlement Schedule (as defined in the Schedule of Performance) to be prepared by Developer in accordance with the Schedule of Performance. Specifically, Developer shall submit for Board review and written approval, which approval shall be in District's sole and absolute discretion, (i) any and all entitlement applications, (ii) Developer proposals to establish or change the Project description to be reflected in any entitlement application, CEQA document, or Project approval, (iii) any environmental review or supporting technical documents prepared in connection with CEQA compliance prior to publication by the City, and (iv) any other items as reasonably requested by the District. Developer further acknowledges and agrees that it shall provide monthly progress reports to the District, and, within seven (7) days following District's request, shall advise the District of the status of all work being undertaken by Developer pursuant to the Schedule of Performance and Entitlement Schedule and shall note any delay in the Entitlement Schedule. To the extent there has been a delay in the Entitlement Schedule, Developer shall prepare and submit an updated Entitlement Schedule reconciling any discrepancy in the then existing Entitlement Schedule. Developer shall pay for the services of all consultants necessary to comply with CEQA and Developer shall respond fully and in a timely manner to any and all reasonable requests for information from City and its consultants. The Parties acknowledge and agree that the size, layout, height, design, components, or other features

of the PWC Master Plan, as such items are described in entitlement applications pending or to be filed with the City, shall be determined in the sole and absolute discretion of the District.

8.2. Acquisition of Gatepath Site and/or School District Site. Developer and District shall reasonably cooperate to evaluate potential acquisition by District of the Gatepath Site and the School District Site. The Parties acknowledge and agree that: (i) if either the Gatepath Site or the School District Site is proposed to be acquired, such acquisition shall be by the District in the District's sole and absolute discretion; (ii) Developer shall not negotiate terms or conditions for acquisition of the Gatepath Site and/or the School District Site directly with Gatepath or the School District, respectively, without the participation of District; and (iii) the terms and conditions of any proposed acquisition by District of the Gatepath Site and/or School District Site will affect multiple issues to be negotiated during the Term Sheet Phase. Accordingly, the Parties agree that within one hundred eighty (180) days of the Effective Date (the "**Gatepath / School District Decision Date**"), Developer shall notify the District in writing whether, based on the information known to Developer as of the Gatepath / School District Decision Date, Developer will include the Gatepath Site, the School District Site, neither of them, or both of them in the Project proposed by Developer and accompanying components of Developer's Work (the "**Gatepath / School District Decision**"). Developer's Gatepath / School District Decision shall be subject to review and approval by the District in the District's sole and absolute discretion. If District disapproves of Developer's Gatepath / School District Decision, the Parties shall meet and confer to discuss alternatives for planning of the Project and the Site, including whether to mutually terminate this Agreement prior to expiration of the Term Sheet Phase.

8.3. Developer Consultants. The Parties acknowledge that Developer will need to retain consultants during the Negotiation Period to assist in the design and development of the Project, prepare and submit Project Documents (as defined in Section 15 below), and prepare materials required in connection with Developer's Work. Developer shall obtain prior written approval from the Board, which approval shall not be unreasonably withheld, of any consultant proposed to be retained by Developer for preparation of any work in relation to this Agreement. For purposes of this Section 8.3, the Board shall be deemed to have approved any consultant identified in Developer's Proposal.

9. Preparation and Submittal of Reports and Studies. During the Negotiation Period, Developer and District shall cooperate in the preparation and submittal of any required reports and studies reasonably necessary to define the scope of development or determine the feasibility of the Project.

