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County of Tulare

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Department
County of Tulare

(APN)

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FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

BY AND BETWEEN

COUNTY OF TULARE

AND

SEQUOIA GATEWAY, LLC

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "**Amendment**") is made and entered into as of _____, 2020 by and between SEQUOIA GATEWAY, LLC, a California limited liability company ("**Sequoia Gateway**"), and the COUNTY OF TULARE, STATE OF CALIFORNIA ("**County**," and together with Sequoia Gateway, the "**Parties**," and each a "**Party**") pursuant to California Government Code Section 65864 et seq.

RECITALS

A. The Parties are parties to that certain Development Agreement dated as of June 4, 2019 and recorded as Instrument 2019-0030036 in the Official Records of the County of Tulare on June 7, 2019 (the "**Original Agreement**").

B. The Original Agreement pertains to the development of the Project pursuant to the Specific Plan.

C. The Parties now mutually desire to modify the terms of the Original Agreement as provided herein. The Original Agreement, as amended by this Amendment, is referred to herein as the "**Agreement**."

A G R E E M E N T

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Amendment and the Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Sequoia Gateway and County hereby agree as follows:

1. **Recitals; Defined Terms.** The foregoing recitals are true and correct and are incorporated herein by reference. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Original Agreement.

2. **Recitals in Original Agreement.**

a. Recital D. 1. is amended to delete the first sentence. It now reads:

“A signalized intersection would be provided at the westerly project entrance at the intersection of Sequoia Gateway Drive and Caldwell Avenue.”

b. Recital D. 4 is deleted in its entirety and the following is substituted:

“In cooperation with the City of Visalia (“City”), installation of a sewer force main or gravity sewer line to connect the project to the City’s Walnut Avenue sewer trunk lines. This line would be from Sequoia Gateway Drive/Caldwell to Walnut Avenue. An Extraterritorial Service Agreement would be required for this alternative.”

c. Recital D.5 is amended to delete the last sentence and to substitute the following:

“A temporary basin would be provided as part of Phase 1.”

d. Recital D.6 is deleted in its entirety and the following is substituted:

“Installation of Caldwell Avenue signage and landscaping along the Phase 1 frontage and Sequoia Gateway Drive and Sherman Way right of way improvements per the Specific Plan.”

e. The first paragraph following **Phase 2-Highway Commercial/Mixed Use/Regional Retail** is deleted in its entirety and the following is substituted:

“Phase 2 is comprised of four sub-phases to be constructed between 2018 and 2028. The County has determined based on substantial evidence that adequate traffic capacity exists so that Parcels 8, 9, 10, 11, 12 and 15 of Figures 2-3 and 2-4 in Exhibit B hereof may develop prior to completion of the interchange improvements without adversely impacting the circulation system beyond that assumed for Phase 1. A follow-up traffic study was completed to assess the traffic generation and impacts of Phase 1 and to assess the current traffic volumes and impacts on affected facilities, which concluded that Parcels 1-12 and 15 as illustrated in Exhibit B may develop without additional improvements. After construction of the building improvements and occupancy of Parcel 1-12 and 15, a follow-

up traffic study shall be completed to determine if any or all of Parcels 13, 14, 16, 17 and 18 may develop prior to the completion of the Caldwell/Highway 99 interchange improvements.”

3. **ARTICLE 1. DEFINITIONS.** The definition of “Agreement” is amended to read:

“ ‘Agreement’ shall mean this Development Agreement by and between Sequoia Gateway and County, dated June 4, 2019.”

