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DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO
AND
DUBUQUE CENTER, L.P.

800 – 890 DUBUQUE AVE.
SOUTH SAN FRANCISCO, CALIFORNIA

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

Effective Date: [_____]

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of **[_____]** ("**Effective Date**") by and between Dubuque Center, L.P., a Delaware limited partnership ("**Developer**"), and the City of South San Francisco, a municipal corporation ("**City**"), pursuant to California Government Code ("**Government Code**") sections 65864 *et seq*. Developer and City are sometimes collectively referred to herein as "**Parties**."

RECITALS

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

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

C. Developer has a legal and/or equitable interest in certain real property located in the City on the approximately 5.89-acre site commonly known as "800 – 890 Dubuque Ave.," as more particularly described in Exhibit A ("**Project Site**"). Developer has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of the City with regard to Developer's proposed Project (as defined below).

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

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

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

G. Development (as defined in Section 1.16 of this Agreement) of the Project Site with the Project in accordance with this Agreement will provide substantial benefits to and will further important policies and goals of City. This Agreement will, among other things, benefit the City by (1) advancing the City's economic development goals of enhancing the competitiveness of the local economy and maintaining a strong and diverse revenue and job base, (2) creating a state-of-the art transit-oriented office/R&D development to advance General Plan objectives for the East of 101 Transit Core area, (3) making significant investments in expanding and upgrading access to transit and multimodal circulation, (4) supporting the City's achievement of its Climate Action Plan goals through incorporation of environmentally sensitive design and equipment, energy

conservation features, water conservation measures, and other sustainability features, (5) generating construction-related benefits, including employment, economic and fiscal benefits related to new construction, and (6) generating fiscal benefits to the City and San Mateo County due to community benefits payments, taxes and other revenue sources from operations.

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

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

J. On July 12, 2023, following review and recommendation by the South San Francisco Planning Commission ("**Planning Commission**") and after a duly noticed public hearing, by Resolution No. 118-2023, the City Council adopted the Initial Study / Mitigated Negative Declaration ("**MND**") in accordance with the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.* ("**CEQA**")) and the CEQA Guidelines (California Code of Regulations, Title 14, §§ 15000 *et seq*.). The MND analyzed the potential environmental impacts of Development of the Project on the Project Site. Concurrent with its adoption of the MND, and by the same resolution, the City Council duly adopted a Mitigation Monitoring and Reporting Program ("**MMRP**") for the Project. The MMRP identifies all mitigation measures identified in the MND that are applicable to the Project and sets forth a program for monitoring or reporting on the implementation of such mitigation measures.

K. Also on July 12, 2023, after a duly noticed public hearing, the City Council duly adopted Resolution No. 119-2023 approving the Design Review Permit, Transportation Demand Management Plan ("**TDM Plan**"), and Community Benefits Proposal for the Project.

L. On _____, 2025, following a duly noticed public hearing, by Resolution No. [_____], the Planning Commission recommended that the City Council adopt an ordinance approving and authorizing the execution of this Agreement.

M. On _____2025, after a duly noticed public hearing, the City Council introduced Ordinance No. [_____], approving and authorizing execution of this Agreement.

N. On _____ 2025, at a duly noticed public meeting, the City Council adopted on second reading Ordinance No. [_____], approving and authorizing execution of this Agreement.

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

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

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

AGREEMENT

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

ARTICLE 1
DEFINITIONS

1.1 Project Description. As used herein, "**Project**" shall mean the Development on the Project Site 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, and maximum size and height of buildings specified in the General Plan and in 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. Without limitation, the Project shall consist of three office/research and development buildings of 10 stories, 9 stories, and 6 stories respectively, with a combined floor area of approximately 857,000 sf, and a 4-level subterranean parking structure with approximately 1,335 spaces, for a parking ratio of 1.5 spaces/1,000 sf; and off-site circulation and infrastructure improvements, all as set forth in the Project Approvals.

1.2 "**Administrative Agreement Amendment**" shall have that meaning set forth in Section 7.2 of this Agreement.

1.3 "**Administrative Project Amendment**" shall have that meaning set forth in Section 7.1 of this Agreement.

1.4 "**Affiliate**" shall have that meaning set forth in Section 8.1 of this Agreement.

1.5 "**Agreement**" shall mean this Development Agreement.

1.6 "**Applicable Law**" shall have that meaning set forth in Section 6.3 of this Agreement.

1.7 "**CEQA**" shall have that meaning set forth in Recital J of this Agreement.

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

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

1.10 "**City Law**" shall have that meaning set forth in Section 6.5 of this Agreement.

1.11 "**CFD**" shall have that meaning set forth in Section 5.6 of this Agreement.

1.12 "**Community Benefits Proposal**" shall have that meaning set forth in Section 3.3 of this Agreement.

1.13 "**Control**," "controlled," and "controlling" shall have that meaning set forth in Section 8.1 of this Agreement.

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

1.15 "**Developer**" shall mean Dubuque Center, L.P. and any successors or assignees pursuant to Article 8 of this Agreement.

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

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

1.18 "**Direct Community Benefits**" shall have that meaning set forth in Section 3.3 of this Agreement.

1.19 "**Effective Date**" shall have that meaning set forth in the introductory paragraph to this Agreement.

1.20 "**FAR**" shall have that meaning set forth in Section 3.3 of this Agreement.

1.21 "**Final Payment**" shall have that meaning set forth in Section 3.3 of this Agreement.