10. Limitations of Agreement. This Agreement and the negotiations entered into between the Parties in accordance with the terms of this Agreement shall not obligate either the District or Developer to enter into the Term Sheet, the DDA, or ground lease(s) on any particular terms. The Parties acknowledge and agree that by executing this Agreement, the District is not committing itself to undertake or approve the Project. Execution of this Agreement by the District and Developer is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof. The District retains full discretion to review, consider, condition, approve, or disapprove the Term Sheet, the DDA, the ground lease(s), and the Project. The District also retains full discretion in acting on any applications for permits or approvals for the Project, including to identify environmental impacts associated with the Project, to impose mitigation measures pursuant to CEQA, or to consider and approve or reject alternatives to the Project, including a “no project” alternative. Any DDA or other agreement(s) resulting from negotiations pursuant to this Agreement shall become effective only after (i) compliance with applicable laws, (ii) compliance with CEQA, (iii) consideration and approval by the Board, and (iv) execution by authorized representatives of the District and Developer. Until and unless a DDA is signed by Developer, approved by the Board, and executed by the District, no agreement drafts, communications, or actions arising from the performance of this Agreement shall impose a legally binding obligation on either Party to enter into or support entering into a DDA, nor shall they be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding agreement, which decision shall remain in the sole and absolute discretion of each Party.

11. Defaults and Remedies.


11.1. Developer Default.

11.1.1. Events of Default by Developer. Failure by the Developer to (i) negotiate in good faith with the District, (ii) timely complete Developer’s Work in accordance with the Schedule of Performance (as such schedule may be extended by Extension Option Periods pursuant to Section 2.1); (iii) timely complete entitlement milestones set forth in the Entitlement Schedule submitted by Developer and approved by District pursuant to Section 8.1, or (iv) perform any of Developer’s material obligations under this Agreement, shall constitute an event of default hereunder. The District shall give written notice of an event of default to Developer, specifying the nature of the default and the action required to cure the default. If such default remains uncured fifteen (15) days after delivery by District of such notice in the case of a default arising from the obligation to pay or reimburse money, or forty-five (45) days after receipt of such notice in the case of all other defaults, the District may exercise the remedies set forth in Section 11.1.3.

11.1.2. Joint and Several Liability for Developer Default. Until such time as the Joint Venture Entity is formed and this Agreement is assigned to such Joint Venture Entity pursuant to Section 17, PMB

and Generations shall be jointly and severally liable for all Developer obligations, covenants, representations, and warranties under this Agreement. A default hereunder by either PMB or Generations shall automatically constitute a default by both PMB and Generations and shall give District the right to pursue remedies against, and to terminate this Agreement as to, both PMB and Generations.

- 11.1.3. Remedies for Developer Default & Post-DDA Termination/Expiration. Upon an uncured event of default by Developer, the District may terminate this Agreement. If this Agreement terminates during the Term Sheet Phase due to an uncured Developer default or if this Agreement terminates after commencement of the DDA Phase for any reason other than an uncured District default, the Parties acknowledge and agree that the District's sole and exclusive remedy shall be to retain the Performance Deposit as liquidated damages. The Parties agree that the payment of the Performance Deposit by Developer, together with all accrued interest, is not intended as a forfeiture or penalty within the meaning of California Civil Code Section 3275 or Section 3369, but rather is a reasonable estimate of the District's damages in the event this Agreement terminates due to a Developer default during the Term Sheet Phase, or terminates during the DDA Phase for any reason other than an uncured District default. The terms of this Section 11.1.3 shall survive the termination or expiration of this Agreement. By placing its initials below, each Party specifically confirms the terms of this Section 11.1.3 and the fact that each Party was represented by counsel who explained the consequences of this liquidated damages provision.

District: 

Developer: _____


11.2. District Default.

- 11.2.1. Events of Default by District. Failure by the District to negotiate in good faith with Developer as provided in this Agreement and the Schedule of Performance or to timely complete its obligations under Section 5, shall constitute an event of default hereunder. The Developer shall give the District written notice of an event of default, specifying the nature of the default and the action required to cure the default. If such default remains uncured by the District forty-five (45) days after receipt of such written notice by the Developer, the Developer may exercise the remedies set forth in Section 11.2.2.

and Generations shall be jointly and severally liable for all Developer obligations, covenants, representations, and warranties under this Agreement. A default hereunder by either PMB or Generations shall automatically constitute a default by both PMB and Generations and shall give District the right to pursue remedies against, and to terminate this Agreement as to, both PMB and Generations.

