11/3/2022 DRAFT – TERMS STILL UNDER NEGOTIATION

This draft does not include language related to some additional terms still under negotiation. Those additional terms do not impact nature of development.

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AND WHEN RECORDED MAIL TO:

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

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

DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO
AND
OYSTER POINT HOLDCO, LLC.

367 Marina Boulevard
SOUTH SAN FRANCISCO, CALIFORNIA

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

Effective Date: _____

11/3/2022 DRAFT – TERMS STILL UNDER NEGOTIATION
This draft does not include language related to some additional terms still under negotiation. Those additional terms do not impact nature of development.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into by and between Oyster Point Holdco, LLC, a Delaware limited liability company ("**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 the 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. (the "**Development Agreements Statute**"), which authorizes the 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 at 367 Marina Boulevard, also known as San Mateo County Assessor's Parcel Number 015-011-350, as more particularly described and depicted in Exhibit A (the "**Property"**).

D. On March 23, 2011, the City, the South San Francisco Redevelopment Agency, and Oyster Point Ventures, LLC, executed a Disposition and Development Agreement ("**DDA**") for the master development named Oyster Point through a multi-phased project, which included development of a hotel on the Property, and required Oyster Point Ventures, LLC, to perform certain site work, grading, and installation of infrastructure to prepare the Property for development.

E. On December 10, 2021, Developer and City entered into a Purchase and Sale Agreement and Joint Escrow Instructions (the "**PSA**") for Developer's purchase of the Property from the City, which PSA is included with this Agreement as Exhibit B. The PSA set forth Developer's and City's intentions to enter into this Agreement to address the details for development of the Project (as defined below).

F. 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).

G. 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.

H. 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.

I. This Agreement and the Project will be consistent with the City of South San Francisco General Plan ("**General Plan**"), the City's East of 101 Area Plan, and the Specific Plan (as defined in Recital M).

J. Development of the Property with the Project in accordance with this Agreement will provide substantial benefits to City and will further important policies and goals of the City and San Mateo County. This Agreement will, among other things, secure the right to develop an up to 350-room full-service hotel facility which is the quality of a "AAA" (or similar rating) four diamond or higher hotel Project that will benefit the City by (1) advancing the City economic development goals of enhancing the competitiveness of the local economy and maintaining a strong and diverse revenue and job base, (2) providing much needed additional hotel rooms to visitors to the City and its preeminent biotechnology center at Oyster Point, (3) generating construction-related benefits, including employment, economic and fiscal benefits related to new construction, (4) generating fiscal benefits to the City and San Mateo County due to taxes and other revenue, (5) improving access for residents and visitors to the San Francisco Bay, the City's marina, and to the San Francisco Bay Trail, and (6) redevelopment and implementation of monitoring protocols for the successful reuse of a former landfill site.

K. In exchange of 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 the "Applicable Law" (as defined in Section 1.6 of this Agreement), and therefore desires to enter into this Agreement.

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

M. The General Plan's Land Use Element designates the Property as Business Commercial. The Property is also located in the East of 101 Area Plan (and therein designated as Commercial) and in the Oyster Point Specific Plan ("**Specific Plan**") (depicted therein as a future hotel site) and the Oyster Point Specific Plan Zoning District (Chapter 20.230 of the City of South San Francisco Municipal Code). On March 23, 2011, after duly noticed public hearing and review by the City of South San Francisco Planning Commission ("**Planning Commission**"), by Resolution No. 46-2011, the City Council certified the Oyster Point Specific Plan and Phase 1 Project Environmental Impact Report (SCH# 20100022070) ("**EIR**") 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 EIR analyzed the potential environmental impacts of developing a new full-service hotel with up to 350 rooms and approximately 40,000 square feet of retail uses on the Property. Concurrent with its

certification of the 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 Project. The Statement of Overriding Considerations carefully considered each of the Project's significant and unavoidable impacts identified in the EIR and determined that each such impact is acceptable in light of the Project's economic, legal, social, technological and other benefits. The MMRP identifies all mitigation measures identified in the EIR that are applicable to the Project and sets forth a program for monitoring or reporting on the implementation of such mitigation measures. Also on March 23, 2011, after a duly noticed public hearing and review by the Planning Commission, by Resolution No. 47-2011, the City Council duly approved a General Plan Amendment for the Oyster Point Specific Plan ("**General Plan Amendment**"). Also, after a duly noticed by public hearing and review by the Planning Commission, on March 16, 2011, the City Council introduced, and on March 23, 2011 adopted, Ordinance No. 1437-2011 adopting Chapter 20.230 of the City of South San Francisco Municipal Code to establish the Oyster Point Specific Plan District ("**Zoning Amendment**"). On _____, 2022, after a duly noticed public hearing and review, by Resolution No. _____, the Planning Commission approved a Precise Plan for the Project to allow for development of a hotel with up to 350 rooms and approximately 246 parking spaces, consistent with the Specific Plan, which Precise Plan is attached to this Agreement as Exhibit H. The entitlements described in this Recital M and listed on Exhibit C, as well as this Agreement, are collectively referred to herein as the "**Project Approvals**." 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 Property at a responsible level of growth.

N. On _____, 2022, following a duly noticed public hearing, the Planning Commission recommended that the City Council approve this Agreement. And, on _____, 2022, the City Council, after conducting a duly noticed public hearing, found that this Agreement is consistent with the General Plan and Title 20 of the SSFMC and has conducted all necessary proceedings in accordance with the City's rules and regulations for the approval of this Agreement and introduced Ordinance No. _____ to approve this Agreement. In accordance with SSFMC section 19.60.120, the City Council, on _____, 2022, at a duly noticed public hearing, conducted a second reading of and adopted Ordinance No. _____ approving and authorizing the execution 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

TERMS UNDER SECTIONS 1.1 – 1.57 STILL UNDER NEGOTIATION

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 City Law**" means the City regulations and provisions applicable to the Property as of the Effective Date as set forth in Exhibit D and any other City ordinances, resolutions, orders, rules, policies, standards, specifications, plans, guidelines or other regulations that are applicable to the Property and the Project and in effect on the Effective Date.

1.6 **"Applicable Law"** means (i) City Law and (ii) all applicable laws, statutes, ordinances, rules, regulations, permits, certificates, judgments, decisions, decrees or orders of any governmental authority as such may be enacted, adopted, and amended from time to time, including regional, State and Federal laws and regulations applicable to the Property and the Project as such

1.7 "**Assessments**" shall have that meaning set forth in Exhibit D.

1.8 "**CEQA**" shall have that meaning set forth in Recital M of this Agreement.

1.9 "**City**" shall mean the City of South San Francisco.

1.10 "**City Council**" shall have that meaning set forth in Recital G of this Agreement.

1.11 "**City Indemnitees**" shall have that meaning set forth in Section 3.12 of this Agreement.

1.12 "**City Law**" shall mean City regulations and provisions applicable to the Property as of the Effective Date as set forth in Exhibit D and any other City ordinances, resolutions, orders, rules, policies, standards, specifications, plans, guidelines or other City regulations that are applicable to the Property and the Project and in effect on the Effective Date..

1.13 "**Claims**" shall have that meaning set forth in Section 3.12 of this Agreement.

1.14 "**Control**" shall have that meaning set forth in Section 8.1 of this Agreement.

1.15 "**Controlled**" shall have that meaning set forth in Section 8.1 of this Agreement.

1.16 "**Controlling**" shall have that meaning set forth in Section 8.1 of this Agreement.

1.17 "**Deficiencies**" shall have that meaning set forth in Section 9.2 of this Agreement.

1.18 "**Developer**" shall mean Oyster Point Holdco, LLC, a Delaware limited liability company, and any assignees pursuant to Article 8 of this Agreement.

1.19 "**Developer Indemnitees**" shall have that meaning set forth in Section 4.9 of this Agreement.

1.20 "**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 Property; 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.

1.21 "**Development Agreements Statute**" shall have that meaning set forth in Recital A of this Agreement.

1.22 "**Development Fees**" shall have that meaning set forth in Section 3.2 of this Agreement.

1.23 "**District**" shall mean any assessment or financing district(s) established by the City pursuant to the Community Facilities District Act of 1982 (Mello-Roos), Government Code Sections 53311 et seq., the Streets and Highways Code, Division 10 and 12, the Landscape and Lighting Act of 1972, or other similar law to finance all or part of the public improvements through the issuance of bonds and the imposition of assessments, fees, or taxes on the benefiting land, including, but not limited to, the Property.

1.24 "**E101 CFD**" shall have that meaning set forth in Section 3.7 of this Agreement.

1.25 "**Effective Date**" shall have that meaning set forth in Section 2.1 of this Agreement.

1.26 "**EIR**" shall have that meaning set forth in Recital M of this Agreement.

1.27 "**Force Majeure Delay**" shall have that meaning set forth in Section 10.3 of this Agreement.

1.28 "**GDP**" shall have that meaning set forth in Section 10.3 of this Agreement.

