

DRAFT – FOR PLANNING COMMISSION REVIEW

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City of South San Francisco
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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO
AND
LPGS (TANFORAN) LLC**

**Southline Specific Plan Area
SOUTH SAN FRANCISCO, CALIFORNIA**

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

Effective Date: _____, 2022

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DRAFT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into as of [____], 2022 (“**Effective Date**”) by and between LPGS (Tanforan) LLC, a Delaware limited liability company (“**Developer**”), and the City of South San Francisco, a municipal corporation (“**City**”), pursuant to California Government Code (“**Government Code**”) sections 65864 *et seq.* Developer and 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 28.5-acre site commonly known as the “Southline Specific Plan Area,” as more particularly described and depicted in Exhibit A (“**Project Site**”). Developer has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of the City with regard to Developer’s proposed Project (as defined below).

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

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

F. This Agreement and the Project (as defined in Section [1.1] of this Agreement) will be consistent with the City of South San Francisco General Plan (“**General Plan**”), the Southline Specific Plan (as defined in Recital [L]), and the SSFMC.

G. Development (as defined in Section [1.15] 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 commercial campus development to advance long-standing General Plan objectives for the Lindenville 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 of the benefits to City described in the preceding Recital, together with the other public benefits that will result from the Development of the Project, Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with 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 [____], 2022, following a duly noticed public hearing, the City of South San Francisco Planning Commission ("**Planning Commission**") recommended that the City Council approve this Agreement and adopt the Resolutions and Ordinances described in Recitals [K] through [L].

K. On [____], 2022, after a duly noticed public hearing, by Resolution No. [____], the City Council certified the Southline Specific Plan Environmental Impact Report (SCH# 2020050452) ("**EIR**") in accordance with the California Environmental Quality Act (Public Resources Code §§ 2100 *et seq.* ("**CEQA**")) and the CEQA Guidelines (California Code of Regulations, Title 14, §§ 15000 *et seq.*). The EIR analyzed the potential environmental impacts of Development of the Project on the Project Site. Concurrent with its certification of the EIR, and by the same resolution, the City Council duly adopted CEQA findings of fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program ("**MMRP**") for the Project. The Statement of Overriding Considerations carefully considered each of the Project's significant and unavoidable impacts identified in the EIR and determined that each such impact is acceptable in light of the Project's economic, legal, social, technological and other benefits. The MMRP identifies all mitigation measures identified in the EIR that are applicable to the Project and sets forth a program for monitoring or reporting on the implementation of such mitigation measures.

L. Also on [____], 2022, after a duly noticed public hearing, the City Council duly adopted the following resolutions and introduced the following ordinances granting certain land use entitlements for Development of the Project on the Project Site:

1. Resolution No. [____], amending the General Plan to reflect adoption of the Specific Plan;

2. Resolution No. [], adopting the Southline Specific Plan (“**Specific Plan**”);
3. Ordinance No. [] (introduced), adopting Chapter 20.[] of the City of South San Francisco Municipal Code to add the Southline Campus Specific Plan (S-C) District zoning regulations, consistent with the Specific Plan, and amending the zoning map to reflect adoption of the S-C District (“**Zoning Amendment**”);
4. Ordinance No. [] (introduced), approving and authorizing the execution of this Agreement;
5. Resolution No. [], approving the Vesting Tentative Tract Map for the Project Site (the “**VTM**”);
6. Resolution No. [], approving the [Preliminary] Transportation Demand Management Plan for the Southline Specific Plan (“**TDM Plan**”); and
7. Resolution No. [], approving the Phase 1 Precise Plan for development within the Project Site (the “**Phase 1 Precise Plan**”).
8. Resolution No. [], approving the Design Review for development within the Project Site (“**Phase 1 Design Review**”)

The entitlements described in this Recital [L] and listed on Exhibit B, are collectively referred to herein as the “**Project Approvals**.”

M. On [], 2022, the City Council, at a duly noticed public meeting, conducted a second reading of and adopted the following ordinances:

1. Ordinance No. [], adopting the Zoning Amendment.
2. Ordinance No. [], approving and authorizing the execution of this Agreement.