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District: _____

Developer:  _____


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and Generations shall be jointly and severally liable for all Developer obligations, covenants, representations, and warranties under this Agreement. A default hereunder by either PMB or Generations shall automatically constitute a default by both PMB and Generations and shall give District the right to pursue remedies against, and to terminate this Agreement as to, both PMB and Generations.

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District: _____

Developer:  _____

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11.2.2. Remedies for District Default. In the event of an uncured default by the District, Developer's sole and exclusive remedies shall be (i) an action for specific performance if permitted under California law, which remedy shall in all cases remain subject to District's discretion as set forth in Section 10, including to disapprove the Term Sheet, the DDA, the ground lease(s) and the Project, (ii) injunctive relief in the event the District commences negotiations with another developer with respect to the matters in this Agreement, or (iii) to terminate this Agreement, upon which termination the Performance Deposit shall be returned to Developer.

11.3. Limitation on Damages. Except as set forth herein, in no event shall either Party be liable to the other Party for damages for breach or default under this Agreement, including but not limited to actual, consequential, special, or punitive damages. Each Party expressly waives any claim for such damages based on breach or default by the other Party; provided, however, that nothing contained in this Section 11.3 shall (i) preclude the retention of the Performance Deposit by the District as provided in Section 11.1.3, (ii) limit the Parties' indemnification obligations with respect to third party claims, or (iii) waive any damages to the extent covered by insurance required to be carried under this Agreement. The terms of this Section 11.3 shall survive termination of this Agreement.

12. Termination; Survival.

12.1. Termination. This Agreement shall terminate upon the earlier of (i) the expiration of the Term Sheet Phase (as it may be extended pursuant to Section 2.1) without the Parties' mutual written approval of the Term Sheet, (ii) following commencement of the DDA Phase, if it occurs, termination by a Party pursuant to Section 2.2 following the expiration of the DDA Phase without the Parties' execution of the DDA, or (iii) written termination by one of the Parties under Section 2.2 based on an event of default and in accordance with the terms of this Agreement.

12.2. Rights Following Expiration or Termination; Survival. Following the expiration or termination of this Agreement, the District shall return to Developer any information submitted by Developer under this Agreement (excluding Developer's Work and, subject to the terms of Section 15, the Project Documents (as defined in Section 15)), and thereafter neither Party shall have any further rights against, or liability to, the other Party except as otherwise expressly provided in this Agreement. Subject to Section 11.2.2(i) or (ii), following the expiration or termination of this Agreement with no DDA having been executed by District and Developer, the District shall have the absolute right to pursue an agreement, including without limitation, ground lease(s) and/or a disposition and development agreement, in any manner, and with any party or parties, the District deems appropriate, in its sole and absolute discretion.

13. Confidentiality of Information. Any information provided by Developer to District, including proformas and other financial projections (whether in written, graphic, electronic or any other form) that is clearly marked as "CONFIDENTIAL/PROPRIETARY"

INFORMATION” (“**Confidential Information**”) shall be subject to the provisions of this Section 13. Subject to the terms of this Section 13, District shall use diligent good faith efforts to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253 *et seq.*) or other applicable local, state, or federal law (“**Public Disclosure Laws**”). Notwithstanding the preceding sentence, the District may disclose Confidential Information to its officials, employees, agents, attorneys, and advisors to the extent necessary to carry out the purpose for which the Confidential Information was disclosed. Developer expressly acknowledges and agrees that the District has not made any representations or warranties of any kind that any Confidential Information the District receives from Developer will be exempt from disclosure under any Public Disclosure Laws. In the event the District’s legal counsel determines that the release of the Confidential Information is required by Public Disclosure Laws, or by order of a court of competent jurisdiction, the District shall notify Developer of the District’s intention to release the Confidential Information. If the District’s legal counsel, in her or his discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, the District may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released.

Developer acknowledges that in connection with the Board’s consideration of any DDA as contemplated by this Agreement, the District will be required to present a summary of Developer’s financial projections, including without limitation anticipated costs of development, anticipated project revenues, and returns on cost and investment. If this Agreement is terminated without the execution of a DDA, the District shall return to Developer any Confidential Information.

