City of South San Francisco

City Council

Ordinance: ORD 1653-2024

P.O. Box 711 (City Hall, 400 Grand Avenue)
South San Francisco, CA

File Number: 24-03 **Enactment Number: ORD 1653-2024**

ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (DA22-0005) BETWEEN THE CITY OF SOUTH SAN FRANCISCO AND HCP FORBES, LLC FOR THE VANTAGE CAMPUS DEVELOPMENT PROJECT IN SOUTH SAN FRANCISCO, CALIFORNIA.

WHEREAS, HCP Forbes, LLC ("Applicant") has proposed to construct an approximately 1.65 million square foot life sciences campus by way of a Master Plan for the Vantage Life Science Campus and the execution of a total of three (3) precise plans or building phases at 420, 440, 460, 480 and 490 Forbes Boulevard ("Project Site") and,

WHEREAS, the proposed Project is located within the East of 101 planning sub-area; and,

WHEREAS, the Applicant seeks entitlement approval for the Vantage Life Science Campus Master Plan and Precise Plan (Phase 2) including the following: Master Plan, Precise Plan, Design Review, Use Permit, Transportation Demand Management Plan, Vesting Tentative Map and Development Agreement ("Project"); and,

WHEREAS, approval of the applicant's proposal is considered a "project" for purposes of the California Environmental Quality Act, Pub. Resources Code §21000, et seq. ("CEQA"); and,

WHEREAS, City Council certified an Environmental Impact Report ("EIR") on October 12, 2022, (State Clearinghouse number 2021020064) in accordance with the provisions of CEQA and the CEQA Guidelines, which analyzed the potential environmental impacts of the development of the 2040 General Plan Update, Zoning Code Amendments and Climate Action Plan ("2040 General Plan EIR"); and

WHEREAS, City Council also adopted a Statement of Overriding Considerations ("SOC") on October 12, 2022, in accordance with the provisions of CEQA and the CEQA Guidelines, which carefully considered each significant and unavoidable impact identified in the 2040 General Plan EIR and found that the significant environmental impacts are acceptable in light of the project's social, economic, and environmental benefits; and

WHEREAS, environmental analysis for the proposed Project was conducted in accordance with Guidelines Section 15183, which concluded that the environmental effects associated with implementation of the Project are fully within the scope of the environmental analysis conducted in the 2040 General Plan EIR, such that the Project does not meet the criteria under California Environmental Quality Act ("CEQA") Guidelines Sections 15164 or 15162 justifying preparation of additional CEQA documentation; and

WHEREAS, the Design Review Board reviewed the Project at its meetings of January 17, 2023, and February 21, 2023, and recommended approval of the Project; and,

WHEREAS, on October 19, 2023, the Planning Commission for the City of South San Francisco held a lawfully noticed public hearing to solicit public comment and consider the proposed Development Agreement, and recommended that the City Council approve the proposed Development Agreement; and

WHEREAS, the Planning Commission reviewed and carefully considered the information in the 2040 General Plan EIR and Vantage CEQA Analysis pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15183 and by resolution, found that no additional CEQA analysis is required; and

WHEREAS, the Planning Commission exercised its independent judgment and analysis, and considered all reports, recommendations, and testimony before making a determination on the Project; and

WHEREAS, the City and Applicant have drafted a proposed Development Agreement, attached hereto as Exhibit A ("Development Agreement") to outline the expectations and obligations of the parties for a fifteen (15) year term and potential five (5)-year extension term; and

WHEREAS, the City and the Applicant now wish to enter into the Development Agreement in Exhibit A; and

WHEREAS, City Council held a duly noticed public hearing on December 13, 2023, to consider the proposed Development Agreement, take public testimony, and introduce this Ordinance for adoption; and

WHEREAS, City Council has considered approval of the entitlements and the environmental impacts of the proposed Project by separate resolutions.

NOW, THEREFORE, BE IT RESOLVED Council of the City of South San Francisco does hereby ordain as follows:

SECTION 1. Findings.

Based on the entirety of the record before it, which includes without limitation, the California Environmental Quality Act, Public Resources Code §21000, et seq. ("CEQA") and the CEQA Guidelines, 14 California Code of Regulations §15000, et seq.; the South San Francisco General Plan; the South San Francisco Municipal Code; the 2040 General Plan EIR and Statement of Overriding Considerations; Vantage Project CEQA Analysis including all appendices thereto; the Project applications; the Vantage Project Plan set, prepared by Flad Architects, dated July 14, 2023, the Transportation Impact Analysis including Transportation Demand Management Plan, as prepared by Fehr & Peers, dated August 2023, Community Benefits Analysis, dated August 18, 2023, Design Review Board recommendations dated January 30, 2023 and February 21, 2023, Development Agreement, and all reports, minutes, and public testimony submitted as part of the Planning Commission's duly noticed October 19, 2023 meeting, the City Council's duly noticed December 13, 2023 meeting; and any other evidence (within the meaning of Public Resources Code Sections 21080(e) and 21082.2), the City Council of the City of South San Francisco hereby finds as follows:

A. The foregoing recitals are true and correct and made a part of this Ordinance.

B. The Exhibit attached to this Ordinance, the proposed Development Agreement (Exhibit A), is incorporated by reference and made a part of this Ordinance, as if set forth fully herein.

C. The documents and other material constituting the record for these proceedings are located at the Planning Division for the City of South San Francisco, 315 Maple Avenue, South San Francisco, CA 94080, and in the custody of Chief Planner.

D. The Development Agreement, attached hereto as Exhibit A, sets for the duration of the Agreement, the property, project criteria, and other required information identified in Government Code section 65865.2. Based on the findings in support of the Project, the City Council finds that the Development Agreement, vesting a Project to create a vibrant, transit supported, state of the art research and office campus for the life sciences, is consistent with the objectives, policies, general land uses and programs specified in the General Plan.

E. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed in the Zoning District in which the real property is located as it does not grant special provisions for Applicant and is primarily intended to ensure compliance and community benefits for the City.

F. The Development Agreement is in conformity with public convenience, general welfare and good land use practice as it will strengthen the future development of the Project and fulfill community benefits for the City, including open space, and conveyance of the Fire Station Parcel.

G. The Development Agreement will not be detrimental to the health, safety and general welfare of the City as implementation of the Development Agreement will permit the construction of a well-designed, well-planned Project that will locate appropriate uses as contemplated by the General Plan and Zoning Ordinance and provide a location for a potential future fire station.

H. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because implementation of the Development Agreement will permit the construction of the Project on underutilized commercial sites and will provide community serving benefits.

SECTION 2. Approval of Development Agreement

A. City Council of the City of South San Francisco hereby approves the Development Agreement with HCP Forbes, LLC attached hereto as Exhibit A and incorporated herein by reference.

B. City Council further authorizes the City Manager to execute the Development Agreement, on behalf of the City, in substantially the form attached as Exhibit A, and to make revisions, corrections, and minor modifications to such Agreement, subject to the approval of the City Attorney, which do not materially alter or substantially increase the City's obligations thereunder.

SECTION 3. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held

invalid or unconstitutional, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. Council of the City of South San Francisco hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

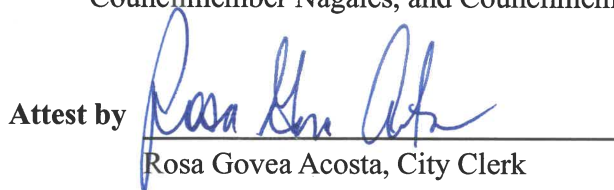
SECTION 4. Publication and Effective Date.

Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the City Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This Ordinance shall become effective thirty (30) days from and after its adoption.

* * * * *

At a meeting of the City Council on 1/24/2024, a motion was made by Councilmember Nicolas, seconded by Vice Mayor Flores, that this Ordinance be adopted. The motion passed.

Yes: 5 Mayor Coleman, Vice Mayor Flores, Councilmember Addiego, Councilmember Nagales, and Councilmember Nicolas

Attest by 

Rosa Govea Acosta, City Clerk

James Coleman, Mayor

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of South San Francisco
P.O. Box 711
South San Francisco, CA 94083

(Space Above This Line Reserved For Recorder's Use)

This instrument is exempt from recording fees pursuant to Government Code section 27383.

Documentary Transfer Tax is $0.00 (exempt per Revenue & Taxation Code section 11922, Transfer to Municipality).

DRAFT

DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO
AND
HCP FORBES, LLC

SOUTH SAN FRANCISCO, CALIFORNIA

ADOPTED BY ORDINANCE NO. ______________
OF THE CITY OF SOUTH SAN FRANCISCO CITY COUNCIL

Effective Date: __________________, 2024

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- Exhibit A1 – Legal Description of Project Site
- Exhibit A2 – Diagram of Project Site – Existing Parcels
- Exhibit A3 – Diagram of Project Site – Proposed Parcels

Exhibit B – List of Project Approvals as of Effective Date
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Exhibit D – Sustainability Features
Exhibit E – Applicable Laws
Exhibit F – Form of Assignment and Assumption Agreement
Exhibit G – Fire Station Agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of ________________, 2024 ("**Effective Date**") by and between HCP Forbes, LLC ("**Developer**"), and the City of South San Francisco, a municipal corporation ("**City**"), pursuant to California Government Code ("**Government Code**") sections 65864 *et seq*. Developer and City are sometimes collectively referred to herein as "**Parties**."

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted California Government Code sections 65864 *et seq.*, which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property for the development of such property.

B. Pursuant to Government Code section 65865, City has adopted procedures and requirements for the consideration of development agreements (South San Francisco Municipal Code ("**SSFMC**") Chapter 19.60). This Agreement has been processed, considered, and executed in accordance with such procedures and requirements.

C. Developer has a legal and/or equitable interest in certain real property located in the City on the approximately 18.99 acre site consisting of 420 Forbes Boulevard (APN 015-050-710, 015-050-720, 015-050-730), 440 Forbes Boulevard (APN 015-050-230), 460 Forbes Boulevard (APN 015-050-900), and 480 and 490 Forbes Boulevard (APN 015-050-890) as more particularly described and depicted in Exhibit A ("**Project Site**"). Developer has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of the City with regard to Developer's proposed Project (as defined below).

D. The terms and conditions of this Agreement have undergone extensive review by Developer, City, and the City of South San Francisco City Council ("**City Council**") members and have been found to be fair, just, and reasonable.

E. The City Council believes that the best interests of the citizens of the City of South San Francisco and the public health, safety, and welfare will be served by entering into this Agreement.

F. This Agreement and the Project (as defined in Section 1.1 of this Agreement) will be consistent with the Shape SSF 2040 General Plan Update ("**General Plan**"), and the South San Francisco Municipal Code ("**SSFMC**").

G. Development (as defined in Section 1.15 of this Agreement) of the Project Site with the Project in accordance with the terms of this Agreement will provide substantial benefits to and will further important policies and goals of City. This Agreement will, among other things, benefit the City by (1) advancing the City's economic development goals of enhancing the competitiveness of the local economy and maintaining a strong and diverse revenue and job base, (2) creating a state-of-the art commercial campus development to advance General Plan objectives for the area, (3) supporting the City's achievement of its adopted Climate Action Plan goals

through incorporation of environmentally sensitive design and equipment, energy conservation features, water conservation measures, and other sustainability features, (5) generating construction-related benefits, including employment, economic and fiscal benefits related to new construction, (6) providing substantial community benefits, including conveyance of a site for a planned new fire station, and (7) generating fiscal benefits to the City and San Mateo County due to community benefits, taxes and other revenue sources from operations.

H. In exchange for the benefits to City described in the preceding Recital, together with the other public benefits that will result from the Development of the Project, Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with Applicable Law (as defined in Section 1.6 of this Agreement), and therefore desires to enter into this Agreement.

I. This Agreement will eliminate uncertainty in planning and provide for the orderly Development of the Project on the Project Site, facilitate progressive installation of necessary improvements, provide for public services appropriate to the Development of the Project on the Project Site, and generally serve the purposes for which development agreements under section 65864, *et seq.* of the California Government Code are intended.

J. On October 12, 2022, after a duly noticed public hearing, by Resolution No. 22-393, the City Council certified the Program Environmental Impact Report (SCH# 2021020064) ("**Program EIR**") for the General Plan in accordance with the California Environmental Quality Act (Public Resources Code §§ 2100 *et seq.* ("**CEQA**") and the CEQA Guidelines (California Code of Regulations, Title 14, §§ 15000 *et seq*.). The Program EIR analyzed the potential environmental impacts of development of the General Plan. Concurrent with its certification of the Program EIR, and by the same resolution, the City Council duly adopted CEQA findings of fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program ("**MMRP**") for the General Plan. The Statement of Overriding Considerations carefully considered each of the General Plan's significant and unavoidable impacts identified in the EIR and determined that each such impact is acceptable in light of the General Plan's economic, legal, social, technological and other benefits. The MMRP identifies all mitigation measures identified in the Program EIR that are applicable to the General Plan and sets forth a program for monitoring or reporting on the implementation of such mitigation measures.

K. On October 19, 2023, following a duly noticed public hearing, the City of South San Francisco Planning Commission ("**Planning Commission**") recommended that the City Council approve this Agreement and adopt the Resolutions and Ordinances described in Recitals L through M.

L. On December 13, 2023 after a duly noticed public hearing, by Resolution No. [XXXX], the City Council approved the environmental document for the Project finding that in accordance with CEQA Guidelines section 15183, the Project is consistent with the development density established by the General Plan for which the Program EIR was certified and thus, the Project does not require additional environmental review, except the analysis contained in the Project's environmental document, which examined all potential project-specific environmental effects which are peculiar to the Project and the Project Site.

M. On December 13, 2023, after a duly noticed public hearing, the City Council duly adopted the following resolution and introduced the following ordinances granting certain land use entitlements for Development of the Project on the Project Site:

1. Resolution No. [XXXX] for Project P22-0117 (Master Plan) and Project P22-0138 (Precise Plan) adopting the: Master Plan MP23-0002, Precise Plan PP23-0001, Design Review DR22-0036, Use Permit UP22-0011, Transportation Demand Management TDM22-0009, Vesting Tentative Map PM22-0002, Development Agreement DA22-0005 & Environmental Determination ND22-0002

2. Ordinance No. [XXXX] introducing, approving and authorizing the execution of this Agreement.

The entitlements described in Recitals M, and listed on Exhibit B, are collectively referred to herein as the "**Project Approvals**."

N. The Project has been designed to fulfill the Development vision of the Project Approvals consistent with the City's land use policies and regulations, and to secure Developer's ability to achieve the Development potential of the Project Site at an appropriate level of growth.

O. In adopting Ordinance No. [_], the City Council found that this Agreement is consistent with the General Plan and Title 20 of the SSFMC and has followed all necessary proceedings in accordance with the City's rules and regulations for the approval of this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties, pursuant to the authority contained in Government Code sections 65864 through 65869.5 and Chapter 19.60 of the South San Francisco Municipal Code in effect on the Effective Date and in consideration of the mutual covenants and agreements contained herein, agree as follows:

ARTICLE 1
DEFINITIONS

Project Description. As used herein, "**Project**" shall mean the Development on the Project Site as contemplated by the Project Approvals and, as, when, and if they are issued, the Subsequent Approvals, including, without limitation, the permitted uses, density and intensity of uses, and maximum size and height of buildings specified in the project plans prepared by Flad Architects on July 14, 2023 and as such Project Approvals and Subsequent Approvals may be further defined or modified pursuant to the provisions of this Agreement. Without limitation, the Project shall consist of buildings that may be used for office/R&D and amenities of one million six hundred and fifty five thousand two hundred and two (1,655,202) total gross square feet at a 2.01 FAR, including approximately three hundred and sixty-six thousand six hundred twenty (366,620) gross square feet of previously entitled buildings currently under construction ("**Phase 1 Project**"), and one million two hundred and eighty-eight thousand five hundred eighty two (1,288,582) gross square feet of proposed new construction; vehicle parking at a ratio of 2.24 striped stalls per 1,000 square feet of development; and an approximately nine thousand six hundred (9,600) gross square foot municipal fire station with fifteen (15) parking spaces and a

minimum of two (2) fire truck bays on an approximately one acre site that would be constructed by the City, all as set forth in the Project Approvals.

1.1 “**Administrative Agreement Amendment**” shall have that meaning set forth in Section 7.2 of this Agreement.

1.2 “**Administrative Project Amendment**” shall have that meaning set forth in Section 7.1 of this Agreement.