1.29 "**General Plan**" shall have that meaning set forth in Recital I of this Agreement.

1.30 "**General Plan Amendment**" shall have that meaning set forth in Recital M of this Agreement.

1.31 "**Judgment**" shall have that meaning set forth in Section 9.2 of this Agreement.

1.32 "**Maximum TOT Rebate Amount**" shall have that meaning set forth in Section 4.9 of this Agreement.

1.33 "**Mortgage**" shall mean any lien of mortgage, deed of trust, or other security interest (e.g., lease-leaseback agreement) in the Project or the Property given in exchange for financing of any kind.

1.34 "**Mortgagee**" shall mean the beneficiary of any Mortgage.

1.35 "**MMRP**" shall have that meaning set forth in Recital M of this Agreement.

1.36 "**Parties**" shall mean the Developer and City, collectively.

1.37 "**Periodic Review**" shall have that meaning set forth in Section 10.5 of this Agreement.

1.38 "**Prevailing Wage Laws**" shall have that meaning set forth in Section 6.12 of this Agreement.

1.39 "**Planning Commission**" shall have that meaning set forth in Recital M of this Agreement.

1.40 "**Pre-Existing Property Conditions**" shall have that meaning set forth in Section 4.2 of Exhibit B to this Agreement.

1.41 "**Project**" shall mean the Development on the Property as contemplated by the Project Approvals and, as and when they are issued, the Subsequent Approvals, including, without limitation, the permitted uses, density and intensity of uses, the parking requirements, and maximum size and height of buildings specified in the Specific Plan and in Chapter 20.230 of Title 20 of the SSFMC, and as such Project Approvals and Subsequent Approvals may be further defined or modified pursuant to the provisions of this Agreement.

1.42 "**Project Approvals**" shall have that meaning set forth in Recital M of this Agreement.

1.43 "**Property**" shall have that meaning set forth in Recital C of this Agreement.

1.44 "**PSA**" shall have that meaning set forth in Recital E to this Agreement.

1.45 "**Severe Economic Recession**" shall have that meaning set forth in Section 10.3 of this Agreement.

1.46 "**Specific Plan**" shall have that meaning set forth in Recital M of this Agreement.

1.47 "**SSFMC"** shall have that meaning set forth in Recital B of this Agreement.

1.48 "**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; design review approvals, unless determined not required pursuant to the further provisions of this Agreement; 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; preliminary and final development plans; development agreements; 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.

1.49 "**Successor Agency"** shall mean the Successor Agency to the Redevelopment Agency for the City of South San Francisco.

1.50 "**Tax**" and "**Taxes**" shall not include any generally applicable City Business License Tax or locally imposed Sales Tax.

1.51 "**TDM Plan**" shall have that meaning set forth in Section 3.7(a) of this Agreement.

1.52 "**Term**" shall have that meaning set forth in Section 2.2 of this Agreement.

1.53 "**TOT Rebate**" shall have that meaning set forth in Section 4.9 of this Agreement.

1.54 "**Transfer**" shall mean the sale, assignment, conveyance, hypothecation, in whole or in part by Developer of its right, title, obligations, and interest in and to all or any part of the Property to any person or entity at any time during the term of this Agreement.

1.55 "**Transfer Agreement**" shall have that meaning set forth in Section 9.2 of this Agreement.

1.56 "**Transient Occupancy Tax**" or "TOT" shall mean the tax imposed on the Project pursuant to South San Francisco Municipal Code Chapter 4.20.

1.57 "**Zoning Amendment**" 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 that 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 **Effective Date.** This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective ("**Effective Date**").

2.2 Term. 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 ten (10) years plus one (1) day after the Effective Date ("**Term**").

ARTICLE 3
OBLIGATIONS OF DEVELOPER

3.1 Obligations of Developer Generally. The Parties acknowledge and agree that the 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.

3.2 City Fees.

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

(b) Consistent with the terms of the Agreement, and subject to Section 5.6, City shall have the right to impose only such development fees ("**Development Fees**") as have been adopted by City as of the Effective Date of this Agreement, as set forth on Exhibit D, and only at those rates of such Development Fees in effect at the time of payment of the Development Fees, provided that any increases to Development Fees after the Effective Date are imposed on a citywide (or East of 101 Area Plan-wide) basis, reserving to City the discretion to increase Development Fees for different land use zoning designations in varying amounts. The Development Fees shall be paid at the time set forth on Exhibit D 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 Post-Closing Mitigation Measures. ***TERMS UNDER THIS SECTION 3.3 STILL UNDER NEGOTIATION***

(a) Developer shall perform, at Developer's sole expense, each of the "Developer's Post-Closing Mitigation Measures" identified in Exhibit F to Exhibit B and in the manner set forth therein.

(b) Prior to issuance of a building permit, Developer shall execute an Operations and Maintenance Agreement with the City in substantially the form attached to this Agreement as Exhibit E as described in Section F.3 of Exhibit F to Exhibit B. Such Operations and Maintenance Agreement shall be recorded and shall include financial assurances for the ongoing maintenance and operations elements of the "Developer's Post-Closing Mitigation Measures," including routine inspections, maintenance and reporting for (i) the landfill cap, (ii)

methane and volatile organic compound collection, monitoring and alarm systems, (iii) groundwater, surface water and leachate monitoring systems, as required, (iv) elevation monitoring, and (v) maintenance of hardscape and softscapes. Developer shall separately enter into any Operation and Maintenance Agreement that may be required by the San Francisco Regional Water Quality Control Board ("Water Board") or by any other regulatory agency pursuant to Applicable Laws.

(c) Prior to issuance of a building permit for the Project, Developer shall prepare a methane and volatile organic compound monitoring plan approved in writing by the Water Board and as described in Section D.4 of Exhibit F to Exhibit B and proceed to implement such plan as part of the Project.

(d) Prior to issuance of a building permit for the Project, Developer shall prepare an elevation monitoring plan for the Property as described in Section D.5 of Exhibit F to Exhibit B and proceed to implement such plan as part of the Project.

(e) Prior to issuance of a building permit for the Project, Developer shall prepare a post-closure Emergency Response Plan as described in Section E.1 of Exhibit F to Exhibit B and proceed to implement such plan as part of the Project.

(f) Developer's failure to act in accordance with the requirements of Developer's Post-Closing Mitigation Measures identified in Exhibit F to Exhibit B shall constitute a Default under this Agreement. Notwithstanding the preceding sentence, to the extent that any modifications to Developer's Post-Closing Mitigation Measures, which the Parties acknowledge were developed without input from or formal approval by the Water Board, are required in order to comply with the Water Board's regulations or other requirements, or to the extent that there are conflicts between the Water Board's requirements and Developer's Post-Closing Mitigation Measures, the Parties agree that Developer's compliance with the Water Board's requirements shall not constitute an event of default under this Agreement provided that such compliance and any modifications to Developer's Post-Closing Mitigation Measures are reviewed and approved in writing by the City's Public Works Department and to the reasonable satisfaction of the City Attorney.

3.4 Pre-Construction and Construction Site Maintenance and Security. ***TERMS UNDER THIS SECTION 3.4 STILL UNDER NEGOTIATION***

(a) From the Effective Date through construction of the Project, Developer shall ensure that the Property is maintained and kept in good repair and condition through implementation of the following measures:

(b) Within sixty days after the Effective Date, install a security fence around the perimeter of the Property, landscaping at the Property, and signage with a short description of the Project, approximate construction milestones, and contact information for Developer;

(c) Maintain the fence, landscaping, and signage in a neat, clean and orderly condition;

(d) Ensure that the fence and signage is kept free and clear of graffiti or other evidence of vandalism;

(e) Ensure the reasonably prompt removal and replacement of dead, damaged or diseased landscaping, conduct quarterly weed abatement and removal, and conduct quarterly cutting of existing grass or other landscape to prevent overgrowth;

(f) Ensure the reasonably prompt removal of any solid waste, trash, or other debris deposited on the Property by third-parties;

(g) Undertake any other commercially reasonable efforts to ensure that site is kept in a neat, clean and orderly condition prior to the commencement of construction;

(h) In the event that Developer fails to maintain the fencing, signage, and landscaping and/or fails to remove solid waste, trash, or debris and fails to remedy such deficiency within seven (7) days of written notice from the City, then City may perform such maintenance and/or cleanup on Developer's behalf and charge the Developer the cost associated therewith. In the event that a condition on the Property poses an immediate threat to health and safety and/or includes profanity or obscenity, then the City may abate the condition immediately and charge the cost of abatement to Developer; and

(i) Implement erosion control measures. Such erosion control measures shall include grading Best Management Practices (BMPs) to be implemented during construction to prevent substantial erosion from occurring during site development. The BMPs shall be included in all construction documents and may include, but not be limited to:

(i) restricting grading to the dry season or meet City requirements for grading during the rainy season;

(ii) using effective, site-specific erosion and sediment control methods approved by the City Engineer during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed;

(iii) covering soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff with secure plastic sheeting or tarps;

(iv) implementing regular maintenance activities such as sweeping driveways between the construction area and public streets. Cleaning

sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designating a concrete truck washdown area;

(v) disposing of all wastes properly and keep site clear of trash and litter. Cleaning up leaks, drips, and other spills immediately so that they do not contact stormwater; and

(vi) placing straw wattles, fiber rolls, or silt fences around the perimeter of the site. Protecting existing storm and sewer inlets in the Project area from sedimentation with filter fabric and sand or gravel bags.

