

RECORDING REQUESTED
BY CITY OF SAN JOSE:

When Recorded, Return To:
City of San José
200 East Santa Clara Street
San José, CA 95113
Attn: City Clerk, 2nd Floor West Wing

FIRST AMENDMENT TO TURNKEY PARKLAND AND EXCESS CREDIT AGREEMENT

FOR

TENTATIVE MAPS NO.

PT15-067 and PT15-068 (PHASE 3 UNITS)

BETWEEN

THE CITY OF SAN JOSE

AND

S.J. SIERRA GROUP LLC, BGT DEVELOPMENT, LLC

AND KB HOME SOUTH BAY INC.

(Chapter 19.38 of SJMC)

This First Amendment to Turnkey Parkland and Excess Credit Agreement (“First Turnkey Amendment”) is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”), and S.J. SIERRA GROUP LLC, a Delaware limited liability company (successor in interest to THE FLEA MARKET, INC., a California corporation and BUMB & ASSOCIATES, a California general partnership); and BGT DEVELOPMENT, LLC, a California limited liability company (collectively "Owner1"), and KB HOME SOUTH BAY INC., a California corporation ("Owner2") as of the date of City’s execution ("Effective Date"). Owner1 and Owner2 are collectively referred to in this Agreement as "Owner" or “Developer”; each of City and Owner are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

RECITALS

- A. The Parties previously entered into that certain Turnkey Parkland Agreement dated January 9, 2019 (the “Agreement”) regarding the development of real property located at the north side of Berryessa Road, between Union Pacific Railroad Right of the Way to the east and the Coyote Creek to the West also known generally as 1590 Berryessa Road and associated with the Flea Market Development (“Project”) in the City of San Jose, California (Tract 10160).
- B. The Agreement (which augmented the Original Parkland Agreement and the Interim Parkland Agreement, both defined in the Agreement) provided in part for the provision of up to \$5,000,000 of Park Improvements by Developer for Reunion Park and Mercado Park, to be constructed by Developer and thereafter accepted by City.
- C. The Parties now wish to amend the Agreement as hereafter provided.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this First Turnkey Amendment and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Definitions.

Defined terms in this First Turnkey Amendment shall have the same meaning as in the Agreement unless otherwise indicated.

2. Modified and/or Additional Provisions.

- a. In lieu of Developer’s obligations described in Sections 2.D (including Exhibit E), 2.G, 2.H, 2.I, 2.J, 2.L, 2.M, 3, 4 (including Exhibit F), 5, 6, 13 and 14 of the Agreement, Developer shall pay to City the voluntary contribution of \$5,000,000 for the construction of all Park Improvements, provided, however, that Developer shall receive a credit toward that voluntary contribution for Developer’s documented Park Improvement expenses (the “Contribution Credit”). The amount of the Contribution Credit equals \$927,440.68, as provided in Exhibit A to this First Turnkey Amendment, attached hereto and incorporated herein by this reference. At the close of escrow, Developer shall pay to City \$4,072,559.32, being the \$5,000,000 voluntary contribution less the Contribution Credit. Upon City’s receipt of said payment, any design modifications of, and the construction of the Park Improvements shall be the sole obligation of City and for purposes of the Agreement, Developer will be deemed to have constructed all Park Improvements and had the Park

Improvements accepted by City, and Developer shall receive all benefits provided in the Agreement for completion of the Park Improvements, including but not limited to accumulation of Excess Parkland Credits and New Excess Parkland Credits.