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

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

AGREEMENT

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

ARTICLE 1 DEFINITIONS

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 Specific Plan and in Chapter 20.260 of Title 20 of the SSFMC, and as such Project Approvals and Subsequent Approvals may be further defined or modified pursuant to the provisions of this Agreement. Without limitation, the Project shall consist of buildings that may be used for office, R&D, accessory retail, and/or amenity uses of up to two million eight hundred thousand (2,800,000) total gross square feet across the Specific Plan area; vehicle parking at a ratio of up to 1.65 striped stalls per 1,000 square feet of commercial use area as calculated across the Specific Plan area; approximately 2.3 acres of publicly accessible open space; on-site and off-site circulation improvements for motor vehicles, bicycles, and pedestrians; and infrastructure, utility, signage, and landscaping 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 [K] 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 “Community Benefits Payments” shall have that meaning set forth in Section [3.3] of this Agreement.

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

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

1.14 “Developer” shall mean LPGA (Tanforan) LLC and any successors or assignees pursuant to Article 8 of this Agreement.

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

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

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

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

1.19 “EIR” shall have that meaning set forth in Recital [K] of this Agreement.

1.20 “Force Majeure Delay” shall have that meaning set forth in Section [10.3] of this Agreement.

1.21 “GDP” shall have that meaning set forth in Section [10.3] of this Agreement.

1.22 “General Plan” shall have that meaning set forth in Recital [F] of this Agreement.

1.23 “Judgment” shall have that meaning set forth in Section [9.2] of this Agreement.

1.24 “Mortgage” shall have that meaning set forth in Section [11.10] of this Agreement.

1.25 “Mortgagee” shall mean the beneficiary of any Mortgage.

1.26 “MMRP” shall have that meaning set forth in Recital [K] of this Agreement.

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

1.28 “Periodic Review” shall have that meaning set forth in Section [10.5] of this Agreement.

1.29 “Phase 1 Precise Plan” shall have that meaning set forth in Recital [L] of this Agreement. Without limitation, the Phase 1 Precise Plan allows for development of approximately [six hundred eighty-four thousand seven hundred and ten (684,710)] gross square feet of building area and one thousand ninety-five (1,095) vehicle parking stalls across approximately [12.38] acres of the Project Site.

1.30 “Planning Commission” shall have that meaning set forth in Recital [J] of this Agreement.

1.31 “Project Approvals” shall have that meaning set forth in Recital [L] of this Agreement.

1.32 “Project Site” shall have that meaning set forth in Recital [C] of this Agreement.

1.33 “Severe Economic Recession” shall have that meaning set forth in Section [10.3] of this Agreement.

1.34 “SOV” shall have that meaning set forth in Section [3.4] of this Agreement.

1.35 “Specific Plan” shall have that meaning set forth in Recital [L] of this Agreement.

1.36 “SSFMC” shall have the meaning set forth in Recital [B] of this Agreement.

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

1.38 “Tax” and “Taxes” shall not include any generally applicable City Business License Tax or locally imposed Sales Tax.

1.39 “TDM Plan” shall have that meaning set forth in Recital [L] of this Agreement.

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

1.41 “VTM” shall have that meaning set forth in Recital [L] of this Agreement.

1.42 “Zoning Amendment” shall have that meaning set forth in Recital [L] of this Agreement.

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

ARTICLE 2 EFFECTIVE DATE AND TERM

2.1 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 twelve (12) years plus one (1) day after the Effective Date (“**Term**”).

2.3 Administrative Extension. If within five (5) years of the Effective Date, as may be extended due to any Litigation Tolling Period and/or Force Majeure Delay, Developer has obtained temporary certificates of occupancy for each of the buildings approved in connection with the Phase 1 Precise Plan, then Developer shall have the right to request an extension to the Term of up to five (5) additional years. 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. 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 date the Project’s VTM application was determined to be complete (i.e., July 13, 2020), as set forth in Exhibit C, and except as set forth in Section 3.2(c), only at those rates of such Development Fees in effect at the time of payment of the Development Fees. The Development Fees shall be paid at the time set forth in Exhibit C except as otherwise provided in Article 3 of this Agreement. This Section 3.2(b) shall not prohibit City from imposing on Developer any fee or obligation that is imposed by a regional agency or the State of California in accordance with state or federal obligations and required to be implemented by City.