4. **Section 4.05 (a).** The first paragraph in Section 4.05 (a) is amended to read as follows:

“(a) **Sequoia Gateway Build Improvements.** Sequoia Gateway hereby agrees to construct and dedicate the improvements described in Recital D hereof, and as further set forth in subparagraphs (i) through (iv) below (collectively, “Sequoia Gateway Build Improvements”). All Sequoia Gateway Build Improvements shall be made, constructed and dedicated to fully comply with the requirements of the County Ordinance Code, County Standards and Specifications. Prior to occupancy of the first structure on the Project Site or commencement of construction and installation of any improvements, Sequoia Gateway shall submit for review and approval a complete set of engineered improvement plans for all Sequoia Gateway Build Improvements to County’s Engineer, and a landscape and irrigation plan for all Sequoia Gateway Build Improvements to the Director. Said improvement plans shall be prepared by a registered engineer authorized to perform such work or licensed landscape architect, as appropriate, and shall be developed in accordance with, and shall comply with, the County’s Standard Drawings and Standard Specifications, and the City of Visalia’s 2016 Engineering Design and Improvements Standards, where feasible, and when not inconsistent with the County’s improvements standards and the standards in the Specific Plan. Sequoia Gateway shall not commence construction on Sequoia Gateway Build Improvements until said improvement plans have been signed and stamped approved by County’s Engineer and County’s Engineer covenants to timely stamp and approve such improvement plans to the extent that they substantially comply with the above requirements.”

5. **Section 4.05 (b).** The title of Section 4.05 (b) is changed from “Improvements” to “Additional Sequoia Gateway Drive Right of Way Improvements.”

6. **Section 7.03.** The Parties hereby amend the last sentence of Section 7.03 to delete the following portion of the sentence “are provided generally in the context of a medical center for the purposes of supporting the provision of healthcare to Sequoia Gateway Permanente members, employees and patients and do not significantly alter the overall appearance of the Project Site as a medical center” and instead to read as follows:

“Any third party vendors and users not owned by or affiliated with Sequoia Gateway or any affiliate of Sequoia Gateway and providing retail, commercial or other goods and services at the Project Site shall be permitted so long as such goods and services are consistent with the uses as approved in the Specific Plan.”

7. **Section 9.02.** The Parties delete Section 9.02 in its entirety and substitute the following:

“Section 9.02 Transfer Agreements. For purposes of this Agreement, the term “Transfer Agreement” shall mean an agreement between Sequoia Gateway and a third party transferee, as consented to by the County as set forth in this Section 9.02, to transfer all or a portion of this Agreement to the transferee.

- (a) The rights (“Rights”) conferred under the Project Approvals and Subsequent Approvals (including but not limited to the vested rights referred to in Recital J, Section 5.09, Article 6, and Article 7 and any rights to enforce the Agreement) run with the land and shall automatically transfer to the transferee with the sale, devise, conveyance, assignment, gift or other transfer (“Transfer”) of all or any portion of the Project Site without any need for either the parties to enter into a Transfer Agreement or for the transferee to obtain the consent of the County or Sequoia Gateway. Notwithstanding the foregoing and anything to the contrary in Section 13.06 and/or Reimbursements for Oversizing set forth in Section 4.06, all Reimbursable Costs as defined in the Infrastructure Reimbursement Agreement attached hereto as Exhibit C, and any other monetary reimbursements or equivalent financial benefits payable to Sequoia Gateway, or to which Sequoia Gateway may be entitled as the result of Sequoia Gateway’s expenditures in developing the Project shall remain personal to Sequoia Gateway and do not run with the land and do not automatically transfer to the transferee upon a Transfer of all or any portion of the Project Site.
- (b) Notwithstanding anything to the contrary in Section 13.06, the obligations set forth under the Project Approvals and Subsequent Approvals do not run with the land and do not automatically transfer to the transferee upon a Transfer of all or any portion of the Project Site. In the event that the parties to a Transfer desire to assign all or any portion of the obligations set forth under the Project Approvals and/or Subsequent Approvals, a Transfer Agreement in a form approved by the County shall be required. Such Transfer Agreement may: (i) release Sequoia Gateway from all or some of the obligations set forth under the Project Approvals or Subsequent approvals that pertain to that portion of the Project Site being transferred, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations; and (ii) address any other matter deemed by Sequoia Gateway to be necessary or appropriate in connection with the transfer or assignment.
- (c) Sequoia Gateway shall seek the County’s prior written consent to any Transfer Agreement, which consent shall not be unreasonably withheld or delayed. The County may refuse to give its consent only if, in light of the proposed transferee’s reputation and financial resources, such transferee would not in the County’s reasonable opinion be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the County Administrative Office and is appealable to the County by Sequoia Gateway or the transferee.