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

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

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

1.25 "**Initial Pre-Payment**" shall have that meaning set forth in Section 3.3 of this Agreement.

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

1.27 "**Legal Challenge**" shall have that meaning set forth in Section 9.1 of this Agreement.

1.28 "**MND**" shall have that meaning set forth in Recital J of this Agreement.

1.29 "**Monetary Contribution**" shall have that meaning set forth in Section 3.3 of this Agreement.

1.30 "**Mortgage**" shall have that meaning set forth in Section 11.10 of this Agreement.

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

1.32 "**MMRP**" shall have that meaning set forth in Recital J of this Agreement.

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

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

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

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

1.37 "**Project Site**" shall have that meaning set forth in Recital C of this Agreement.

1.38 "**Second Pre-Payment**" shall have that meaning set forth in Section 3.3 of this Agreement.

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

1.40 "**SOV**" shall have that meaning set forth in Section 3.4 of this Agreement.

1.41 "**SSFMC"** shall have the meaning set forth in Recital B of this Agreement.

1.42 "**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; improvement agreements; grading permits; demolition permits; building permits; lot line adjustments; sewer, water, and utility connection permits; certificates of occupancy; subdivision map approvals; parcel map approvals; resubdivisions; zoning and rezoning approvals; conditional use permits; minor use permits; sign permits; any subsequent approvals required by other state or federal entities for Development and implementation of the Project that are sought or agreed to in writing by Developer; and any amendments to, or repealing of, any of the foregoing.

1.43 "**TDM Plan**" shall have that meaning set forth in Recital K of this Agreement.

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

1.45 "**Third Pre-Payment**" shall have that meaning set forth in Section 3.3 of this Agreement.

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

ARTICLE 2
EFFECTIVE DATE AND TERM

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

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**").

2.3 **Administrative Extension.** Developer shall have the right to request an extension due to (1) any Litigation Tolling Period equal to the period of excusable delay or as mutually agreed to by the Parties, (2) delays related to other public agency approvals necessary to carry out the Project or for any building moratorium equal to the period of delay, and (3) Force Majeure Delay. Developer may also request an extension due to delays resulting from economic or other conditions that are not within the Developer's control, which such approval is subject to City's reasonable discretion. City shall process such requested extension as a request for an Administrative Agreement Amendment pursuant to Section 7.2.

ARTICLE 3
OBLIGATIONS OF DEVELOPER

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

3.2 **City Development Fees**.

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

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

(c) For any Development Fees in effect as of the Effective Date but no longer in effect at the time of payment, Developer shall pay the rate in effect as of the Effective Date plus an increase of five percent (5%) annually, which shall be applied as of July 1 each year. Notwithstanding any City ordinance or regulation regarding allocation of Development Fees, City shall allocate Developer's payments for such Development Fees to the then-existing impact fee fund that most closely corresponds to the purpose for which each fee has been paid, in City's reasonable discretion.

3.3 Community Benefits Proposal. In connection with construction of the Project, Developer shall satisfy the terms of the "**Community Benefits Proposal**" approved by the City Council pursuant to Resolution No. 119-2023 and as modified herein.

(a) SSFMC Chapter 20.395 establishes a Community Benefits Program, which is required to be satisfied for commercial development above a floor area ratio ("**FAR**") of 1.0. The Community Benefits Program may be satisfied through either (1) payment of a Community Benefits Fee, which is currently calculated at a rate of Twenty Dollars ($20.00) per gross square foot of commercial development above a floor area ratio of 1.0, as such fee amount may be adjusted by the City Council from time to time, or (2) entering a Community Benefits Agreement, which may include payment of Community Benefits Fees to satisfy part of the benefit.

(b) The Project's Community Benefits Proposal establishes a monetary value for several direct Project commitments that are consistent with the City's priorities for the Community Benefits Program (the "**Direct Community Benefits**"), as described in Section 3.3(c), and applies these toward the total value due to the City pursuant to the Community Benefits Program. The remaining value due to the City pursuant to the Community Benefits Program is required to be satisfied through a monetary contribution (the "**Monetary Contribution**"). For informational purposes, at the time the City Council approved the Project Approvals, the total value of the Community Benefits Proposal was Twelve Million Six Hundred Twenty Thousand Dollars ($12,620,000), including (i) the Direct Community Benefits (Seven Million Eight Hundred Seventy-Seven Thousand and Five Hundred Dollars ($7,877,500)) and (ii) the Monetary Contribution (Four Million Seven Hundred Forty-Two Thousand and Five Hundred Dollars ($4,742,500)).

(c) For purposes of this Development Agreement, the City shall apply the value of the following Direct Community Benefits as credits against the Community Benefits Fee that would otherwise be due, with a total credit value of Seven Million Eight Hundred Seventy-Seven Thousand and Five Hundred Dollars ($7,877,500):

(i) Developer shall provide plaza space on the Project Site, substantially in the size and in the locations provided in the Project Approvals, that is publicly accessible during business hours. The City will consider approximately 40% of the cost of these plazas as a Direct Community Benefit, at a value of Two Million Six Hundred Twenty Thousand Dollars ($2,620,000). Nothing in this Agreement shall prohibit Developer from enacting reasonable rules and regulations for the usage of such open space, including regulations related to hours of operation, security, and conduct within such open space.