1.3 “**Affiliate**” shall have that meaning set forth in Section 8.1 of this Agreement.

1.4 “**Agreement**” shall mean this Development Agreement.

1.5 “**Applicable Law**” shall have that meaning set forth in Section 6.3 of this Agreement.

1.6 “**CEQA**” shall have that meaning set forth in Recital J of this Agreement.

1.7 “**City**” shall mean the City of South San Francisco.

1.8 “**City Council**” shall mean the City of South San Francisco City Council.

1.9 “**City Law**” shall have that meaning set forth in Section 6.5 of this Agreement.

1.10 “**CFD**” shall have that meaning set forth in Section 5.6 of this Agreement.

1.11 “**Community Benefits**” shall have that meaning set forth in Section 3.3 of this Agreement.

1.12 “**Control**,” “controlled,” and “controlling” shall have that meaning set forth in Section 8.1 of this Agreement.

1.13 “**Deficiencies**” shall have that meaning set forth in Section 9.2 of this Agreement.

1.14 “**Developer**” shall mean HCP Forbes, LLC and any Affiliate, successors or assignees pursuant to Article 8 of this Agreement.

1.15 “**Development**” or “**Develop**” shall mean the division or subdivision of land into one or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, improvement, maintenance, or enlargement of any structure; any excavation, fill, grading, landfill, or land disturbance; the construction of specified road, path, trail, transportation, water, sewer, electric, communications, and wastewater infrastructure directly related to the Project whether located within or outside the Project Site; the installation of landscaping and other facilities and improvements necessary or appropriate for the Project; and any use or extension of the use of land.

1.16 “**Development Fees**” shall have that meaning set forth in Section 3.2 of this Agreement.

1.17 “**Effective Date**” shall have that meaning set forth in the introductory paragraph to this Agreement.

1.18 “**EIR**” shall have that meaning set forth in Recital J of this Agreement.

1.19 “**Fire Station”** shall have the meaning set forth in Section 3.3 of this Agreement.

1.20 “**Fire Station Agreement**” shall have the meaning set forth in Section 3.3(a) of this Agreement.

1.21 “**Fire Station Parcel**” shall have the meaning set forth in Section 3.3 of this Agreement.

1.22 “**Force Majeure Delay**” shall have that meaning set forth in Section 10.3 of this Agreement.

1.23 “**GDP**” shall have that meaning set forth in Section 10.3 of this Agreement.

1.24 “**General Plan**” shall have that meaning set forth in Recital F of this Agreement.

1.25 “**Judgment**” shall have that meaning set forth in Section 9.2 of this Agreement.

1.26 “**Legal Challenge**” shall have that meaning set forth in Section 9.1 of this Agreement.

1.27 “**Mortgage**” shall have that meaning set forth in Section 11.10 of this Agreement.

1.28 “**Mortgagee**” shall mean the beneficiary of any Mortgage.

1.29 “**MMRP**” shall have that meaning set forth in Recital L of this Agreement.

1.30 “**Parties**” shall mean the Developer and City, collectively.

1.31 “**Periodic Review**” shall have that meaning set forth in Section 10.5 of this Agreement.

1.32 “**Planning Commission**” shall have that meaning set forth in Recital J of this Agreement.

1.33 “**Project Approvals**” shall have that meaning set forth in Recital M of this Agreement.

1.34 “**Project Site**” shall have that meaning set forth in Recital C of this Agreement.

1.35 “**Severe Economic Recession**” shall have that meaning set forth in Section 10.3 of this Agreement.

1.36 “**SOV**” shall have that meaning set forth in Section 3.4 of this Agreement.

1.37 “**SSFMC”** shall have the meaning set forth in Recital B of this Agreement.

1.38 “**Subsequent Approvals**” shall mean those certain other land use approvals, entitlements, and permits other than the Project Approvals that are necessary or desirable for the Project. In particular, for example and without limitation, the parties contemplate that Developer may, at its election, seek approvals for the following: amendments of the Project Approvals; Precise Plans; improvement agreements; grading permits; demolition permits; building permits; lot line adjustments; sewer, water, and utility connection permits; certificates of occupancy; subdivision map approvals; parcel map approvals; resubdivisions; zoning and rezoning approvals; conditional use permits; minor use permits; sign permits; any subsequent approvals required by other state or federal entities for Development and implementation of the project that are sought or agreed to in writing by Developer; and any amendments to, or repealing of, any of the foregoing.

1.39 “**TDM Plan**” shall have that meaning set forth in Recital M of this Agreement.

1.40 “**Term**” shall have that meaning set forth in Section 2.2 of this Agreement.

1.41 “**VTM**” shall have that meaning set forth in Recital M of this Agreement.

To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, then by controlling law, including the SSFMC.

ARTICLE 2
EFFECTIVE DATE AND TERM

2.1 **<u>Effective Date</u>.** This Agreement is effective as of the Effective Date first set forth above.

2.2 **<u>Term</u>.** The term of this Agreement shall commence upon the Effective Date and continue (unless this Agreement is otherwise terminated or extended as provided in this Agreement) until fifteen (15) years plus one (1) day after the Effective Date (“**Term**”). The Term shall be automatically extended for an additional (5) five years provided that, the Developer obtains a building permit for one Project building prior to the expiration of the Term.

ARTICLE 3
OBLIGATIONS OF DEVELOPER

3.1 **<u>Obligations of Developer Generally</u>.** The Parties acknowledge and agree that City’s agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer’s agreement to perform and abide by its long term covenants and obligations, as set forth herein. The Parties acknowledge that many of Developer’s long term obligations set forth in this Agreement are in addition to Developer’s agreement to perform all the applicable mitigation measures identified in the MMRP. Failure by Developer to provide the community benefits or make any of the payments called for in this Article 3 at the times and in the amounts specified shall constitute a default by Developer subject to the provisions of Article 10 of this Agreement.

3.2 City Development Fees.

(a) Developer shall pay those processing, building permit, inspection and plan checking fees and charges required by City for processing applications and requests for Subsequent Approvals under the applicable regulations in effect at the time such applications and requests are submitted to City.

(b) Consistent with the terms of the Agreement, City shall have the right to impose only such development fees ("**Development Fees**") as had been adopted by City as of the date the Project's development application was determined to be complete (i.e. February 9, 2023), as set forth in Exhibit C, only at those rates of such Development Fees in effect at the time of payment of the Development Fees. The Development Fees shall be paid at the time set forth in Exhibit C except as otherwise provided in Article 3 of this Agreement. This Section 3.2(b) shall not prohibit City from imposing on Developer any fee or obligation that is imposed by a regional agency or the State of California in accordance with state or federal obligations and required to be implemented by City.

3.3 Community Benefits. As consideration for the Project Approvals, Developer agrees to convey to the City an approximately one acre parcel on the northwestern corner of the Project Site accessible from Forbes Boulevard (the "**Fire Station Parcel**") pursuant to the terms set forth in this Section 3.3 and that certain Fire Station Agreement attached as Exhibit G to be executed concurrently herewith (the "**Fire Station Agreement**"). The obligations contained in Article 3 and the Fire Station Agreement memorializing Developer's Community Benefits commitments satisfy Developer's Community Benefits obligations pursuant to SSFMC Section 20.395.003.A.2(c) requiring that developers enter into Community Benefits Agreements.

(a) Fire Station Parcel Use Restriction. City shall use reasonable, efforts to commence construction of a fire station on the Fire Station Parcel within a period of seven (7) years from the Effective Date of this Agreement. City may not sell or develop an alternative use on the Fire Station Parcel for a period of seven (7) years from the Effective Date of this Agreement. For purposes of this Agreement, the seven (7) year period during which the City will make efforts to commence construction of a Fire Station and/or will not sell or develop an alternative use on the Fire Station Parcel as discussed in the foregoing sentences of this Section 3.3(a) shall be known as the "Restriction Period".

(b) Right of First Offer/Right of First Refusal. Subject to the City's compliance with the provisions of the California Surplus Land Act, if the City elects to sell the Fire Station Parcel after the expiration of the Restriction Period, then Developer shall have a right of first offer to repurchase the Fire Station Parcel, and if the City thereafter elects to sell to a subsequent party and Developer has not exercised its right of first offer, Developer shall have a right of first refusal ("ROFO/ROFR") in accordance with the procedures outlined in the Fire Station Agreement. Notwithstanding the foregoing, Developer shall not have a ROFO/ROFR if City elects to develop another public use consistent with Table 20.100.002: Use Regulations for BTP-H zoning district in effect on the Fire Station Parcel after the Restriction Period.

(c) Satisfaction of Community Benefits Fee Obligation. The Parties acknowledge and agree that Developer's conveyance of the Fire Station Parcel to the City satisfies

Developer's entire Community Benefits Program Fee obligation ("**Community Benefit Obligation**") as set forth on Exhibit C for the development of the Property. The City agrees that any future development of the Property shall not be subject to any new or increased Community Benefit Obligation that may be imposed, except to the extent applicable to any increased gross square footage that is built in excess of the gross square footage allowed on the Property by the Project Approvals as such gross square footage is articulated in Project Approvals at the time of the Effective Date of this Agreement . The provisions of this Section 3.3(c) shall remain in full force and effect and survive the expiration or earlier termination of this Agreement.

3.4 Other Developer Commitments

(a) Amenity Building/Support for Local Businesses. Consistent with the Project Approvals, Developer intends to provide an amenity building that will provide, subject to commercial tenant needs, some publicly-accessible amenities, as well as support for local businesses.

(b) Transportation Demand Management Plan. Developer shall implement the TDM Plan approved by the City as described in Recital M to reduce the Project-related single occupancy vehicle ("**SOV**") trips and to encourage the use of public transit and alternate modes of transportation. The TDM Plan is designed to ensure that a minimum of fifty percent (50%) of alternative mode use will be achieved and maintained. If Developer constructs the third parking structure pursuant to the Project Approvals, then the Project shall implement performance measures to ensure that an increased target of fifty-five percent (55%) alternative mode use will be achieved and maintained. The TDM Plan shall be implemented through one or more individual TDM plans. Developer shall comply with all annual reporting obligations associated with the TDM Plan as outlined in SSFMC § 20.400.006.

(c) Public Open Space. Developer shall provide publicly accessible open space on the Project Site, substantially in the size and in the locations provided in the Phase 1 Project and Project Approvals, and improved with active and passive recreation amenities, as provided in the Phase 1 Project and Project Approvals. Nothing in this Agreement shall prohibit Developer from enacting reasonable rules and regulations for the usage of such open space, including regulations related to hours of operation, security, and conduct within such open space.

(d) Sustainability Commitments. Developer shall implement the sustainability features identified in the Project Approvals. For ease of reference only, a list of these sustainability features is attached as Exhibit D.

(e) Mitigation Measures. Developer shall comply with the Mitigation Measures identified and approved in environmental document for the Project that comports with the Program EIR for the General Plan, in accordance with CEQA or other law as identified and as set forth in the MMRP.

(f) Utility Relocation and Replacement. Developer, at is sole cost, shall be responsible for all on-site work to relocate and upgrade required utilities and infrastructure on the Project Site. As each phase of utilities infrastructure is built, it is anticipated that the constructed

public infrastructure will be dedicated to and accepted by the City, as set forth in the Project Approvals.

(g) Community Facilities District Support. Developer agrees to participate, to the extent Developer remains a stakeholder, in the City's anticipated future process to establish a community facilities district ("**CFD**") serving land within the East of 101 Area Plan boundary; provided, however, that such participation shall not be considered by City to be a commitment by Developer to pay any future CFD assessments. In the event that a CFD is not formed during the term of this Agreement, Developer shall not be subject to any additional development fee, assessment or tax, except as otherwise provided for or contemplated in this Development Agreement.

ARTICLE 4
OBLIGATIONS OF CITY

4.1 Obligations of City Generally. The Parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to site the Project in the City and Developer's conveyance of the Fire Station Parcel, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.

4.2 Protection of Vested Rights. City acknowledges that the vested rights provided to Developer by this Agreement might prevent some City Law from applying to the Project Site or prevailing over all or any part of this Agreement. City further acknowledges that Developer's vested rights to Develop the Project Site include the rights provided by the Project Approvals or the Subsequent Approvals, which may not be diminished by the enactment or adoption of City Law, except as provided in this Agreement. City shall cooperate with Developer and shall undertake actions mutually agreed by the Parties as necessary to ensure that this Agreement remains in full force and effect.

4.3 Limitation on Fire Station Parcel. During the Restriction Period, City agrees that the Fire Station Parcel shall only be used for fire station and associated public uses, and shall not be developed with land uses that are incompatible or compete with the Project.

4.4 Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Developer in reserving such capacity for sewer and water services as may be necessary to serve the Project.

4.5 Developer's Right to Rebuild. City agrees that, during the Term of this Agreement, Developer may renovate or rebuild all or any part of the Project should it become necessary due to damage or destruction within Developer's sole discretion. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

4.6 Expedited Plan Check Process. City agrees to provide an expedited plan check process for the approval of Project drawings consistent with its existing practices for expedited plan checks. Developer agrees to pay City's established fees for expedited plan check services.

City shall use reasonable efforts to provide such plan checks within three (3) weeks of a submittal that meets the requirements of Section 5.2. City acknowledges that City's timely processing of Subsequent Approvals and plan checks is essential to the successful and complete Development of the Project.

4.7 Project Coordination. City shall perform those obligations of City set forth in this Agreement, which the City acknowledges are essential for the Developer to perform its obligations in Article 3. City and Developer shall use good faith and diligent efforts to communicate, cooperate and coordinate with each other during Development of the Project.

4.8 Estoppel Certificates. Developer may at any time, and from time to time, deliver to City notice requesting that City certify to Developer, a potential transferee pursuant to Article 8, a potential lender to Developer, or a Mortgagee in writing: (i) that this Agreement is in full force and effect and creates binding obligations on the Parties; (ii) that this Agreement has not been amended or modified, or if so amended or modified, identifying such amendments or modifications; (iii) that Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, identifying the nature, extent and status of any such Default; and (iv) the findings of the City with respect to the most recent Periodic Review performed pursuant to Section 10.5 of this Agreement. The City Manager or his or her designee, acting on behalf of City, shall execute and return such certificate within thirty (30) calendar days after receipt of the request.

4.9 Timing for Approval of Subsequent Project Approvals. Except in situations where delay is outside the reasonable control of City or in situations of Force Majeure Delay, City will use reasonable efforts to ensure that Subsequent Project Approvals will be timely granted.

ARTICLE 5
COOPERATION – IMPLEMENTATION

5.1 Processing Applications for Subsequent Approvals. By approving the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare of the City. Accordingly, in considering any application for a Subsequent Approval, to the maximum extent permitted by law, City shall not use its discretionary authority to revisit, frustrate, or change the policy decisions or material terms reflected by the Project Approvals, or otherwise to prevent or delay Development of the Project. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions.

5.2 Timely Submittals By Developer. Developer acknowledges that City cannot expedite processing Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its reasonable efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary required materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

5.3 Timely Processing By City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall, to the maximum extent permitted by law, promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation: (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. City shall ensure that adequate staff is available, and shall authorize overtime staff assistance as may be necessary, to timely process any such Subsequent Approval application.

5.4 Denial of Subsequent Approval Application. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law or with any state or federal law, regulations, plans, or policies as set forth in Section 6.10.

5.5 Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the Development of, or the provision of services to, the Project. City, at Developer's expense, shall cooperate with Developer in its efforts to obtain such permits and approvals and shall, from time to time, at the request of Developer, use its reasonable efforts to assist Developer to ensure the timely availability of such permits and approvals.

5.6 Assessment Districts or Other Funding Mechanisms.

(a) Existing Fees. As set forth in Section 3.2, above, the Parties understand and agree that as of the Effective Date the fees, exactions, and payments listed in Exhibit C are the only City fees and exactions that apply to the Project. Except as otherwise listed in Exhibit C, City is unaware of any pending efforts to initiate, or consider applications for new or increased fees, exactions, or assessments covering the Project Site, or any portion thereof that would apply to the Project prior to the Effective Date.

(b) Application of Fees Imposed by Outside Agencies. City agrees to exempt Developer from any and all fees, including but not limited to, development impact fees, which other public agencies request City to impose at City's discretion on the Project or Project Site after the Effective Date through the expiration of the Term. This Section 5.6(d) shall not prohibit City from imposing on Developer any fee or obligation that is imposed by a public agency in accordance with state or federal obligations implemented by City in cooperation with such regional agency, or that is imposed by the State of California.

