AMENDED AND RESTATED EXCLUSIVE NEGOTIATING AGREEMENT

This AMENDED AND RESTATED EXCLUSIVE NEGOTIATING AGREEMENT ("**Restated Agreement**") dated for reference purposes as of [____], 2021("**A&R 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 ("**MidPen**"). PMB and Generations are referred to collectively herein as "**Mixed-Use Developers**." 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 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 (the "**Site**").

B. 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 (the "**Project**"), in coordination with the District as the property owner, with a project that was 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 ("**PWC 1.0**"), (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.

C. The District submitted applications to the City for approval of a master plan to establish zoning and development standards for the Project. 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.

D. In response to the RFP, Mixed-Use Developer submitted a written project proposal on May 19, 2017. A summary of the Proposal and the concept plan is attached hereto as Exhibit B and incorporated herein by this reference ("**Developer's Proposal**").

E. On September 28, 2017, after considering the Mixed-Use 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 Mixed-Use Developer's Proposal met the requirements of the RFP, and authorized the negotiation of an exclusive negotiation agreement with PMB and Generations to develop, construct, and operate the Project.

F. PMB, Generations and the District are parties to that certain Exclusive Negotiating Agreement, dated July 1, 2018, as amended by that certain First Amendment to the Exclusive Negotiating Agreement, dated March 1, 2019, that certain Second Amendment to Exclusive Negotiating Agreement, dated March 27, 2020, and that certain Third Amendment to Exclusive Negotiating Agreement, dated June 30, 2021 (collectively, the "**Original ENA**"). The Original ENA contemplated 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(s) ("**Ground Lease**") and disposition and development agreement(s) ("**DDA**") for the Site.

G. On or about April 22, 2019, Mixed-Use Developers submitted a revised proposal for the development of the Site that would reserve an approximately 2-acre portion of the Site along Marco Polo Way for the development of affordable housing by an affordable housing developer and would adjust and relocate the commercial and residential components of the proposed project to the remaining approximately 4-acre portion of the Site located east of Hetch-Hetchy ("**PWC 2.0**"). The Board reviewed Mixed-Use Developers' PWC 2.0 proposal and after evaluating the Mixed-Used Developer's' feasibility plan for PWC 2.0, authorized the Mixed-Use Developers to proceed with planning and entitlement activities for PWC 2.0 and the Mixed-Use Developers and the District continued with negotiation of a Term Sheet and DDA.

H. On or about September 24, 2020, Mixed-Use Developers and MidPen submitted a revised physical site plan for development of the Site and ("**PWC 3.0**"). The revised PWC 3.0 site plan, as reflected in Exhibit C, proposes an approximately 70,000 to 90,000 square foot Center for Community Health and related parking (the "**CCH Component**"), approximately 275 to 320 units of market rate senior housing (of which 10% shall be affordable), an approximately 35,000 to 50,000 square foot hub, and related parking (the "**Mixed-Use Component**"), and approximately 152 affordable housing units (the "**Affordable Component**"). The CCH Component, the Mixed-Use Component and the Affordable Component are sometimes individually referred to individually as a "**Component**," and collectively the "**Components**."

I. The Parties desire to enter into this Restated Agreement to (1) amend and restate the Original ENA in its entirety, (2) ensure coordination and cooperation between the District and each Developer to negotiate a Term Sheet during the Term Sheet Phase (defined below) and a Ground Lease and DDA during the DDA Phase (defined below), and (3) memorialize certain other agreements of the Parties all as set forth herein.

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; Restated Agreement. 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 Restated Agreement for the preparation of a Term Sheet, DDA, and Ground Lease for each Component of the Project. 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. From the Effective Date of the Original ENA, until the A&R Effective Date, the terms and conditions of the Original ENA control. As of the A&R Effective Date, the terms and conditions of the Restated Agreement control. The District, PMB, Generations and MidPen agree that the Original ENA is hereby amended and restated in its entirety as of the A&R Effective Date, except as specifically provided herein, reference shall be made only to this Restated Agreement for all matters arising from and after the A&R Effective Date.

1.2 Good Faith Negotiations. The District and Developer agree to negotiate for each Component of the Project the terms of the Term Sheet and related transaction documents for the Project, including the DDA and Ground Lease, diligently and in good faith, and shall follow reasonable negotiation procedures, including meetings, telephone and video 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 Restated 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, Chip Gabriel, CEO of Generations, and Jan Lindenthal, Chief Real Estate Development Officer of MidPen, 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.

1.4 Affordable Housing Developer. MidPen is a party to this Restated Agreement and as such shall be a "Developer," solely with respect to rights, liabilities and obligations that arise under this Restated Agreement from and after the A&R Effective Date set forth above. MidPen shall not be required to contribute to the Performance Deposit (as defined in Section 7) already paid to the District by Mixed Use Developers and shall only be responsible for reimbursing a portion of the District Costs as contemplated in Section 4.1.

1.5 Mutual Assurances. Each of the Parties hereby mutually affirm as of the A&R Effective Date that (a) to their current actual knowledge, the other Parties are in compliance with the terms of the Original ENA, (b) there are no asserted (in writing) or to their current actual knowledge, unasserted claims, causes of action or lawsuits against or by any of the Parties against the other Parties, and (c) to their current actual knowledge, there is no default by the other Parties

nor of the occurrence of any event which with notice or the passage of time would constitute a default by the other Parties under the Original ENA. Subject to the terms of this Restated Agreement, the Parties further mutually affirm and warrant to the other Parties that they will cooperate with the other Parties to consummate the transactions contemplated herein.

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 on the date which is two hundred seventy-five (275) days after the Effective Date 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 D 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, three (3) separate mutually acceptable Term Sheets (one for each Component) addressing, without limitation, the matters described in Section 3.