(ii) Developer shall improve public access and connectivity around the Project Site by installing new landscaping and sidewalk improvements, as well as facilitate vehicular and pedestrian connections to the Caltrain Station, as set forth in the Project Approvals. The City will consider approximately 35% of this estimated cost, or Three Million Seven Hundred Twenty-Seven Thousand and Five Hundred Dollars ($3,727,500), as a Direct Community Benefit.

If the enhanced connectivity improvements identified in the Project Approvals are not possible due to external factors that are not within Developer's control, Developer will instead submit a proposal for equivalent alternative pedestrian improvements or appropriate replacement, subject to the Chief Planner's review and approval prior to issuance of building permits for the Project. Submittal requirements will include an in-kind valuation, site plan, and specifications for any proposed improvements. A financial contribution may be permitted if equivalent on-site improvements are not possible.

(iii) Developer has committed to 100% electric buildings, furthering the City's Climate Action Plan goals by avoiding use of natural gas. The City will consider approximately 30% of the added upfront cost, or One Million Five Hundred Thirty Thousand Dollars ($1,530,000), as a Direct Community Benefit toward mitigating the impacts of sea level rise.

(d) Developer shall pay to City its Monetary Contribution in the following amounts and at the following times, which payments City, in its sole discretion, may allocate and spend for any authorized governmental purpose:

(i) Unless Developer has commenced construction and paid all fees due by the first (1st) anniversary of the Effective Date, Developer shall make an initial One Million Dollar ($1,000,000) payment towards Developer's total Monetary Contribution (the "**Initial Pre-Payment**");

(ii) Unless Developer has commenced construction and paid all fees due by the third (3rd) anniversary of the Effective Date, Developer shall pay an additional One Million Dollars ($1,000,000) payment towards Developer's total Monetary Contribution (the "**Second Pre-Payment**"); and

(iii) Unless Developer has commenced construction and paid all fees due by the fifth (5th) anniversary of the Effective Date, Developer shall pay fifty percent (50%) of the remaining Monetary Contribution (the "**Third Pre-Payment**"). The Third Pre-Payment shall be calculated by multiplying the Community Benefits Fee rate then in effect by the square foot of proposed development in the Project above 1.0 FAR, then subtracting the value of the Direct

Community Benefits identified above, then subtracting the Initial Pre-Payment and the Second Pre-Payment, then multiplying by fifty percent (50%).

The table below provides an example of how the Third Pre-Payment would be calculated, assuming a Citywide Community Benefits Fee of Twenty Dollars ($20.00) per square foot of development over 1.0 FAR, and a proposed development of six hundred thousand (600,000) square feet of development over 1.0 FAR. The Parties acknowledge and agree that this example is provided for illustration purposes only and that the actual Monetary Contribution may differ.

Example of Monetary Contribution Calculation as of Third Pre-Payment:

Total Community Benefits Fee Due	$12,000,000
Minus Direct Community Benefits	(*$7,877,500)*
Minus Initial Pre-Payment	(*$1,000,000)*
Minus Second Pre-Payment	(*$1,000,000)*
Total Remaining Monetary Contribution	$2,122,500
Third Pre-Payment (50% of Total Remaining)	(*$1,061,250)*

(iv) In lieu of paying the Third Pre-Payment as of the fifth (5^{th}) anniversary date, Developer may elect to provide written notice to the City of its desire to terminate this Agreement.

(e) Developer shall pay the remaining portions of the Monetary Contribution (the "**Final Payment**") at the times and in the manner set forth in Exhibit C.

(f) For any Pre-Payment or payment of the Monetary Contribution made by Developer, Developer shall provide written confirmation of payment to the City which identifies the obligation and the portion of the Monetary Contribution that is being paid.

(g) The obligation to satisfy the Community Benefits Proposal , or the right to receive credit for prior completion of the Community Benefits Proposal, or any portion thereof, may be assigned in connection with any assignment and assumption of rights under Article 8 of this Agreement.

(h) If Developer does not provide any Pre-Payment or payment of the Monetary Contribution when due, City will provide notice to Developer of its failure to pay and afford an opportunity for Developer to cure by submitting payment within ten (10) business days from receipt of such notice.

(i) Once paid, no Pre-Payment or payment of the Monetary Contribution is refundable in the event Developer does not pursue development of the Project or elects to terminate this Agreement as of the fifth (5^{th}) anniversary of the Effective Date.

3.4 Other Developer Commitments.

(a) Transportation Demand Management Plan. Developer shall implement the TDM Plan approved by the City as described in Recital K to reduce the Project-related single occupancy vehicle ("**SOV**") trips and to encourage the use of public transit and alternate modes of transportation. The TDM Plan is designed to ensure that at least fifty percent (50%) of Project employee trips to the Project Site occur using non-SOV transportation modes.

(b) Dubuque Avenue Widening. Developer shall cooperate with the City to dedicate land for the widening of Dubuque Avenue, including utilizing commercially reasonable efforts to acquire right-of-way from the adjacent property owner to the south of the Project Site, as specified in the Project Approvals.

(c) Sustainability Commitments. Developer shall implement the sustainability features identified in the Project Approvals, including achieving LEED Gold Certification, exceeding the baseline requirements established under CALGreen, as well as Fitwel building health certification.

(d) Union Labor. Developer shall utilize union labor, including local hire, for mechanical, plumbing, electrical, shoring/dewatering, and electrical skin.

(e) Mitigation Measures. Developer shall comply with the Mitigation Measures identified and approved in the MND for the Project, in accordance with CEQA or other law as identified and as set forth on the MMRP.