(c) Developer and City acknowledge that certain Development Fees applicable to the Project are no longer in effect on a City-wide basis as of the Effective Date of this Agreement, as set forth in Exhibit C. For any such Development Fees, Developer shall pay the rate in effect as of July 13, 2020 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 Benefit Payments. In connection with construction of the Project, Developer shall pay phased "**Community Benefits Payments**" totaling Twenty-Five Million Dollars (\$25,000,000.00), as set forth in this Section 3.3.

(a) Phased Fee Payments. Developer shall pay to City Community Benefits Payments 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) Nine Million Dollars (\$9,000,000.00) upon issuance of the first building permit issued for vertical construction in the Project;

(ii) Nine Million Dollars (\$9,000,000.00) upon issuance of the first building permit issued for vertical construction that will result in a cumulative total of more than seven hundred thousand (700,000) gross square feet of development in the Project, exclusive of structured parking; and

(iii) Seven Million Dollars (\$7,000,000.00) upon issuance of the first building permit issued for vertical construction that will result in a cumulative total of more than one million eight hundred thousand (1,800,000) gross square feet of development in the Project, exclusive of structured parking.

Developer's obligation to provide any Community Benefits Payment shall accrue and become effective only at the time such Community Benefits Payment is triggered by Developer's request for issuance of building permits during the Term of this Agreement as set forth herein. By way of example, if within the Term of this Agreement Developer has duly made the first and second phased payments and the total building area is one million seven hundred thousand (1,700,000) square feet at the end of the Term (as such Term may be extended), then Developer shall have no obligation to provide the third Community Benefits Payment. For the avoidance of doubt, in the event that City issues a building permit for vertical construction of a second phase of development of the Project that includes more than one million eight hundred thousand (1,800,000) gross square feet of development, then Developer shall pay to City the Community Benefits Payments in subsections (ii) and (iii) above.

3.4 Other Developer Commitments.

(a) Transportation and Circulation Improvements. Developer shall complete construction and (as applicable) dedication to City of the on-site and off-site pedestrian, bicycle,

transit accessibility, and vehicular circulation improvements within the City, and shall use commercially reasonable efforts to complete construction and (as applicable) dedication of the off-site pedestrian, bicycle, transit accessibility, and vehicular circulation improvements located outside of the City, all as identified in, and substantially in accordance with the phasing set forth in, the VTM and other Project Approvals. For ease of reference only, a list of these pedestrian, bicycle, transit accessibility, and vehicular circulation improvements is attached as Exhibit D. Except as set forth in the Project Approvals, Developer shall have no obligation to fund, construct, or dedicate off-site circulation improvements.

(b) Transportation Demand Management Plan. Developer shall implement the [Preliminary] Transportation Demand Management Plan (“**TDM Plan**”) approved by the City as described in Recital [L] 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 forty-five percent (45%) of Project employee trips to the Project Site occur using non-SOV transportation modes, and shall be implemented through one or more individual TDM plans corresponding to individual Precise Plans (“**Phased TDM Plans**”). City agrees that the Phased TDM Plans shall allow Developer to count “remote working” arrangements (e.g., working from home) as contributing to Developer’s SOV trip reduction obligation.

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

(d) Centennial Way Trail Maintenance. *[Geographic extent, requirements and / or financial contribution subject to further discussion]*

(e) Community Center. Developer shall provide within the “Amenities Building” in the first phase of the Project approximately one thousand five hundred (1,500) square feet of space for the benefit of the community, including offices for non-profit organizations, after school/youth oriented programming, public meeting space, or similar uses free of charge (the “**Community Center**”). Developer or a property manager reporting to Developer or owner of the first phase of the Project shall be responsible for managing the Community Center.

(f) Sustainability Commitments. Developer shall implement the sustainability features identified in the Specific Plan and other Project Approvals. For ease of reference only, a list of these sustainability features is attached as Exhibit E.

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

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

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

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 assist Developer in reserving such capacity for sewer and water services as may be necessary to serve the Project.

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, or if any buildings become functionally outdated, within Developer's sole discretion. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

4.5 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 6.10.

5.5 Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and

approvals as may be required by other governmental or quasi-governmental entities in connection with the Development of, or the provision of services to, the Project. City, at Developer's expense, shall cooperate with Developer in its efforts to obtain such permits and approvals and shall, from time to time, at the request of Developer, use its reasonable efforts to assist Developer to ensure the timely availability of such permits and approvals.