ARTICLE 6
STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT

6.1 Vested Right to Develop. Developer shall have a vested right to Develop the Project on the Project Site in accordance with the terms and conditions of this Agreement, the Project Approvals, the Subsequent Approvals (as, when, and if they are issued), and Applicable

Law, provided, however, that this Agreement shall not supersede, diminish, or impinge upon vested rights secured pursuant to other Applicable Laws, including without limitation, vested rights secured in connection with a vesting tentative subdivision map pursuant to the California Subdivision Map Act (Gov't. Code §§ 66410 *et seq*.) and vested rights secured pursuant to common law vested rights protections. Nothing in this section shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals, or to eliminate or diminish Developer's right to have its applications for any Subsequent Approval timely processed by City in accordance with this Agreement and Applicable Law.

6.2 Permitted Uses Vested by This Agreement. The vested permitted uses of the Project Site; the vested density and intensity of use of the Project Site; the vested maximum height, bulk, and size of proposed buildings; vested provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other vested terms and conditions of Development applicable to the Project, shall be as set forth in the vested Project Approvals and, as and when they are issued (but not in limitation of any right to Development as set forth in the Project Approvals) the vested Subsequent Approvals. The vested permitted uses for the Project shall include those uses listed as "permitted" in the Project Approvals, as they may be amended from time to time in accordance with this Agreement.

6.3 Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the Project (the "**Applicable Law**") shall be those set forth in this Agreement and the Project Approvals, and, with respect to matters not addressed by this Agreement or the Project Approvals, those rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing of construction, densities, design, heights, and fees in force and effect on the Effective Date of this Agreement. A list of Applicable Law is provided in Exhibit E.

6.4 Uniform Codes. City may apply to the Project Site, at any time during the Term, then current Uniform Building Code and other uniform construction codes, and City's then current design and construction standards for road and storm drain facilities, provided any such uniform code or standard has been adopted and uniformly applied by City on a citywide basis and provided that no such code or standard is adopted for the purpose of preventing or otherwise limiting Development of all or any part of the Project. Notwithstanding the foregoing, with respect to any local "reach codes" adopted by City after the Effective Date (including, without limitation, any local measures to restrict use of natural gas or require on-site renewable energy generation, or to require energy efficiency measures beyond Title 24 requirements), (i) Developer shall be excused from compliance with such reach codes for the first two buildings of the Project as set forth in the Phase 2 Precise Plan, and (ii) regardless of whether Developer has submitted a complete Precise Plan application for a phase of the Project prior to the effective date of any reach codes, City may, at any time, excuse Developer from compliance with such reach codes on the basis of a written good faith assessment by Developer that compliance will not be feasible, including for technological or financial reasons, or that compliance would frustrate the goals of the Project Approvals or this Agreement. Prior to submitting a written good faith assessment of reach code feasibility to City, Developer shall confer in good faith with Peninsula Clean Energy, or a qualified third-party consultant with subject matter expertise as reasonably identified by City, regarding feasibility of both full and partial compliance with the reach code, including technological and financial feasibility, and shall include the feasibility assessment of Peninsula Clean Energy or the

other consultant identified by City. Notwithstanding the foregoing, Developer shall be excused from compliance with such reach codes if the Project is otherwise exempt under the terms of the reach codes.

6.5 No Conflicting Enactments. Developer's vested right to Develop the Project shall not be diminished by City approval (whether by action of the City Council or by initiative, referendum or other means) of any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "**City Law**") that is in conflict with Applicable Law or this Agreement or that reduces the rights or assurances provided by this Agreement. Without limiting the generality of the foregoing, any City Law shall be deemed to conflict with Applicable Law or this Agreement or reduce the Development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

(a) Change any land use designation or permitted use of the Project Site;

(b) Limit or control the availability of public utilities, services, or facilities, or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project, provided that Developer has complied with all applicable requirements for receiving or using public utilities, services, or facilities;

(c) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or the Subsequent Approvals (as and when they are issued);

(d) Limit or control the rate, timing, phasing, or sequencing of the Development of all or any part of the Project in any manner;

(e) Result in Developer having to substantially delay Development of the Project or require the issuance of additional permits or approvals by City other than those required by Applicable Law;

(f) Establish, enact, increase, or impose against the Project or Project Site any fees, liens or other similar monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement or other connection fees imposed by third party utilities;

(g) Impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Law; or

(h) Limit the processing or procuring of applications and approvals of Subsequent Approvals.

6.6 Initiatives and Referenda; Other City Actions Related to Project.

(a) If any City Law is enacted or imposed by initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with Applicable Law or this Agreement or reduce the Development rights provided by this Agreement, such Law shall only apply to the Project to the extent it would not diminish Developer's vested rights to Develop the Project.

(b) Except as authorized in Section 6.10, without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of Development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted within the City, or portions of the City, shall diminish Developer's vested rights to Develop the Project.

(c) To the maximum extent permitted by law, City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect.

(d) Developer reserves the right to challenge in court any City Law that would reduce the Development rights provided by this Agreement.

6.7 New Taxes. Any subsequently enacted City-wide taxes shall apply to the Project provided that: (1) the application of such taxes to the Property is prospective; and (2) the application of such taxes would not prevent development in accordance with this Agreement. Other than agreeing that Developer has no vested right against such new taxes, Developer does not waive its right to challenge the legality of any such taxes under the controlling law then in place.

6.8 Assessments. Nothing herein shall be construed to relieve the Property from assessments levied against it by City pursuant to any statutory procedure for the assessment of property to pay for infrastructure and/or services which benefit the Property.

6.9 Vote on Future Taxes, Assessments, and Fees. In the event that any assessment, fee or charge which is applicable to the Project Site is subject to Article XIIIC or XIIID of the California Constitution and Developer does not return its ballot, Developer agrees, on behalf of itself and its successors, that City may count Developer's ballot as an abstention on such tax, assessment, fee or charge.

6.10 Environmental Review and Mitigation. The Parties understand that the Project's environmental document, the Program EIR and MMRP were intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the Project's environmental document and the Program EIR, City agrees to use the Project's environmental document, Program EIR, and MMRP in connection with the processing of any Subsequent Approval to the maximum extent allowed by law and not to impose on the Project any mitigation measures other than those specifically imposed by the Project's environmental document, Project Approvals, Program EIR, and MMRP, or specifically required by CEQA or other Applicable Law, except as provided for in this Section 6.7. Without limitation of the foregoing, the Parties acknowledge that Subsequent

Approvals may be eligible for one or more statutory or categorical exemptions under CEQA. The Parties agree that this Agreement shall not limit or expand the operation or scope of CEQA, including Public Resources Code section 21166 and California Code of Regulations, title 14, section 15162, with respect to City's consideration of any Subsequent Approval. Consistent with CEQA, a future, additional CEQA document may be prepared for any Subsequent Approval only to the extent required by Public Resources Code section 21166 and California Code of Regulations, title 14, section 15162, unless otherwise requested in writing by Developer. Developer specifically acknowledges and agrees that, under Public Resources Code section 21166 and California Code of Regulations, title 14, section 15162, City as lead agency is responsible and retains sole discretion to determine whether an additional CEQA document must be prepared, which discretion City agrees it shall not exercise unreasonably or delay.

6.11 Future Legislative Actions.

(a) In the event that, following the Effective Date, City amends or otherwise updates the General Plan in a manner that would increase or expand the permitted uses, the maximum floor area ratio (or any other land use density or intensity metric), or the maximum height, bulk, and size of proposed buildings applicable to any land area that the land use element or land use map of the General Plan designates as "Office" or "R&D," City shall also consider making conforming General Plan amendments and updates applicable to that land area that comprises the Project Site and which is designated as "Office" or "R&D" under the General Plan.

(b) In the event that, following the Effective Date, City revises, modifies, updates, or amends the land use designation(s) of the General Plan, that are applicable to the Project Site, or the zoning designation(s) applicable to the Project Site and in effect on the Effective Date, such updates or amendments shall not diminish Developer's vested rights to Develop the Project or the Project Site, but no provision of this Agreement shall limit Developer's right to apply for any land use entitlement(s) for the Project Site that are consistent with, or authorized by, such update(s) or amendment(s). Developer acknowledges, however, that the amended or updated policies identified in the immediately preceding sentence might include requirements for permitted development that would be in addition to any obligations of Developer under this Agreement, and that those additional requirements would apply to Developer if Developer applies for any land use entitlement(s) for the Project Site that are consistent with, or authorized by, any revision, modification, update, or amendment contemplated by this subsection (b) of Section 6.8 of this Agreement. No provision of this Agreement shall limit or restrain in any way Developer's full participation in any and all public processes undertaken by City that are in any way related to revisions, modifications, amendments, or updates to the General Plan or the City of South San Francisco Municipal Code. Notwithstanding the foregoing, in the event that future legislative actions increase the allowable density or development capacities on the Project Site, any future development application seeking to utilize such increased density or capacity shall not be allowed to utilize any increased parking ratio authorized by this Agreement by-right.

(c) Developer acknowledges that, if it applies for any land use entitlement(s) for the Project Site that are consistent with, or authorized by, any revision, modification, update, or amendment contemplated by subsection (c) of this Section 6.8 of this Agreement, and that would allow development of the subject parcel(s) in a manner that is inconsistent with, or not authorized by, the Project Approvals, then City may be required to conduct additional CEQA review with

respect to such application in accordance with Section 6.7 of this Agreement, and, if such application is finally approved by City and becomes effective, such approval shall automatically be vested under this Agreement only to the extent such approval is consistent with, or authorized by, the Project Approvals. By way of example, if (following any required CEQA compliance) such effective approval were to authorize Development of a structure with a floor area ratio of 2.0, but the Project Approvals would only authorize Development of a structure with a floor area ratio of 1.0, then Developer would automatically have the *vested* right to Develop said structure with a floor area ratio of 1.0, and would automatically have the *non-vested* right to Develop that same structure with a floor area ratio of 2.0 (unless, following such approval, this Agreement is amended to vest Developer's right to Develop such structure with a floor area ratio of 2.0).

(d) City agrees that, if Developer applies for any land use entitlement(s) for the Project Site that are inconsistent with, or not authorized by, the Project Approvals, then:

(i) such event shall not be a basis for amending or revisiting the terms of the Agreement, unless Developer also applies for an amendment of this Agreement pursuant to subsection (b) of Section 7.2 of this Agreement (*i.e.*, a non-Administrative Agreement Amendment), and shall not be a basis for imposing new exactions, mitigation requirements, conditions of approval, or any other requirement of, or precondition to, Developer's exercise of its Development rights vested under this Agreement; and

(ii) the only exactions, mitigation requirements, or conditions of approval City may impose on such land use entitlement shall be limited to those exactions, mitigation requirements, or conditions of approval authorized under federal, state, or local laws in effect at the time such application is deemed complete, and shall only be imposed with respect to those uses, densities, intensities, and other Development standards applicable to the subject parcel(s) that are inconsistent with, or not authorized by, the Project Approvals.

6.12 Life of Subdivision Maps, Development Approvals, and Permits. The term of any subdivision map or any other map, permit, rezoning, or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the longer of the Term (including any extensions) or the term otherwise applicable to such Project Approval or Subsequent Approval if this Agreement is no longer in effect. The Term of this Agreement and the term of any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which a Development moratorium (including, but not limited to, a water or sewer moratorium or water and sewer moratorium) or the actions of other public agencies that regulate land use, Development or the provision of services to the land, prevents, prohibits or delays the construction of the Project or a lawsuit involving any such Development approvals or permits is pending.

6.13 State and Federal Law. As provided in Government Code section 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically mandated and required by state or federal laws and regulations. In the event of any changes required by state or federal laws or regulations, the Developer and City shall meet and confer in good faith to determine what, if

any, modifications to this Agreement and/or the Project Approvals would allow the Project and City to comply with such state or federal law or regulation while preserving to the maximum extent feasible the spirit and intent of the Parties in this Agreement and the Project Approvals.

6.14 Timing and Review of Project Construction and Completion. Except as expressly provided in the Project Approvals, Developer shall have the vested right to Develop the Project in such order, at such rate and at such times as the Developer deems appropriate in the exercise of its sole business judgment. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of Development resulted in a later-adopted initiative restricting the timing of Development to prevail over such Parties' agreement, it is the desire of the Parties hereto to avoid that result. The Parties acknowledge that, except as otherwise provided for in the Project Approvals, Developer shall have the vested right to Develop the Project on the Project Site in such order and at such rate and at such times as the Developer deems appropriate in the exercise of its business judgment. Nothing in this Agreement shall create any obligation for Developer to complete development of the Project, or any portion thereof, except and to the extent set forth in the Project Approvals.

ARTICLE 7
AMENDMENT

7.1 Project Amendments. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

(a) Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, City's Chief Planner or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the Chief Planner or his/her designee finds that the proposed amendment or modification is minor, consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an "**Administrative Project Amendment**" and the Chief Planner or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor alterations in vehicle circulation patterns or vehicle access points, location of parking stalls on the site, number of required parking stalls if City development standards allow, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments. Any requested amendment seeking modification of or deviation from the performance or development standards contained in the Municipal Code and which would

otherwise require a discretionary approval by the City Council, Planning Commission, or other formal approval body shall not be treated as an Administrative Project Amendment.

(b) Non-Administrative Project Amendments. Any request by Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

7.2 Amendment of this Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties hereto or their successors in interest, as follows:

(a) Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City's Chief Planner or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the Chief Planner or his/her designee finds that the proposed amendment or modification is minor, consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the Project's environmental document or Program EIR, the amendment shall be determined to be an "**Administrative Project Amendment**" and the Chief Planner or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor alterations in vehicle circulation patterns or vehicle access points, location of parking stalls on the site, number of required parking stalls if City development standards allow, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, substitutions of comparable building design/façade materials for any building design/façade material shown on any final development plan or Precise Plan, variations in the location of structures that do not substantially alter the design concepts of the Project, location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Property diagram or Property legal description shall be treated as Administrative Project Amendments. Any requested amendment seeking modification of or deviation from the performance or development standards contained in the Municipal Code and which would otherwise require a discretionary approval by the City Council, Planning Commission, or other formal approval body shall not be treated as an Administrative Project Amendment.

(b) Other Agreement Amendments. Any amendment to this Agreement other than an Administrative Agreement Amendment shall be subject to recommendation by the Planning Commission (by advisory resolution) and approval by the City Council (by ordinance) following a duly noticed public hearing before the Planning Commission and City Council, consistent with Government Code sections 65867 and 65867.5.

(c) Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, or a Subsequent Approval shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

ARTICLE 8
ASSIGNMENT AND TRANSFER

8.1 Assignment and Transfer.

(a) Developer may transfer or assign all or any portion of its interests, rights, or obligations under the Agreement and the Project Approvals to third parties acquiring an interest or estate in the Project or the Project Site or any portions thereof including, without limitation, purchasers or lessees of lots, parcels, or facilities. Prior to any such transfer or assignment, Developer will seek City's prior written consent thereof, which consent will not be unreasonably withheld or delayed. City shall respond within fifteen (15) business days to any Developer notice of transfer. City failure to respond within thirty (30) days shall be deemed consent to the transfer. City may refuse to give consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not, in City's reasonable opinion (which shall be appealable by Developer to the City Council), be able to perform the obligations proposed to be assumed by such transferee. To assist the City Manager in determining whether to provide consent to a transfer or assignment, the City Manager may request from the transferee (directly or through Developer) reasonable documentation of transferee's understanding of and ability and plan to perform the obligations proposed to be assumed by transferee, including without limitation obligations specifically identified in this Agreement, the Project Approvals, the Project's environmental document, the Program EIR and MMRP, the General Plan, and the TDM Plan. To assist the City Manager in determining whether to consent to a transfer or assignment, the City Manager may also require one or more representatives of the transferee to meet in person to demonstrate to the City Manager's reasonable satisfaction that the transferee understands, intends, and has the ability to perform the obligations intended to be assumed, including without limitation the obligations identified in the immediately preceding sentence. Such determination will be made by the City Manager and will be appealable by Developer to the City Council. For any transfer of all or any portion of the Property, the Developer and assignee shall enter into an assignment and assumption agreement in substantially the form set forth in Exhibit G.

