

RECORDING REQUESTED BY
CLERK OF THE BOARD OF
SUPERVISORS OF THE CITY
AND COUNTY OF SAN
FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED
RETURN TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94105



Doc # **2024063236**

City and County of San Francisco
Joaquin Torres, Assessor – Recorder

8/13/2024	3:10:26 PM	Fees	\$0.00
Pages 10	Title 013 ES	Taxes	\$0.00
Customer 028		Other	\$0.00
		SB2 Fees	\$0.00
		Paid	\$0.00

Space Above Reserved for Recorder's Use

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT**

by and among

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company,

and

FOUND MIDDLE LP,
a Delaware limited partnership,

and

THE CITY AND COUNTY OF SAN FRANCISCO

**FOR PROPERTY GENERALLY BOUND BY 23RD STREET TO THE SOUTH, ILLINOIS
STREET TO THE WEST, 22ND STREET TO THE NORTH, AND THE SAN FRANCISCO
BAY TO THE EAST**

Block 4175, Lot 002; Block 4232, Lot 006; Block 4175, Lot 017; a portion of block 4175, Lot 018, Block
4232, Lot 006; and non-assessed Port and City and County of San Francisco properties

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “**First Amendment**”) is made as of _____, 2024 (the “**Effective Date**”) by and among CALIFORNIA BARREL COMPANY LLC, a Delaware limited liability company, FOUND MIDDLE LP, a Delaware limited partnership (each, a “**Developer**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**”), operating by and through its Planning Department, pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the Administrative Code, with reference to the following facts:

RECITALS

A. The City, acting by and through its Planning Department, and Developer entered into that certain Development Agreement, dated for reference purposes only as of September 22, 2020 and recorded in the Official Records of the City and County of San Francisco (the “**Official Records**”) on October 2, 2020 as Document No. 2020025312, as corrected by that certain Correction to Development Agreement, dated as of September 30, 2021 and recorded in the Official Records on October 13, 2021 as Document No. 2021157025, as amended by that certain Memorandum of Minor Modification of Development Agreement Potrero Power Station Mixed-Use Development Project (First Amendment) dated as of June 20, 2023 and recorded in the Official Records on June 20, 2023, as Document No. 2023044096, and as amended in that Memorandum of Minor Modification of Development Agreement Potrero Power Station Mixed-Use Development Project (Second Amendment) dated as of June 20, 2023 and recorded in the Official Records on June 20, 2023, as Document No. 2023044102 (as amended, the “**Development Agreement**”). The Development Agreement relates to certain property, as more particularly described in the attached Exhibit A (the “**Project Site**”), and authorizes the construction of a multi-phased, mixed-use development on the Project Site known as the Potrero Power Station Mixed-Use Development Project (as more particularly described in the Development Agreement, the “**Project**”). All initially capitalized terms used but not defined in this First Amendment shall have the meaning given to such terms in the Development Agreement.

B. Subsequent to the execution of the Development Agreement, the City has, through the enactment of City Resolution No. 133-23 and Ordinance No. 044-23, pursued the establishment of San Francisco Enhanced Infrastructure Financing District No. 1 (the “**EIFD**”). As set forth in the findings of Ordinance No. 044-23, the EIFD would provide financing for the Project’s public infrastructure, affordable housing, and other facilities of communitywide significance, such as parks and open space.

C. Under that Grant Deed dated December 13, 2023 and recorded in the Official Records on December 21, 2023 as Document No. 2023103212, California Barrel Company LLC transferred to Found Middle LP all its right, title, and interest in a portion of the Project Site known as “Block 7B” and described in Exhibit A of such Grant Deed. Concurrently, California Barrel Company LLC assigned to Found Middle LP certain of its right, title, and interest in the Development Agreement with respect to Block 7B under that Assignment and Assumption Agreement dated December 20, 2023 and recorded in the Official Records on December 21, 2023

as Document No. 2023103213. Under such Assignment and Assumption Agreement, Found Middle LP is “Developer” under the Development Agreement as it relates to Block 7B.

D. The Parties now wish to execute and record this First Amendment to set forth certain modifications to the Development Agreement to implement the EIFD.

A G R E E M E N T S

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants and agreements set forth in this First Amendment and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Developer and City hereby agree as follows:

1. DEFINITIONS

Article 1 of the Development Agreement is hereby amended to add the following defined terms:

“**Acquisition and Reimbursement Agreement**” is defined in the Financing Plan.

“**Contingent Services Special Tax**” is defined in the Financing Plan.

“**EIFD**” is defined in Recital B of this First Amendment.

“**EIFD Acquisition and Financing Agreement**” is defined in the Financing Plan.

“**EIFD Funding Sources**” is defined in the Financing Plan.

“**EIFD Law**” is defined in the Financing Plan.

“**IFP**” is defined in the Financing Plan.

“**Project Special Tax**” is defined in the Financing Plan.

“**RMA**” is defined in the Financing Plan.

“**Services Special Tax**” is defined in the Financing Plan.