(f) Conditions of Approval. Developer shall comply with the conditions of approval identified and approved for the Project, in accordance with and as set forth in the Project Approvals.

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 Protection of Vested Rights. City acknowledges that the vested rights provided to Developer by this Agreement might prevent some City Law from applying to the Project Site or prevailing over all or any part of this Agreement. City further acknowledges that Developer's vested rights to Develop the Project Site include the rights provided by the Project Approvals or the Subsequent Approvals, which may not be diminished by the enactment or adoption of City

Law. 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.

4.3 Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall reasonably assist Developer in reserving such capacity for sewer and water services as may be necessary to serve the Project. For the avoidance of doubt, City shall have no obligation to assist Developer's activities related to reserving electrical capacity or service from PG&E.

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

4.5 Expedited Plan Check Process. City agrees to provide an expedited plan check process for the approval of Project drawings consistent with its existing practices for expedited plan checks. Developer agrees to pay City's established fees for expedited plan check services. City shall use reasonable efforts to provide such plan checks within three (3) weeks of a submittal that meets the requirements of Section 5.2. City acknowledges that City's timely processing of Subsequent Approvals and plan checks is essential to the successful and complete Development of the Project.

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

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

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 of the City. Accordingly, in considering any application for a Subsequent Approval, to the maximum extent permitted by law, City shall not use its

discretionary authority to revisit, frustrate, or change the policy decisions or material terms reflected by the Project Approvals, or otherwise to prevent or delay Development of the Project. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions.

5.2 Timely Submittals By Developer. Developer acknowledges that City cannot expedite processing Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its 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. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law or with any state or federal law, regulations, plans, or policies as set forth in Section 6.9.

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 reasonably cooperate with Developer in its efforts to obtain such permits and approvals and shall, from time to time, at the request of Developer, use its reasonable efforts to assist Developer to ensure the timely availability of such permits and approvals.

5.6 Assessment Districts or Other Funding Mechanisms.

(a) Existing Fees. As set forth in Section 3.2, above, the Parties understand and agree that as of the Effective Date the fees, exactions, and payments listed in Exhibit C are the only City fees and exactions that apply to the Project, subject to the credits and exemptions set forth in Article 3 of this Agreement or identified on Exhibit C.

(b) Potential East of 101 Area CFD. Developer shall support the City's formation of a Community Facilities Districts ("**CFD**") to levy special taxes within the East of 101

Area as generally established within the parameters described in the City Manager's presentation of October 2, 2019, provided that (i) the Project's maximum CFD assessment rate does not exceed one dollar ($1.00) per square foot of assessable real property and (ii) the Project's maximum CFD assessment rate does not exceed the rate assessed against other office/R&D properties in the East of 101 area. If during the term of this Agreement, Developer forms, or becomes subject to, a separate CFD to fund community facilities within the Dubuque Avenue corridor that would result in an equivalent assessment rate of one dollar ($1.00) per square foot of assessable real property or more, Developer will no longer be required to support the City's formation of the CFD. Without limitation, City Council shall consider adoption of a resolution of intention to establish the CFD(s), and following adoption, City shall use good faith and diligent efforts, in compliance with Government Code section 53318 *et seq.*, to establish and implement the CFD(s) pursuant to the terms of this Agreement, including noticing and conducting necessary public hearings, adoption of resolutions, and, as appropriate, levying special taxes and providing for issuance of CFD bonds. Developer shall not be prohibited from participating in public hearings, negotiations, or other communications regarding the formation of the CFD or the facilities and/or services proposed to be funded by CFD proceeds.

(c) Future Taxes and Assessments. City understands that long term assurances by City concerning fees, taxes and assessments are a material consideration for Developer agreeing to enter this Agreement and to pay long term fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or tax districts or citywide assessments or taxes covering all or any portion of the Project Site. In the event an assessment district or tax district is lawfully formed to provide funding for services, improvements, maintenance, or facilities which are substantially the same as those services, improvements, maintenance, or facilities being funding by the fees or assessments to be paid by Developer under the Project Approvals or this Agreement, such fees or assessments to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such fees or assessments to be paid by Developer under the Project Approvals or this Agreement. Except as provided for in Section 5.6(b), Developer retains, and this Agreement shall not restrict or limit, its right to oppose or challenge the formation or proposed adoption of any new assessment district or tax district increased assessment.

(d) Application of Fees Imposed by Outside Agencies. City agrees to exempt Developer from any and all fees, including but not limited to, development impact fees, which other public agencies request City to impose at City's discretion on the Project or Project Site after the Effective Date through the expiration of the Term. Notwithstanding the previous sentence, in the event that another public agency requests that City impose a fee, including a development impact fee on all new development and land use projects on a citywide basis, then any such fee duly adopted by City shall apply to the Project. This Section 5.6(d) shall not prohibit 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 City in cooperation with such regional agency, or that is imposed by the State of California.

ARTICLE 6
STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT

6.1 Vested Right to Develop. Developer shall have a vested right to Develop the Project on the Project Site in accordance with the terms and conditions of this Agreement, the Project Approvals, the Subsequent Approvals (as and when they are issued), and Applicable Law. Nothing in this section shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals, or to eliminate or diminish Developer's right to have its applications for any Subsequent Approval timely processed by City in accordance with this Agreement and Applicable Law.