(b) Notwithstanding any other provision of this Agreement to the contrary, each of following Transfers are permitted and shall not require City consent under this Section 8.1:

(i) Any transfer for financing purposes to secure the funds necessary for construction and/or permanent financing of the Project or any use of the Property;

(ii) An assignment of this Agreement to an Affiliate;

(iii) Transfers of common area to a property owners association;

(iv) Dedications and grants of easements and rights of way required in accordance with the Project Approvals; or

(v) Any leasing activity.

(c) For the purposes of this Section 8.1, "**Affiliate**" means an entity or person that is directly or indirectly controlling, controlled by, or under common control or management of or with Developer. For the purposes of this definition, "**control**" means the possession, direct

or indirect, of the power to direct or cause the direction of the management and policies of an entity or a person, whether through the ownership of voting securities, by contract, or otherwise, and the terms "**controlling**" and "**controlled**" have the meanings correlative to the foregoing.

ARTICLE 9
COOPERATION IN THE EVENT OF LEGAL CHALLENGE

9.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to the Agreement challenging the validity of any provision of the Agreement, or any Project Approval or Subsequent Approval ("**Legal Challenge**"), the Parties will cooperate in defending such action or proceeding. City shall promptly (within five business days) notify Developer of any such Legal Challenge against City. If City fails promptly to notify Developer of any Legal Challenge against City or if City fails to cooperate in the defense, Developer will not thereafter be responsible for City's defense. The Parties will use best efforts to select mutually agreeable legal counsel to defend such Legal Challenge, and Developer will pay compensation for such legal counsel (including City Attorney time and overhead for the defense of such action), but will exclude other City staff overhead costs and normal day-to-day business expenses incurred by City. Developer's obligation to pay for legal counsel will extend to attorneys' fees incurred on appeal. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such Legal Challenge, each party may select its own legal counsel and Developer will pay its and City's attorneys' fees and costs. Developer shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such Legal Challenge or payable to any prevailing plaintiff/petitioner.

9.2 Reapproval.

(a) If, as a result of any Legal Challenge, all or any portion of the Agreement or the Project Approvals are set aside or otherwise made ineffective by any judgment in such action or proceeding ("**Judgment**"), based on procedural, substantive or other deficiencies ("**Deficiencies**"), the Parties will use their respective best efforts to sustain and reenact or readopt the Agreement, and/or the Project approvals, that the Deficiencies related to, as follows, unless the Parties mutually agree in writing to act otherwise:

(i) If any Judgment requires reconsideration or consideration by City of the Agreement or any Project approval, then City will consider or reconsider that matter in a manner consistent with the intent of the Agreement and with Applicable Law. If any such Judgment invalidates or otherwise makes ineffective all or any portion of the Agreement or Project approval, then the Parties will cooperate and will cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of the Agreement and with Applicable Law. City will then consider readopting or reenacting the Agreement, or the Project approval, or any portion thereof, to which the Deficiencies related.

(ii) Acting in a manner consistent with the intent of the Agreement includes, but is not limited to, recognizing that the Parties intend that Developer may undertake and complete Development of the Project as described in the Agreement, and adopting such ordinances, resolutions, and other enactments as are necessary to readopt or reenact all or any portion of the Agreement or Project approvals without contravening the Judgment.

(b) The Parties agree that this Section 9.2 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 9.2, which shall survive invalidation, nullification, or setting aside.

9.3 Extension Due to Legal Challenge. In the event that any Legal Challenge has the direct or indirect effect of setting aside or modifying the Project Approvals, or preventing or delaying development of the Project as set forth herein, the Term of this Agreement shall be automatically extended for a period equal to the number of days from the commencement of litigation to its conclusion ("**Litigation Tolling Period**"); provided, however, that the total Litigation Tolling Period shall not exceed five (5) years.

ARTICLE 10
DEFAULT; REMEDIES; TERMINATION

10.1 Defaults. Any failure by either Party to perform any term or provision of the Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party (unless such period is extended by mutual written consent), will constitute a default under the Agreement. Any notice given will specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, will be deemed to be a cure within such 30-day period. Upon the occurrence of a default under the Agreement, and the failure to cure the default, the non-defaulting party may institute legal proceedings to enforce the terms of the Agreement or, in the event of a material default, terminate the Agreement. If the default is cured, then no default will exist and the noticing party shall take no further action.

10.2 Termination. If City elects to consider terminating the Agreement due to a material default of Developer, then City will give a notice of intent to terminate the Agreement and the matter will be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. Developer will have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate the Agreement, City will give written notice of termination of the Agreement to Developer by certified mail and the Agreement will thereby be terminated sixty (60) days thereafter, provided, however, that if Developer files an action to challenge City's termination of the Agreement within such 60 day period, then the Agreement shall remain in full force and effect until a trial court has affirmed City's termination of the Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired); provided however that the time period during which the Agreement shall remain in effect shall not exceed three (3) years.

10.3 Enforced Delay; Extension of Time of Performance. Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes and labor disputes; lockouts; riots; floods; earthquakes; fires;

casualties; acts of God; acts of the public enemy; terrorism; epidemics or pandemics; quarantine or shelter-in-place restrictions; freight embargoes; governmental restrictions or priority; litigation and arbitration, including court delays; legal challenges to this Agreement, the Project Approvals, Subsequent Approvals, or any other approval required for the Project, or any initiatives or referenda regarding the same; environmental conditions that have not been previously disclosed or discovered or that could not have been discovered with reasonable diligence that delays the construction or Development of the Property or any portion thereof; unusually severe weather but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that cumulatively exceed thirty (30) days for every winter season occurring after commencement of construction of the Project; acts or omissions of the other party; or acts or failures to act of any public or governmental agency or entity (except that acts or failures to act of City shall not excuse performance by City); moratorium; or a Severe Economic Recession (each a "**Force Majeure Delay**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause. If Notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such Notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer Developer's inability or failure to obtain financing or otherwise timely satisfy shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay unless such inability, failure or delay is a direct result of a Severe Economic Recession. "**Severe Economic Recession**" means a decline in the monetary value of all finished goods and services produced in the United States, as measured by initial quarterly estimates of United States Gross Domestic Product ("**GDP**") published by the United States Department of Commerce Bureau of Economic Analysis (and not subsequent monthly revisions), lasting more than four (4) consecutive calendar quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

10.4 Legal Action. Either Party may institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement in the Agreement, enjoin any threatened or attempted violation thereof, and enforce by specific performance or declaratory relief the obligations and rights of the Parties thereto. Except as provided in Section 10.1, the sole and exclusive remedies for any default or violation of the Agreement will be specific performance or declaratory relief. In any proceeding brought to enforce the Agreement, the prevailing Party will be entitled to recover from the unsuccessful Party all costs, expenses and reasonable attorneys' fees incurred by the prevailing party in the enforcement proceeding.

10.5 Periodic Review.

(a) Conducting the Periodic Review. Throughout the Term, at least once every twelve (12) months following the Effective Date of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review ("**Periodic Review**") shall be conducted by the Chief Planner or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code section 65865.1. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Section 11.9 of this Agreement, City shall deposit in the mail or transmit electronically to Developer a copy of

any staff report and documents to be relied upon in conducting the Periodic Review and, to the extent practical, related exhibits concerning Developer's performance hereunder.

(b) Developer Submission of Periodic Review Report. Annually commencing one year from the Effective Date and continuing through termination of this Agreement, Developer shall submit a report to the Chief Planner stating the Developer's good faith compliance with terms of the Agreement.

(c) Good Faith Compliance Review. During the Periodic Review, the Chief Planner shall set a meeting to consider the Developer's good-faith compliance with the terms of this Agreement. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at the meeting or in a supplemental written statement, at Developer's election. Such response shall be made to the Chief Planner. At the conclusion of the Periodic Review, the Chief Planner shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the Chief Planner shall be appealable to the City Council. If the Chief Planner finds and determines that Developer has not complied with such terms and conditions, the Chief Planner may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in Government Code sections 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be borne by Developer.

(d) Failure to Properly Conduct Periodic Review. If City fails, during any calendar year, to either: (i) conduct the Periodic Review or (ii) notify Developer in writing of City's determination, pursuant to a Periodic Review, as to Developer's compliance with the terms of this Agreement and such failure remains uncured as of December 31 of any year during the Term, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement for the period of time since the last Periodic Review.

(e) Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following request by Developer, execute and deliver to Developer (or to any party requested by Developer) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies:

(i) The Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications;

(ii) That there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default;

(iii) Any other information reasonably requested by Developer. City's failure to deliver to Developer such a Notice of Compliance within such time shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification, except as may be represented by Developer, and that there are no uncured defaults

in the performance of Developer, except as may be represented by Developer. Developer shall have the right, in Developer's sole discretion, to record such Notice of Compliance.

10.6 California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of San Mateo County, California.

10.7 Resolution of Disputes. With regard to any dispute involving Development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes within a reasonable time period. Nothing in this Section 10.7 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to by the parties to such meetings.

10.8 Attorneys' Fees. In any legal action or other proceeding brought by either Party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled.

10.9 Hold Harmless. Developer shall hold City and its elected and appointed officers, agents, employees, and representatives harmless from claims, costs, and liabilities for any personal injury, death, or property damage which is a result of, or alleged to be the result of, the construction of the Project, or of operations performed under this Agreement by Developer or by Developer's contractors, subcontractors, agents or employees, whether such operations were performed by Developer or any of Developer's contractors, subcontractors, agents or employees. Nothing in this Section 10.9 shall be construed to mean that Developer shall hold City harmless from any claims of personal injury, death or property damage arising from, City's breach of this Agreement, or alleged to arise from, (i) any gross negligence or willful misconduct on the part of City, its elected and appointed representatives, officers, agents and employees, or (ii) to the extent arising out of or in connection with the maintenance, use or condition of any public improvement after the time it has been dedicated to and accepted by the City or another public entity.

ARTICLE 11
MISCELLANEOUS

11.1 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

11.2 No Agency. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject Project is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations

and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

11.3 Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations, and policies applicable to the Development of the Project Site at the time of the approval of this Agreement as provided by Government Code section 65866.

11.4 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

11.5 Other Necessary Acts and City Approvals. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise by this Agreement or Applicable Law.

11.6 Construction. Each reference in this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval, or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

11.7 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

11.8 Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns,

representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site, and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.

11.9 Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by email (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If delivered by email, a notice shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day, or else on the next business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

City of South San Francisco
Attn: City Manager
400 Grand Avenue
South San Francisco, CA 94080
Phone: (650) 877-8500
Email: Sharon.Ranals@ssf.net

With a Copy to:

Meyers Nave
Attn: Sky Woodruff
1999 Harrison Street, 9th Floor
Oakland, CA 94612
Phone: (510) 808-2000
Email: sky@meyersnave.com

If to Developer, to: [INSERT]

With a Copy to: [INSERT]

Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

11.10 Mortgagee Protection. The Parties agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Project Site or any portion thereof or any improvement thereon by any lien of mortgage, deed of trust, or other security device securing financing with respect to the Project or the Project Site ("**Mortgage**"). City acknowledges that the lenders providing such financing may require, in addition to estoppel certificates as set forth in Section 4.7, certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification provided such interpretation or modification is consistent with the intent and purpose of this Agreement. Any Mortgagee of the Project Site shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage on the Project Site made in good faith and for value, unless otherwise required by law.

(b) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer or within ten (10) days of receiving a request, if a Mortgagee has not provided a request prior to the City sending a notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such Party under this Agreement.

(c) Any Mortgagee who comes into possession of the Project Site, or any portion thereof, pursuant to foreclosure of the Mortgage or deed in lieu of such foreclosure, shall take the Project Site, or portion thereof, subject to the terms of this Agreement. Notwithstanding any provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be condition precedent to City's performance hereunder, and further provided that any sales, transfer, or assignment by any Mortgagee in possession shall be subject to the provisions of Section 8.1 of this Agreement.

11.11 Entire Agreement, Counterparts And Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of twenty-nine (29) pages, exclusive of signature pages, and seven (7) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A: Description and Diagram of Project Site

- Exhibit A1: Legal Description of Project Site
- Exhibit A2: Diagram of Project Site – Existing Parcels

- Exhibit A3: Diagram of Project Site – Proposed Parcels

Exhibit B: List of Project Approvals as of Effective Date

Exhibit C: City Fees, Exactions and Payments

Exhibit D: Sustainability Features

Exhibit E: Applicable Laws

Exhibit F: Form of Assignment and Assumption Agreement

Exhibit G: Fire Station Agreement

11.12 No Third Party Beneficiaries. This Agreement is intended for the benefit of the Parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any express or implied provision hereof be enforced by, any other person, except as otherwise set forth in Section 11.10.

11.13 Recordation Of Development Agreement. Pursuant to Government Code section 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of San Mateo.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

[Signatures to follow on subsequent pages.]

SIGNATURE PAGE FOR DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND HCP FORBES, LLC

CITY:

CITY OF SOUTH SAN FRANCISCO,
a California municipal corporation

By: ___________________________________

Date: ___________________________________

Name: Sharon Ranals
Its: City Manager

ATTEST:

By: ___________________________________
City Clerk

APPROVED AS TO FORM:

By: ___________________________________
City Attorney

[*Insert Notary Acknowledgment*]

SIGNATURE PAGE FOR DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND HCP FORBES, LLC

DEVELOPER:

By: ______________________________

Date: ______________________________

Name:
Its:

By: ______________________________

Date: ______________________________

Name:
Its:

[*Insert Notary Acknowledgment*]

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND HCP FORBES, LLC

Exhibit A

Description and Diagram of Project Site

(Starts on Next Page)

EXHIBIT A1 – LEGAL DESCRIPTION OF PROJECT SITE

Real property in the City of South San Francisco, County of San Mateo, State of California, described as follows:

PARCEL ONE:

PARCEL 49, IN BLOCK 2, AS SHOWN AND DELINEATED UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, GALLO TRACT", BEING A RESUBDIVISION OF LOT 12, IN BLOCK 2, CABOT, CABOT AND FORBES INDUSTRIAL PARK UNIT NO. 1, FILED IN THE OFFICE OF THE COUNTY RECORDER ON DECEMBER 23, 1976, IN BOOK 34 OF PARCEL MAPS, PAGE 35, SAN MATEO COUNTY RECORDS.

PARCEL TWO:

PARCEL 50, IN BLOCK 2, AS SHOWN AND DELINEATED UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, GALLO TRACT", BEING A RESUBDIVISION OF LOT 12, IN BLOCK 2, CABOT, CABOT AND FORBES INDUSTRIAL PARK UNIT NO. 1, FILED IN THE OFFICE OF THE COUNTY RECORDER ON DECEMBER 23, 1976, IN BOOK 34 OF PARCEL MAPS, PAGE 35, SAN MATEO COUNTY RECORDS.

PARCEL THREE:

PARCEL 13 IN BLOCK 2 AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A RESUBDIVISION OF LOT 8, IN BLOCK 2, CABOT, CABOT & FORBES INDUSTRIAL PARK UNIT NO. 1, SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON FEBRUARY 25, 1966 IN BOOK 1 OF PARCEL MAPS, PAGE 11.

PARCEL FOUR:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 38 AND A PORTION OF PARCEL 39 AS SAID PARCELS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP BEING A SUBDIVISION OF LOT 9, BLOCK 2, CABOT, CABOT & FORBES INDUSTRIAL PARK UNIT NO. 1, RECORDED IN VOLUME 61 OF MAPS AT PAGES 45 THROUGH 49 AND PARCEL 14, BLOCK 2, AS SHOWN ON THE PARCEL MAP RECORDED IN VOLUME 1 OF PARCEL MAPS AT PAGE 11 ", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON JULY 7, 1966 IN BOOK 1 OF PARCEL MAPS AT PAGE 37, SAID REAL PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 38 AS SHOWN ON SAID PARCEL MAP IN BOOK 1 OF PARCEL MAPS AT PAGE 37 SAID POINT ALSO BEING ON THE RIGHT OF WAY OF FORBES BOULEVARD (80 FOOT WIDE);

THENCE EASTERLY ALONG SAID RIGHT OF WAY OF FORBES BOULEVARD ON A NON-TANGENTIAL CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 3600.00 FEET AND TO WHICH RADIUS POINT A RADIAL LINE BEARS NORTH 00° 54' 50" WEST, THROUGH A CENTRAL ANGLE OF 05° 05' 34", WITH A CURVE LENGTH OF 319.99 FEET;

THENCE LEAVING SAID RIGHT OF WAY SOUTH 00° 22' 10" WEST 160.71 FEET;

THENCE SOUTH 15° 28' 01" WEST 341.06 FEET TO THE SOUTHWESTERLY BOUNDARY LINE OF SAID PARCEL 39;

THENCE WESTERLY ALONG SAID SOUTHWESTERLY BOUNDARY LINE ON A NON-TANGENTIAL CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 1156.06 FEET AND TO WHICH RADIUS POINT A RADIAL LINE BEARS SOUTH 16° 32' 31" WEST, THROUGH A CENTRAL ANGLE OF 11° 37' 30", WITH A CURVE LENGTH OF 234.56 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 38;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 38 NORTH 00° 22' 10" EAST 426.53 FEET (CALLED 426.52 FEET ON SAID PARCEL 38), TO THE POINT OF BEGINNING, SAID PARCEL IS SHOWN AS RESULTANT PARCEL A ON THAT CERTIFICATE OF COMPLIANCE OF LOT LINE ADJUSTMENT RECORDED DECEMBER 2, 2022 AS INSTRUMENT NO. 2022-083501, SAN MATEO COUNTY RECORDS.