2.1.1 Extension of Term Sheet Phase. 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 (the "**Extension Option Period**") and there shall be no more than one (1) Extension Option Period during the Term Sheet Phase. If Developer elects to exercise the 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.

2.1.2 Expiration of Term Sheet Phase. If the Term Sheet Phase, as the same may be extended by Developer or a Force Majeure Delay or an Administrative Delay (each as defined in Section 2.4), expires without the District and each Developer reaching agreement in writing on a Term Sheet, then subject to Section 14.1, the Negotiation Period and this Restated Agreement shall terminate automatically unless the Parties, each in their sole and absolute discretion, mutually agree in writing to amend this Restated Agreement to further extend the Term Sheet Phase. Upon the termination of this Restated Agreement due to expiration of the Term Sheet Phase without the District and each Developer 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 Restated Agreement, except as otherwise expressly provided herein.

2.2 DDA Phase. If the District and each Developer 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 that the last mutually agreed upon Term Sheet is approved by the Board. The DDA Phase shall expire twelve (12) months following the Definitive Agreements Date (as defined below), unless a separate expiration date is identified and mutually agreed to by the applicable Developer and the District in such Developer's respective Term Sheet (the "**DDA Phase Expiration Date**") subject to Section 9.2. During the DDA Phase, each Developer and the District shall work together in good faith to negotiate and present to the Board for consideration and approval, on or before the Definitive Agreements Date, a separate DDA and Ground Lease for such Developer's Component of the Project as described in Section 2.3 below, incorporating the terms set forth in such Developer's respective Term Sheet. If all of the Parties have not executed a DDA prior to the expiration of the DDA Phase Expiration Date, subject to Force Majeure Delay or Administrative Delay and Section 10 and Section 14.1, then District or any remaining Developer may terminate this Restated Agreement upon ten (10) business days' written notice to the other Parties, in which case 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 7 below), and no Party shall have any further rights or obligations under this Restated Agreement, except those that expressly survive the termination of this Restated Agreement; provided however, that if a DDA is timely executed by the District and a Developer, this Restated Agreement as to the District and such Developer shall terminate upon such execution of the DDA, and all rights and obligations of the District and such Developer shall be as set forth in the executed DDA.

2.3 Component DDAs and Ground Leases. During the DDA Phase, the District will negotiate a separate DDA and Ground Lease with each of PMB, Generations, and MidPen as described below:

2.3.1 For the Affordable Component, MidPen and District will negotiate a separate stand-alone DDA (the "**Affordable Component DDA**") and a separate stand-alone ground lease (the "**Affordable Component Ground Lease**");

2.3.2 For the CCH Component, PMB and the District would negotiate a separate stand-alone DDA (the "**CCH Component DDA**") and separate stand-alone ground lease (the "**CCH Ground Lease**"); and

2.3.3 For the Mixed Use Component, the Mixed Use Developers and the District would negotiate a separate stand-alone DDA (the "**Mixed Use Component DDA**") and separate stand-alone ground lease (the "**Mixed Use Ground Lease**") to be entered into by and between the District and subject to Section 3.1, 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 Mixed Use Component.

2.4 Force Majeure Delay; Administrative Delay. Performance by either of the Parties of an obligation under this Agreement shall be excused during any period of "**Force Majeure Delay**" or "**Administrative Delay**" subject to the terms of this Section 2.4.

2.4.1 A Force Majeure Delay shall mean delay, whether foreseeable or unforeseeable, caused by war; acts of terrorism; insurrection; strikes or lock-outs not caused by, or outside the reasonable control of, the Party claiming an extension; floods; earthquakes; fires,

casualties; epidemics; pandemics; quarantine restrictions; or previously unknown environmental conditions discovered or affecting the Project site. A Party's financial inability to perform shall not be a ground for claiming Force Majeure Delay. Notice of a Party's failure or delay in performance due to a Force Majeure Delay must be given to the other Party within three (3) calendar days after its occurrence. The foregoing notwithstanding, a Party shall not be excused from performance until the other Party has received written notice of the events upon which such Party is asserting a Force Majeure Delay. The Party affected by a Force Majeure Delay shall have the duty and obligation to mitigate the effects of the Force Majeure Delay by taking any and all reasonable steps necessary to limit or prevent any delay or non-performance of any obligation hereunder. The Force Majeure Delay shall last no longer than the conditions preventing performance provided the Party is exercising reasonable diligent efforts to overcome the cause of such delay.

2.4.2 An "Administrative Delay" shall mean the failure of the City or other approving agency (excluding the District) to act within a reasonable time, in keeping with standard practices for the City, provided that delays caused by the Developers failure to provide required information or to respond to reasonable requests for information or documents shall not be an Administrative Delay. Developers shall provide a written notice to the District of a delay in performance due to an Administrative Delay within three (3) calendar days after obtaining actual knowledge of its occurrence. Developers shall not be excused from performance until the District has received written notice of the events upon which Developers assert an Administrative Delay. The total cumulative extension permitted under this Restated Agreement due to an Administrative Delay shall not exceed six (6) months.

3. Terms to Be Negotiated During Term Sheet Phase. 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 for each Component of the Project that shall include, without limitation, the following matters as applicable to each Component:

3.1 Formation of Joint Venture Entity. The formation, subject to the Mixed Use Developers' 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 Mixed-Use Component.