If any claim, action or litigation (“**Claim**”) is filed seeking to make public any Confidential Information, the District will work with Developer to maintain the confidentiality of such information. District and Developer shall cooperate in defending any such Claim, and Developer shall pay the District’s reasonable costs of defending such Claim and shall indemnify the District against all costs and attorney fees awarded to the plaintiff as a result of any such Claim. Alternatively, Developer may elect to disclose the Confidential Information rather than defend the Claim.

The restrictions set forth in this Section 13 shall not apply to Confidential Information to the extent such Confidential Information (i) is now, or hereafter becomes, through no act or failure to act on the part of the District, generally known or available, (ii) is known by the District at the time of receiving such information as evidenced by District’s public records, (iii) is hereafter furnished to District by a third party, as a matter of right and without restriction on disclosure, (iv) is independently developed by the District without any breach of this Agreement and without any use of, or access to, Developer’s Confidential Information as evidenced by District’s records, or (v) is the subject of a written permission to disclose provided by Developer to the District. The provisions of this Section 13 shall survive the termination of this Agreement.

14. Indemnity. Developer shall indemnify and defend the District, and its Board members, officers, agents and employees (each an “**Indemnified Party**” and collectively “**Indemnified Parties**”) from and against any and all claims, demands, causes of action, damages, costs, expenses (including legal, expert witness, and consulting fees and costs), losses, or liabilities, in law or equity, or alleged by any third parties arising directly out of, or resulting directly from, (i) the acts or omissions of Developer in the observance or performance of any of Developer’s obligations under this Agreement, (ii) any and all litigation, lawsuits, claims, or causes of action challenging this Agreement, the Term Sheet, the DDA, any CEQA-related actions or approvals associated with any of the foregoing, (iii) any failure of any material representation by Developer made under this Agreement, (iv) any claim, demand, or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency, whether meritorious or not, which directly or indirectly relates to, arises from, or is based on the occurrence or allegation of any of the matters described in clauses (i) through (iv) above, provided that no Indemnified Party shall be entitled to indemnification under this Section 14 for matters to the extent caused by the intentional fraud or willful misconduct of such Indemnified Party. In the event any action or proceeding is brought against an Indemnified Party by reason of a claim arising out of any loss for which Developer has indemnified the Indemnified Party, and upon written notice from such Indemnified Party, Developer shall at its sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Party. The Indemnified Party shall have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit, or judgment against the Indemnified Party in connection with the matters covered by this Agreement. The indemnity shall include, without limitation, Developer's obligation to pay reasonable attorney’s fees and costs (as set forth in Section 20.3), reasonable fees of consultants and experts, laboratory costs, and related costs.

14.1. Defense of Claims. The District agrees to give prompt notice to Developer with respect to any suit filed or claim made against the District no later than the earlier of (i) ten (10) days after valid service of process as to any filed suit, or (ii) fifteen (15) days after receiving written notification of the assertion of such claim, which the District has good reason to believe is likely to give rise to a claim for indemnification under this Agreement by the Developer. The failure of the District to give such notice within such timeframes shall not affect the rights of the District or obligations of the Developer under this Agreement except to the extent that the Developer is prejudiced by such failure. The provisions of this Section 14 shall survive the termination of this Agreement.

15. District Rights to Project Documents, Design Concepts and Development Plans; Developer Obligation to Deliver Project Documents. The Developer will cause its consultants to prepare for the development of the Project certain drawings, specifications, materials, models, renderings, and other documents in connection with Developer's obligations under this Agreement, including but not limited to CEQA compliance documents, planning and entitlement documents, and development project design concepts and plans ("**Project Documents**"). In the event this Agreement terminates due to expiration of the Term Sheet Phase with no agreement on a Term Sheet, expiration of the DDA Phase with no agreement on a DDA, or termination due to a Developer default, then the Developer shall within seven (7) days following Developer's receipt of a written demand from the District provide to the District a copy of the Project Documents, and assign such Project Documents to the District, all without representation or warranty, at the sole cost and expense of the Developer. If this Agreement is terminated due to a District default, then the Developer shall, if requested in writing by District, provide to the District a copy of the Project Documents, and assign such Project Documents to the District, all without representation or warranty, at the sole cost and expense of the District (including payment to the Developer of Developer's reasonable third party out of pocket costs actually incurred after the Effective Date that are directly related to such Project Documents). Developer shall use commercially reasonable efforts to ensure that all Project Documents include a provision that allows the Developer to assign the applicable Project Document without the consent of the consultant. The Parties rights and obligations set forth under this Section 15 shall survive termination of this Agreement.