3.5 New Sewer Pump Station Funding. ***-TERMS UNDER THIS SECTION 3.5 STILL UNDER NEGOTIATION-*** Prior to issuance of the first building permit for the Project, Developer shall pay City $250,000.00 as a contribution for funding a new pump station as detailed in the DDA. Developer agrees to provide any necessary easements or licenses necessary to facilitate continued operation of the existing pump station (i.e., to the extent that City requires access to the Property in order to maintain the current sewer infrastructure on the Property), in addition to any necessary easements or licenses for construction and maintenance of the new Pump Station, subject to Developer's approval which shall not be unreasonably withheld, conditioned or delayed.

3.6 Access for Methane Monitoring. Developer shall provide access to the closed landfill on the Property to third-party consultants and/or representatives of the City and the Successor Agency for the purpose of methane monitoring, subject to applicable regulatory monitoring procedures. Developer shall ensure that the Project design and site conditions do not prevent, impede, or otherwise obstruct such methane monitoring activity.

3.7 Transportation Benefits. ***-TERMS UNDER THIS SECTION 3.7 STILL UNDER NEGOTIATION-***

(a) Transportation Demand Management Plan. The Developer shall implement a Transportation Demand Management Plan ("**TDM Plan**") in compliance with the requirements of the SSFMC in effect on the Effective Date . Failure by Developer to implement the TDM Plan shall constitute a default by Developer subject to the provisions of Article 10 of this Agreement.

(b) Community Facilities Districts Support.

(i) Developer will support City's formation of a communities facilities district serving land within the East of 101 Area Plan boundary, provided that (i) the CFD is established within one hundred twenty (120) months of the Effective Date, and (ii) the Project's combined maximum CFD assessment rate between the CFD contemplated in this subsection (i) and the CFD contemplated in subsection (ii) shall not exceed one dollar ($1.00) per square foot of assessable real property.

(ii) Developer will support and pay for the City's formation of a communities facilities district serving the Property and land within the vicinity of the Property to

fund the services authorized for CFD 2021-01, including without limitation the following services: police protection services; maintenance and lighting of parks, parkways, streets, roads, and open space including roadway maintenance, streetlight maintenance and operations, traffic signal maintenance and operations, parks, waterfront and Bay Trail maintenance, landscaping, parkway, median and open space maintenance, including erosion prevention, public surface parking maintenance, and operation and maintenance of public restroom buildings; operation and maintenance of storm drainage systems. The Project's CFD tax rate for the CFD contemplated in this subsection (ii) shall be a maximum of $.035 per square foot of non-residential floor area increased annually by two (2.00%) per Fiscal Year. No special tax shall be levied on undeveloped property. The first assessment will be made during the year in which the Project receives its certificate of occupancy.

3.8 BCDC Permit and Public Access. ***-TERMS UNDER THIS SECTION 3.8 STILL UNDER NEGOTIATION-***

(a) The Parties acknowledge that the Bay Conservation and Development Commission ("**BCDC**") Permit No. 2017.007.00, originally issued on April 27, 2018 and as subsequently amended (the "**BCDC Permit**") requires the construction of (i) a temporary north-south Bay Trail connection no later than six (6) months following the completion of Phase IC as described therein, and (ii) a permanent north-south Bay Trail connection. As to the temporary trail, Developer shall [TO BE DETERMINED BASED ON BCDC DIRECTION]. The Parties further acknowledge that Developer has evaluated various ways to implement the permanent north-south connector trail in various locations, including on the Property and in the vicinity of the Property, and that construction of a permanent north-south connector trail meeting BCDC Permit specifications is not feasible. As a consequence, Developer and City agree that as Developer cannot construct the permanent north-south connector trail as shown in the BCDC Permit on behalf of the City; Developer shall instead coordinate with BCDC to identify an alternative project to satisfy the BCDC Permit condition and complete such project, subject to the City's review and approval, which shall not be unreasonably withheld. Developer shall also be responsible for coordinating with BCDC to facilitate amending the BCDC Permit to omit the requirement for the permanent north-south connector trail, including but not limited demonstrating that the location of the trail as depicted in the BCDC Permit is not physically feasible given the topography of the site and the significant difference in grade elevations between the existing Bay Trail near the existing pedestrian bridge at the southern shoreline of the peninsula and the Property, and instead providing alternative on-site public access enhancements desired by BCDC as a condition of amending the BCDC Permit.

3.9 Participation in Net Transfer Proceeds. ***-TERMS UNDER THIS SECTION 3.9 STILL UNDER NEGOTIATION-*** In exchange for the TOT Rebate described in Section 4.8, in the event that Developer Transfers a Majority Interest in the Project to a person or entity who is not an Affiliate, Developer shall pay to the City a one-time only "Participation in Net Transfer Proceeds" as provided in this Section 3.9.

(a) For purposes of this Section 3.9, the following definitions apply:

(i) "Cash Consideration" means (A) cash, (B) cash equivalents, and (C) securities that are listed and traded on one or more recognized securities exchanges in or outside the United States and that are not restricted securities within the meaning of the Securities Act of 1933 or Rule 144 adopted thereunder.

(ii) "Cash Flow" means (A) Gross Receipts, less (B) unreimbursed operating expenses, less (C) debt service payments pursuant to a Mortgage (limited to interest if debt service is interest only, or interest and straight line amortization of principal on the Mortgage, with an amortization period of not less than twenty years). Cash Flow shall be calculated on a monthly basis including and through the close of escrow under the Transfer.

(iii) "Costs of Transfer" means only the following costs incurred by the Developer in connection with a Transfer: (A) verifiable, reasonable, customary brokerage commissions paid as a result of the Transfer; (B) reasonable and customary closing fees and costs including title insurance premiums, documentary stamp taxes, survey fees, escrow fees, recording charges, and transfer taxes; (C) attorneys' fees and costs incurred, and (D) other verifiable, reasonable, and customary expenses actually incurred by Developer in connection with closing the Transfer. Costs of Transfer shall exclude adjustments to reflect prorations of rents, taxes, or other items of income or expense customarily prorated in connection with sales of real property.

(iv) "Developer's Return" shall mean an amount earned through Cash Flow and Net Transfer proceeds sufficient to cause Developer to have achieved an unlevered Internal Rate of Return (IRR) equal to a rate of _____ (___%) per annum, through and including the date of calculation. "Internal Rate of Return" shall mean, with respect to Developer and as of any date, the discount rate, at which the net present value of all Development Costs as of (and including) such date, all Cash Flow received by Developer as of (and including) such date, and all Net Transfer Proceeds received by Developer as of (and including) such date equals zero. For purposes of calculating Internal Rate of Return, Development Costs shall be an "outflow," deemed to have occurred on the last day of the month during which such Development Costs were incurred by or provided to Developer, and Cash Flow and Net Transfer Proceeds shall be an "inflow," deemed to have occurred on the last day of the month during which such Cash Flow and Net Transfer Proceeds were received by Developer. The Internal Rate of Return shall be calculated using the latest version of Microsoft Excel electronic spreadsheet XIRR Financial Function (or, if such electronic spreadsheet is no longer available, a similar spreadsheet used by Developer in its real estate investments to calculate internal rates of return).

(v) "Development Costs" means costs incurred and paid by Developer in connection with the development and construction of the Project, or costs that are invoiced to Developer in connection with the development and construction of the Project, as reasonably documented by Developer and as set forth by Developer in a written statement or affidavit to the City.

(vi) "Gross Receipts" means the following determined on a cash basis: all payments, revenues, fees, or amounts actually received by Developer or by any other party for the account of Developer from any person for the person's use or occupancy of any portion of the Property, or from any other advertising, concessions, licensing, or programming generated from

the Project, including, without limitation, all minimum rent, percentage rent, license fees, advertising revenues, event or promotional fees or charges, and permit fees. Notwithstanding the foregoing, City and Developer agree that for purposes of this Section 3.9, with respect to any revenue generated from parking or concessions operated at the Project, Gross Receipts shall only be deemed to include the net amounts received by Developer after paying all expenses incurred in connection with the operation of such parking or concessions services, but in no event shall such net amounts be less than zero.

(vii) "Gross Transfer Proceeds" means all consideration directly or indirectly received by or for the account of the Developer in connection with a Transfer of a Majority Interest, of whatever form or nature, including, without limitation, (A) Cash Consideration, (B) the principal amount of any loan made by the Developer to a purchaser as part of the purchase price, and (C) the fair market value of any other non-cash consideration representing a portion of the purchase price.