5.6 Assessment Districts or Other Funding Mechanisms.

(a) Existing Fees. As set forth in Section [3.2], above, the Parties understand and agree that as of the Effective Date the fees, exactions, and payments listed in Exhibit C are the only City fees and exactions that apply to the Project, subject to the credits and exemptions set forth in Article 3 of this Agreement or identified on Exhibit C. Except as otherwise listed in Exhibit C, City is unaware of any pending efforts to initiate, or consider applications for new or increased fees, exactions, or assessments covering the Project Site, or any portion thereof that would apply to the Project prior to the Effective Date.

(b) Potential Southline Specific Plan Area CFD. Developer shall have the right, but not the obligation, to seek establishment of one or more Community Facilities Districts ("CFD") to levy special taxes within the Project Site to fund construction and/or maintenance of on-site and off-site public facilities and/or services, and upon the filing of a petition by Developer pursuant to Government Code Section 53318(c), City shall cooperate with Developer in its efforts to form such CFD(s). 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 advance to City the estimated out-of-pocket costs associated with CFD formation, to be reimbursed from proceeds of the sale of CFD bonds.

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

6.2 Permitted Uses Vested by This Agreement. The vested permitted uses of the 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 F.

6.4 Uniform Codes. City may apply to the Project Site, at any time during the Term, then current Uniform Building Code and other uniform construction codes, and City's then current design and construction standards for road and storm drain facilities, provided any such uniform code or standard has been adopted and uniformly applied by City on a citywide basis and provided

that no such code or standard is adopted for the purpose of preventing or otherwise limiting Development of all or any part of the Project. Notwithstanding the foregoing, with respect to any local “reach codes” adopted by City after the Effective Date (including, without limitation, any local measures to restrict use of natural gas or require on-site renewable energy generation, or to require energy efficiency measures beyond Title 24 requirements), (i) Developer shall be excused from compliance with such reach codes for the first phase of the Project as set forth in the Phase 1 Precise Plan and (ii) regardless of whether Developer has submitted a complete Precise Plan application for a phase of the Project prior to the effective date of any reach codes, City may, at any time, excuse Developer from compliance with such reach codes on the basis of a written good faith assessment by Developer that compliance will not be feasible, including for technological or financial reasons, or that compliance would frustrate the goals of the Project Approvals or this Agreement. Prior to submitting a written good faith assessment of reach code feasibility to City, Developer shall confer in good faith with Peninsula Clean Energy, or a qualified third-party consultant with subject matter expertise as reasonably identified by City, regarding feasibility of both full and partial compliance with the reach code, including technological and financial feasibility, and shall include the feasibility assessment of Peninsula Clean Energy or the other consultant identified by City.

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

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

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

6.7 Environmental Review and Mitigation. The Parties understand that the EIR and MMRP were intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIR, City agrees to use the EIR and MMRP in connection with the processing of any Subsequent Approval to the maximum extent allowed by law and not to impose on the Project any mitigation measures other than those specifically imposed by the Project Approvals, EIR, and MMRP, or specifically required by CEQA or other Applicable Law, except as provided for in this Section 6.7. Without limitation of the foregoing, the Parties acknowledge that Subsequent Approvals may be eligible for one or more statutory or categorical exemptions under CEQA, including the exemption established by Public Resources Code section 21155.4. The Parties agree that this Agreement shall not limit or expand the operation or scope of CEQA, including Public Resources Code section 21166 and California Code of Regulations, title 14, section 15162, with respect to City's consideration of any Subsequent Approval. Consistent with CEQA, a future, additional CEQA document may be prepared for any Subsequent Approval only to the extent

required by Public Resources Code section 21166 and California Code of Regulations, title 14, section 15162, unless otherwise requested in writing by Developer. Developer specifically acknowledges and agrees that, under Public Resources Code section 21166 and California Code of Regulations, title 14, section 15162, City as lead agency is responsible and retains sole discretion to determine whether an additional CEQA document must be prepared, which discretion City agrees it shall not exercise unreasonably or delay.