16. Insurance. Without in any way limiting Developer's indemnification obligations under this Agreement, Developer shall obtain, maintain, and cause to be in effect at all times from the Effective Date, at no cost to the District, the insurance policies set forth herein:

16.1 The insurance obligations set forth under Section 6 of this Agreement;

16.2 Professional Liability Insurance. Developer shall require all consultants that it directly contracts with for the Project and all sub-consultants retained by such consultants, including but not limited to architects, engineers, and surveyors, to have liability insurance covering their negligent acts, errors and omissions. The Professional Liability insurance shall include prior acts coverage, at least back to commencement of services for the Project, to cover their specific services and contractual liability under the applicable contracts. The limits of any Professional Liability insurance shall not be less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the annual aggregate. Developer shall provide the District with copies of consultants' insurance certificates showing such coverage.

16.3 District as Additional Insured. The insurance policies required under this Section 16 shall name the District and its officers, agents and employees as an additional insured ("**Additional Insureds**"), and the coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. For any claims arising out of or relating to work on this Project, Developer's insurance coverage shall be primary insurance with respect to the Additional Insureds. Any insurance or self-insurance maintained by the District shall be excess of Developer's insurance and shall not contribute to it or limit the amounts payable by Developer's insurer. The Developer shall require any consultants, contractors, and sub-

consultants thereof performing work on the Project or at the Site to include the District as an Additional Insured with respect to the insurance policies required under this Section 16.

16.4 Waiver of Subrogation. Developer shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the District for the insurance policies required under this Section 16. Developer shall waive all rights against the District for loss or damage to the extent covered by the insurance policies set required under this Section 16, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

16.5 Application. Developer's insurance shall apply separately to each insured person or entity whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability, and rights or duties specifically assigned to the first or other named insureds.

17. Assignment. Developer acknowledges and agrees that the District selected Developer and entered into this Agreement and granting the exclusive right to negotiate on the basis of Developer's particular experience, financial capacity, skills and capabilities. Accordingly, Developer may not assign its rights under this Agreement, including but not limited to its exclusive right to negotiate with the District, to any party without the prior written approval of District. District's approval of a proposed assignment to the Joint Venture Entity shall not be unreasonably withheld. District's approval of any other proposed assignment shall be in District's sole and absolute discretion.

18. Notices. Any notice or other communication given under this Agreement by a Party must be given or delivered (i) by hand, (ii) by registered or certified mail, postage prepaid and return receipt requested, or (iii) by a recognized overnight carrier, such as Federal Express, in any case addressed as follows:

To District: Peninsula Health Care District
1819 Trousdale Drive
Burlingame, CA 94010
Attn: Cheryl A. Fama, Chief Executive Officer
Email: Cheryl.fama@peninsulahealthcaredistrict.org
Phone: (650) 697-6900

With a copy to: Perkins Coie LLP
505 Howard Street
Suite 1000
San Francisco, CA 94105
Attn: Matthew S. Gray
Email: MGray@perkinscoie.com
Phone: (415) 344-7082

To Developer: PMB LLC
3394 Carmel Mountain Road, Suite 200

San Diego, CA 92121
Attn: Jake Rohe
Email: jrohe@pmbllc.com
Phone: (858) 794-1900

Generations LLC
Attn: Chip Gabriel
8601 SE Causey Ave.
Portland, OR 97086
Email: cgabriel@generationsllc.com
Phone: (503) 652-0750

With a copy to: PMB LLC
Rebecca Gemmel, Esq
3394 Carmel Mountain Road, Suite 200
San Diego, CA 92121
Email: rgemmel@pmbllc.com
Phone: (858) 794-1900

19. Amendments. Any alteration, change, modification or amendment of or to this Agreement shall only be effective if made in writing and signed by on behalf of each Party by a person having authority to do so. The Board shall review any alteration, change, modification or amendment to this Agreement, and no alteration, change, modification or amendment to this Agreement shall be effective unless approved by the Board.