(viii) "Majority Interest" means an interest that is fifty and one-tenth percent (50.1%) or higher in the Project or in the entity that owns the Project.

(ix) "Net Transfer Proceeds" means Gross Transfer Proceeds less Costs of Transfer.

(b) Calculation of City's Participation in Net Transfer Proceeds. The City's Participation in the Net Transfer Proceeds shall be calculated as follows: Net Transfer Proceeds multiplied by _____ percent (___%); provided, however, that City's Participation in the Net Transfer Proceeds shall be reduced by the amount required to ensure that Developer achieves a return equal to no less than Developer's Return (at time of sale) after factoring in the City's Participation in Net Transfer Proceeds.

(c) Reporting of Proceeds from Transfer. No less than fifteen business days prior to a Transfer of a Majority Interest, Developer will deliver to City a written statement that includes the amount of Developer's Development Costs, and an estimated closing statement that includes the best estimate of the following items:

(i) Estimated Gross Transfer Proceeds, identifying all Cash Consideration and non-cash consideration;

(ii) Estimated Costs of Transfer;

(iii) Estimated Net Transfer Proceeds; and

(iv) The calculation of the City's Participation in Net Transfer Proceeds in accordance with Section 3.9(b) hereof.

(d) Manner of Payment. Developer shall pay City's Participation in the Net Transfer Proceeds at close of escrow of the first Transfer of a Majority Interest. The estimated closing statement shall be updated as of the date of close of escrow under the Transfer to show the

actual Net Transfer Proceeds and City's share thereof. City may reference in any Notice of Compliance or other representation requested from City that payment of City's Participation in Net Transfer Proceeds is a material obligation under this Agreement, due and owing at close of escrow on the first Transfer of a Majority Interest hereunder. Within forty-five days after any such Transfer, the Developer shall submit to City a report prepared in accordance with generally accepted accounting principles consistently applied, and certified, under penalty of perjury, by Developer's Chief Financial Officer (or equivalent position) as complete and correct in all material respects, confirming the actual amount of Net Transfer Proceeds received, and the amount of Net Transfer Proceeds due to the City. At City's option, any overpayments may be either refunded to Developer or applied to any other amount then due and unpaid. Developer shall accompany the statement of Net Transfer Proceeds with the amount of any underpayments. The closing statement delivered to City under this subsection (d) may be subject to audit or review by City for determination of the accuracy of Developer's reporting of the City's Participation in Net Transfer Proceeds. Failure by Developer to make the payments in the manner and at the times described in this Section 3.9 constitutes default by Developer subject to the provisions of Article 10 of this Agreement.

3.10 Compliance with Master Development Schedule; Extension Rights. ***-TERMS UNDER THIS SECTION 3.10 STILL UNDER NEGOTIATION-***

(a) Subject to any extensions provided as a result of a Force Majeure Delay as set forth in Section 10.3, and so long as City complies with its obligations to cooperate and to timely process any applications submitted by Developer as set forth in Sections 4.6, 5.1, and 5.3, Developer shall comply with the Master Development Schedule attached as Exhibit G to this Agreement.

(b) Notwithstanding the above, Developer shall have the right to for (4) six-month extensions to extend the milestones identified in Exhibit G, at a charge of $100,000.00 per extension, for documented good cause, and by providing thirty (30) days' advance written notice to the City of Developer's desire to exercise an extension. Upon receipt of such written notice, documentation supporting good cause, and payment of the applicable fee, each remaining milestone on Exhibit G shall automatically be by six-months. For purposes of this Section 3.10, "good cause" means the following: (1) construction or pre-construction delays arise that are outside of Developer's reasonable control arising from the unavailability of construction materials for projects similar to the Project that cause significant construction delays, significant construction delays resulting from such materials being unusually difficult or impossible to obtain, or from defects, tariffs, embargoes, or trade disputes, where, in each case, Developer is unable to obtain alternative or replacement materials, within the same or substantially similar time period at substantially the same cost (and without having to forfeit any significant deposits or advance payments), and (2) changes in economic and market conditions that affect the availability of commercially reasonable financing for comparable hotel projects within the San Francisco Bay Area. In the event that Developer fails to provide documentation of good cause as defined above, City may deny Developer's requested extension.

3.11 Other Developer Obligations.

(a) Mitigation Measures. Developer shall comply with the applicable Mitigation Measures identified and approved in the EIR for the Specific Plan, in accordance with CEQA as identified and as set forth in the MMRP.

3.12 Indemnification By Developer. ***-TERMS UNDER THIS SECTION 3.12 STILL UNDER NEGOTIATION-***

(a) Except for the Claims released by City pursuant to Section 11.2 of Exhibit B, Developer agrees to the fullest extent allowed by law, to indemnify, protect, defend (with counsel satisfactory to City), and hold City (and its elected and appointed officers, officials, directors, legislative body members, managers, employees, consultants, contractors, subcontractors, attorneys, agents, invitees, and/or licensees acting on behalf of City; collectively "**City Indemnitees**") harmless from and against any and all actions, causes of action, charges, claims, compensation, costs, damages, fees (including attorneys' fees and experts' fees), fines, demands, judgments, losses, orders, penalties, rights, and expenses of any kind or type, and compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen (collectively, "**Claims"**) suffered by City Indemnitees to the extent caused by:

(i) Any material misrepresentation or breach of warranty or covenant made by Developer in this Agreement, provided that Developer's obligations under this Section 3.12 shall not apply to any misrepresentation or breach of warranty or covenant actually known to and waived by City prior to the Effective Date;

(ii) The acts or negligent omissions of Developer or any Developer Indemnitee, including without limitation: (i) Developer's design, construction, operation, use, and/or maintenance of the Project; (ii) Developer's performance or failure to perform Developer's Post-Closing Mitigation Measures; (iii) Developer's design, construction, operation, use, monitoring, and/or maintenance of any of Developer's Post-Closing Mitigation Measures set forth in Exhibit F to Exhibit B; and (iv) Developer's failure to install, operate, maintain or upgrade the improvements described in the Post-Closing Mitigation Measures, including the Vapor Intrusion Mitigation ("**VIMS**")/Methane Mitigation System ("**MMS**"), in accordance with Best Management Practices or required by Applicable Law, including in response to changed, unexpected, or unanticipated conditions at the Property; and/or

(b) Notwithstanding anything to the contrary herein, Developer's obligations under this Section 3.12 shall not apply to any Claims for any alleged lost profits, lost opportunity, or alleged consequential, speculative, contingent or punitive damages.

3.13 Construction Bonds. ***-TERMS UNDER THIS SECTION 3.13 STILL UNDER NEGOTIATION-***

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, 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 Post-Closing Mitigation Measures.

(a) City shall perform, at City's sole expense, each of the "City's Post-Closing Mitigation Measures" identified in Exhibit G to Exhibit B and in the manner set forth therein.

(i) Prior to issuance of a certificate of occupancy for the Project, City shall prepare and implement an Operations and Maintenance Plan approved in writing by the Water Board and as described in Section B.9 of City's Post-Closing Mitigation Measures as described in Exhibit G to Exhibit B.

(ii) Prior to issuance of a certificate of occupancy for the Project, City shall prepare and implement a methane and volatile organic compound monitoring plan approved in writing by the Water Board and as described in Section B.11 of City's Post-Closing Mitigation Measures as described in Exhibit G to Exhibit B.

(iii) Prior to issuance of a certificate of occupancy for the Project, City shall prepare and implement a post-closure Emergency Response Plan as described in Section D.1 of City's Post-Closing Mitigation Measures as described in Exhibit G to Exhibit B.

4.3 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 Property or prevailing over all or any part of this Agreement. City further acknowledges that Developer's vested rights to Develop the Property 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. City shall cooperate with Developer and shall consider undertaking actions mutually agreed by the Parties as necessary to ensure that this Agreement remains in full force and effect. To the maximum extent feasible in accordance with Applicable Law, City shall not require Developer to include a secondary fire apparatus access road from a second public right of way to the Property.

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 Developer may renovate or rebuild all or any part of the Project within the Term should it become necessary due to damage or destruction. 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. The 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 the City's established fees for expedited plan check services. The City shall use reasonable efforts to provide such plan checks within 3 weeks of a submittal that meets the requirements of Section 5.2. The City acknowledges that the 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. The City shall perform those obligations of the City set forth in this Agreement, which the City acknowledges are essential for the Developer to perform its obligations in Article 3. The 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 Transient Occupancy Tax Rebate. ***-TERMS UNDER THIS SECTION 4.8 STILL UNDER NEGOTIATION-*** To help ensure the economic feasibility of the Project in light of site constraints and added costs associated with development on the Property, City and Developer shall enter into a separate Transient Occupancy Tax Rebate Agreement recorded in the San Mateo County Recorder's Office prior to issuance of a certificate of occupancy for the Project granting to Developer a Transient Occupancy Tax Rebate ("**TOT Rebate**") of TOT collected by City from Developer in connection with its operation of the Project as a hotel in the form attached as Exhibit F hereto. Such Agreement shall include the following terms:

(a) The City's obligation to provide the TOT Rebate amount to Developer is contingent upon Developer's continuous operation of a 350-room full-service hotel facility which is the quality of a "AAA" (or similar rating) four diamond or higher hotel Project at the Property. City shall confirm such continued operation annually.