6.8 Future Legislative Actions.

(a) The Parties acknowledge that, as of the Effective Date, City is in the process of preparing a comprehensive update (the “**General Plan Update**”) to the General Plan that is in effect on the Effective Date (the “**Vested General Plan**”). In the event that, following the Effective Date, City adopts a General Plan Update that is consistent with the Project Approvals, then notwithstanding the Developer’s rights pursuant to the Vested General Plan and this Agreement, Developer and City may mutually elect for the Project to be governed by the General Plan Update following its adoption, which election shall not require an amendment to this Agreement and which may be memorialized by City and Developer in a letter. For the purpose of this subsection (a), “for the project to be governed by the General Plan Update” means that the General Plan Update’s processes and standards shall apply to applications for Subsequent Approvals, to the extent that the General Plan Update prescribes a process or standard that applies to a Subsequent Approval.

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

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

(d) Developer acknowledges that, if it applies for any land use entitlement(s) for the Project Site that are consistent with, or authorized by, any revision, modification, update, or amendment contemplated by subsection (c) of this Section 6.8 of this Agreement, and that would allow development of the subject parcel(s) in a manner that is inconsistent with, or not authorized by, the Project Approvals, then City may be required to conduct additional CEQA review with respect to such application in accordance with Section 6.7 of this Agreement, and, if such application is finally approved by City and becomes effective, such approval shall automatically be vested under this Agreement only to the extent such approval is consistent with, or authorized by, the Project Approvals. By way of example, if (following any required CEQA compliance) such effective approval were to authorize Development of a structure with a floor area ratio of 2.0, but the Project Approvals would only authorize Development of a structure with a floor area ratio of 1.0, then Developer would automatically have the *vested* right to Develop said structure with a floor area ratio of 1.0, and would automatically have the *non-vested* right to Develop that same structure with a floor area ratio of 2.0 (unless, following such approval, this Agreement is amended to vest Developer's right to Develop such structure with a floor area ratio of 2.0).

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

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

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

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

6.10 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.

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

ARTICLE 7 AMENDMENT

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

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

do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments. Any requested amendment seeking modification of or deviation from the performance or development standards contained in the Municipal Code and which would otherwise require a discretionary approval by the City Council, Planning Commission, or other formal approval body shall not be treated as an Administrative Project Amendment.

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

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

(a) Administrative 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. Without limitation of the foregoing, in the event that City approves any amendment to the Specific Plan to incorporate one or more additional properties contiguous to the Project Site, in a manner consistent with Specific Plan policies, and which does not result in additional development capacity beyond two million eight hundred thousand (2,800,000) gross square feet, City may grant an Administrative Agreement Amendment to apply the vested rights provided by this Agreement to such Specific Plan amendment. Administrative Agreement Amendments may be approved by the City Manager or, in the sole discretion of the City Manager, the City Manager may refer any proposed Administrative Agreement Amendment to the City Council for consideration and approval or denial.

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

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

ARTICLE 8 ASSIGNMENT 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 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 EIR and MMRP, the General Plan, and the TDM Plan. To assist the City Manager in determining whether to consent to a transfer or assignment, the City Manager may also require one or more representatives of the transferee to meet in person to demonstrate to the City Manager's reasonable satisfaction that the transferee understands and intends and has the ability to perform the obligations intended to be assumed, including without limitation the obligations identified in the immediately preceding sentence. Such determination will be made by the City Manager and will be appealable by Developer to the City Council. For any transfer of all or any portion of the Property, the Developer and assignee shall enter into an assignment and assumption agreement in substantially the form set forth in Exhibit G.

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

- (i) Any transfer for financing purposes to secure the funds necessary for construction and/or permanent financing of the Project;
- (ii) An assignment of this Agreement to an Affiliate;
- (iii) Transfers of common area to a property owners association;
- (iv) Dedications and grants of easements and rights of way required in accordance with the Project Approvals; or
- (v) Any leasing activity.

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

ARTICLE 9 COOPERATION IN THE EVENT OF LEGAL CHALLENGE

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

9.2 Reapproval.

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

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

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

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

agree to be bound by the terms of this Section 9.2, which shall survive invalidation, nullification, or setting aside.

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

ARTICLE 10 DEFAULT; REMEDIES; TERMINATION

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

10.2 Termination. If City elects to consider terminating the Agreement due to a material default of Developer, then City will give a notice of intent to terminate the Agreement and the matter will be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. Developer will have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate the Agreement, City will give written notice of termination of the Agreement to Developer by certified mail and the Agreement will thereby be terminated sixty (60) days thereafter.