3.2 DDA; Ground Lease. Material terms and conditions of (a) the DDAs, including the Parties' respective rights, risks, and obligations, and (b) the Ground Leases, including the timing for execution of the Ground Lease, structure and amounts of 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 Term of Ground Leases. During the Term Sheet Phase, the District and Developers shall negotiate the material terms of the respective DDAs and the Ground Leases identified by the Parties. The District and Developers agree that the term of each Ground Lease ("**Ground Lease Term**") shall be for a period of 75-years with two possible extensions of 10 years each. The initial Ground Lease Term for each Component regardless of when executed shall expire on the date which is 75 years following the date on which the earliest of the Ground Lease Terms commences (and, accordingly, the initial extensions and second extensions, if exercised with respect thereto,

shall also expire concurrently, it being understood that each extension for any Component may be exercised irrespective of whether the extensions for the other Components are exercised). The Parties and Developers agree and acknowledge that negotiation of other material terms of the DDAs and Ground Leases may be impacted by the Ground Lease Term. The District and Developers further agree and acknowledge that they shall further negotiate and reflect in the respective Term Sheets, the terms and conditions for the Ground Lease, including the two (2) 10-year extensions, including consideration and market resets/adjustments, subject to Section 3.4, and conditions for exercise (including but not limited to no uncured default under the Ground Lease and evidence that each of the Components is in good condition and maintained in accordance with the terms of the Ground Lease), provided that the market reset shall not be applicable to the Affordable Component Ground Lease.

3.4 Ground Lease Payment. The Parties shall determine the appropriate amount of any Ground Lease rent payments with respect to the CCH Ground Lease and the Mixed Use Ground Lease, and the structure of District residual receipt payments with respect to the Affordable Component Ground Lease. The Parties acknowledge that Ground Lease rent payments are not the only method of compensation to the District and commit to evaluating all options that make sense and lead to a financially viable project.

3.4.1 PMB and Generations. PMB and Generations acknowledge that it is premature to conclude that the Project's proforma will not support any Ground Lease rent payment by PMB and Generations. The Parties each acknowledge that significant additional refinement of the Project proforma is required before a Term Sheet can be approved by the Parties. The CCH Ground Lease and the Mixed Use Ground Lease shall include market resets at years 25 and 50 based upon then existing land use.

3.4.2 MidPen. MidPen and the District have agreed that the Affordable Component Ground Lease will provide for a "residual receipts" approach for compensating the District under the Affordable Component Ground Lease in order for MidPen to secure financing for the Affordable Component. During the Term Sheet Phase, MidPen and the District will negotiate the specific terms and conditions for the "residual receipts" compensation arrangement with the District under the Affordable Component Ground Lease.

3.5 Master Schedule of Performance. Development of one integrated master schedule of performance ("**Master SOP**") which shall be included in each Term Sheet that identifies the Developers' cooperation with respect to the phasing of development, including commencement and completion of the construction of buildings, infrastructure and improvements for each Component, including but not limited to (a) coordination between the Developers in processing and obtaining permits and approvals for the construction of the Affordable Housing Component of the Project and the other Components, (b) identification of the proposed premises under the Ground Lease for each Component, (c) possible sequencing of physical construction for each Component, (d) identification of which infrastructure elements, open space, pedestrian connections, common area/circulation landscaping and other improvements in PWC 3.0 shall accompany which Components (including which phases and which of the Developers is responsible), and (e) the completion, operation, and maintenance of shared infrastructure within the Project, and (f) excusable delays. As each Developer will have full rights to independently develop their respective Component after the Project Entitlement Approval Date, no Developer shall be considered in default at any point due

non-performance of schedule of performance items that are not the responsibility of such Developer.

3.6 Financing. Each Developer's proposed financing, construction, and operations plan, methods of financing the construction, installation, and long-term maintenance of buildings, infrastructure, and improvements for its Component.

3.7 Consultant Costs. 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.

3.8 Design Guidelines. 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 Conditions of Approval. Each Developer's obligations relating to anticipated 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 Transfer and Assignment Provisions. Transfers and assignments permitted under the DDAs and Ground Leases including conditions precedent to any permitted transfers and assignments.

3.11 Bonding, Indemnity, and Remedies. 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.

3.12 Ownership of Project Documents. Ownership of plans, drawings, and specifications prepared by or on behalf of a Developer in the event of termination of the applicable Developers' DDA prior to completion of construction of improvements under the applicable Developer's DDA.

3.13 Relationship between Developers. The legal and financial relationship between PMB, Generation, and MidPen.

3.14 Community Benefits. Identification of what community benefits the CCH Component and the Affordable Component would be expected to deliver. Proportional community benefits that flow to the District shall be reviewed and approved by the District in its sole and absolute discretion and included in Developers' entitlement application to the City.

3.15 Cooperation and Coordination. The District and Developers understand that cooperation and coordination will be necessary to implement the Master SOP provided, however, that from and after the Project Entitlement Approval Date (as defined below) each Developer shall have the right to proceed with its Component pursuant to the terms and conditions of the DDA and Ground Lease for such Component. The Parties will agree upon a meet and confer process to resolve disputes and address coordination issues in connection with the construction and operation of the Project.

3.16 Development Agreement. As set forth in Section 8, Developers are responsible for securing Project Entitlements (defined in Section 8.2) for the Project, which includes a development agreement with the City of Burlingame that secures vested rights in all entitlements for the Project for a minimum of ten (10) years ("**Development Agreement**"). The Parties agree that, as to each Developer, the party responsible for executing the Development Agreement shall be negotiated and established during the Term Sheet Phase and memorialized in the Term Sheets.