PARCEL FIVE:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 38 AND A PORTION OF PARCEL 39 AS SAID PARCELS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP BEING A RESUBDIVISION OF LOT 9, BLOCK 2, CABOT, CABOT & FORBES INDUSTRIAL PARK UNIT NO. 1, RECORDED IN VOLUME 61 OF MAPS AT PAGES 45 THROUGH 49 AND PARCEL 14, BLOCK 2, AS SHOWN ON THE PARCEL MAP RECORDED IN VOLUME 1 OF PARCEL MAPS AT PAGE 11", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON JULY 7, 1966 IN BOOK 1 OF PARCEL MAPS AT PAGE 37, SAID REAL PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 39 ALSO BEING THE NORTHEAST CORNER OF LOT 7 AND THE WEST RIGHT OF WAY OF ALLERTON AVENUE AS SHOWN ON SAID PARCEL MAP BOOK 1 OF MAPS AT PAGE 37;

THENCE LEAVING SAID RIGHT OF WAY NORTH 56° 37' 50" WEST 41.45 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWEST HAVING A RADIUS OF 1156.06 FEET, THROUGH A CENTRAL ANGLE OF 16° 49' 39", WITH A CURVE LENGTH OF 339.53 FEET;

THENCE NORTH 15° 28' 01" EAST 341.06 FEET;

THENCE N 0° 22' 10" EAST A DISTANCE OF 160.71 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF FORBES BOULEVARD (80 FOOT WIDE);

THENCE EASTERLY ON A NON-TANGENTIAL CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 3600.00 FEET AND TO WHICH RADIUS POINT A RADIAL LINE BEARS NORTH 06° 00' 24" WEST, THROUGH A CENTRAL ANGLE OF 9° 07' 30," WITH A CURVE LENGTH OF 573.35 TO THE BEGINNING OF A REVERSE CURVE;

THENCE ALONG LAST SAID CURVE CONCAVE TO THE SOUTHWEST THROUGH A CENTRAL ANGLE 98° 08' 24", HAVING A RADIUS OF 30.00 FEET, FOR A DISTANCE OF 51.39 FEET TO THE BEGINNING OF A COMPOUND CURVE;

THENCE ALONG ON THE WEST RIGHT OF WAY OF ALLERTON AVENUE AND ALONG LAST SAID CURVE HAVING A RADIUS OF 465.29 FEET THROUGH A CENTRAL ANGLE OF 40° 21' 40", WITH A CURVE LENGTH OF 327.77 FEET;

THENCE CONTINUING ALONG SAID RIGHT OF WAY OF ALLERTON AVENUE SOUTH 33° 22' 10" WEST FOR A DISTANCE OF 505.47 FEET (CALLED 505.48 FEET ON SAID PARCEL 39), TO THE POINT OF BEGINNING, SAID PARCEL IS SHOWN AS RESULTANT PARCEL B ON THAT CERTIFICATE OF COMPLIANCE OF LOT LINE ADJUSTMENT RECORDED DECEMBER 2, 2022 AS INSTRUMENT NO. 2022-083501, SAN MATEO COUNTY RECORDS.

APNs: 015-050-710, 015-050-720, and 015-050-730 (Parcels One and Two; 420 Forbes Blvd.)
APN: 015-050-230 (Parcel Three; 440 Forbes Blvd.)
APN: 015-050-900 (Parcel Four; 460 Forbes Blvd.)
APN: 015-050-890 (Parcel Five; 480-490 Forbes Blvd.)

EXHIBIT A2 – DIAGRAM OF PROJECT SITE – EXISTING PARCELS

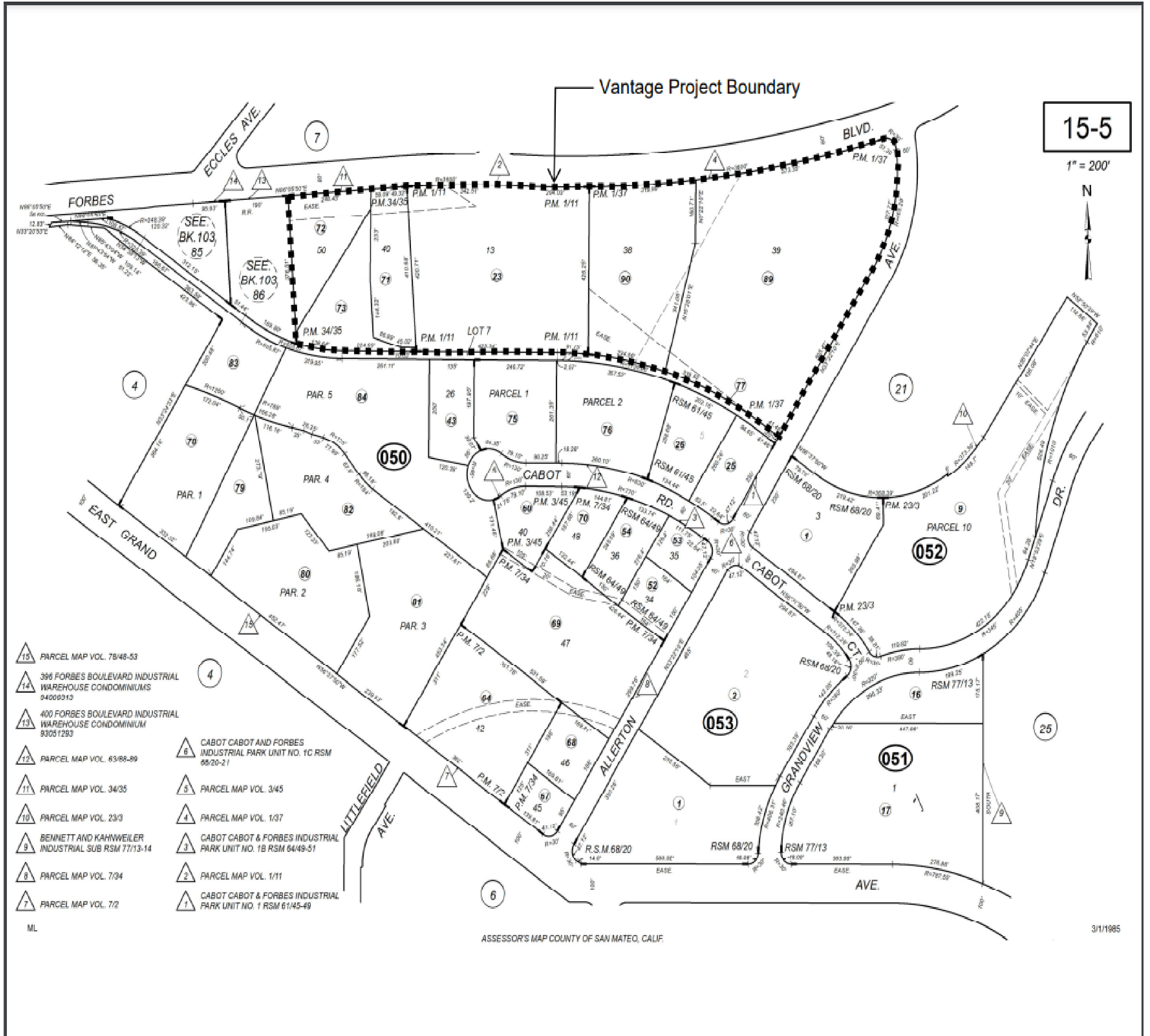
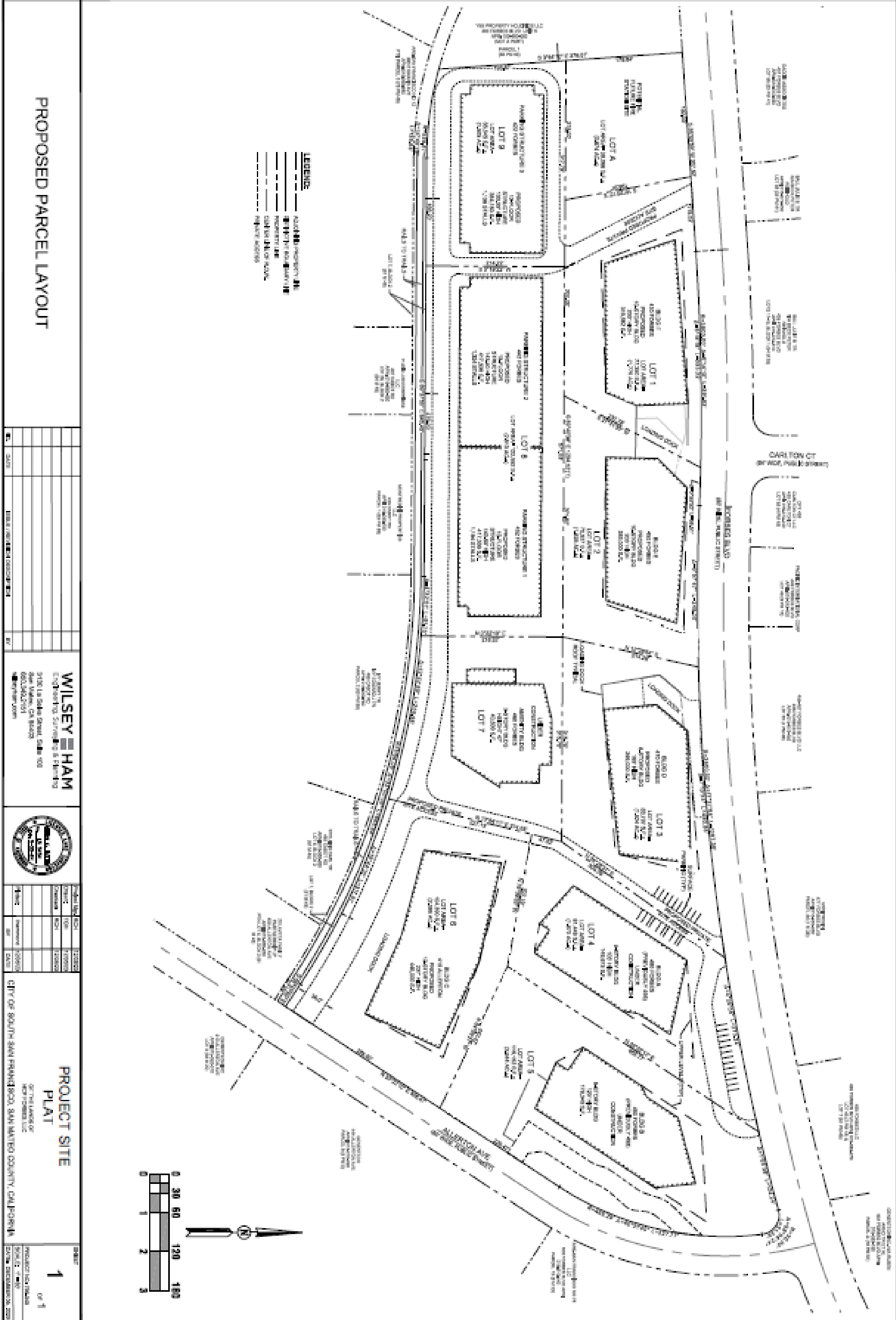


EXHIBIT A3 – DIAGRAM OF PROJECT SITE – PROPOSED PARCELS


PROPOSED PARCEL LAYOUT
PROJECT SITE PLAT
WILSEY HAM
CITY OF SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA
CARLTON CT
LEGEND
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT 8
LOT 9
LOT A
1

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND HCP FORBES, LLC

Exhibit B

List of Project Approvals as of Effective Date

Project P22-0117 (Master Plan) and Project P22-0138 (Precise Plan) adopting the:

- Master Plan MP23-0002
- Precise Plan PP23-0001
- Design Review DR22-0036
- Use Permit UP22-0011
- Transportation Demand Management TDM22-0009
- Vesting Tentative Map PM22-0002
- Development Agreement DA22-0005
- Environmental Determination ND22-0002

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND HCP FORBES, LLC

Exhibit C

City Fees, Exactions, and Payments

The following fees are estimates, are subject to change, based on final plans submitted for building permits. Credits for existing uses will be calculated and applied to applicable fees. **

1. ADMINISTRATIVE/PROCESSING FEES. The Developer shall pay the applicable application, processing, administrative, legal and inspection fees and charges, as then currently adopted pursuant to City's Master Fee Schedule and required by City for processing of land use entitlements, including without limitation, General Plan amendments, zoning changes, Precise Plans, development agreements, conditional use permits, variances, transportation demand management plans, tentative subdivision maps, parcel maps, lot line adjustments, general plan maintenance fee, demolition permits, and building permits.

2. CHILDCARE FEE: Prior to issuance of the first building permit non-residential, the applicant shall pay any applicable childcare fees in accordance with South San Francisco Municipal Code Chapter 20.310. This fee is subject to annual adjustment. The childcare impact fee estimate for the project is:

- Office/R&D: $1.51/SF x 1,288,582 SF = $1,945,758.82

3. PARK FEES: Prior to issuance of the first building permit the applicant shall pay the Parkland Acquisition Fee and Parkland Construction Fee in accordance with South San Francisco Municipal Code Chapter 8.67. The fee is subject to annual adjustment. The park fee estimate for the project is:

- Office/R&D: $3.54/SF x 1,288,582 SF = $4,561,580.28

4. CITYWIDE TRANSPORTATION FEE: Prior to issuance of the first building permit, the applicant shall pay applicable transportation impact fees in accordance with South San Francisco Municipal Code Chapter 8.73. The fee is subject to annual adjustment. The citywide transportation fee estimate for the project is:

- Office/R&D: $34.85/SF x 1,288,582 SF = $44,907,082.70

5. COMMERCIAL LINKAGE FEE: Prior to issuance of the first building permit, the applicant shall pay the applicable commercial linkage fee in accordance with South San Francisco Municipal Code Chapter 8.69, based on the current fee for each applicable land use category. The fee shall be calculated based on the fee schedule in effect at the time the building permit is issued. The commercial linkage fee estimate for the project is:

- Office/R&D: $17.38/SF x 1,288,582 SF = $22,395,555.20

6. PUBLIC SAFETY IMPACT FEE: Prior to issuance of the first building permit for the development, the applicant shall pay applicable Public Safety Impact Fees in accordance with South San Francisco Municipal Code Chapter 8.75. The Public Safety Impact Fee for the project is:

- Office/R&D: $1.31/SF x 1,288,582 SF = $1,688,042.42

7. LIBRARY IMPACT FEE: Prior to issuance of the certificate of occupancy for the development, whichever is earlier, the applicant shall pay applicable Library Impact Fee in accordance with South San Francisco Municipal Code Chapter 8.74. The Library Impact Fee for the project is:

- Office/R&D: $.14/SF x 1,288,582 SF = $180,401.48

8. PUBLIC ART REQUIREMENT: All non-residential development is subject to the Public Art Requirement, per South San Francisco Municipal Code Chapter 8.76. The public art requirement for this project shall be satisfied by providing qualifying public art, as defined in South San Francisco Municipal Code Chapter 8.76 and reviewed and approved by the Cultural Arts Commission or designee, with a value equal to not less than 1% of construction costs for acquisition and installation of public art on the project site; or electing to make a public art contribution payment in an amount not less than 0.5% of construction costs into the public art fund. The in-lieu contribution payment shall be made prior to the issuance of a building permit.

**DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
HCP FORBES, LLC**

Exhibit D

Sustainability Features

The Vantage Project incorporates the following sustainability features into the campus design. The following features assume a full campus build out:

- **Transportation**
  - The site is within walking distance of a select number of basic services and is bikeable to several basic services such as restaurants, shops, and parks accessible from Allerton Road or the bike trail. The campus amenity building also offers a restaurant, fitness center, meeting space, and a conferencing center to reduce vehicular use to and from the site during the work day.
  - The parking garage includes bicycle parking for 168 long-term bicycles at full build out and short-term bicycle parking spaces near building entrances in accordance with CALGreen. Showers are provided in the amenity building to accommodate commuters who bicycle to work.
  - Parking areas include CLEAN AIR/VANPOOL/EV striping in accordance with CALGreen requirements.
  - Parking areas provide infrastructure for future Electric Vehicle Charging Stations.
  - A Transportation Demand Management Plan (TDM) has been developed to promote alternative forms of transportation and improve air quality.

- **Energy / Greenhouse Gas Emissions**
  - Energy strategies will be evaluated holistically to reduce energy demand and operational carbon. Systems will be tested and monitored to aid in operational efficiencies.
    - A commissioning agent has been retained in order to meet the requirements of the LEED Fundamental & Enhanced Commissioning prerequisite, CALGreen, and Title 24 requirements.
    - Project will comply with all applicable provisions of Title 24 2022 Energy Efficiency Standards.
    - Project will meet LEED energy savings requirements through compliance with Title 24. This energy optimization may be achieved using strategies such as: building envelope features, building orientation or shape, efficient mechanical, plumbing, or electrical systems.
  - Electrical service to be provided by Peninsula Clean Energy or other clean energy source.

- **Waste Reduction**

    - Recycling and composting collection areas include mixed paper, corrugated cardboard, glass, plastics, and metals. The project will take appropriate measures for the safe collection, storage, and disposal of electronic waste.
    - A Construction Waste Management Plan will be prepared and implemented.

- **Water Conservation**

    - Water conservation strategies will be prioritized to first conserve water by reducing potable water demand. Water use monitoring and measurement offers operational efficiencies for water conservation.
        - Outdoor Water Use
            - Landscape will comply with the Model Water Efficient Landscape Ordinance (MWELO).
            - Irrigation systems should be separately metered.
            - Native and drought tolerant species will be specified and planted.
        - Indoor Water Use
            - Indoor plumbing fixtures will target an aggregate water consumption reduction by 30% from the LEED v4.0 baseline. Additional reductions will be targeted pending final selection of fixtures.
            - Urinals, water closets, and any showerheads will be WaterSense labeled.
            - Building will have a dedicated water meter for whole building water use.
            - Project will install permanent meters for two water subsystems. One of these meters should be tied to landscape irrigation and the cooling towers will be equipped with make up water meters.
    - Cooling towers shall be designed to maximize cycles of concentration by assessing the water quality on the site and through filtration and treatment.

- **Designing for Employee and Community Wellness**

    - Prioritize wellness as part of the design and operations through mechanical ventilation and high efficiency filters.
    - Provide on-site health and fitness facilities for building tenants.
    - Provide open space that offers opportunities for tenant recreation and social interaction.
    - Provide vegetated area and diversity of plant species to promote connections to nature.
    - Provide access to natural daylight and views.

- **Other**

    - LEED v4.0 Certification.

- On-site stormwater pollution prevention plans (including bio-filtration areas, flow-through planters, and pervious pavers and pavements) and erosion and sediment control plans.

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND HCP FORBES, LLC

Exhibit E

Applicable Laws

Developer shall comply with the following City regulations and provisions applicable to the Property as of the Effective Date of this Agreement (except as modified by this Agreement and the Project Approvals).

1. South San Francisco General Plan, as adopted on October 12, 2022 and as amended from time to time prior to the Effective Date.

2. City of South San Francisco Municipal Code, as amended from time to time prior to the Effective Date, including Chapter 20.020 Zoning Districts, Zoning Map, and Boundaries.

3. South San Francisco Zoning Map, as amended from time to time prior to the Effective Date.

4. City Fees as set forth in Exhibit C

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND HCP FORBES, LLC

Exhibit F

Form of Assignment and Assumption Agreement

(Starts on Next Page)

WHEN RECORDED MAIL TO:

City of South San Francisco
Attn: City Clerk
400 Grand Avenue
South San Francisco, CA 94080

Space Above for Recorder's Use
Exempt from Recording Fees per Cal. Gov. Code § 6103

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Assignment Agreement") is entered into to be effective on ______, 202_, by and between HCP Forbes, LLC ("Assignor"), and ___________________, a _______________ ("Assignee"), and the City of South San Francisco, a municipal corporation ("City"). Assignor and Assignee are sometimes referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. Assignor and City have previously entered into that certain Development Agreement between City and Assignor dated ________, 2024, approved by the City of South San Francisco City Council by Ordinance No. ________ on _________,2024 and recorded on ______________, 2024 as Document No. ______________, San Mateo County Official Records ("Development Agreement") to facilitate the development and redevelopment of that certain real property within the City of South San Francisco, California, which is legally described in Exhibit A of the Development Agreement ("Property"). A true and complete copy of the Development Agreement is attached hereto as Exhibit 1.

B. Assignor is the fee owner of the Property, and Assignor desires to convey its interest in the developable, approximately [_] acre portion of the Property and more particularly described on Exhibit 2 attached hereto ("Assigned Property") to Assignee concurrently with execution of this Assignment Agreement; and Assignee desires to so acquire such interest in the Assigned Property from the Assignor.

C. Section 8.1 of the Development Agreement ("Agreement and Transfer" therein) refers to Assignor as "Developer" and provides in part that:

> Developer may transfer or assign all or any portion of its interests, rights, or obligations under the Agreement and the Project approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or lessees of lots, parcels, or facilities. Prior to the issuance of the first certificate of occupancy for the Project Site, Developer will seek City's prior written consent to any transfer, which consent will not be unreasonably withheld or delayed. City may refuse to give consent only if, in light of the proposed

transferee's reputation and financial resources, such transferee would not, in City's reasonable opinion, be able to perform the obligations proposed to be assumed by such transferee. Such determination will be made by the City Manager and will be appealable by Developer to the City Council. For any transfer of all or any portion of the Property, the Developer and assignee shall enter into an assignment and assumption agreement in substantially the form set forth in Exhibit F.

D. The Parties desire to enter into this Assignment Agreement in order to satisfy and fulfill their respective obligations under Section 8.1 of the Development Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Assignment by Assignor. Assignor hereby assigns, transfers and grants to Assignee, and its successors and assigns, all of Assignor's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Development Agreement with respect to the Assigned Property and only to the extent accruing or arising on and after the Effective Date (collectively, the "Assigned Rights and Obligations").

2. Acknowledgement and Assumption of Obligations by Assignee. Assignee, for itself and its successor and assigns, hereby acknowledges that it has reviewed, is aware of and intends to honor its Assigned Rights and Obligations with respect to its Development of the Assigned Property pursuant to the terms of the Development Agreement, and additionally expressly and unconditionally assumes all of the Assigned Rights and Obligations. Assignee agrees, expressly for the benefit of Assignor and City, to comply with, perform, and execute all of the Assigned Rights and Obligations.

3. Release of Assignor. Assignee and City hereby fully release Assignor from all Assigned Rights and Obligations. Both Assignor and Assignee acknowledge that this Assignment Agreement is intended to partially or fully assign all of the Assigned Rights and Obligations to Assignee, and it is expressly understood that Assignor shall continue to be obligated under the Development Agreement only with respect to those portions of the Project Site retained by Assignor.

4. Substitution of Assignor. Assignee hereinafter shall be substituted for and replace Assignor in the Development Agreement with respect to the Assigned Property. Whenever the term "Developer" appears in the Development Agreement, it shall hereinafter include Assignee with respect to the Assigned Property.

5. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment and assumption, all the terms, covenants, conditions and provisions of the Development Agreement are hereby ratified and shall remain in full force and effect.

6. Recording. Assignor shall cause this Assignment Agreement to be recorded in the Official Records of San Mateo County, California, and shall promptly provide conformed copies of the recorded Assignment Agreement to Assignee and City.

7. Successors and Assigns. All of the terms, covenants, conditions and provisions of this Assignment Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

8. Applicable Law/Venue. This Assignment Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Assignment Agreement shall be brought only in the Superior Court of the County of San Mateo, State of California.

9. Applicable Law/Venue. This Assignment Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Assignment Agreement shall be brought only in the Superior Court of the County of San Mateo, State of California.

10. Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Assignment Agreement, and this Assignment Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Assignment Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

11. Severability. Except as otherwise provided herein, if any provision(s) of this Assignment Agreement is (are) held invalid, the remainder of this Assignment Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

12. Counterparts. This Assignment Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Assignment Agreement had executed the same counterpart.

13. City Consent. City is executing this Assignment Agreement for the limited purpose of consenting to the assignment and assumption and clarifying that there is privity of contract between City and Assignee with respect to the Development Agreement.

14. Effective Date. The Effective Date of this Assignment Agreement shall be the date upon which Assignee obtains fee title to the Assigned Property by duly recorded deed ("Effective Date").

IN WITNESS WHEREOF, Assignor, Assignee and City have entered into this Assignment Agreement as of the date first written above.

ASSIGNOR:

HCP FORBES, LLC

By: ______________________________
Signature of Person executing the Agreement on behalf of Assignor

Name: ______________________________

Title: ______________________________

ASSIGNEE:

[INSERT NAME OF ASSIGNEE]

By: ______________________________
Signature of Person executing the Agreement on behalf of Assignee

Name: ______________________________

Title: ______________________________

CITY:

CITY OF SOUTH SAN FRANCISCO,
a Municipal Corporation

By: ______________________________
Signature of Person executing the Agreement on behalf of City

Name: ______________________________

Title: City Manager

Approved as to form by:

By: ______________________________
Signature of Person approving form of the Agreement on behalf of City

Name: ______________________________

Title: City Attorney

Exhibit G
Fire Station Agreement
(Starts on Next Page)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of South San Francisco
P.O. Box 711
South San Francisco, CA 94083

(Space Above This Line Reserved For Recorder's Use)

This instrument is exempt from recording fees pursuant to Government Code section 27383.

Documentary Transfer Tax is $0.00 (exempt per Revenue & Taxation Code section 11922, Transfer to Municipality).

VANTAGE PROJECT

FIRE STATION AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND HCP FORBES, LLC

This Fire Station Agreement ("**Agreement**") is entered into as of _________, 2024 ("**Effective Date**"), by and between the City of South San Francisco, a municipal corporation organized and existing under the State of California (the "**City**") and HCP Forbes, LLC, a Delaware limited liability company ("**Developer**"). The City and Developer are sometimes hereinafter referred to as a "**Party**" and collectively as the "**Parties**."

R E C I T A L S

WHEREAS, Developer has a legal and/or equitable interest in certain real property located on the approximately 18.99 acre site consisting of 420, 440, 460, 480, and 490 Forbes Boulevard in the City of South San Francisco, County of San Mateo, State of California (the "**Property**"), and intends to develop the Property into a One Million Six Hundred Fifty Five Thousand Two Hundred Two (1,655,202) square foot office/research and development and life science campus and amenities, parking, and infrastructure (the "**Campus Development**") with a fire station that will be developed by the City (the "**Fire Station**"). Collectively, the Campus Development and the Fire Station are referred to as, the "**Development Project**"; and

WHEREAS, on [DATE], after a duly noticed public hearing, the City Council approved various entitlements for the Development Project by adopting Resolution No. ____ for Project P22-0117 and Project P22-0138, including a Master Plan, Precise Plan, Design Review,

Transportation Management Plan, Conditional Use Permit, Development Agreement ("**Development Agreement**"), and Vesting Tentative Map (collectively, the "**Entitlements**"), which authorize development of the Development Project; and

WHEREAS, on [DATE], pursuant to Ordinance No. ____, the Parties entered into the Development Agreement to vest Developer' rights to develop the Development Project in exchange for certain community benefits provided to the City; and

WHEREAS, the Development Project's 2.0 FAR is proposed in accordance with the BTP-High General Plan designation and zoning that allow a maximum 2.0 FAR with community benefits on the Property; and

WHEREAS, South San Francisco Municipal Code (the "**S.S.F.M.C.**") section 20.100.003(B) allows for certain projects to realize increased FAR by complying with the City's Community Benefit Program; and

WHEREAS, Developer intends to satisfy the City's Community Benefit Program by conveying to the City an approximately one-acre parcel on the northwestern corner of the Property, accessible from Forbes Boulevard, more specifically described in the attached **Exhibit A** (the "**Fire Station Parcel**"), upon which the City will develop the Fire Station; and

WHEREAS, the Parties agree that the Development Project and the densification of the East of 101 Area, as envisioned by the City's Shape SSF 2040 General Plan (the "**General Plan**"), will increase the demand for fire services in the neighborhood and will strain existing fire service facilities; and

WHEREAS, the City is responsible for providing fire protection services within the City; and

WHEREAS, conveyance of the Fire Station Parcel will provide the City with significant community benefits, by allowing the City to develop the Fire Station onsite, increasing fire service coverage in the East of 101 Area, consistent with the City Shape SSF 2040 General Plan policies and the S.S.F.M.C.; and

WHEREAS, Developer and the City agree that the conveyance of the Fire Station Parcel and the City's development of the Fire Station on the Fire Station Parcel will mutually benefit the Parties; and

WHEREAS, the conveyance of the Fire Station Parcel for the City's development of the Fire Station is consideration for the City's issuance of the Entitlements to Developer, and Developer' development rights under the Development Agreement granted by the City; and

WHEREAS, Developer has agreed to convey the Fire Station Parcel to the City, subject to the terms and conditions set forth herein, in order to mitigate the Development Project's impacts to fire protection services and to provide significant community benefits to the City, in exchange for the City's approval of the Development Project and Entitlements at the proposed density; and

WHEREAS, the Parties desire to enter into this Agreement to set forth (i) Developer's commitment to convey the Fire Station Parcel to the City, in exchange for increased density for the Development Project, and (ii) the City's obligations with respect to acceptance of the Fire Station Parcel and efforts towards development of the Fire Station.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

AGREEMENT

ARTICLE 1
FIRE STATION PARCEL

Section 1.1 Fire Station Parcel

1.1.1 Fire Station Parcel Transfer. Pursuant and subject to the terms of this Agreement, Developer shall convey fee title to the Fire Station Parcel to the City in exchange for the benefits afforded Developer detailed in the Development Agreement.

ARTICLE 2
Obligations OF THE PARTIES

Section 2.1 Developer' Rights and Obligations

2.1.1 Fire Station Parcel Conveyance. Within ninety (90) days of the execution of this Agreement, Developer shall execute a grant deed for the Fire Station Parcel to the City in accordance with this Section 2.1.1 (the "**Grant Deed**") substantially in the form attached as Exhibit B hereto and deliver such Grant Deed to the City.

2.1.2 Conveyance of Fire Station Parcel. Developer shall convey the Fire Station Parcel on an "as is" basis without warranties, representations or guarantees, express or implied, but in a fenced condition. Upon conveyance, Developer shall be released from liability with respect to the Fire Station Parcel.

Section 2.2 City's Rights and Obligations

2.2.1 As-Is Property. City agrees and acknowledges that it is taking title to the Fire Station Parcel in its "as-is" condition and that Developer makes no representations or warranties regarding the condition of the Fire Station Parcel.

ARTICLE 3
Fire Station Development and Interim Use

Section 3.1 License for Use of Fire Station Parcel

During the term of the Development Agreement, Developer may, pursuant to a mutually acceptable license agreement (the "**Fire Station Parcel License Agreement**"), operate and utilize the Fire Station Parcel in accordance with applicable laws and regulations, including using the Fire Station Parcel for ingress, egress, parking, staging, and other construction related activities until the City (i) commences construction of the Fire Station, (ii) conveys the Fire Station Parcel to a third-party after the Restriction Period or (iii) otherwise commences an alternative public use (consistent with the Alternative Use Restriction set forth in Section 3.5 (b) below) on the Fire Station Parcel after the Restriction Period. For purposes of this Agreement, the Restriction Period shall have the same meaning as outlined in the Development Agreement.