- b. Prior to Developer's payment to City pursuant to Section 2.a of this First Turnkey Amendment, Developer shall comply with Section 2 of the Original Parkland Agreement as modified by its First Amendment, including Exhibit D of the Original Parkland Agreement which provides the Park Site Requirements for Bruzzone Park, and shall comply with Section 2 of the Interim Parkland Agreement, including Exhibit D thereto which provides the Transfer of Real Property Requirements for Mercado Park.
- c. Concurrent with Developer's payment to City pursuant to Section 2.a of this First Turnkey Amendment, Developer shall convey Bruzzone Park to the City by grant deed as required by the Original Parkland Agreement as modified by its First Amendment, and shall convey Mercado Park to the City by grant deed as required by the Interim Parkland Agreement.
- d. Upon City's receipt of the payment described in Section 2.a. of this First Turnkey Amendment, the Parties shall be deemed to have waived their respective rights to terminate the Agreement pursuant to Section 2.N of the Agreement.
- e. Upon City's receipt of the payment described in Section 2.a. of this First Turnkey Amendment, City shall release Developer's securities as described in Section 4.C of the Agreement.

3. Inconsistency

In the event of any inconsistency between the terms of this First Turnkey Amendment and the terms of the Agreement, the terms of this First Turnkey Amendment shall control as to the matters which are the subject of this First Turnkey Amendment.

4. Ratification.

Except as amended by this First Turnkey Amendment, the terms and provisions of the Agreement are hereby ratified, confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Turnkey Amendment as the day and year hereinafter written by City.

APPROVED AS TO FORM:

CITY OF SAN JOSE,
a municipal corporation

JON CALEGARI
Deputy City Attorney

MATT CANO
Director of Public Works

Date

200 East Santa Clara Street
San Jose, CA 95113

"OWNER1"

"OWNER1"

S.J. Sierra Group LLC,
a Delaware limited liability company

BGT DEVELOPMENT, LLC,
a California limited liability company

By: T&B Management Group LLC,
a Delaware limited liability company,
Manager

By: _____
Brian Bumb, Managing Member

By: _____
Timothy Bumb, Manager

By: _____
Brian Bumb, Manager

1590 Berryessa Road
San Jose, CA 95131

1590 Berryessa Road
San Jose, CA 95131

"OWNER2"

KB HOME SOUTH BAY INC.

By: _____

Name: Jeffrey B. McMullen

Title: Senior Vice President

Address: 5000 Executive Parkway, #125
San Ramon, CA 94583

* All Developer/Owner's signatures must be accompanied by an attached notary acknowledgement.

* Proof of authorization for Developer's/Owner's signatures is required to be submitted concurrently with this Agreement.

EXHIBIT A TO FIRST TURNKEY AMENDMENT

Contribution Credit Accounting as of December 21, 2021

Exhibit A

Development Costs to Date for Turnkey Parkland and Excess Credit Agreement

Cost Type	Description	Debit	Credit	Balance
<i>Developer Contribution</i>				
	Developer contribution of \$5M to support development of FMN Parks		\$ 5,000,000.00	\$ 5,000,000.00
<i>City Review</i>				
	Nov 2018 - Fees for parks tract 10264 per Interim PA - Tentative Map PT15-067;PT15-068	\$ 435,486.00		\$ 4,564,514.00
	Nov 2018 - Fees for parks tract 10264 per Interim PA - Tentative Map PT15-067;PT15-068	\$ 264,514.00		\$ 4,300,000.00
<i>Site Fencing</i>				
	Mercado Park fence replacement	\$ 1,000.00		\$ 4,299,000.00
	Mercado park fencing cost 2022 to 2023	\$ 6,000.00		\$ 4,293,000.00
	Bruzzone Park fence repair	\$ 845.00		\$ 4,292,155.00
	Bruzzone Park ongoing fencing cost February 2022 to August 2022 @ \$427 per month (Seven Months)	\$ 2,989.00		\$ 4,289,166.00
<i>HMH Design</i>				
	Design cost-to-date through 10/31/2020 (consulting, materials, site preperation/maintenance)	\$ 165,401.68		\$ 4,123,764.32
	Design cost-to-date 10/31/2020 through close of escrow	\$ 51,205.00		\$ 4,072,559.32
Total		\$ 927,440.68		\$ 4,072,559.32