2. AMENDED TERMS AND CONDITIONS

a) Section 3.12.1 of the Development Agreement is hereby deleted and amended and restated in its entirety as follows:

3.12.1 Financing Districts. The City shall take all actions reasonably necessary, and Developer shall cooperate reasonably, to establish and implement the CFD under the CFD Act and the EIFD under the EIFD Law, all in accordance with the Financing Plan. Any and all costs incurred by the City in forming the CFD and EIFD shall be City Costs. The terms and conditions of the CFD and EIFD must be consistent with the specifications in the Financing Plan, including, as relates to the EIFD, the IFP. Developer shall not, at any time, contest, protest, or otherwise challenge (i) the formation of the CFD or EIFD, (ii) the issuance of bonds or other financing

secured by Project Special Taxes or EIFD Funding Sources, or (iii) the application of bond proceeds, Project Special Taxes, or EIFD Funding Sources to the extent consistent with the Financing Plan. Developer acknowledges the provisions of Section 2.6(b) of the Financing Plan, and further acknowledges that section 9 of article I of the California Constitution and Government Code Section 5854 restrict the Developer's ability to repeal or reduce the Project Special Taxes. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Services Special Taxes or the Contingent Services Special Taxes, provided the Services Special Taxes or the Contingent Services Special Taxes are levied in accordance with the applicable RMA and except as otherwise set forth in the Financing Plan or such RMA. The provisions of this Section 3.12.1 shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section 3.12.1 in the CC&Rs (or, if the CC&Rs have not yet been created and recorded, in the sale documents for any sale of all or part of the Project Site).

b) Section 5.7.1 of the Development Agreement is hereby amended to add subsection (o):

(o) change, impede, control or delay any rights or obligations under, or the implementation or enforcement of, the Financing Plan, EIFD Acquisition and Financing Agreement, or Acquisition and Reimbursement Agreement, including related to the issuance of bonds or reimbursement of Developer.

c) Section 14.8 of the Development Agreement is hereby deleted and amended and restated in its entirety as follows:

Section 14.8 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, except for any provision that, by its express terms, survives the expiration or termination of this Agreement. The rights and obligations under the Financing Plan, including Developer's right to receive reimbursements, survive the expiration or termination of this Agreement and shall expire or terminate solely as described therein.

3. EXHIBITS

Exhibit C (Financing Plan) is hereby deleted in its entirety and amended and restated by Exhibit C attached hereto.

Exhibit X (Form of Assignment and Assumption Agreement) is hereby deleted in its entirety and amended and restated by Exhibit X attached hereto.

4. NOTICE ADDRESSES

The Parties hereby include a statement of the current addresses of the Parties for purposes of notices delivered in accordance with Section 14.10 of the Development Agreement:

To the City:

San Francisco Planning Department
49 South Van Ness Avenue
San Francisco, California 94103
Attn: Rich Hillis, Director of Planning

with a copy to:

David Chiu, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Real Estate/Finance, Potrero Power Station Project

To Developer:

California Barrel Company LLC
c/o Associate Capital
1201 Illinois Street
San Francisco, California 94107
Attention: Jamie Brown, Partner & General Counsel

with a copy to:

J. Abrams Law, P.C.
538 Hayes Street
San Francisco, California 94102
Attn: Jim Abrams, Esq.

To Developer:

Found Middle LP
c/o Associate Capital
1201 Illinois Street
San Francisco, California 94107
Attention: Jamie Brown, Partner & General Counsel

with a copy to:

J. Abrams Law, P.C.
538 Hayes Street
San Francisco, California 94102
Attn: Jim Abrams, Esq.

5. NO OTHER MODIFICATIONS

Except as expressly provided in this First Amendment, the terms and provisions of the Development Agreement are unmodified.

6. COUNTERPARTS


This First Amendment may be signed in counterparts, each of which shall be an original and all of which together shall constitute one instrument.

[signatures on following page]

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

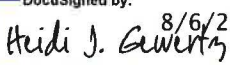
CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 
Rich Hillis
Director of Planning

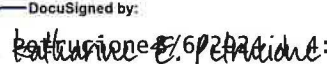
Approved as to form:


David Chiu, City Attorney

DocuSigned by:
8/6/2024 | 4:08 PM PDT
By: 
Heidi J. Gewertz, Deputy City Attorney

Approved on April 4, 2024
Board of Supervisors Ordinance No. 067-24

Approved:

By: Katharine E. :56 PM PDT
for Carmen Chu, City Administrator

By:  8/7/2024 | 12:52 PM PDT
Carla Short, Director of Public Works

DEVELOPER:

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company

By: 
Name: Enrique Landa
Title: CEO

DEVELOPER:

FOUND MIDDLE LP,
a Delaware limited partnership

By: 
Name: Enrique Landa
Title: CEO

ACKNOWLEDGMENT

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 Francisco

On August 13th, 2024 before me, Kwei San, Notary Public
(insert name and title of the officer)

personally appeared Rich Hillis
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 Kwei San (Seal)

NOTARY ACKNOWLEDGMENT

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 Francisco)

On August 1, 2024

before me, Catalina M. Contreras Vargas, a Notary Public, personally appeared

Enrique Landa

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 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]
Signature of Notary Public



NOTARY ACKNOWLEDGMENT

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 FRANCISCO)

On August 1, 2024

before me, Catalina M. Contreras Vargas, a Notary Public, personally appeared

Enrique Landa

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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]
Signature of Notary Public