20. General Provisions.

20.1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as though set forth in full.

20.2. Applicable Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California. The Parties agree that venue for any action arising directly or indirectly under this Agreement shall be in San Mateo County, California.

20.3. Attorney's Fees. In the event of any action or proceeding to enforce a term or condition of this Agreement, any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement or any action or proceeding in any way arising from this Agreement, the prevailing Party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs of defense paid or incurred in good faith. The "prevailing" Party, for purposes of this Agreement, shall be deemed to be the Party that obtains substantially the result sought, whether by settlement, dismissal, or judgment.

20.4. No Brokers. Each Party warrants and represents to the other that no brokers have been retained or consulted with in connection with this transaction. Each party agrees to

defend, indemnify, and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section 20.4 shall survive the expiration or earlier termination of this Agreement.

20.5. Severability. If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

20.6. Integration; Entire Agreement. This Agreement, including the exhibits attached hereto, contains the entire understanding between the Parties relating to the matters set forth herein. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

20.7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of an original to both Parties.

20.8. Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective successors and assigns of the District and Developer, subject to the limitations on assignment by the Developer set forth in Section 17 above.

20.9. No Third Party Beneficiaries. This Agreement does not, and is not intended to, confer any rights or remedies on any person or entity not a signatory to this Agreement. No person or entity not a signatory to this Agreement shall have any rights or causes of action against either the District or the Developer arising out of, or due to, District's or Developer's entry into this Agreement.

20.10. Joint and Several. If the Developer consists of more than one entity or person, the obligations of Developer hereunder shall be joint and several.

20.11. Survival. All terms and conditions that by their nature should survive termination or expiration of this Agreement, shall so survive.

20.12. No Waiver. No waiver of any breach of any covenant or provision contained in this Agreement shall be deemed a waiver of any preceding or succeeding breach of such provision, or of any other covenant or provision contained in this Agreement. No extension of the time for performance of any obligation or act or any waiver of any provision of this Agreement shall be enforceable against the District or Developer, unless made in writing and executed by both Parties.

20.13. Exhibits.

Exhibit A-1. Diagram of the District Property

Exhibit A-2 Diagram of the Gatepath Property

Exhibit A-3 Diagram of the School District Property

Exhibit B Developer's Proposal

Exhibit C Schedule of Performance


Exhibit D Anticipated District Cost Budget

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

DISTRICT

PENINSULA HEALTHCARE DISTRICT,
a political subdivision of the State of California

By: 
Name: Cheryl A. Fama
Its: CEO

DEVELOPER

PMB LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

GENERATIONS LLC,
an Oregon limited liability company

By: _____
Name: _____
Its: _____

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

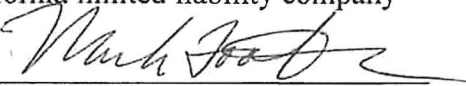
DISTRICT

PENINSULA HEALTHCARE DISTRICT,
a political subdivision of the State of California

By: _____
Name: _____
Its: _____

DEVELOPER

PMB LLC,
a California limited liability company

By: 
Name: **Mark Toothacre**
Its: **President**

GENERATIONS LLC,
an Oregon limited liability company

By: _____
Name: _____
Its: _____

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

DISTRICT

PENINSULA HEALTHCARE DISTRICT,
a political subdivision of the State of California

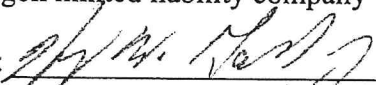
By: _____
Name: _____
Its: _____

DEVELOPER

PMB LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

GENERATIONS LLC,
an Oregon limited liability company

By: 
Name: Harry W. Gubiel Jr.
Its: Authorized Member