10.3 Enforced Delay; Extension of Time of Performance. Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes and labor disputes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; terrorism; epidemics or pandemics; quarantine or shelter-in-place restrictions; freight embargoes; governmental restrictions or priority; litigation and arbitration, including court delays; legal challenges to this Agreement, the Project Approvals, Subsequent Approvals, or any other approval required for the Project or any initiatives or referenda regarding the same; environmental conditions that have not been previously disclosed or discovered or that could not have been discovered with reasonable diligence that delays the construction or Development of the Property or any portion thereof; unusually severe weather but only to the extent that such weather or its effects (including, without limitation, dry out time) result

in delays that cumulatively exceed thirty (30) days for every winter season occurring after commencement of construction of the Project; acts or omissions of the other party; or acts or failures to act of any public or governmental agency or entity (except that acts or failures to act of City shall not excuse performance by City); moratorium; or a Severe Economic Recession (each a “**Force Majeure Delay**”). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause. If Notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such Notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. Developer’s inability or failure to obtain financing or otherwise timely satisfy shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay unless such inability, failure or delay is a direct result of a Severe Economic Recession. “**Severe Economic Recession**” means a decline in the monetary value of all finished goods and services produced in the United States, as measured by initial quarterly estimates of United States Gross Domestic Product (“**GDP**”) published by the United States Department of Commerce Bureau of Economic Analysis (and not subsequent monthly revisions), lasting more than four (4) consecutive calendar quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

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

10.5 Periodic Review.

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

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

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

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

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

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

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

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

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

10.7 Resolution of Disputes. With regard to any dispute involving Development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law,

Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. 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: mike.futrell@ssf.net

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

If to Developer, to: LPGS (Tanforan) LLC
Attn: Marcus Gilmour
644 Menlo Avenue, 2nd Floor
Menlo Park, CA 94025
Phone: (650) 838-0100
Email: marcus@lane-partners.com

With Copies 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 Mortgage 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.

11.12 Entire Agreement, Counterparts And Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of [35] pages, exclusive of signature pages, and [seven (7)] exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A: Description and Diagram of Project Site

Exhibit B: List of Project Approvals

Exhibit C: City Development Fees and Exactions

Exhibit D: Circulation and Transportation Improvements

Exhibit E: Sustainability Features

Exhibit F: Applicable Laws

Exhibit G: Form of Assignment and Assumption Agreement

11.13 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.

11.14 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 LPGS (TANFORAN) LLC**

CITY:

**CITY OF SOUTH SAN FRANCISCO,
a California municipal corporation**

By: _____

Date: _____

Name: Charles Michael Futrell
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 LPGS (TANFORAN) LLC**

DEVELOPER:

**LPGS (TANFORAN) LLC,
a Delaware limited liability company**

By: _____

Date: _____

Name:

Its:

By: _____

Date: _____

Name:

Its:

[Insert Notary Acknowledgment]

**DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
LPGS (TANFORAN) LLC**

Exhibit A

Description and Diagram of Project Site

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LEGAL DESCRIPTION

DRAFT

**DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
LPGS (TANFORAN) LLC**

Exhibit B:

List of Project Approvals as of Effective Date¹

1. Resolution to Certify the Draft and Final Environmental Impact Report and Adopt the Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations and associated CEQA Findings, approved by the City Council on _____, 2022 by Resolution No. _____;
2. Resolution to Adopt the General Plan Amendment, approved by the City Council on _____, 2022 by Resolution No. _____;
3. Resolution to Adopt the Southline Specific Plan, approved by the City Council on _____, 2022 by Resolution No. _____;
4. Ordinance No. _____ to add Chapter 20. ____ (“Southline Campus (S-C) Zoning District”) of the South San Francisco Municipal Code and amending the zoning map to reflect adoption of the S-C District, introduced by the City Council on _____, 2022 and adopted by the City Council on _____, 2022;
5. Ordinance No. _____ adopting Development Agreement by and between the City of South San Francisco and LPGS (Tanforan) LLC, introduced by the City Council on _____, 2022 and adopted by the City Council on _____, 2022;
6. Resolution to Approve Design Review approved by the City Council on _____, 2022 by Resolution No. _____;
7. Resolution to Approve Vesting Tentative Map approved by the City Council on _____, 2022 by Resolution No. _____;
8. Resolution to approve Preliminary TDM Plan approved by the City Council on _____, 2022 by Resolution No. _____;
9. Resolution to Approve Phase 1 Precise Plan approved by the City Council on _____, 2022 by Resolution No. _____.