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

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

6.4 Uniform Codes. At the time it issues permits for construction, City may apply to the Project Site, at any time during the Term, then current Uniform Building Code and other uniform construction codes, and City's then current design and construction standards for road and storm drain facilities, provided any such uniform code or standard has been adopted and uniformly applied by City on a citywide basis and provided that no such code or standard is adopted for the purpose of preventing or otherwise limiting Development of all or any part of the Project. Notwithstanding the foregoing, with respect to any local "reach codes" adopted by City after the Effective Date (including, without limitation, any local measures to restrict use of natural gas or require on-site renewable energy generation, or to require energy efficiency measures beyond Title 24 requirements), City may, at any time, excuse Developer from compliance with such reach codes on the basis of a written good faith assessment by Developer that compliance will not be feasible, including for technological or financial reasons, or that compliance would frustrate the goals of the Project Approvals or this Agreement.

6.5 No Conflicting Enactments. Developer's vested right to Develop the Project shall not be diminished by City approval (whether by action of the City Council or by initiative, referendum or other means) of any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "**City Law**") that is in conflict with Applicable

Law or this Agreement or that reduces the rights or assurances provided by this Agreement. Without limiting the generality of the foregoing, any City Law shall be deemed to conflict with Applicable Law or this Agreement or reduce the Development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

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

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

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

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

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

(f) Establish, enact, increase, or impose against the Project or Project Site any fees, 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.

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

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

(b) Except as authorized in Section 6.9, without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of Development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted within the City, or portions of the City, shall diminish Developer's vested rights to Develop the Project.

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

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

6.7 Environmental Review and Mitigation. The Parties understand that the MND 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 MND, City agrees to use the MND 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, MND, and MMRP, or specifically required by CEQA or other Applicable Law, except as provided for in this Section 6.7. Without limitation of the foregoing, the Parties acknowledge that Subsequent Approvals may be eligible for one or more streamlining provisions under CEQA, including Public Resources Code section 21083.3 and CEQA Guidelines section 15183. Consistent with CEQA, a future, additional CEQA document may be prepared for any Subsequent Approval. Developer specifically acknowledges and agrees that 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.

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

6.9 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.

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

ARTICLE 7
AMENDMENT

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

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

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

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

(a) Administrative Agreement Amendments. Any amendment to this Agreement which does not substantially affect (i) the Term, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions, or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) 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 Subsequent Approval, or amendment of a Project Approval or Subsequent Approval, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

ARTICLE 8
ASSIGNMENT AND TRANSFER

8.1 Assignment and Transfer.

(a) Developer may transfer or assign all or any portion of its interests, rights, or obligations under the Agreement and the Project approvals to third parties acquiring an interest or estate in the Project or the Project Site or any portions thereof including, without limitation, purchasers or lessees of lots, parcels, or facilities. Prior to any such transfer or assignment, Developer will seek City's prior written consent thereof, which consent will not be unreasonably withheld or delayed. City 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. To assist the City Manager in determining whether to provide consent to a transfer or assignment, the City Manager may request from the transferee (directly or through Developer) reasonable documentation of

transferee's understanding of, financial resources, and ability and plan to perform the obligations proposed to be assumed by transferee, including without limitation obligations specifically identified in this Agreement, the Project Approvals, the MND and MMRP, the General Plan, Zoning Ordinance, and the TDM Plan. Such determination will be made by the City Manager and will be appealable by Developer to the City Council. For any transfer of all or any portion of the Property, the Developer and assignee shall enter into an assignment and assumption agreement in substantially the form set forth in Exhibit E.

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

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

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

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

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

(v) Transfers in the event of foreclosure or deed in lieu thereof; or

(vi) Any leasing activity.

(c) For the purposes of this Section 8.1, "**Affiliate**" means an entity or person that is directly or indirectly controlling, controlled by, or under common control or management of or with Developer. For the purposes of this definition, "**control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity or a person, whether through the ownership of voting securities, by contract, or otherwise, and the terms "**controlling**" and "**controlled**" have the meanings correlative to the foregoing.

ARTICLE 9
COOPERATION IN THE EVENT OF LEGAL CHALLENGE

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

select its own legal counsel and Developer will pay its and City's attorneys' fees and costs. Developer shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such Legal Challenge or payable to any prevailing plaintiff/petitioner.

9.2 Reapproval.

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

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

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

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

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

ARTICLE 10
DEFAULT; REMEDIES; TERMINATION

10.1 Defaults. Any failure by either Party to perform any term or provision of the Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party (unless such period is extended by mutual written consent), will constitute a default under the Agreement. Any notice given will specify the nature

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

lasting more than three (3) consecutive calendar quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

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

10.5 Periodic Review.

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

(b) Developer Submission of Periodic Review Report. Annually commencing one year from the Effective Date and continuing through termination of this Agreement, upon thirty (30) days' advance notice by the City, Developer shall submit a report to the Chief Planner stating the Developer's good faith compliance with terms of the Agreement.

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

(d) Failure to Properly Conduct Periodic Review. If City fails, during any calendar year, to either: (i) conduct the Periodic Review or (ii) notify Developer in writing of City's determination, pursuant to a Periodic Review, as to Developer's compliance with the terms of this Agreement and such failure remains uncured as of December 31 of any year during the

Term, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement for the period of time since the last Periodic Review.

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

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

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

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

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

10.7 Resolution of Disputes. With regard to any dispute involving Development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. 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 Project Site at the time of the approval of this Agreement as provided by Government Code section 65866.