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

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

4.1 Reimbursement of District Costs. Subject to Section 1.4 above, in the event that a DDA is executed by the District and a Developer, such Developer shall reimburse the District for that Developer's share of the third party expenses actually and reasonably incurred by the District from the Effective Date of the ENA through the DDA Phase Expiration Date, including but not limited to actual out of pocket reasonable (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 foregoing notwithstanding, (a) MidPen shall not have an obligation to reimburse the District for any District Costs incurred prior to September 1, 2019 (the "**Cutoff Date**"), and (b) MidPen's share of the obligation to reimburse the District for District Costs incurred from and after the Cutoff Date is limited to twenty percent (20%) of such District Costs. The Mixed Use Developers shall be responsible for reimbursing the District for all District Costs incurred prior to the Cutoff Date and the remaining eighty percent (80%) of District Costs incurred from and after the Cutoff Date. The District hereby represents and warrants to the Developer that (a) the total District Costs incurred prior to the Cutoff Date are in the amount of Sixty-One Thousand Five Hundred Seventy-Four Thousand Dollars ($61,574.00), and (b) the total District Costs incurred through August 31, 2021 (including prior to the Cutoff Date) are in the amount of One Hundred Forty-Three Thousand Two Hundred Ninety-Nine Dollars and Four Cents ($143,299.04). The reimbursement to District by Developer of District Costs shall occur within ten (10) days after the last DDA Phase Expiration Date if the Developer has elected to proceed with their respective Components. Such Developer's portion of the District Costs shall be deducted in calculating the Entitlement Cost Reimbursement pursuant to Section 10.3. 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.

4.2 District's Anticipated Cost Budget. The anticipated budget for District Costs as of the A&R Effective Date is Five Hundred Fifty Thousand Dollars ($550,000.00), ("**Anticipated District Cost Budget**") as further set forth in Exhibit E 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 Cost Budget and shall provide Developer with written notice if any increase in the Anticipated District Cost 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 Restated 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. The District previously made 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 Restated 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 Restated Agreement or any extension thereof, Developer, its representatives, consultants, contractors and employees ("**Developer Representatives**") 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 Representatives on the Property. Each Developer exercising its right of entry under this Section 6 shall name each other Developer as an additional insured on any certificate of insurance delivered to the District. 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

Representatives; 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 Representatives 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 Restated Agreement.

7. Deposit. Mixed Use Developers delivered to the District a deposit in the amount of Two Hundred Thousand Dollars ($200,000) ("**Performance Deposit**") which is currently being held by the District until the execution of the DDA. If this Restated 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 Restated 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 14.1.3 shall apply in the event of a default by Developer, and the terms of Section 14.2.2 shall apply in the event of a default by District.

8. Planning, Entitlements and CEQA Review; 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 Restated 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 prior to submittal of any of the following to any public agency, 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. In the event that Developer

believes that such delay would impact Developer's ability to meet the deadline set forth in Section 9.2, (a) Developer shall notify District of such delay and anticipated impact to the deadline of the City Approval Date, (b) the parties shall meet and confer to discuss an extension of the deadline in Section 9.2, and (c) upon mutual agreement any such extension shall be documented in an amendment to this Restated Agreement, provided that any such extension shall not exceed six (6) months. 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 Project, 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. The District and Developer acknowledge and agree that the parties have a shared goal of timely implementation of the Project. In furtherance of this shared goal, Developer shall submit planning and entitlement applications in a timely manner to the City for processing and shall diligently, using good faith efforts, pursue and obtain the Project Entitlements (defined below).

8.2 Single Project. While the District has agreed to negotiate a separate Ground Lease and a separate DDA for each Component during the Term Sheet Phase, the Project shall be entitled as a single integrated project, with one application and one entitlement approval. The District will only consider multiple DDAs and Ground Leases if the Project is entitled as a single integrated project. Accordingly, the Term Sheets will address coordination among Developers in processing and obtaining entitlements for one single Project that includes each Component ("**Project Entitlements**"). Developers acknowledge that if conditions imposed by the City affect more than one Component or include triggers, sequencing, or phasing requirements applicable to multiple Components, it will be the responsibility of Developers to ensure that such conditions are satisfied. As part of the Project Entitlements, Developers shall negotiate a Development Agreement that is acceptable to the Board, and permits Developers to assign their rights thereunder (the "**Assignable Vested Rights**") to the District (if the Parties agree that one or more Developers should execute the Development Agreement during the Term Sheet Phase) without City consent, and for the District to assign those rights to any subsequent developer and ground lessee, either without City consent or with any required City consent not to be unreasonably withheld.

9. Timing and Conditions Precedent to the Parties' Execution of DDAs and Ground Leases. The District anticipates that the DDAs and the Ground Leases will be negotiated concurrently, and the District anticipates executing each of the DDAs and the respective Ground Leases on or prior to the expiration of the DDA Phase Expiration Date; provided, however, that it shall not be a condition precedent for entering into any individual DDA or Ground Lease for a Component that the DDAs or Ground Leases for the other Components have been entered into concurrently or will be entered into by any particular date. Each Developer shall have up to the DDA Phase Expiration Date for its Component to determine whether it intends to proceed with its Component and to enter into a DDA and Ground Lease for its Component, provided that:

9.1 On the earlier of 270 days after the date the Board approves the Term Sheets and the Project Entitlements Approval Date, the District and each Developer has agreed in good faith to a form of DDA and Ground Lease for their respective Component that is acceptable to the District, in its sole and absolute discretion (the "**Form Agreements**"). Subject to Section 14.1, if this condition

for a Component is not satisfied on or before the stated deadline despite the respective Parties' good faith efforts, the DDA Phase for all Components shall be deemed terminated.

9.2 No later than three (3) years from the A&R Effective Date (as may be extended by mutual agreement pursuant to Section 8.1), Developer obtains from the City approval of the Project Entitlements ("**City Approval Date**"). The City Approval Date does not include the time period associated with any Challenge (as defined in Section 10.3) to the Project Entitlements.