If Developer elects not to pursue a Fire Station License Agreement with the City for use of the Fire Station Parcel as contemplated in this Section 3.1, then City may elect to license the Fire Station Parcel to other users for similar temporary uses pursuant to a license agreement. For purposes of this Section 3.1, Developer shall have elected not to pursue the Fire Station License Agreement with the City only if Developer has not requested to enter into the Fire Station License Agreement with the City in writing within one (1) year of the Effective Date of the Development Agreement or has failed to respond to City's offer to enter into the Fire Station License Agreement within thirty (30) days after receipt of same.

Section 3.2 License for Use of Campus Development Property

During the term of the Development Agreement, the City may, pursuant to a mutually acceptable license agreement in a form substantially similar to the Fire Station Pracel License Agreement (the "**Vantage Campus License Agreement**"), use certain Campus Development property (as determined by Developer, in its sole discretion) for vehicle parking, staging and other construction related activities for the Fire Station Parcel in accordance with applicable laws and regulations, until such time as Developer determines, in its sole discretion, that it can no longer allow such use by the City.

If the City has not requested to enter into a Vantage Campus License Agreement with Developer in writing within one (1) year of the Effective Date of the Development Agreement or has failed to respond to Developer's offer to enter into a license agreement within thirty (30) days after receipt of same, the City shall be deemed to have elected not to pursue the Vantage Campus Licese Agreement with Developer.

Section 3.3 City Responsibility for Fire Station Development

The City shall be solely responsible for design, construction and development of the Fire Station on the Fire Station Parcel and shall design and construct the Fire Station to be aesthetically cohesive with the Development Project. The City shall cooperate with Developer in designing the Fire Station to ensure that it conforms to the foregoing requirements; provided, however, that the City may decline to incorporate any changes that Developer requests to the final plans and specifications that would unreasonably increase the cost of the Fire Station or would otherwise be inconsistent with the City's approved use of the Fire Station Parcel.

Section 3.4 Timing for Fire Station Development

The City shall use reasonable efforts to commence construction of the Fire Station within seven (7) years following Development Agreement Effective Date ("**Fire Station Development Period**"). For purposes of this Section 3.4, "commence construction" shall mean receipt of any written certification or authorization required to obtain building permits or other development approvals for the construction of the fire station.

Section 3.5 Limitation on Sale/Use of Fire Station Parcel

a) Limitation on Sale of Fire Station Parcel. Consistent with the terms outlined in the Development Agreement, the City agrees that it will not sell the Fire Station Parcel during the

Fire Station Development Period. Any proposed sale after the Fire Station Development Period shall be subject to the provisions of Article 7 herein.

b) Limitation on Use of Fire Station Parcel. After the Fire Station Development Period, City may develop an alternative public use on the Fire Station Parcel consistent with Table 20.100.002: Use Regulations for BTP-H zoning district in effect on the Fire Station Parcel ("**Alternative Use Restriction**"). After the expiration of the term of the Development Agreement, City may elect to develop any use consistent with the then applicable zoning on the Fire Station Parcel.

Section 3.6 Prorations

Real property taxes, bonds, assessments and any other similar charges imposed on the Fire Station Parcel shall be segregated or such segregation shall be estimated by First American Title Insurance Company (the "**Title Company**"), and prorated as of the Closing Date on the basis of a thirty (30)-day month. With respect to any proration based on an estimated segregation by the Title Company, if and when the charges relating thereto are segregated by the appropriate agency, within thirty (30) days after such date but in no event later than ninety (90) days after the year in which the Closing occurs, the Parties shall adjust said proration as necessary, and pay such adjustment to the appropriate Party.

Section 3.7 Closing Costs

Developer shall pay all applicable charges and expenses associated with the Closing, including, without limitation: transfer stamps and any other transfer taxes, all escrow fees and charges, all recording fees, the cost of the Title Policy, and any miscellaneous costs as determined by the Title Company (collectively, "**Closing Costs**").

Section 3.8 Closing Conditions

The Closing is subject to satisfaction of the following closing conditions ("**Closing Conditions**"):

(a) Each Party shall have performed all of its obligations under this Agreement; and

(b) Each Party shall have deposited with the Title Company all documents, monies and written escrow instructions as may be necessary for conveyance and acceptance of the Fire Station Parcel.

Section 3.9 Developer' Deliveries

On or before the Closing Date (as defined below), Developer shall deliver (or cause to be delivered) to the Title Company the following:

(a) An executed and notarized Grant Deed;

(b) Funds to pay Closing Costs; and

(c) Such other documents and instruments as may be required by this Agreement or reasonably requested by the Title Company in order to consummate this transaction.

Section 3.10 City's Deliveries

On or before Closing Date, the City shall deliver to the Title Company the following:

(a) Such other documents and instruments as may be required by this Agreement or as may be reasonably requested by the Title Company in order to consummate this transaction; and

(b) The amount of one dollar ($1) as a sale price.

Section 3.11 Concurrent Conditions

On the Closing Date, the following shall occur, all of which shall be deemed concurrent conditions:

(a) The Title Company shall record the Grant Deed in the Official Records of the County of San Mateo; and

(b) Subject to the license rights described herein, Developer shall deliver (or cause to be delivered) possession of the Fire Station Parcel to the City free and clear of any tenancies and parties in possession.

ARTICLE 4
Full satisfaction of community benefit commitments

Developer' performance of this Agreement shall constitute full and complete satisfaction of its community benefit commitments in exchange for obtaining increased density for the Development Project, pursuant to S.S.F.M.C. section 20.395.003(A)(2). In furtherance of the foregoing understandings, in the event Developer has not yet constructed all of the Development Project buildings within the term of the Development Agreement, the Parties agree that any Community Benefit Commitments Developer has made prior to the expiration of the Development Agreement shall nonetheless satisfy any of the Community Benefits Payment allocated to the Development Project buildings constructed after the Development Agreement expires and the Project shall not be subject to any additional Community Benefits Payment obligations provided however, that the Development Project buildings are constructed in accordance with the Project Approvals as memorialized in the Development Agreement at execution.

Section 4.1 Full and Complete Mitigation.

4.1.1 **No Waiver of Right to Protest**. The Parties acknowledge that Government Code section 66020(d)(1) provides that local agencies shall provide a project applicant notice, in writing, at the time of imposition of fees, dedications, reservations, or other exactions, a statement of the amount of fees, or a description of the dedications, reservations, or exactions and a notification that the ninety (90)-day approval period in which the applicant may protest such fees has begun. Developer agrees that it has voluntarily entered this Agreement and knowingly and

willingly waives all rights of protest under Government Code sections 66020, 66021 or 66022, or any other provision of law with respect to the dedication or transfer of the Fire Station Parcel, and other payments, responsibilities, obligations or consideration as set forth herein; provided, however, that Developer and its successors-in-interest do not hereby waive the right to protest future adjustments of the City's fees, if applicable, as and when such adjustments may be adopted by the City from time to time, in accordance with Government Code sections 66000, *et seq*.

4.1.2 Tax/Bond.

Notwithstanding any provision herein to the contrary, nothing contained in this Agreement shall preclude the City from levying a voter-approved special tax or general obligation bond (ad valorem) tax or similar bond and/or tax measure against the property subject to the Development Agreement, provided such measure is uniformly and/or proportionately imposed, to the extent legally permitted and in accordance with applicable legal requirements, on the properties located within the boundaries of the City of South San Francisco.

Section 4.2 Certificates of Compliance

The City shall provide any written certification required to obtain building permits or other development approvals for the construction in the Campus Development ("**Certificates of Compliance**"). The City shall not be obligated to refund or otherwise reimburse Developer for any payments made by Developer in the event Developer fails in any manner to construct any portion of the Campus Development.

ARTICLE 5
Default Provisions

Section 5.1 Default or Breach

In the event of default, breach or failure to perform any material obligation under this Agreement or of any of its terms or conditions ("**Default**"), the Party alleging such Default shall give the defaulting Party not less than thirty (30) days' notice of the Default in writing, unless the Parties extend such time by mutual consent in writing. The notice of Default shall specify the nature of the alleged Default, and, where appropriate, the manner and period of time in which said Default may be satisfactorily cured. If the nature of the alleged Default is such that it cannot reasonably be cured within such thirty (30)-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the Party charged shall not be considered in Default for the purposes of termination or institution of legal proceedings. If the Default is cured, then no Default shall be considered to exist and the noticing Party shall take no further action. Any Default of a material provision of this Agreement not cured by the expiration of the cure period shall entitle the Party injured thereby to any and all remedies available by law.

Section 5.2 Claims or Disputes

Claims or disputes between the City and Developer (including, without limitation, demands for monetary compensation or time extensions) arising from or relating to this Agreement shall be handled in accordance with this Section 6.2. Promptly after identification of a claim or

dispute, authorized representatives of the Parties involved shall meet face-to-face to review and consider the claims ("**Settlement Meeting**"). The Settlement Meeting shall occur at the earliest practicable date and shall be for the express purpose of: (1) exchanging and reviewing pertinent documents and information relating to the matters and issues in dispute; (2) freely and candidly discussing each Party's position; and (3) reaching agreement upon a reasonable, compromise resolution of the claim or dispute.

Section 5.3 Mediation

If any claim or dispute remains unresolved after the Settlement Meeting, the Parties shall promptly submit the matter to mediation by an experienced, mutually acceptable mediator in San Mateo County. If the Parties are unable to agree upon a mediator, they shall meet and confer to establish a mutually acceptable process for the selection of a mediator and coordinate the mediation. Unless the Parties both agree upon a longer period of time, the mediation shall be held no later than forty-five (45) days after the Settlement Meeting. No later than ten (10) days prior to mediation, the Parties shall exchange in a cooperative and forthright manner all documents, data and information relating to the claim or dispute, excepting only those items protected by the attorney-client or other applicable privilege. The Parties shall share equally the mediator's fee for the mediation. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If parties are unable to settle the matter after mediation, then either Party may file suit in the court of competent jurisdiction in San Mateo County.

ARTICLE 6
Transfers and Disclosures

Section 6.1 Transfer Rights

The assignment and transfer provisions contained in Article 8 of the Development Agreement are hereby incorporated herein by this reference and shall apply with respect to any transfers or assignment by the parties hereto with respect to this Agreement *mutatis mutandis*.

Section 6.2 Conveyed Portions of the Property

As set forth herein, the City's rights with respect to the Property are limited to the Fire Station Parcel. The remaining portion of the Property shall be deemed released from any obligation set forth in this Agreement (the "**Released Property**"). The City and Developer hereby authorize and direct that any and all policies of title insurance with respect to the Released Property shall not include or describe the Agreement in matters affecting the condition of title to the Released Property, or applicable portions thereof, following the recordation of the Grant Deed.

ARTICLE 7
ROFO and rofr rights

Section 7.1 Developer' Right of First Offer

7.1.1 Right of First Offer Trigger. Subject to the City's compliance with the provisions of the California Surplus Land Act, if, at any time after the expiration of the Fire Station Development Period, the City desires to sell the Fire Station Parcel to an unaffiliated third party in a bona fide transaction, the City shall notify Developer in writing (the "**ROFO Trigger Notice**") that it intends to offer the Fire Station Parcel for sale. Developer shall thereafter have a right of first offer to purchase the Fire Station Parcel upon the terms and conditions of this Section 7.1 ("**ROFO**"). The ROFO Trigger Notice shall include the City's proposed purchase price for the Fire Station Parcel (the "**ROFO Offer Price**").

7.1.2 ROFO Exercise Notice. Within sixty (60) days of Developer' receipt of the ROFO Trigger Notice (the "**ROFO Exercise Period**"), Developer may notify the City in writing (the "**ROFO Exercise Notice**") that it desires to exercise its ROFO to purchase the Fire Station Parcel: (i) at the ROFO Offer Purchase Price; or (ii) if Developer disagrees with the ROFO Offer Price, Developer shall propose in such notice the terms and conditions of its offer to purchase the Fire Station Parcel including but not limited to the proposed purchase price for the Fire Station Parcel ("**ROFO Counter-Offer Price**"). If the City agrees with the ROFO Counter-Offer Price, the City shall notify Developer in writing within fifteen (15) days following receipt of the ROFO Exercise Notice (the "**City Acceptance Notice**"). If the City disagrees with the ROFO Counter-Offer Price and/or fails to timely deliver the City Acceptance Notice, the City and Developer shall within thirty (30) days thereafter use commercially reasonable efforts to determine the purchase price of the Fire Station Parcel (the "**ROFO Purchase Price**"). During such 30-day period, the City shall provide Developer with customary information necessary to determine the ROFO Purchase Price. If the parties are unable to agree upon the ROFO Purchase Price within such 30-day period, each party will select an appraiser and the two appraisers will select a third appraiser. All appraisers selected to determine the ROFO Purchase Price shall come from JLL, Newmark, Eastdil or CBRE. Upon receipt of the appraisals, the outlier appraisal will be removed from consideration and the ROFO Purchase Price will equal the average of the two remaining appraisals. Upon determination of the ROFO Purchase Price, Developer shall have fifteen (15) days to provide the City with written notice of Developer's intent to proceed with the purchase of the Fire Station Parcel at the ROFO Purchase Price (the "**ROFO Proceed Notice**"). Nothwithstanding anything to the contrary contained herein, all rights and obligations of Developer related to the ROFO pursuant to this Section 7.1 are subject to and contingent upon City's obligations under and compliance with the California State Surplus Land Act.

7.1.3 Escrow Agreement. Within five (5) business days of the later of (i) the delivery of the ROFO Exercise Notice if Developer has accepted the ROFO Offer Price, (ii) the delivery of the City Acceptance Notice if the City has accepted the ROFO Counter-Offer Price, or (iii) the delivery of the ROFO Proceed Notice if a determination of the ROFO Purchase Price was required, Developer and the City shall enter into a commercially reasonable escrow agreement with the Title Company ("**Escrow Agent**") which shall authorize Escrow Agent to hold and disburse the purchase price for the Fire Station Parcel and record the Deed (as defined herein), each in accordance with the terms thereof, and shall include terms and conditions similar to those related to the original conveyance of the Fire Station Parcel to the City pursuant to this Agreement (the "**Escrow Agreement**").

7.1.4 Purchase Contract. Upon the acceptance of the terms and conditions within the ROFO Exercise Notice, City Acceptance Notice, or the ROFO Proceed Notice, as applicable, in

accordance with the provisions of Section 7.1.2 hereof, this Agreement shall automatically become a binding and enforceable Purchase and Sale Agreement between the City and Developer. City and Developer agree that any and all escrow fees, taxes, and transfer costs associated with the transaction described herein shall be handled in accordance with the terms of the customs located in the City of South San Francisco for the transfer of commercial property.

7.1.5 No ROFO for Alternative Public Use. Notwithstanding the foregoing, Developer shall not have a ROFO right if City elects to develop another public use on the Fire Station Parcel after the expiration of the Fire Station Development Period only if such alternative public use satisfies the Alternative Use Restriction.

Section 7.2 Developer' Right of First Refusal

7.2.1 Third Party Sale. Upon compliance with the terms of Section 7.1 above, the City shall have the option, in its sole discretion, to market the Fire Station Parcel for a sale with a third party ("**Third Party Closing**"); provided, however, that Developer shall maintain a right of first refusal ("**ROFR**") on a Third Party Closing subject to the terms of this Section 7.2.

7.2.2 Right of First Refusal.

(a) Notice of Third Party Closing. Subject to the City's compliance with the provisions of the California Surplus Land Act, within five (5) business days following receipt of a term sheet or other expression or letter of intent by a third party to purchase the Fire Station Parcel ("**Third Party LOI**") that is satisfactory to the City in its sole discretion, the City shall notify and send Developer such Third Party LOI which shall disclose to Developer the contemplated purchase price for the Fire Station Parcel (the "**ROFR Trigger Notice**").

(b) ROFR Exercise Notice. Within thirty (30) days after Developer' receipt of the ROFR Trigger Notice (the "**ROFR Exercise Period**"), Developer may notify the City in writing (the "**ROFR Exercise Notice**") that Developer exercises its option to purchase the Fire Station Parcel at the purchase price set forth in the ROFR Trigger Notice (the "**ROFR Purchase Price**"). Within five (5) business days following the ROFR Exercise Notice, Developer and the City shall enter into an Escrow Agreement with the Escrow Agent which shall authorize Escrow Agent to hold and disburse the ROFR Purchase Price for the Fire Station Parcel and record the Deed, each in accordance with the terms thereof. Nothwithstanding anything to the contrary contained herein, all rights and obligations of Developer related to the ROFR pursuant to this Section 7.2 are subject to and contingent upon City's obligations under and compliance with the California State Surplus Land Act.