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

11.5 Other Necessary Acts and City Approvals. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder. Whenever a reference is made herein to an action or approval to be undertaken by City, the City

Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise by this Agreement or Applicable Law.

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

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

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

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

If to City, to:	City of South San Francisco Attn: City Manager 400 Grand Avenue South San Francisco, CA 94080 Phone: (650) 877-8500 Email: sharon.ranals@ssf.net
With a Copy to:	Redwood Public Law Attn: Sky Woodruff 409 13th St., Suite 600 Oakland, CA 94612 Phone: 510-877-5840 Email: sky.woodruff@redwoodpubliclaw.com
If to Developer, to:	Dubuque Center, L.P. Attn: General Counsel 674 Via De La Valle, Suite 206 Solana Beach, CA 92075 Phone: 858-779-1111 Email: info@iqhqreit.com
With a Copy to:	Coblentz Patch Duffy & Bass LLP Attn: Megan Jennings One Montgomery Street, Suite 3000 San Francisco, CA 94104 Phone: (415) 391-4800 Email: mjennings@coblentzlaw.com

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

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

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

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

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

11.11 Entire Agreement, Counterparts And Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of twenty-six (26) pages, exclusive of cover, table of contents, and signature pages, and five (5) 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: Legal Description of Project Site

Exhibit B: List of Project Approvals as of Effective Date

Exhibit C: City Fees, Exactions and Payments

Exhibit D: Applicable Laws

Exhibit E: Form of Assignment and Assumption Agreement

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

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

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

[Signatures to follow on subsequent pages.]

SIGNATURE PAGE FOR DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND DUBUQUE CENTER, L.P.

CITY:

CITY OF SOUTH SAN FRANCISCO,
a California municipal corporation

By: _____

Date: _____

Name: Sharon Ranals
Its: City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

[*Insert Notary Acknowledgment*]

SIGNATURE PAGE FOR DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND DUBUQUE CENTER, L.P.

DEVELOPER:

DUBUQUE CENTER, L.P.,
a Delaware limited partnership

By: _____

Date: _____

Name:
Its:

[*Insert Notary Acknowledgment*]

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND DUBUQUE CENTER, L.P.

Exhibit A

Legal Description of Project Site

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOUTH SAN FRANCISCO IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE 10.444 ACRE TRACT OF LAND CONVEYED TO THE ENTERPRISE FOUNDRY CO., BY THE SOUTH SAN FRANCISCO LAND AND IMPROVEMENT CO., BY DEED RECORDED JULY 15, 1918, IN BOOK 269 OF DEEDS AT A PAGE 462, RECORDS OF SAN MATEO COUNTY, SAID POINT BEING DISTANT NORTH 52° 22' 21" WEST 0.28 FEET FROM A CROSS MARKED ON A BRASS PLATE, SET IN THE TOP OF A LARGE CONCRETE MONUMENT; RUNNING THENCE ALONG THE NORTHEASTERLY LINE OF SAID 10.444 ACRE TRACT AND ITS EXTENSION, SOUTH 52° 22' 21" EAST 805.11 FEET; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 278 FEET, 103.50 FEET, THE CHORD OF SAID CURVE BEARS SOUTH 3° 14' 12" WEST 102.90 FEET, TO A POINT ON THE WESTERLY LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC CO.; THENCE ALONG SAID WESTERLY LINE OF SAID RIGHT OF WAY, NORTH 37° 32' 410" EAST 524.84 FEET TO THE MOST SOUTHERLY CORNER OF THE 12.03 ACRE TRACT OF LAND CONVEYED TO PACIFIC CAR AND EQUIPMENT CO. BY NORMAN B. LIVERMORE, BY DEED RECORDED OCTOBER 27, 1911, IN BOOK 199 OF DEEDS AT PAGE 485, RECORDS OF SAN MATEO COUNTY; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID 12.03 ACRE TRACT AND ITS EXTENSION, NORTH 52° 27' 30" WEST 826.17 FEET TO THE EASTERLY LINE OF SAN BRUNO ROAD; THENCE ALONG THE SAID EASTERLY LINE OF SAN BRUNO ROAD, THE FOLLOWING COURSES AND DISTANCES; SOUTH 51° 4' 39" WEST 90.85 FEET; SOUTH 40° 5' 39" WEST 350.56 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM SO MUCH THEREOF AS WAS CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES, BY DEED DATED OCTOBER 18, 1928 AND RECORDED DECEMBER 10, 1928, IN BOOK 384 OF OFFICIAL RECORDS OF SAN MATEO COUNTY, PAGE 302 AND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF SAN BRUNO ROAD, DISTANT THEREON SOUTH 51° 06' WEST 938.02 FEET FROM THE SOUTHEAST CORNER OF SAN BRUNO ROAD AND BUTLER ROAD, SAID POINT BEING COMMON TO THE LANDS OF THE FONTANA FOODS PRODUCTS COMPANY AND THE PACIFIC CAR AND EQUIPMENT COMPANY; THENCE ALONG A LINE COMMON TO THE LANDS OF SAID COMPANIES, SOUTH 52° 25-3/4' EAST 61.42 FEET; THENCE ALONG A LINE 62.5 FEET EASTERLY MEASURED RADIALLY FROM THE CENTERLINE OF A SURVEY FOR THE STATE HIGHWAY, KNOWN AS ROAD IV, SAN MATEO COUNTY, ROUTE 68, SECTION A, CURVING TO THE LEFT FROM A TANGENT BEARING SOUTH 49° 25-1/4' WEST, WITH A RADIUS OF 1737.5 FEET, THROUGH AN ANGLE OF 14° 33 1/2', FOR A DISTANCE OF 441.48 FEET TO A POINT IN THE LINE COMMON TO LANDS OF THE FONTANA FOOD PRODUCTS COMPANY AND THE PACIFIC GAS AND ELECTRIC COMPANY; THENCE ALONG SAID LINE, NORTH 52° 25-3/4' WEST 63.50 FEET TO A POINT IN SAID SOUTHEASTERLY LINE OF SAN BRUNO ROAD; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 40° 04-3/4' EAST 350.56 FEET; NORTH 51° 04-3/4' EAST 90.85 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THE PROPERTY CONVEYED BY DEED FROM FONTANA FOOD PRODUCTS COMPANY, A CORPORATION TO STATE OF CALIFORNIA, DATED FEBRUARY 21, 1944 AND RECORDED MARCH 22, 1944 IN BOOK 1110, OFFICIAL RECORDS OF SAN MATEO COUNTY, PAGE 228 AND PARTICULARLY DESCRIBED AS FOLLOWS:

PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED BY SOUTH SAN FRANCISCO LAND AND IMPROVEMENT COMPANY TO M.E. FONTANA, BY DEED DATED OCTOBER 15, 1921 AND RECORDED OCTOBER 17, 1921 IN BOOK 25, OF OFFICIAL RECORDS OF SAN MATEO COUNTY, PAGE 9, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF THAT CERTAIN 0.60 ACRE TRACT OF LAND CONVEYED BY FONTANA FOOD PRODUCTS COMPANY, A CORPORATION TO STATE OF CALIFORNIA, BY DEED DATED OCTOBER 18,1928 AND RECORDED DECEMBER 10, 1928, IN BOOK 384, OF OFFICIAL RECORDS OF SAN MATEO COUNTY, PAGE 302; THENCE FROM SAID POINT OF BEGINNING ALONG THE SOUTHEASTERLY LINE OF SAID 0.60 ACRE TRACT OF LAND, ALONG A CURVE TO THE RIGHT, FROM A TANGENT THAT BEARS NORTH 34° 45' 19" EAST, WITH A RADIUS OF 1737.5 FEET, THROUGH AN ANGLE OF 14° 36' 57" A DISTANCE OF 443.23 FEET TO THE MOST WESTERLY CORNER OF THAT CERTAIN 9.325 ACRE TRACT OF LAND CONVEYED BY NORMAN B. LIVERMORE & SONS, FORMERLY NORMAN B. LIVERMORE & COMPANY TO THE STATE OF CALIFORNIA, BY DEED DATED JUNE 10, 1943 AND RECORDED JULY 1, 1943, IN BOOK 1074 OFFICIAL RECORDS OF SAN MATEO COUNTY, PAGE 100; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID 9.325 ACRE TRACT OF LAND, SOUTH 52Â° 31' 32" EAST 216.65 FEET; THENCE FROM A TANGENT THAT BEARS SOUTH 48° 12' 35" WEST, ALONG A CURVE TO THE LEFT, WITH A RADIUS OF 2400 FEET, THROUGH AN ANGLE OF 10° 34" 50', A DISTANCE OF 443.20 FEET TO THE PROPERTY LINE COMMON TO THE LANDS NOW OR FORMERLY OF PACIFIC GAS AND ELECTRIC COMPANY AND FONTANA FOOD PRODUCTS COMPANY; THENCE ALONG THE LAST MENTIONED LINE NORTH 52° 32' 02" WEST 210.02 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

PORTION OF THAT CERTAIN 9.325 ACRE TRACT OF LAND CONVEYED BY N.B. LIVERMORE & SONS TO STATE OF CALIFORNIA, BY DEED DATED JUNE 10, 1943 AND RECORDED JULY 1, 1943, IN BOOK 1074 OFFICIAL RECORDS OF SAN MATEO COUNTY, PAGE 100 AND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF SAID 9.325 ACRE TRACT, DISTANT ALONG SAID SOUTHWESTERLY LINE, SOUTH 52° 31' 32" EAST 216.65 FEET FROM THE MOST WESTERLY CORNER OF SAID 9.325 ACRE TRACT; THENCE FROM SAID POINT OF BEGINNING, ALONG SAID SOUTHWESTERLY LINE, BEING THE PROPERTY LINE COMMON TO THE LANDS NOW OR FORMERLY OF FONTANA FOOD PRODUCTS COMPANY AND STATE OF CALIFORNIA, SOUTH 52° 31' 32" EAST 45.00 FEET; THENCE NORTH 29° 18' 45" WEST 45.21 FEET; THENCE FROM A TANGENT THAT BEARS SOUTH 48° 38' 35" WEST, ALONG CURVE TO THE LEFT, WITH A RADIUS OF 2400 FEET, THROUGH AN ANGLE OF 0° 26', A DISTANCE OF 18.15 FEET TO THE POINT OF BEGINNING.

APN: 015-021-030

DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
DUBUQUE CENTER, L.P.