(b) The TOT Rebate amount provided by City to Developer shall be equal to fifty (50) percent of the TOT collected from transient rentals of hotel rooms within the Project for a period not to exceed fifteen (15) years beginning from the commencement of operations of the Project as a hotel; provided, however, that the total TOT Rebate provided pursuant to this Agreement shall not exceed forty-four million five hundred thirty thousand dollars ($44,530,000) (the "**Maximum TOT Rebate Amount**"). For purposes of this Section 4.8, "commencement of operations of the Project as a hotel" means the first day upon which the Project provides accommodations to members of the general public via paid bookings. Upon request by City, Developer shall provide documentation to verify the "commencement of operations of the Project as a hotel."

(c) Beginning from the commencement of operations of the Project as a hotel, City shall pay the TOT Rebate to Developer every six (6) months in June and December, for the preceding six (6) months based upon the actual TOT collected for that period from the Project only.

(d) Upon the earlier of City's payment to Developer of the Maximum TOT Rebate Amount or 15 years since the commencement of operations of the Project as a hotel, the City shall thereafter be entitled to receive one hundred (100) percent of all TOT revenue owed by the Project to the City pursuant to SSFMC Chapter 4.20.

(e) City's obligations under this Section 4.8 shall immediately cease if the Project ceases to operate as a hotel for more than thirty (30) days. For purposes of this subsection, the Project shall not be deemed to have ceased operations in the event of temporary closures due to a Force Majeure event as described in Section 10.3. In addition, the City's obligations shall immediately cease under this Section 4.8 if Developer fails to pay City's Participation in the Net Transfer Proceeds at close of escrow of the first Transfer of a Majority Interest as contemplated in Section 3.9.

4.9 Indemnification by City. ***-TERMS UNDER THIS SECTION 4.9 STILL UNDER NEGOTIATION-***

(a) Except for the Claims released by Developer pursuant to Section 11.1 of Exhibit B, City agrees to the fullest extent allowed by law to indemnify, protect, defend (with counsel satisfactory to Developer), and hold Developer and its officers, directors, managers, members, employees, agents, contractors, subcontractors, consultants, invitees, or licensees acting on behalf of Developer (collectively, "**Developer Indemnitees**") harmless from and against any and all Claims suffered by Developer Indemnitees, to the extent caused by:

(i) Any material misrepresentation or breach of warranty or covenant made by City in this Agreement, provided that City's obligations under this Section 4.9 shall not apply to any misrepresentation or breach of warranty or covenant actually known to and waived by Developer prior to the Effective Date;

(ii) Claims brought by any third party to the extent caused by the Pre-Existing Property Conditions; provided, however, City's obligations hereunder shall not apply to the extent that such third party claims are caused by the acts or negligent omissions of Developer or any Developer lndemnitee, including without limitation: (i) Developer's design, construction, operation, use, and/or maintenance of the Project; (ii) Developer's performance of or failure to perform Developer's Post-Closing Mitigation Measures set forth in Exhibit F to Exhibit B; (iii) Developer's design, construction, operation, use, and/or maintenance of any of Developer's Post-Closing Mitigation Measures; (iv) Developer's failure to install, operate, maintain or upgrade the improvements described in the Post-Closing Mitigation Measures, including the VIMS/MMS, in accordance with Best Management Practices or required by Applicable Law, including in response to changed, unexpected, or unanticipated conditions at the Property; (v) Developer's breach of this Agreement; and (vi) failure by Developer to provide any notice, disclosure or other information required by Applicable Laws in connection with the presence or potential presence of Pre-Existing Property Conditions at or otherwise relating to the Project, provided, however, that City's obligations to Developer Indemnitees under this Section 4.9 shall not be excused by the mere discovery by a Developer Indemnitee of a Pre-Existing Property Condition;

(iii) Claims to the extent caused by City's: (a) violation of Applicable Laws pertaining to the Pre-Existing Property Conditions from and after the Effective Date; and (b) performance of or failure to perform City's Post-Closing Mitigation Measures described in Exhibit G to Exhibit B from and after the Closing Date (as defined in the PSA).

Notwithstanding anything to the contrary herein, City's obligations under this Section 4.9 shall not apply to any Claims for any alleged lost profits, lost opportunity, or alleged consequential, speculative, contingent or punitive damages.

ARTICLE 5
COOPERATION - IMPLEMENTATION

5.1 Processing Application 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. Accordingly, City shall, to the maximum extent permitted by law, not use its discretionary authority in considering any application for a Subsequent Approval 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 best 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. The City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law.

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 D are the only City fees and exactions that apply to the Project, subject to the credits and exemptions that may be set forth in Article 3 of this Agreement or identified on Exhibit D and subject to Section 5.6(b) below. Except for those fees and exactions listed in Exhibit D, City is unaware of any pending efforts to initiate, or consider applications for new or increased fees, exactions, or assessments covering the Property, or any portion thereof that would apply to the Project prior to the Effective Date.

(b) Application of Fees Imposed by Outside Agencies. The City agrees to exempt Developer from any and all fees, including but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or Property after the Effective Date through the expiration of the Term. Notwithstanding the previous sentence, in the event that another public agency requests that the City impose a fee, including a development impact fee on all new development and land use projects on a citywide (or East of 101 Area Plan-wide) basis, then any such fee duly adopted by the City shall apply to the Project. This Section 5.6(b) shall not prohibit the City from imposing on Developer any fee or obligation that is imposed by a regional agency in accordance with state or federal obligations implemented by the 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 Property in accordance with the terms and conditions of this Agreement, the Project Approvals, the Subsequent Approvals (as and when 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*.). 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 Property; the vested density and intensity of use of the Property; 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 [Intentionally Omitted]

6.4 Adoption of Reach Code. ***-TERMS UNDER THIS SECTION 6.4 STILL UNDER NEGOTIATION-*** City acknowledges and understands that Developer is planning for and relying upon the ability of restaurants within the Project to be permitted to utilize natural gas for all food cooking and preparation functions. Developer is further relying on its ability to utilize natural gas for commercial laundry facilities within the hotel and for the hotel boiler system and spa heating system. Any amendments to SSFMC Title 15 or to any other provision of the City's Code, adopted after the Effective Date of this Agreement, that would preclude Developer's use of natural gas for the hotel operations in the manner described in this Section 6.4 shall not apply to the Project.

6.5 Uniform Codes. Subject to Section 6.4, City may apply to the Property, 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.

6.6 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 Property;

(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 or receiving 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 the City other than those required by Applicable Law;

(f) Establish, enact, increase, or impose against the Project or Property any fees, taxes (including without limitation general, special and excise taxes but excluding any increased local (city or county) sales tax or increases city business license tax), assessments, liens or other 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.

6.7 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.

6.8 Environmental Mitigation. The Parties understand that the 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 EIR,

City agrees to use the 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 Approvals, EIR, and MMRP, or specifically required by CEQA or other Applicable Law, except as provided for in this Section 6.8. 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.

6.9 Future Legislative Actions.

(a) In the event that, following the Effective Date, City revises, modifies, updates, or amends the land use designation(s) of the General Plan in effect on the Effective Date, the Specific Plan in effect on the Effective Date, or of the East of 101 Area Plan in effect on the Effective Date, that are applicable to the Property, or the zoning designation(s) applicable to the Property and in effect on the Effective Date, such updates or amendments shall not diminish Developer's vested rights to Develop the Project or the Property, but no provision of this Agreement shall limit Developer's right to apply for any land use entitlement(s) for the Property 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 Property that are consistent with, or authorized by, any revision, modification, update, or amendment contemplated by this subsection (a) of Section 6.9 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 the City that are in any way related to revisions, modifications, amendments, or updates to the General Plan, the Specific Plan, the East of 101 Area Plan, or the City of South San Francisco Municipal Code.

(b) Developer acknowledges that, if it applies for any land use entitlement(s) for the Property that are consistent with, or authorized by, any revision, modification, update, or amendment contemplated by subsection (a) of this Section 6.9 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 6.8 of this Agreement, and, if such application is finally approved by the 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).

(c) City agrees that, if Developer applies for any land use entitlement(s) for the Property 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.

6.10 Life of Development Approvals, and Permits. The term of any permit 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 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.

6.11 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.