9.3 No later than sixty (60) days after the Project Entitlement Approval Date, each Developer has finalized the Form Agreements for their respective Component to incorporate any provisions required to address the Project Entitlements into a final, execution form that is acceptable to the District, in its sole and absolute discretion (such date being referred to as the "**Definitive Agreements Date**"). If this condition for a Component, despite the respective Parties' good faith efforts, is not satisfied on or before the Definitive Agreements Date, the DDA Phase for such Component shall be deemed terminated and Section 10 of this Restated Agreement shall apply for such Component.

9.4 For each month after the Definitive Agreements Date until the applicable Developer executes the applicable DDA and Ground Lease for a Component (but in no event later than the DDA Phase Expiration Date), the Entitlement Cost Reimbursement amount for such Component shall be reduced as follows: (i) for the Affordable Component, $5,000.00, (ii) for the CCH Component, $3,750.00, and (iii) for the Mixed Use Component, $16,250.00. This Section 9.4 shall not apply in the event of default by the District as contemplated in Section 14.2.1.

10. Replacement Developer Obligations After Project Entitlement Approval Date; Entitlement Acquisition.

10.1 Replacement Affordable Housing Developer. After the Project Entitlement Approval Date, in the event MidPen elects not to proceed with the Affordable Component and to enter into a DDA for Affordable Component, the Mixed-Use Developers and MidPen shall be required to identify a replacement affordable housing developer ("**Replacement Affordable Housing Developer**") that satisfies the replacement affordable housing developer criteria set forth in Exhibit F ("**Affordable Housing Developer Criteria**").

10.1.1 The Mixed-Use Developers and MidPen shall cause the Replacement Affordable Housing Developer to prepare and submit to the District a statement of qualifications demonstrating that the potential Replacement Affordable Housing Developer meets the Affordable Housing Developer Criteria. The statement of qualifications shall include an acknowledgement from the Replacement Affordable Housing Developer that it has reviewed the Project Entitlements and the terms of the Affordable Component DDA and the Affordable Component Ground Lease.

10.1.2 The Board shall review the statement of qualifications and determine, in its sole and absolute discretion, whether the Replacement Affordable Housing Developer meets the Affordable Housing Developer Criteria. The Board shall make such determination within sixty (60) days of receipt of the statement of qualifications.

10.1.3 MidPen shall not be eligible to receive the Entitlement Cost Reimbursement described in Section 10.3 unless and until (a) MidPen assigns their Assignable Vested Rights to the District, and (b) the Board determines that the Replacement Affordable Housing Developer meets the Affordable Housing Developer Criteria. The District shall pay MidPen the Entitlement Cost Reimbursement pursuant to Section 10.3 within ten (10) business days of the date that the Board receives the Assignable Vested Rights.

10.2 Replacement Mixed-Use Developer. After the Project Entitlement Approval Date, in the event PMB and/or Generations elects not to proceed with CCH Component and/or the Mixed-Use Component and to enter into a DDA for the applicable Component, PMB and/or Generations shall be required to identify a replacement developer ("**Replacement Developer**") that satisfies the replacement developer criteria set forth in Exhibit F ("**Replacement Developer Criteria**").

10.2.1 PMB and/or Generations, as applicable, shall cause the Replacement Developer to prepare and submit to the District a statement of qualifications demonstrating that the potential Replacement Developer meets the Replacement Developer Criteria. The statement of qualifications shall include an acknowledgement from the Replacement Developer that it has reviewed the Project Entitlements and the terms of the DDA(s) and Ground Lease(s) for the CCH Component and/or the Mixed-Use Component, as applicable.

10.2.2 The Board shall review the statement of qualifications and determine, in its sole and absolute discretion, whether the Replacement Developer meets the Replacement Developer Criteria. The Board shall make such determination within sixty (60) days of receipt of the statement of qualifications.

10.2.3 PMB and/or Generations shall not be eligible to receive the Entitlement Cost Reimbursement described in Section 10.3 unless and until (a) PMB and/or Generations assign their Assignable Vested Rights to the District, and (b) the Board determines the Replacement Developer meets the Replacement Developer Criteria. The District shall pay PMB and/or Generations the Entitlement Cost Reimbursement pursuant to Section 10.3 within ten (10) business days of the date that the Board receives the Assignable Vested Rights.

10.3 Entitlement Acquisition. Notwithstanding the obligation of Developers to reasonably coordinate and cooperate with each other with respect to the development of the Project, after the Project Entitlement Approval Date (as defined below), each of Developers will have the right to separately develop, construct and occupy their respective Component independently from the other Components. If, after the Project Entitlement Approval Date and prior to the DDA Phase Expiration Date, any of Developers notifies the District in writing of its election not to proceed with the development and construction of its respective Component, then the District shall have the obligation to reimburse the respective Developer for such Component its reasonable, actual third-party out-of-pocket costs and expenses incurred in obtaining the entitlements for such Component ("**Entitlement Cost Reimbursement**") subject to Section 10.1 and Section 10.2 and the following conditions: (a) the reimbursed amount for Entitlement Cost Reimbursement due to PMB for the CCH Component shall not exceed $270,000.00, (b) the reimbursed amount for Entitlement Cost Reimbursement due to the Mixed Use Developers for the Mixed Use Component shall not exceed $1,230,000.00, and (c) the reimbursed amount for Entitlement Cost Reimbursement due to MidPen for the Affordable Component shall not exceed $446,336.00. The Entitlement Cost Reimbursement