Exhibit B

List of Project Approvals as of Effective Date

1. Resolution to Adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, approved by the City Council on July 12, 2023 by Resolution No. 118-2023;

2. Resolution to approve a Design Review Permit, Transportation Demand Management Plan, and Community Benefits Proposal, approved by the City Council on July 12, 2023 by Resolution No. 119-2023;

3. Ordinance No. [_____] adopting Development Agreement by and between the City of South San Francisco and Dubuque Center, L.P., introduced by the City Council on [_____] and adopted by the City Council on [_____].

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND DUBUQUE CENTER, L.P.

Exhibit C

City Fees, Exactions, and 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, and assessments (collectively, "**City Fees**"). 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 this Agreement, the amount paid for a particular City Fee shall be as specified below.

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

2. Vested Development Fees. Only the Development Fees in effect as of the Effective Date of the Development Agreement, as set forth in Table 1 below, shall be paid for net new square footage (after consideration of any applicable credits for replacement of existing square footage in accordance with the calculation methodology for the associated resolutions for each Development Fee as cited in Table 1 below) 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. Developer shall pay each Development Fee at the rates in effect at the time of payment of such Development Fees. For any Development Fees no longer in effect as of the date such Development Fees are due and payable, Developer shall pay the rate in effect as of the Effective Date, as set forth in the table below, plus an increase of five percent (5%) annually, which shall be applied as of July 1 each year. City shall allocate Developer's payments for such Development Fees to the then-existing impact fee fund that most closely corresponds to the purpose for which each fee has been paid, in City's reasonable discretion.

***

Table 1: Vested Development Fees[1]

Applicable Development Fee	Timing for Payment	Rate as of Effective Date – Office/R&D Cost per Square Foot
Park and Recreation Impact Fee (SSFMC Ch. 8.67, Resolution 120-2020)	Issuance of Building Permit, per building	$3.56
Childcare Impact Fee (SSFMC Ch. 8.77, Resolution 122-2020)		$1.52
Public Safety Impact Fee (SSFMC Ch. 8.75)		$1.32
Citywide Transportation Impact Fee (SSFMC Ch. 8.73, Resolution 131-2020)		$35.06
Commercial Linkage Fee (SSFMC Ch. 8.69, Resolution 123-2018)		$17.38
Library Impact Fee (SSFMC Ch. 8.74, Resolution 121-2020)		$0.14
Sewer Capacity Charge (SSFMC Ch. 14.08.03)		Calculated per Reso. 56-2017
Public Art Requirement (SSFMC Ch. 8.76)		0.5% of construction costs[2]
Community Benefits Fee (SSFMC Ch. 20.395, Resolution 179-2022)[3]	Issuance of Building Permit, per building unless otherwise specified in Development Agreement Sec. 3.3	$20.00

[1] South San Francisco Unified School District Fees are not vested by this Agreement. For reference purposes only, as of the Effective Date of the Agreement, this fee is $0.61 per square foot of Commercial/Industrial space.

[2] If public art requirement is not provided on site in accordance with SSFMC Chapter 8.76.

[3] The Community Benefits Fee is applicable on any square footage of development above 1.0 FAR. Section 3.3 of the Development outlines pre-payments due on the 1st, 3rd, and 5th anniversary of the Effective Date of the Development Agreement. Remaining payments due as provided in this Exhibit C.

DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
DUBUQUE CENTER, L.P.

Exhibit D

Applicable Laws

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

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

2. City of South San Francisco Municipal Code, as amended from time to time prior to the Effective Date.

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

4. City Fees as set forth in Exhibit C.

DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF SOUTH SAN FRANCISCO AND DUBUQUE CENTER, L.P.

Exhibit E

Form of Assignment and Assumption Agreement

(Starts on Next Page)

WHEN RECORDED MAIL TO:

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

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

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Assignment Agreement") is entered into to be effective on _____, 202_, by and between Dubuque Center, L.P., a Delaware limited partnership ("Assignor"), and _____, a _____ ("Assignee"), and the City of South San Francisco, a municipal corporation ("City"). Assignor and Assignee are sometimes referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. Assignor and City have previously entered into that certain Development Agreement between City and Assignor dated _____, 2025, approved by the City of South San Francisco City Council by Ordinance No. _____ on [_____], 2025, and recorded on _____, 2025 as Document No. _____, San Mateo County Official Records ("Development Agreement") to facilitate the development and redevelopment of that certain real property consisting of approximately 5.89 acres within the City of South San Francisco, California, which is legally described in Exhibit A of the Development Agreement ("Property"). A true and complete copy of the Development Agreement is attached hereto as Exhibit 1.

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

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

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

transferee's reputation and financial resources, such transferee would not, in City's reasonable opinion, be able to perform the obligations proposed to be assumed by such transferee, including without limitation obligations specifically identified in the Development Agreement, the Project Approvals, the Project's MND, the General Plan, and zoning. Such determination will be made by the City Manager and will be appealable by Developer to the City Council. For any transfer of all or any portion of the Property, the Developer and assignee shall enter into an assignment and assumption agreement in substantially the form set forth in Exhibit E.

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ASSIGNOR:

DUBUQUE CENTER, L.P.,
a Delaware limited partnership

By: _____
Name: _____
Title: _____

ASSIGNEE:

[INSERT NAME OF ASSIGNEE]

By: _____
Name: _____
Title: _____

CITY:

CITY OF SOUTH SAN FRANCISCO,
a Municipal Corporation

By: _____
Name: _____
Title: City Manager

Approved as to form by:

By: _____
Name: _____
Title: City Attorney