6.12 Prevailing Wage. Developer and its contractors and agents shall comply with California Labor Code section 1720 *et seq.*, and regulations adopted pursuant thereto, to the extent applicable to the Project ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the applicable requirements of such law and regulations. Developer shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Developer's expense.

(a) To the fullest extent permitted by law, Developer shall indemnify, defend (with counsel approved by City, which approval shall not be unreasonably withheld) and hold the City, and its elected and appointed officers, officials, employees, agents, consultants, and contractors (for purposes of this Section 6.12 collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (for purposes of this Section 6.12, all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages in connection with this Agreement (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that the City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City, or Developer's deposit with the City, of any of the insurance policies described in this Agreement. The provisions of this Section 6.12 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer's indemnification obligations set forth in this Section 6.12 shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees.

6.13 Timing and Review of Project Construction and Completion. Except as expressly provided in the Project Approvals and this Agreement, 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.

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, 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 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) 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 Agreement Amendments. Any amendment to this Agreement which does not substantially affect (i) the Term, (ii) permitted uses of the Property, (iii) conditions, terms, restrictions, or requirements for subsequent discretionary actions, (iv) the density or intensity of use of the Property or the maximum height or size of proposed buildings, or (v) monetary contributions by Developer, shall be considered an "**Administrative Agreement**

Amendment" and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. Administrative Agreement Amendments may be approved by the City Manager or, in the sole discretion of the City Manager, the City Manager may refer any proposed Administrative Agreement Amendment to the City Council for consideration and approval or denial.

(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, TRANSFER AND NOTICE

8.1 Assignment. ***-TERMS UNDER THIS SECTION 8.1 STILL UNDER NEGOTIATION-***

(a) Absent an express signed written agreement between the Parties to the contrary, neither Developer nor City may assign its rights or delegate its duties under this Agreement without the express written consent of the other Party. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement. Notwithstanding any provision hereof, Developer may assign this Agreement without the consent of City to one or more entities controlled by, or under common control with, or owned in whole or in part by Developer (an "**Affiliate**"), provided, Developer shall not be released from its obligations under this Agreement. As used in this Section 8.1, "**controlled**" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through the ownership of voting securities, partnership interest, contracts (other than those that purport to transfer Developer's interest to a third party not specifically identified in this subsection) or otherwise.

8.2 Transfer Agreements. ***-TERMS UNDER THIS SECTION 8.2 STILL UNDER NEGOTIATION-***

(a) In connection with the Transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an Affiliate), Developer and the transferee shall enter into a written agreement regarding the respective interests, rights, and obligations of Developer and the transferee in and under the Agreement and the Project Approvals (a "**Transfer Agreement**"). Such Transfer Agreement shall include an executed Assignment and Assumption of Rights and Obligations, as set forth in Exhibit I, and may (i) release Developer from obligations under the Agreement or the Project Approvals that pertain to that

portion of the Project being transferred, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations; (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred; and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment.

(b) 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. At the time Developer requests City's written consent, Developer shall submit to the City information describing transferee's development experience and financial resources. 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, including Buyer's Post-Closing Mitigation Measures (contained in Exhibit F to Exhibit B of this Agreement). 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) additional 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 Order No. 00-46 issued by the San Francisco Regional Water Quality Control Board to the City on June 21, 2000, the Final Closure Plan and Postclosure Maintenance and Monitoring Plan each dated September 8, 2017, Buyer's Post-Closing Mitigation Measures (contained in Exhibit F to Exhibit B of this Agreement), Project Approvals, the EIR and MMRP, the General Plan, the TDM Plan, the Specific Plan, and the East of 101 Area 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 and intends and has the ability to perform the obligations intended to be assumed, including without limitation the obligations identified in the immediately preceding sentence. City shall have sixty(60) days to request any of the information and meetings identified above, as well as request any additional information required in order to review any request for consent to a Transfer, and shall provide a determination as to whether to provide its consent within ninety (90) days of the date the request is received. Such determination will be made by the City Manager and will be appealable by Developer to the City Council. For any Transfer of all of the Property, the Developer and assignee shall enter into an assignment and assumption agreement in substantially the form set forth in Exhibit I. 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 8.2:

(i) Any Transfer for financing purposes to secure the funds necessary for construction and/or permanent financing of the Project, including any financing transactions, such as sale-leaseback or grant of a mortgage or deed of trust, for purposes of financing development of the Project; or any foreclosure thereof or deed-in-lieu with respect thereto;

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

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

(iv) any change, directly or indirectly, of the equity or ownership interests of Developer or any transferee which individually or cumulatively with prior changes does not result in a change in control of Developer or transferee; or

(v) Any leases, subleases, licenses, easements, or other occupancy agreements.

(c) Any Transfer Agreement shall be binding on Developer, City, and the transferee. Once approved by the Developer, the transferee, and City, and then upon recordation of any Transfer Agreement in the Official Records of San Mateo County, Developer shall automatically be released from those obligations assumed by the transferee therein.

(d) Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder occurring after the assignment or Transfer by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer.

8.3 Notice of Compliance Generally. Within thirty (30) days following any written request which Developer may make from time to time, City shall 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:

(a) This 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;

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

(c) Any other information reasonably requested by Developer.

The failure to deliver such a statement 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 the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.

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, the Parties will cooperate in defending such action or proceeding. City shall promptly (within five business days) notify Developer of any such action against City. If City fails promptly to notify Developer of any

legal action 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 action, 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 action or proceeding, each party may select its own legal counsel and Developer will pay its and the City's attorneys' fees and costs. Developer shall reimburse the City for all reasonable court costs and attorneys' fees expended by the City in defense of any such action or other proceeding or payable to any prevailing plaintiff/petitioner.

9.2 Reapproval.

(a) If, as a result of any administrative, legal, or equitable action or other proceeding, 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 the 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.

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, 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.

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; pandemics; quarantine restrictions; 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 Force Majeure Delay or 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. ***-TERMS UNDER THIS SECTION 10.4 STILL UNDER NEGOTIATION-***

(a) 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 and Section 10.4(b) below, 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.

(b) In the event that, following Close of Escrow (as defined in the PSA) for the Property, this Agreement is terminated pursuant to Section 10.2, and such termination occurs prior to commencement of construction for the Project, then the City shall have the right to reenter and take possession of the Property, and to revest in the City the estate of the Developer in the Property or portion thereof. Upon revesting in the City of title to the Property, or portion thereof, the City shall promptly use its best efforts to resell it. For purposes of this subsection, "commencement of construction" means [INSERT DEFINITION] Upon any sale or contract for development, the proceeds shall be applied as follows:

(i) First, to reimburse the City for any reasonable costs it incurs in revesting the estate managing or selling the Property or portion thereof, including but not limited to amounts to discharge or prevent liens or encumbrances arising from any acts or omissions of the Developer;

(ii) Second, to reimburse the City for damages to which it is entitled under this Agreement by reason of the Developer's default;

(iii) Third, to the Developer up to the sum of the amount of the purchase price paid to the City by the Developer pursuant to the PSA for the Property which has reverted to the City and the reasonable cost (incurred after close of escrow) of the improvements the Developer has placed on the Property and such other reasonable costs Developer has incurred after

close of escrow directly in connection with development of the Project which has reverted to the City (for purposes of this subsection "reasonable costs" means [INSERT]); and

(iv) Fourth, any balance to the City.

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.

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. 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, or alleged to arise from, any gross negligence or willful misconduct on the part of City, its elected and appointed representatives, offices, agents and employees.

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 Property 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 Property, and is binding upon the owner of all or a portion of the Property 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 or telefacsimile (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 given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal 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. 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. Notice by email transmission 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. 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
400 Grand Avenue
South San Francisco, CA 94080
Attn: City Manager
Phone: (650) 877-8500
Fax: (650) 829-6609

With a Copy to: Meyers Nave
1999 Harrison Street, 9th Floor
Oakland, CA 94612
Attn: Sky Woodruff
Phone: (510) 808-2000
Fax: (510) 444-1108
Email:swoodruff@meyersnave.com

If to Developer, to: Oyster Point Holdco, LLC
444 West Ocean Boulevard, Suite 650
Long Beach, CA 90802
Attn: Conrad Garner, Senior Vice President
Phone: (562) 435-4857
Email: cgarner@ensemble.net

With Copies to: Coblentz Patch Duffy & Bass LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104
Attn: Frank Petrilli
Phone: (415) 268-0503
Email: fpetrilli@coblentzlaw.com

11.10 Mortgagee Protection. ***-TERMS UNDER THIS SECTION 11.10 STILL UNDER NEGOTIATION-*** The Parties agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any Mortgage. City acknowledges that the lenders providing such financing may require 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 Property 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 Property 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. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's Notice of Breach, plus additional time not to exceed 90 days, as reasonably determined by the City Manager, to allow Mortgagee sufficient time to make the election to cure and thereafter prosecute such cure to completion. If a Mortgagee shall be required to obtain title or possession in order to cure any default or breach, then the time to cure shall be tolled so long as the Mortgagee is diligently attempting to obtain possession, including by appointment of a receiver or foreclosure, and provides City upon written request from time to time reasonable evidence of such diligent efforts; provided the tolling shall not exceed 90 days or such longer period as City may agree in its sole discretion. A delay or failure by the City to provide such notice required by this Section shall extend, for the number of days until notice is given, the time allowed to the Mortgagee for cure, but shall not extend Developer's time to cure.