shall be reduced by the respective Developer's portion of the District Costs. The District shall in no event be obligated to reimburse any Developer in excess of the amounts in the preceding sentence and caps on the reimbursement obligation in the preceding sentence shall not operate to limit any Developer's obligation to incur costs, including in excess of such amounts, to secure and defend Project Entitlements through the Project Entitlement Approval Date. In the event of a Developer does not proceed with the development and construction of its respective Component, the applicable Developer shall assign to District all entitlement rights and documents related to its Component, subject to Section 18. The District shall only be obligated to effectuate the Entitlement Cost Reimbursement under this Section if the non-proceeding Developer is not in default under this Restated Agreement and such Developer delivers written notice of its election prior to the DDA Phase Expiration Date. "**Project Entitlement Approval Date**" shall mean the date on which "Final Approval" of all Project Entitlements has been obtained. "**Final Approval**" shall mean the subject Project Entitlement has been approved by the City and (i) all applicable administrative appeal and reconsideration periods or judicial challenge periods for the Project Entitlements has lapsed with no appeal, request for reconsideration, or judicial challenge with respect to the Project Entitlements ("**Challenge**") having been filed, or if any Challenge has been timely filed, such Challenge has been finally resolved in a manner that upholds the Project Entitlements in a manner acceptable to Developers and the District such that no further Challenge to the Project Entitlements can be filed; and (ii) expiration of the time for submitting a referendum petition for any Project Entitlement or, if a referendum petition relating to any Project Entitlements is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the City Council in the manner provided by applicable City laws reflecting the approval by voters of the referended Project Entitlement. Notwithstanding anything to the contrary and for the avoidance of doubt, the District shall have no obligation to pay any Entitlement Cost Reimbursement if the Final Approval of the Project Entitlements have not been obtained.

11. 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 18 below), and prepare materials required in connection with Developer's Work. Developer shall notify the District in writing of all consultants engaged to assist with the Project Documents and shall obtain prior written approval from the Board, which approval shall not be unreasonably withheld, of any design professional, landscape architect or designer, architect, general contractor, structural engineer, civil engineer, and public affairs/community relations consultant, proposed to be retained by Developer for preparation of any work in relation to this Restated Agreement. For purposes of this Section 11, the Board shall be deemed to have approved any consultant identified in Developer's Proposal. If Developer identifies additional consultants or seeks to make changes to consultants identified on the previously approved list, it shall notify to the District, and the District shall have fifteen (15) business days to approve such consultant. If the District does not provide approval within such fifteen (15) business day period, the consultant shall be deemed approved.

12. 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.

13. Limitations of Restated Agreement. This Restated Agreement and the negotiations entered into between the Parties in accordance with the terms of this Restated Agreement shall not obligate

either the District or Developer to enter into the Term Sheets, the DDAs, or Ground Leases on any particular terms. The Parties acknowledge and agree that by executing this Restated Agreement, the District is not committing itself to undertake or approve the Project. Execution of this Restated 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 Sheets, the DDAs, the Ground Leases, 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, Ground Lease, or other agreement(s) resulting from negotiations pursuant to this Restated 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 Restated 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 any Party to enter into any other legally binding agreement, which decision shall remain in the sole and absolute discretion of each Party.

14. Defaults and Remedies.

14.1 Developer Default.

14.1.1 Events of Default by Developer. Failure by a 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 the Extension Option Period pursuant to Section 2.1), (iii) timely agree on a Term Sheet, (iv) timely agree on the Form Agreements in Section 9.1, (v) timely agree on the final Form Agreements in Section 9.3, (vi) timely complete entitlement milestones set forth in the Entitlement Schedule submitted by Developer and approved by District pursuant to Section 8.1, (vii) obtain City approval of the Project Entitlements by the City Approval Date as set forth in Section 9.2; or (viii) perform any of Developer's material obligations under this Restated Agreement, shall constitute an event of default hereunder by such Developer. In the event of default by any Developer, the District shall give written notice of an event of default to such Developer, specifying the nature of the default and the action required to cure the default, and shall provide a copy of such notice to the other Developers. If such default remains uncured thirty (30) days after delivery by District of such notice in the case of a default arising from the obligation to pay or reimburse money, or sixty (60) days after receipt of such notice in the case of all other defaults (or such extended period as may be agreed to by District and the applicable Developer, each in their sole and absolute discretion), the District may exercise the remedies set forth in Section 14.1.4.

14.1.2 Events of Default by MidPen. Notwithstanding Section 14.1.1, in the event of a default by MidPen that remains uncured by MidPen prior to the expiration of the applicable cure period, any other Developer shall be required to cure the uncured default by MidPen. Such other Developer will have an additional cure period commencing on the expiration of the initial MidPen cure period and equal to the time period of the initial MidPen cure period, plus, in each

case, an additional period of thirty (30) days after the expiration of such cure period or after the District has served a notice or a copy of a notice of such default upon the other Developers, whichever is later, and District shall accept such performance by the other Developer(s) as though the same had been done or performed by MidPen. For such purpose, in the event of such uncured default by MidPen, MidPen authorizes the other Developers (at their sole cost and expense) to exercise any of its rights and powers under this Restated Agreement and subject to the provisions of this Restated Agreement. In the event of any uncured default by MidPen, and if prior to the expiration of the applicable initial MidPen cure period specified above, the other Developers give the District written notice that it intends to undertake the curing of such default, or to cause the same to be cured, and if the other Developers, after the initial MidPen cure period, promptly commence and then proceed with all due diligence to do so, then the District will not terminate the Restated Agreement as to the Affordable Component so long as the other Developers are with all due diligence and in good faith engaged in the curing of such default. If, pursuant to Section 14.1.4, the District terminates MidPen's rights under the Restated Agreement with respect to the Affordable Component due to an uncured default by MidPen, then the Parties agree that as part of any such cure of a material uncured default by MidPen that the other Developers may either assume the responsibilities for the Affordable Housing Component or propose a subsequent affordable housing developer that meets the Affordable Housing Developer Criteria set forth in Exhibit F to replace MidPen from and after the date of such termination of MidPen's rights under the Restated Agreement by the District, which such replacement shall be subject to the Board's approval in its sole and absolute discretion. In the event the other Developer(s) fail to satisfy the requirements in this Section 14.1.2 to cure a default by MidPen, either by assuming the responsibilities for the Affordable Housing Component or proposing a subsequent affordable housing developer acceptable to the Board as set forth in the foregoing sentence, such default shall remain uncured.