- (d) Any Transfer Agreement shall be binding on Sequoia Gateway, County and the transferee upon execution and recordation. Upon recordation of any Transfer Agreement in the Official Records of Tulare County, Sequoia Gateway shall automatically be released from the obligations assumed by the transferee therein.
- (e) Sequoia Gateway shall be free from any and all liabilities accruing on or after the date of any assignment or Transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement with respect to the portion of the Project Site transferred. Notwithstanding anything to the contrary in Sections 11.01 and 11.02, (a) no Default hereunder by any transferee succeeding to all or any portion of Sequoia Gateway's obligations under this Agreement shall be attributed to Sequoia Gateway or any other non-Defaulting transferee, and (b) no Default by Sequoia Gateway shall be attributed to any transferee succeeding to all or any portion of Sequoia Gateway's Rights or obligations under this Agreement who has not likewise defaulted. The party or parties defaulting under the Agreement shall be referred to herein as the "Defaulting Party(ies)" and the parties with Rights who have not been a party to the Default shall be referred as the "Non-Defaulting Party(ies)." In the event that any Default remains uncured and the County has the right under Section 11.02 to terminate this Agreement, the County may only terminate the Agreement with respect to the Defaulting Party's portion of the Project Site. The Agreement shall not be terminated with respect to any Non-Defaulting Party's portion of the Project Site. The Non-Defaulting Party's Rights hereunder shall not be canceled or diminished in any way by the uncured Default of the Defaulting Party.
- (f) In the event Sequoia Gateway transfers any portion of the Project Site to a transferee and does not enter into a Transfer Agreement, Sequoia Gateway shall retain all obligations, duties, and responsibilities under the Project Approvals and Subsequent Approvals."

8. Effect of Amendment. Except as expressly modified by this Amendment, the Original Agreement shall continue in full force and effect according to its terms, and the Parties hereby ratify and affirm all their respective rights and obligations under the Agreement. In the event of any conflict between this Amendment and the Original Agreement, this Amendment shall govern.

9. Entire Agreement; Amendment. The Agreement contains all of the agreements of the Parties with respect to the matters contained herein and no prior or contemporaneous agreement or understanding, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of the Agreement may be modified, waived, amended or added to except by a writing signed by the Party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

10. Governing Law. This Amendment and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

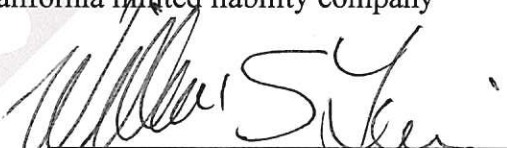
IN WITNESS WHEREOF, The County of Tulare, a municipal corporation, has authorized the execution of this First Amendment to Development Agreement in duplicate by its County Administrative Officer and attestation by its County Clerk under authority of Ordinance No. _____, adopted by Board of the County of Tulare on the _____ 2020, and Sequoia has caused this amendment to be executed in duplicate.

COUNTY OF TULARE

By: _____

Attest: _____

SEQUOIA GATEWAY, LLC,
a California limited liability company

By: 
Name: William S. Travis, Its Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF San Luis Obispo)

ss:

On June 19, 2020 before me, Cole Reichel
Notary Public (insert name and title of the officer),

personally appeared William S. Travis, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 

[Seal]



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

ss:

On _____, 2020 before me, _____
Notary Public (insert name and title of the officer),

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

[Seal]