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of the Mortgage or deed in lieu of such foreclosure, shall take the Property, 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 35 pages, exclusive of signature pages, and six (6) 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 Property

Exhibit B: Purchase and Sale Agreement and Joint Escrow Instructions

Exhibit C: List of Project Approvals

Exhibit D: Applicable Laws & City Fees, Exactions, and Payments

Exhibit E: Operations and Maintenance Agreement

Exhibit F: TOT Rebate Agreement

Exhibit G: Master Development Schedule

Exhibit H: Precise Plan

Exhibit I: Form of Assignment and Assumption Agreement

Exhibit J: Form of Easement for Existing and Future Sewer Pump Station Access and Infrastructure

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 OYSTER POINT HOLDCO, LLC

CITY:

CITY OF SOUTH SAN FRANCISCO, a California municipal corporation

By:_____

Date: _____

Name: Mike Futrell
Its: City Manager

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM:

By:_____
City Attorney

SIGNATURE PAGE FOR DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND OYSTER POINT HOLDCO, LLC

DEVELOPER:

OYSTER POINT HOLDCO, LLC, a Delaware limited liability company

By:_____

Date: _____

Name: _____
Its: _____

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND OYSTER POINT HOLDCO, LLC

Exhibit A

Description and Diagram of Property

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11/3/2022 DRAFT – TERMS STILL UNDER NEGOTIATION
This draft does not include language related to some additional terms still under negotiation. Those additional terms do not impact nature of development.

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND OYSTER POINT HOLDCO, LLC

Exhibit B

Purchase and Sale Agreement and Joint Escrow Instructions

[Need to Insert Fully Executed Version]

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(Exhibit F to Exhibit B – For Reference)

BUYER'S POST-CLOSING MITIGATION MEASURES

Buyer shall perform, at Buyer's sole expense, each of Buyer's Post-Closing Mitigation Measures identified in this Exhibit F. The measures identified herein are not intended as Buyer's sole post-closing obligations with respect to the Pre-Existing Property Conditions and shall not reduce or otherwise diminish Buyer's other obligations under the Agreement with respect to such conditions or otherwise. Capitalized terms not specifically defined herein shall have the meaning prescribed in the Agreement.

A. Site Security

1. Provide site security for the Property and all building(s) at the Property. Security features should be designed to prevent unauthorized access by the general public. Building security features may include barriers and/or restricted access signage and alarm systems.

B. Engineering Measures - Fill /Capping/Construction Activities

1. Install a minimum of nine (9) feet of clean fill or as otherwise engineered by a qualified civil engineer and subject to City Public Works approval and building plan check within the building footprint area above the landfill cap. Outside of the building footprint, utility trenches shall be located at least twelve (12) inches above the top of the landfill cap within clean fill, except to the extent necessary to connect to existing utility connections. Any utility connections within the cap or below the cap shall occur in trenches with a protective clay layer and clean backfill as engineered by a qualified civil engineer subject to City Public Works approval and building plan check.

2. Install a geotextile fabric (as a marker) on top of the erosion resistant layer (i.e. the landfill cap) so the top of the cap can be identified during future construction activities.

3. Install all landscaping and irrigation systems at elevations within the newly-installed fill layer above the cap to protect cap integrity.

4. Grade/maintain the Property to prevent surface water accumulation. Install and maintain survey monuments on the Property to monitor landfill settlement. Quarterly inspections are required to ensure monuments are intact and usable and any repairs or replacement are performed as necessary. Installation of at least two permanent survey monuments are required so that the location and elevation of refuse, final cover, and landfill gas system components can be determined throughout the post-closure period. Additionally, monuments will be surveyed every five years and settlement maps will be produced throughout the post-closure period or until settlement has stopped.

C. Engineering Measures - MMS/Building

1. Design, install and operate a methane mitigation and monitoring system (MMS) approved in advance by the Water Board and City in building structures. The MMS shall meet the requirements of Title 27 CCR Sections 20931 and 21190, for structures on landfilled areas, and of those listed in the PCMMP. The MMS shall also be designed in general accordance with methane mitigation standards used by Los Angeles County Public Works' Gas Hazard Mitigation Policy and Standards (https://dpw.lacounty.gov/epd/swims/onlineservices/methane-mitigation-standards.aspx).

   At a minimum, the MMS shall include a vapor barrier membrane (VBM) combined with a horizontal collection and venting system below the VBM. The venting system vents vapors through vertical riser piping that extends from beneath the building to above the roof level. Mechanical blowers will be on standby for use as an active venting system in the event elevated methane levels are detected by electronic sensors installed at various locations within the buildings. The MMS shall also be designed to mitigate potential vapors of other contaminants, including VOCs.

2. Design and install trench dams in utility trenches to prevent migration of methane and/or volatile organic compounds (VOCs) into buildings.

3. All building utilities, methane membrane and collection pipes should be connected/adhered to underside of building foundation slab or installed in a manner that prevents damage from potential future ground settlement.

4. Utilities should be designed to accommodate potential future ground settlement in areas outside of building footprint.

5. Perform all required inspections, maintenance, monitoring and reporting in connection with the approved MMS meeting the requirements of Title 27 CCR Sections 20931 and 21190, for structures on landfilled areas, the requirements listed in the PCMMP and other applicable requirements and regulations. Provide copies of all reports to the City.

D. Site Maintenance, Monitoring and Reporting

1. Maintain all hardscapes and softscapes at the Property. Hardscapes are building slabs, slab on grade, roadways, sidewalks and any other hard surfaces over the final landfill cover

("cap"); softscapes are landscaped areas over the cap. Maintain all irrigation systems associated with softscape. Inspect all final cover at the Property, including buildings, hardscape and softscape at the Property monthly during the wet season and quarterly during the dry season. In the event corrective action is warranted, promptly implement any necessary corrective action.

2. Prepare and implement an Operation and Maintenance ("O&M") Plan for the Property, approved in writing by the San Francisco Regional Water Quality Control Board ("Water Board") to address routine inspections, maintenance and reporting for the: a) landfill cap; b) methane and VOC collection, monitoring and alarm systems; and c) groundwater, surface water and leachate monitoring systems, as required.

3. Prepare annual maintenance and monitoring reports relating to implementation of the O&M Plan for the Property, methane and VOC monitoring plan, surface water sampling monitoring plan, and elevation monitoring plan, as required. Submit maintenance and monitoring reports to stakeholders.

4. Prepare and implement a methane and volatile organic compound ("VOC") monitoring plan for the Property, including the installation of any necessary monitoring wells, approved in writing by the Water Board that describes the frequency and procedures for monitoring in structures and perimeter areas of the site and required corrective actions if monitoring results exceed established thresholds. Perform required reporting and provide copies of all reports to the City. Quarterly monitoring is required within subsurface vaults, utilities and any other subsurface structures where gas may potentially build up. At a minimum, a portable landfill gas meter will be used for subsurface structure monitoring.

5. Prepare and implement an elevation monitoring plan for the Property.

6. Review and properly update all maintenance and monitoring plans and ensure that corrective actions are implemented in a timely manner.

E. Emergency Response Measures

1. Prepare and implement a post-closure Emergency Response Plan (ERP) for the Property outlining the procedures to be followed in the event of an emergency (such as fires, explosions, earthquakes, floods, vandalism, surface drainage problems, waste releases, etc.). Procedures for dealing with each type of emergency should be included in the ERP. Multiple agencies (fire, police, City, etc.) should be involved with preparation of the plan.

2. Require annual (at a minimum) updates and training for the ERP.

3. For planned or emergency subsurface activities, implement the ERP, assess damage and perform corrective action as necessary.

F. Administrative/Legal Measures – Site Maintenance/Cap/Construction Activities

1. Have entered into a binding voluntary oversight agreement with the Water Board (i) pursuant to which the Water Board will oversee Buyer's compliance with the requirements of Order No. 00-46, the Closure Plans, and related Applicable Laws, relating to Buyer's acquisition, development, operation and use of the Property, and (ii) confirming that with respect to such requirements, the Buyer is the party primarily responsible for such compliance.

2. Comply with the requirements of Order No. 00-46, the Closure Plans, and related Applicable Laws, relating to Buyer's acquisition, development, operation and use of the Property.

3. Execute and implement an O&M Agreement with the City providing the City and/or the Water Board with financial assurance for completion of the Buyer's Post-Closing Mitigation Measures.

4. Establish and assure an automatic dig alert notification to City Public Works in advance of any soil disturbance at the Property.