14.1.3 Joint and Several Liability for Developer Default. Until the Definitive Agreements Date (or until this Restated Agreement is terminated pursuant to Section 2.2 and then only as to the Developer who timely executed the DDA), each of the Developers shall be jointly and severally liable for all Developer obligations, covenants, representations, and warranties under the Restated Agreement, subject to Section 1.4 of this Restated Amendment (i.e., MidPen's joint and several liability shall be limited to liabilities and obligations that arise under the Restated Agreement from and after the A&R Effective Date).

14.1.4 Remedies for Developer Default. Upon an uncured event of default by any Developer prior to the Definitive Agreements Date, the District may terminate the Restated Agreement with respect to all Components (except with respect to any Developer who timely executed a DDA and for whom this Restated Agreement has been terminated pursuant to Section 2.2) and retain the Performance Deposit pursuant to Section 7 except as otherwise expressly set forth herein. The Parties acknowledge and agree that the District's sole and exclusive remedy for a Developer default (other than termination of the Restated Agreement) shall be the retention of 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 the Restated Agreement terminates due to a Developer default during such period of time. The terms of this Section 14.1.4 shall survive the termination or expiration of the Restated Agreement. By placing its initials below, each Party

specifically confirms the terms of this Section 14.1.4 and the fact that each Party was represented by counsel who explained the consequences of this liquidated damages provision.

District: _____

Developer: _____ _____ _____

14.2 District Default.

14.2.1 Events of Default by District. Failure by the District to negotiate in good faith with Developer as provided in this Restated Agreement and the Schedule of Performance or to timely complete its obligations hereunder, including 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 sixty (60) days after receipt of such written notice by the Developer, the Developer may exercise the remedies set forth in Section 14.2.2.

14.2.2 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 13, including to disapprove the Term Sheet, the DDA, the Ground Lease and the Project, (ii) injunctive relief in the event the District commences negotiations with another developer with respect to the matters in this Restated Agreement, or (iii) to terminate this Restated Agreement, upon which termination the Performance Deposit shall be returned to Developer, and the District shall pay to the Developers the Entitlement Cost Reimbursement (if Final Approval of the Project Entitlements have been obtained) without offset and without any reductions pursuant to Section 9.4.

14.3 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 Restated 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 14.3 shall (i) preclude the retention of the Performance Deposit by the District as provided in Section 14.1.3, (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 Restated Agreement. The terms of this Section 14.3 shall survive termination of this Restated Agreement.

15. Termination; Survival.

15.1 Termination. This Restated Agreement shall terminate upon the earlier of (i) the expiration of the Term Sheet Phase pursuant to Section 2.1.2, (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, (iii) written termination by one of the Parties based on an event of default in accordance with the terms of Section 14.1 or Section 14.2, as applicable, (iv) a deemed termination under Section 9.1 of this Restated Agreement, (v) a deemed

termination under Section 9.3, (vi) upon a Developers election not to proceed with its Component following the Project Entitlement Approval Date pursuant to Section 10, and (vii) as otherwise explicitly set forth in this Agreement. For matters described in clauses (v) and (vi), this Restated Agreement shall only terminate as to the respective Developer electing not to proceed with its Component, or the respective Developer the District determines not to proceed with for a particular Component pursuant to Section 10; and in all other circumstances termination of this Restated Agreement shall apply to all Developers, except as otherwise expressly set forth herein. It being understood that pursuant to Section 2.2, this Restated Agreement as to the District and a Developer shall terminate upon such execution of the DDA, and all rights and obligations of the District and such Developer shall thereafter be as set forth in the executed DDA.

15.2 Rights Following Expiration or Termination; Survival. Following the expiration or termination of this Restated Agreement, with respect to any Component for which a DDA and Ground Lease has not been executed, the District shall return to Developer any information submitted by Developer under this Restated Agreement (excluding Developer's Work and, subject to the terms of Section 18, the Project Documents (as defined in Section 18)), and thereafter neither Party shall have any further rights against, or liability to, the other Party except as otherwise expressly provided in this Restated Agreement. Subject to Section 14.2.2(i) or (ii), following the expiration or termination of this Restated Agreement with no DDA and Ground Lease for a Component having been executed by District and a Developer, so long as such failure is not due to an uncured fault of the District, 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 with respect to any Component for which a DDA or Ground Lease has not been executed by a Developer.

16. 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 16. Subject to the terms of this Section 16, 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

and Ground Lease as contemplated by this Restated 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 Restated Agreement is terminated without the execution of a DDA and Ground Lease, 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 16 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 Restated 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 16 shall survive the termination of this Restated Agreement.

17. 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 Restated Agreement, (ii) any and all litigation, lawsuits, claims, or causes of action challenging the approval, validity, applicability, interpretation or implementation of this Restated Agreement, the Term Sheets, the DDAs, the Ground Leases, any CEQA-related actions or approvals associated with any of the foregoing, (iii) any and all litigation, lawsuits, claims or causes of action challenging the request for proposal/qualification process or the selection of any of Developer, including but not limited to the addition of MidPen for the Affordable Component, (iv) any and all litigation, lawsuits, claims or causes of action challenging any Project Entitlements, including but not limited to indemnifying the City or other approving agency for any judgment, attorneys' fees or costs incurred in litigation and dismissal of applicable litigation for mootness, (v) any and all litigation, lawsuits, claims or causes of action in connection with Developer's performance of this Restated Agreement or any contract or agreement contemplated under this Restated Agreement, (vi) any failure of any material representation by Developer made under this Restated Agreement, (vii) 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 (vii) above, provided that no Indemnified Party shall be entitled to

indemnification under this Section 17 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 Restated Agreement. The indemnity shall include, without limitation, Developer's obligation to pay reasonable attorney's fees and costs (as set forth in Section 23.3), reasonable fees of consultants and experts, laboratory costs, and related costs.