(c) Purchase Contract. Upon receipt of the ROFR Exercise Notice pursuant to Section 7.2.2(b) of this Agreement, this Agreement shall automatically become a binding and enforceable Purchase and Sale Agreement between the City and Developer. For the avoidance of doubt, the terms of this Agreement shall supersede all provisions of the Third Party LOI except for the ROFR Purchase Price.

7.2.3 ROFR Conditional Waiver and Re-Offer. In the event that Developer either (a) fails to give the ROFR Exercise Notice within the ROFR Exercise Period, or (b) fails to consummate the transaction contemplated in this Section 7.2 for any reason, the City shall be free

to offer the Fire Station Parcel for sale in the market in accordance with, and subject to, this Section 7.2. Notwithstanding the foregoing, if the City does not sell the Fire Station Parcel to such third party at purchase price of 95% or more of the ROFR Purchase Price or does not close the sale of the Fire Station Parcel to such third party within nine (9) months from the expiration of the ROFR Exercise Period, then if the City still desires to market the Fire Station Parcel for sale, then the City shall be required to re-offer the Fire Station Parcel to Developer.

7.2.4 ROFR Rights Remain. For the avoidance of doubt, if at any time after complying with the provisions of Section 7.2, a sale to a third party by the City fails to close, Developer' rights under this Section 7.2 shall remain in full force and effect for the remainder of the ROFO/ROFR Period.

7.2.5 No ROFR for Alternative Public Use. Notwithstanding the foregoing, Developer shall not have a ROFR right if City elects to develop another public use on the Fire Station Parcel after the expiration of the Fire Station Development Period only if such alternative public use satisfies the Alternative Use Restriction.

Section 7.3 ROFO/ROFR Period

7.3.1 The City and Developer agree that Developer shall retain its ROFO and ROFR rights, as described in Sections 7.1 and 7.2 above, respectively, during the term of the Development Agreement, as may be extended ("**ROFO/ROFR Period**").

7.3.2 The Escrow Agreement will provide the for at least a sixty (60) day due diligence period and allow Developer to access, inspect and perform its due diligence with respect to the Fire Station Parcel, and at any time prior to the expiration of the 60-day due diligence period, Developer can elect, in its sole discretion, to rescind its ROFO Exercise Notice, ROFO Proceed Notice, or ROFO Exercise Notice, as applicable, or proceed to closing on a closing date reasonably and mutually agreeable to the parties ("**Closing Date**"). The ROFO Offer Price, ROFO Counter-Offer Price, ROFO Purchase Price, or ROFR Purchase Price, as applicable (collectively, the "**Purchase Price**"), shall be payable to the Escrow Agent by wire transfer of immediately available funds as directed by the City on the Closing Date. The Purchase Price shall be adjusted as of the Closing Date for customary and ordinary prorations with respect to real estate taxes, assessments, and any other governmental taxes and charges levied or assessed against the Fire Station Parcel.

ARTICLE 8
General

Section 8.1 Governing Law

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California applicable to contracts to be performed wholly within the State.

Section 8.2 Construction

The Parties acknowledge and agree that each of the Parties and each of the Parties' attorneys have participated fully in the negotiation and drafting of this Agreement. In cases of uncertainty as to the meaning, intent or interpretation of any provision of this Agreement, the

Agreement shall be construed without regard to which of the Parties caused, or may have caused, the uncertainty to exist. No presumption shall arise from the fact that particular provisions were or may have been drafted by a specific Party.

"Business Days" means days other than Saturdays, Sundays, and federal and State legal holidays, and "days" means calendar days. If the time for performance of an obligation under this Agreement falls other than on a Business Day, the time for performance shall be extended to the next Business Day. The words "include" or "including" shall be read as if followed by the phrase "without limitation." "Shall" is mandatory and "may" is permissive. All references to this Agreement shall include the Agreement as amended or supplemented in compliance with its terms. Any reference to a statute or regulation shall include any amendments thereto. The words "Party" or "Parties" refer only to named Parties to this Agreement. The definitions in this Agreement apply equally to both singular and plural of the defined term.

Section 8.3 Force Majeure

No Party shall be held responsible or liable for an inability to fulfill any obligation under this Agreement by reason of an act of God, natural disaster, accident, breakage or failure of equipment, strikes, lockouts, or other labor disturbances or labor disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restriction on the use of utilities or public transportation whether due to energy shortages or other causes, war, acts of terrorism, civil disturbance, riot, litigation or other legal action by a third party arising out of or relating to this Agreement, the Fire Station Parcel or the Fire Station, or by any other occurrence that is beyond the control of that Party ("**Force Majeure**") or its authorized agents, contractors or assigns. Any Party relying on a Force Majeure shall give the other Party reasonable notice thereof and the Parties shall use their best efforts to minimize potential adverse effects from such Force Majeure, including without limitation, subcontracting the obligations of the Party claiming such Force Majeure to a third party and extending the time periods for performance.

Section 8.4 Notices

Any notice to be given hereunder to either Party shall be in writing and shall be given either by personal delivery (including express or courier service), by nationally recognized overnight courier, or by registered or certified mail, with return receipt requested, postage prepaid and addressed as follows:

To the City:

____

____

____

____

With a copy to:

____

____

____

____

To Developer:

____

____

____

____

With copies to:

____

____

____

____

Section 8.5 Relationship of Parties

The relationship of the Parties to this Agreement is determined solely by the provisions of this Agreement. This Agreement does not create and shall not be construed to create any agency, partnership, joint venture, trust or other relationship with duties or incidents different from those of parties to an arm's length contract. Each Party is an independent entity and shall be solely responsible for the employment, acts, omissions, control and direction of its employees. Except as expressly set forth herein, nothing in this Agreement shall authorize or empower any Party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the other Party or to bind any other Party in a manner or make any representation, warranty or commitment on behalf of any other Party.

Section 8.6 No Third Party Beneficiaries

Nothing in this Agreement, whether express or implied, is intended to or shall do any of the following: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it; (b) relieve or discharge the obligation or liability

of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any Party to this Agreement.

Section 8.7 Time is of the Essence

Time is of the essence in the performance of each Party's respective obligations under this Agreement.

Section 8.8 Amendments/Waivers

No amendment of, supplement to or waiver of any obligations under this Agreement will be enforceable or admissible unless set forth in writing signed by the Party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

Section 8.9 Entire Agreement

This Agreement, along with the Development Agreement and the Grant Deed, sets forth the entire understanding of the Parties relating to the transactions it contemplates, and supersedes all prior understandings relating to them, whether written or oral. There are no obligations, commitments, representations or warranties relating to them except those expressly set forth in this Agreement, the Development Agreement and the Grant Deed.

Section 8.10 Severability

If any provision of this Agreement is held invalid, void or unenforceable but the remainder of this Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties; *provided, however*, that if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, then the Party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other Party. In the event any provision in this Agreement is revised or eliminated pursuant to this Section which prevents the City from obtaining the Fire Station Parcel, the City shall be entitled to collect the Community Benefit Fees contemplated in SSFMC section 20.100.003(B) described above.

Section 8.11 Signatures

By signing below, each of the signatories represents and warrants that he or she has been duly authorized to execute this Agreement on behalf of the Party for whom he or she is signing. The Mayor or delegated representative further represents and warrants by their signature, that this Agreement has been duly ratified and approved by the City Council.

Section 8.12 Successors and Assigns

This Agreement shall bind and inure to the benefit of successors and assigns of the Parties, including successors in ownership of the Property and any portions thereof.

Section 8.13 Further Assurances

Each Party to this Agreement shall at its own expense perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Agreement.

[*Signatures on Following Page*]

IN WITNESS WHEREOF, this Agreement has been entered into among the Parties as of the date first set forth above.

CITY:

CITY OF SOUTH SAN FRANCISCO

By: ______________________________

Name: ______________________________

Title: ______________________________

Developer:

HCP FORBES, LLC,
a Delaware limited liability company

By: ______________________________

Name: ______________________________

Title: ______________________________

APPROVED AS TO FORM:

By: ______________________________
Name: ________________
City Attorney

By: ______________________________

Name: ______________________________

Title: ______________________________

EXHIBIT A

LEGAL DESCRIPTION AND MAP DEPICTION OF FIRE STATION PARCEL

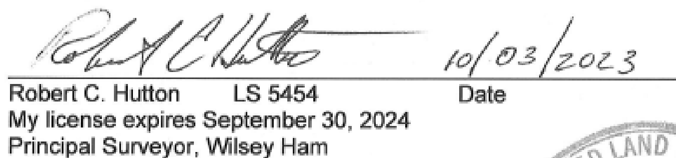
EXHIBIT A
SHEET 1 OF 2

Legal Description
Lot A -Fire Station Parcel
Across Parcel 50, 34 PM 35
Lands of HCP FORBES LLC
City of South San Francisco

All that certain real property situate in the City of South San Francisco, County of San Mateo, State of California, being a portion of Parcel 50, Block 2, as said Parcel 50 is shown on that certain map entitled "PARCEL MAP GALLO TRACT SOUTH SAN FRANCISCO", filed December 23, 1976, as Volume 34 of Parcel Maps at Page 35, recorded in the Office of the San Mateo County Recorder, State of California, said real property being more particularly described as follows:

BEGINNING at a point at the most northwesterly corner of said Parcel 50 (said corner being common with the most northeasterly corner of Parcel 1 as said Parcel 1 is shown on that certain map entitled "PARCEL MAP NO. 92-291, An Office/Warehouse Condominium Being all of Lot 11, Block 2" filed April 1, 1993, as Book 66 of Parcel Maps at Page 56, recorded in the Office of the San Mateo County Recorder, State of California, said corner also being on the southerly right of way line of Forbes Boulevard (80 feet wide right of way);
Thence from said **POINT OF BEGINNING** North 86° 05' 50" East for a distance of 192.00 feet along the northerly boundary line of said Parcel 50;
Thence leaving said northerly line, South 10° 26' 15" East for a distance of 196.97 feet;
Thence North 89° 40' 38" West for a distance of 215.00 feet to the westerly boundary line of said Parcel 50;
Thence along said westerly line, North 03° 54' 10" West for a distance of 179.84 feet to the **POINT OF BEGINNING** and containing 38,066 square feet of land, more or less.

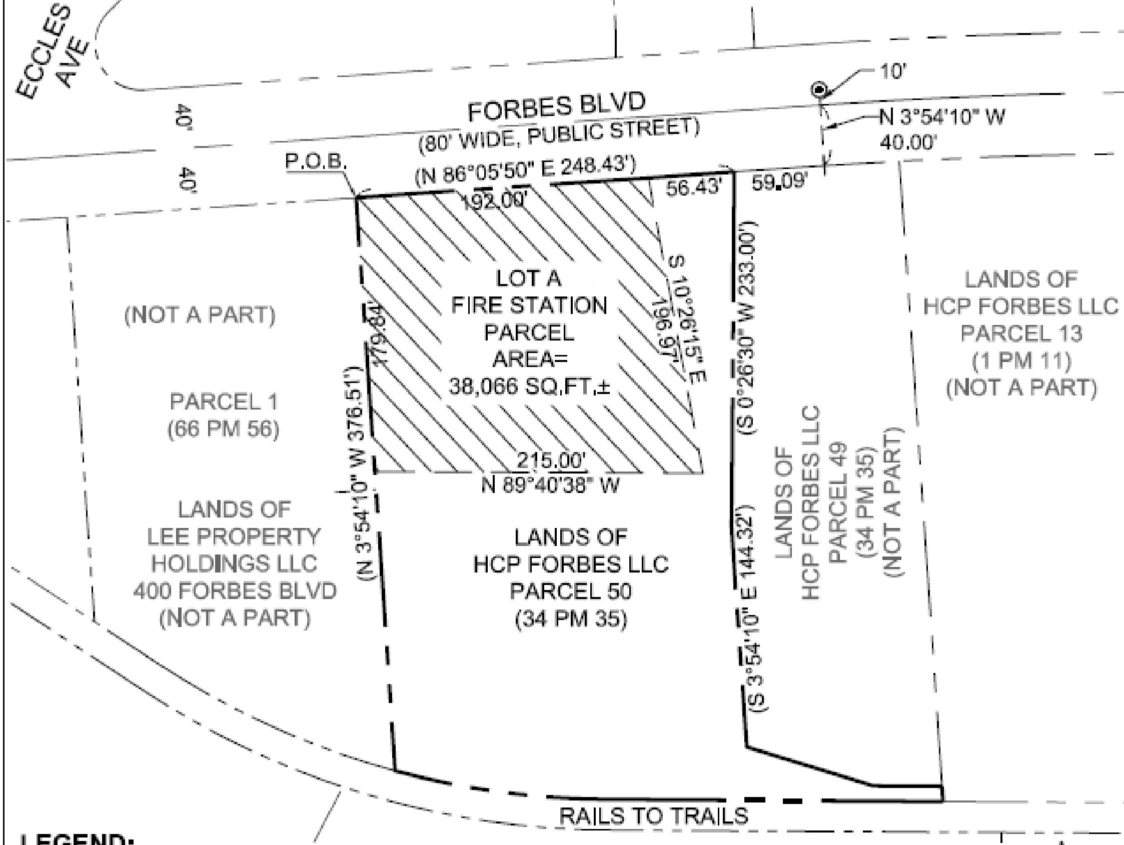
A plat, entitled "Exhibit A" being Sheet 2 of 2 is attached hereto and by this reference made a part hereof.



Robert C. Hutton LS 5454 Date
My license expires September 30, 2024
Principal Surveyor, Wilsey Ham

BASIS OF BEARINGS:

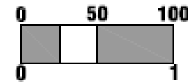
THE BASIS FOR THE BEARINGS SHOWN HEREON IS IDENTICAL TO THAT AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP GALLO TRACT" FILED DECEMBER 23, 1976, IN VOLUME 34 OF PARCEL MAPS AT PAGE 35.



LEGEND:

ADJOINERS PROPERTY LINE
BOUNDARY LINE
CENTERLINE
FIRE STATION PARCEL LINE
P.O.B. POINT OF BEGINNING
⊙ FOUND STANDARD CITY MONUMENT
( ) RECORD PER (34 PM 35)

NOTE: EASEMENTS NOT SHOWN HEREON



T:\796-FLAD\796-045 Flad HP Vantage PH1 Easements Plat and legals\DWG\420 & 440 PAE EVAE PH1A\796-045 Fire Stn Prcl Plat_Ph1A_Prcl 50.dwg

WILSEY HAM

3130 LA SELVA STREET, SUITE 100, SAN MATEO, CA 94403 PHONE 650-349-2151 WWW.WILSEYHAM.COM

LICENSED LAND SURVEYOR
RCH
ROBERT C. HUTTON
No. LS 5454
Exp. 9-30-24
STATE OF CALIFORNIA

EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION

JOB NO: 796-045

LOT A
FIRE STATION PARCEL
LANDS OF HCP FORBES LLC

CITY OF SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA

SHEET: 2 OF 2

SCALE: 1"=100'

DATE: 10/03/23

EXHIBIT B

FORM OF GRANT DEED

[Attached below]

Recording Requested by and when Recorded, return to: City of South San Francisco 400 Grand Avenue South San Francisco, CA 94080 EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383 & 27388.1(a)(2) SUBJECT TO DOCUMENTARY PER REVENUE AND TAXATION CODE § 11911	
APN: XXX-XXX-XXX	(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

RECITALS

A. HCP Forbes, LLC ("Grantor") is the owner of the Property (as defined below).

B. The City of South San Francisco ("Grantee") agrees to purchase the Property, and Grantor agrees to sell the Property to Grantee, subject to the terms and conditions of the Fire Station Agreement approved by the City Council on ______ _____, _______ by Ordinance No. ________________________; and

F. Grantor and Grantee agree that the purpose of this Grant Deed is to convey the Property to the Grantee pursuant to the terms set forth in the Fire Station Agreement.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee all that real property located in the City of South San Francisco, County of San Mateo, State of California and more particularly described in Exhibit A ("Property"), attached hereto and incorporated into this grant deed ("Grant Deed") by this reference.

This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of ____________________, 2024.

GRANTOR:

HCP FORBES, LLC

By: ______________________________

SIGNATURES MUST BE NOTARIZED

5531630.1