¹ NTD: update with any additional Project Approvals

**DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
LPGS (TANFORAN) LLC**

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. Except as set forth in Section [] of this Agreement, only the Development Fees in effect as of July 13, 2020 (the “Vesting Date”), as set forth in Table 1 below, shall be paid for net new square footage (after consideration of any credits for replacement of existing square footage) at the earlier of (i) issuance of certificate of occupancy or (ii) the times prescribed in the resolution(s) or ordinance(s) adopting and implementing the fees. 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 Vesting 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 identifies each applicable Development Fee. For reference purposes only, Table 1 also identifies whether each such Development Fee remains in effect as of the Effective Date of this Agreement, and the rate of each such Development Fee as of the Vesting Date.

Table 1: Vested Development Fees*

Applicable Development Fee	In Effect as of Effective Date?	Rate as of July 13, 2020 – Office/R&D Cost per Square Foot	Rate as of July 13, 2020 – Retail Cost per Square Foot
Park and Recreation Impact Fee (SSFMC Chapter 8.67)	Yes	\$1.12	\$1.26
Childcare Impact Fee (SSFMC Chapter 20.310)	Yes	\$0.57	\$0.68
Public Safety Impact Fee (Resolution 97-2012)	No – Superseded by Resolution 123-2020	\$0.44	\$0.44
Bicycle and Pedestrian Impact Fee (SSFMC Chapter 8.68)	No – Superseded by Resolution 120-2020	\$0.09	\$0.36
Commercial Linkage Fee (SSFMC Chapter 8.69)	Yes	\$15.00	\$2.50
Sewer Capacity Fee (Resolution 56-2017)	Yes	Calculated per Resolution 56-2017	Calculated per Resolution 56-2017

* 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.

**DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
LPGS (TANFORAN) LLC**

Exhibit D

Circulation and Transportation Improvements

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**DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
LPGS (TANFORAN) LLC**

Exhibit E

Sustainability Features

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**DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
LPGS (TANFORAN) LLC**

Exhibit F

Applicable Laws²

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 13, 1999 and as amended from time to time prior to the Effective Date.
2. Southline Specific Plan, as adopted prior to the Effective Date.
3. City of South San Francisco Municipal Code, as amended from time to time prior to the Effective Date, including Chapter 20.[], Southline Campus (S-C) Zoning District.
4. South San Francisco Zoning Map, as amended from time to time prior to the Effective Date.
5. City Fees as set forth in Exhibit C.

² NTD: list to be reviewed/expanded

**DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO AND
LPGS (TANFORAN) LLC**

Exhibit G

Form of Assignment and Assumption Agreement

(Starts on Next Page)

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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 LPGS (Tanforan) LLC, a Delaware limited liability company ("Assignor"), and _____, a _____ ("Assignee"), and the City of South San Francisco, a municipal corporation ("City"). Assignor and Assignee are sometimes referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. Assignor and City have previously entered into that certain Development Agreement between City and Assignor dated _____, 2022, approved by the City of South San Francisco City Council by Ordinance No. _____ on _____, 2022, to be effective on _____, 2022, and recorded on _____, 2022 as Document No. _____, San Mateo County Official Records ("Development Agreement") to facilitate the development and redevelopment of that certain real property consisting of approximately _____ acres with the City of South San Francisco, California, which is legally described in Exhibit A of the Development Agreement ("Property"). A true and complete copy of the Development Agreement is attached hereto as Exhibit 1.

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

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

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

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

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:

LPGS (TANFORAN) LLC,
a Delaware limited liability company

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

Name: _____

Title: _____

ASSIGNEE:

[INSERT NAME OF ASSIGNEE]

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

Name: _____

Title: _____

CITY:

CITY OF SOUTH SAN FRANCISCO,
a Municipal Corporation

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

Name: _____

Title: City Manager

Approved as to form by:

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

Name: _____

Title: City Attorney