5. All construction activities that potentially disturb landfill cap shall be performed only pursuant to a Soil Management Plan (SMP) approved in advance by the Water Board.

6. Record a land use covenant prohibiting construction/subsurface work unless City is notified in advance and the work is performed pursuant to the Water Board-approved SMP.

7. Require hotel personnel to notify City if geotextile "marker" fabric is encountered or visible.

11/3/2022 DRAFT – TERMS STILL UNDER NEGOTIATION
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DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
OYSTER POINT HOLDCO, LLC

Exhibit C:

List of Project Approvals

- Resolution to Adopt the Draft and Final Environmental Impact Reports, Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations and associated CEQA Findings certified and approved by the City Council on March 23, 2011 by Resolution No. 46-2011;

- Resolution to Adopt the Oyster Point Specific Plan approved by the City Council on March 23, 2011 by Resolution No. 47-2011;

- Ordinance No. 1437-2011 to amend Chapter 20.230 ("Oyster Point Specific Plan Zoning District") of the South San Francisco Municipal Code introduced by the City Council on March 16, 2011 and adopted by the City Council on March 23, 2011;

- Development Agreement by and between the City of South San Francisco and Developer approved by Ordinance No. _____ introduced by the City Council on _____, 2022 and adopted by the City Council on _____.

- Resolution to Approve a Precise Plan for the Project approved by the City Council on _____ by Resolution No. _____.

11/3/2022 DRAFT – TERMS STILL UNDER NEGOTIATION
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DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND OYSTER POINT HOLDCO, LLC

Exhibit D

Applicable City Laws & City Fees, Exactions, and Payments

CURRENT SOUTH SAN FRANCISCO LAWS

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

1.1. South San Francisco General Plan. The Developer will develop the Project in a manner consistent with the objectives, policies, general land uses and programs specified in the South San Francisco General Plan, as adopted on October 13, 1999 and as amended from time to time prior to the Effective Date of this Agreement.

1.2 East of 101 Area Plan. The Developer will develop the Project in a manner consistent with the objectives, policies, general land uses and programs specified in the East of 101 Area Plan, as adopted and as amended from time to time prior to the Effective Date of this Agreement.

1.3 Oyster Point Specific Plan. The Developer will develop the Project in a manner consistent with the objectives, policies, general land uses and programs specified in the 2011 Oyster Point Specific Plan, as adopted and as amended from time to time prior to the Effective Date of this Agreement.

1.3 Oyster Point Specific Plan Zoning District. The Developer shall construct the Project in a manner consistent with the Oyster Point Specific Plan Zoning District, City of South San Francisco Municipal Code Chapter 20.230, applicable to the Property as of the Effective Date and as amended from time to time prior to the Effective Date of this Agreement.

1.4 South San Francisco Municipal Code. The Developer shall construct the Project in a manner consistent with the City of South San Francisco Municipal Code provisions, as applicable to the Project as of the Effective Date (except as modified by this Agreement, and as may be amended from time to time consistent with this Agreement).

FEES, EXACTIONS, & PAYMENTS

Subject to the terms of Sections 3.2 and 5.6 of this Agreement, Developer agrees that Developer shall be responsible for the payment of the following fees, charges, exactions, taxes, and assessments (collectively, "**Assessments**"). From time to time, the City may update, revise, or

change its Assessments. Further, nothing herein shall be construed to relieve the Property from common benefit assessments or district taxes levied against it and similarly situated properties by the City pursuant to and in accordance with any statutory procedure for the assessment of property to pay for infrastructure and/or services that benefit the Property. As authorized by the applicable Development Fee enabling ordinance or resolution as of the Effective Date of this Agreement, the amount paid for a particular Assessment, shall be the amount owed, based on the calculation or formula in place at the time payment is due, as specified below.

2.1 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 the 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.

2.2. Impact Fees (Existing Fees). Except as modified below and as set forth in Section 5.6(a) of this Agreement, only the following existing impact fees shall be paid for net new square footage at the earlier of (i) issuance of certificate of occupancy, or (ii) the times prescribed in the resolution(s) or ordinance(s) adopting and implementing the fees.

- Park and Recreation Impact Fee (SSFMC Chapter 8.67).
- Childcare Impact Fee (SSFMC Chapter 20.310).
- Public Safety Impact Fee (SSFMC Chapter 8.75).
- Commercial Linkage Fee (SSFMC Chapter 8.69).
- Sewer Capacity Fee (Resolution 39-2010).
- Transportation Impact Fee (SSFMC Chapter 8.73).
- East of 101 Sewer Impact Fee.
- Oyster Point Interchange Impact Fee.
- Library Impact Fee (SSFMC Chapter 8.74).
- Public Art In-Lieu Fee (SSFMC Chapter 8.76).

11/3/2022 DRAFT – TERMS STILL UNDER NEGOTIATION
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DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
OYSTER POINT HOLDCO, LLC

Exhibit E

Operations and Maintenance Agreement
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DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND OYSTER POINT HOLDCO, LLC

Exhibit F

TOT Rebate Agreement

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DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND OYSTER POINT HOLDCO, LLC

Exhibit G

Master Development Schedule

Activity	Milestones
Closing of Escrow	No later than December 31, 2022
Submit application for Building Permit	No later than December 31, 2023.
Delivery of Proof of an Approved Construction Loan from a Reputable Lender	Within 18 months of submitting for Building Permit, but no later than June 30, 2025.
Delivery of a Final Construction Contract	Within 18 months of submitting for Building Permit, but no later than June 30, 2025.
Construction Commences	Within 18 months of submitting for building permit, but no later than July 31, 2025.
Substantial Completion of Construction	Within 36 months of construction commencement; targeted for September 2027 (26-month schedule), but no later than June 2028 (35-month schedule).
Estimated Opening of hotel	Targeted November 2027, but no later than August 2028.

11/3/2022 DRAFT – TERMS STILL UNDER NEGOTIATION
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DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
OYSTER POINT HOLDCO, LLC

Exhibit H

Precise Plan

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DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND OYSTER POINT HOLDCO, LLC

Exhibit I

Form of Assignment and Assumption Agreement

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 Oyster Point Holdco, LLC, a Delaware limited liability company ("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

-TERMS UNDER THIS SECTION STILL UNDER NEGOTIATION-

A. Assignor and City have previously entered into that certain Development Agreement between City and Assignor dated _____, 2022, approved by the City of South San Francisco City Council by Ordinance No. _____ on _____, 2022, to be effective on _____, 2022, and recorded on _____, 2022 as Document No. _____, San Mateo County Official Records ("Development Agreement") to facilitate the development and redevelopment of that certain real property consisting of approximately ____ acres with 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. Sections 8.1 and 8.2 of the Development Agreement ("Agreement" therein) refer to Oyster Point Holdco, LLC as "Developer" and provide in part that:

> In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an Affiliate), Developer and the transferee shall enter into a written agreement regarding the respective interests, rights, and obligations of Developer and the transferee in and under the Agreement and the Project Approvals (a "**Transfer Agreement**"). Such Transfer Agreement shall include an executed Assignment and Assumption of Rights and Obligations, as set forth in Exhibit I.
>
> . . .
>
> 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. At the time Developer requests City's written consent, Developer shall submit to the City information describing transferee' s development experience and financial resources. 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, including Buyer's Post-Closing Mitigation Measures (contained in Exhibit F to Exhibit B of this Agreement). 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) additional 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 Order No. 00-46 issued by the San Francisco Regional Water Quality Control Board to the City on June 21, 2000, the Final Closure Plan and Postclosure Maintenance and Monitoring Plan each dated September 8, 2017, Buyer's Post-Closing Mitigation Measures (contained in Exhibit F to Exhibit B of this Agreement), Project Approvals, the EIR and MMRP, the General Plan, the TDM Plan, the Specific Plan, and the East of 101 Area 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 and intends and has the ability to perform the obligations intended to be assumed, including without limitation the obligations identified in the immediately preceding sentence. City shall have sixty (60) days to request any of the information and meetings identified above, as well as request any additional

information required in order to review any request for consent to a Transfer, and shall provide a determination as to whether to provide its consent within ninety (90) days of the date the request is received. Such determination will be made by the City Manager and will be appealable by Developer to the City Council. For any Transfer of all of the Property, the Developer and assignee shall enter into an assignment and assumption agreement in substantially the form set forth in Exhibit I.

D. The Parties desire to enter into this Assignment Agreement in order to satisfy and fulfill their respective obligations under Sections 8.1 and 8.2 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, defined below (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 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 Property 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:

OYSTER POINT HOLDCO, LLC,
a Delaware limited liability company

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: _____

Approved as to form by:

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

Name: _____

Title: _____

11/3/2022 DRAFT – TERMS STILL UNDER NEGOTIATION

This draft does not include language related to some additional terms still under negotiation. Those additional terms do not impact nature of development.

Exhibit J

Form of Easement for Existing and Future Pump Station and Infrastructure

5214327.1