17.1 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 Restated 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 Restated Agreement except to the extent that the Developer is prejudiced by such failure. The provisions of this Section 17 shall survive the termination of this Restated Agreement.

18. 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 Restated 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 Restated Agreement terminates for any reason contemplated hereunder, provided that the District is not otherwise in default, then the Developers shall within seven (7) days following Developers' receipt of a written demand from the District provide to the District a copy of the Project Documents, and assign to the extent assignable such Project Documents to the District, all without representation or warranty, at the sole cost and expense of the Developer (other than the District's payment of the Entitlement Cost Reimbursement, as applicable). If this Restated 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 the Entitlement Cost Reimbursement, plus Developer's additional reasonable third party out of pocket costs actually incurred after the Effective Date of the Original ENA that are directly related to such Project Documents and not included in the Entitlement Cost Reimbursement). 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 Restated Agreement.

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

19.1 The insurance obligations set forth under Section 6 of this Restated Agreement.

19.2 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.

19.3 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 19.

19.4 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 19. 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.

19.5 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.

20. Assignment. Developer acknowledges and agrees that the District selected Developer and entered into this Restated 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 Restated 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.

21. Notices. Any notice or other communication given under this Restated 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

MidPen Housing Corporation
Attn: Jan Lindenthal
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Email: jlindenthal@midpen-housing.org
Phone: (650) 356-2900

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

22. Amendments. Any alteration, change, modification or amendment of or to this Restated 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 Restated Agreement, and no alteration, change, modification or amendment to this Restated Agreement shall be effective unless approved by the Board.

23. General Provisions.

23.1 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 Restated Agreement as though set forth in full.

23.2 Applicable Law; Venue. This Restated 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 Restated Agreement shall be in San Mateo County, California.

23.3 Attorney's Fees. In the event of any action or proceeding to enforce a term or condition of this Restated Agreement, any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Restated Agreement or any action or proceeding in any way arising from this Restated 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 Restated Agreement, shall be deemed to be the Party that obtains substantially the result sought, whether by settlement, dismissal, or judgment.

23.4 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 23.4 shall survive the expiration or earlier termination of this Restated Agreement.

23.5 Severability. If any provision of this Restated 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 Restated Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

23.6 Integration; Entire Agreement. This Restated 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 Restated Agreement and shall be of no further force or effect.

23.7 Counterparts. This Restated 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.

23.8 Successors and Assigns. This Restated 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.

23.9 No Third Party Beneficiaries. This Restated Agreement does not, and is not intended to, confer any rights or remedies on any person or entity not a signatory to this Restated 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 Restated Agreement.

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

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

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

23.13 Exhibits.

Exhibit A	Diagram of Project Site
Exhibit B	Developer's Proposal
Exhibit C	PWC 3.0 Site Plan
Exhibit D	Schedule of Performance
Exhibit E	Anticipated District Cost Budget
Exhibit F	Replacement Developer Criteria

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IN WITNESS WHEREOF, the Parties hereto have executed this Amended and Restated Exclusive Negotiating Agreement as of the A&R Effective Date.

DISTRICT

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

By: _____
Name: _____
Its: _____

DEVELOPERS

PMB LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

GENERATIONS LLC,
an Oregon limited liability company

By: _____
Name: _____
Its: _____

MIDPEN HOUSING CORPORATION,
a California nonprofit public benefit corporation

By: _____
Name: _____
Its: _____

Exhibit A

Diagram of Project Site

Exhibit B

Developer's Proposal

Exhibit C

PWC 3.0 Site Plan

Exhibit D

Schedule of Performance

Exhibit E

Anticipated District Cost Budget

Exhibit F

Replacement Developer Criteria

Comparable Project Experience Qualifications:

1. The proposed replacement developer Project team shall include at least two (2) individuals who each have a minimum of 10 years of experience managing the entitlement, development, lease-up, and operations of projects in California of comparable size to the proposed Peninsula Wellness Community ("Comparable Projects").

2. The proposed replacement developer shall have successfully entitled, developed, leased, and/or operated for at least three (3) years a minimum of three (3) Comparable Projects, as applicable to such replacement developer, in California within the past 10 years. Demonstrated experience with projects (which do not have to be Comparable Projects) that have involved public land and/or a public agency as a partner.

3. The proposed replacement developer shall submit to the District letters of interest from debt and equity partnerships for the applicable Component of the Project, including a proposal for how the proposed replacement developer will satisfy the financial obligations under the applicable DDA and Ground Lease.

Affordable Developer Criteria

Comparable Project Experience Qualifications:

1. The proposed replacement developer Project team shall include at least two (2) individuals who each have a minimum of 10 years of experience managing the entitlement, development, lease-up, and operations of projects in California of comparable size to the proposed affordable component of the Peninsula Wellness Community ("Comparable Affordable Projects").

2. The proposed replacement developer shall have successfully entitled, developed, leased, and/or operated for at least three (3) years a minimum of three (3) Comparable Affordable Projects, as applicable to such replacement developer, in California within the past 10 years. At least one of the aforementioned comparable Projects or three (3) other projects (which do not have to be Comparable Affordable Projects) must have involved public land and/or a public agency as a partner.

3. The proposed replacement developer shall submit to the District a letter of interest from the proposed replacement developer for the applicable Component of the Project, including a proposal for how the proposed replacement developer will satisfy the financial obligations under the applicable DDA and Ground Lease.