

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Exempt from recording fees under
Government Code § 27383.



San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC- 2018-K619432-00
Acct 28-SFCC Board of Supervisors
Friday, MAY 25, 2018 13:49:37
Ttl Pd \$0.00 Rcpt # 0005811194
ofa/FT/1-163

Recorder's Stamp

4052/001

4111/004

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

FC PIER 70, LLC, A DELAWARE LIMITED LIABILITY COMPANY

RELATING TO DEVELOPMENT OF CITY LAND

UNDER THE JURISDICTION OF

THE PORT COMMISSION OF SAN FRANCISCO

REFERENCE DATE: MAY 2, 2018

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| 1. DEFINITIONS..... | 2 |
| 1.1. Role of Appendix..... | 2 |
| 2. CERTAIN TERMS..... | 2 |
| 2.1. Effective Date | 2 |
| 2.2. DA Term | 3 |
| 2.3. Relationship to DDA..... | 3 |
| 2.4. Roles of City and Port..... | 3 |
| 2.5. Recordation and Effect | 3 |
| 2.6. Relationship to Project..... | 4 |
| 3. GENERAL RIGHTS AND OBLIGATIONS | 4 |
| 3.1. Project | 4 |
| 3.2. Timing of Development..... | 5 |
| 3.3. Horizontal Improvements Dedicated for Public Use | 5 |
| 3.4. Private Undertaking | 5 |
| 4. DEVELOPER OBLIGATIONS | 5 |
| 4.1. Public Benefits..... | 5 |
| 4.2. Delivery; Failure to Deliver..... | 7 |
| 4.3. Developer Mitigation Measures..... | 8 |
| 4.4. Payment of Planning Costs | 8 |
| 4.5. Indemnification of City..... | 8 |
| 4.6. Costa-Hawkins Waiver | 8 |
| 5. VESTING AND CITY OBLIGATIONS..... | 9 |
| 5.1. Vested Rights..... | 9 |
| 5.2. Existing City Laws and Standards | 9 |
| 5.3. Changes to Existing City Laws and Standards | 11 |
| 5.4. Fees and Exactions..... | 13 |
| 5.5. Limitations on City's Future Discretion | 16 |
| 5.6. Public Health and Safety and Federal or State Law Exceptions..... | 17 |
| 5.7. Future Approvals | 18 |
| 5.8. Criteria for Future Approvals..... | 18 |
| 5.9. Public Financing | 20 |

| | | |
|-------|--|----|
| 6. | NO DEVELOPMENT OBLIGATION..... | 20 |
| 7. | MUTUAL OBLIGATIONS..... | 20 |
| 7.1. | Cooperation by Parties..... | 20 |
| 7.2. | Other Regulators..... | 21 |
| 7.3. | Third-Party Challenge..... | 21 |
| 7.4. | Estoppel Certificates..... | 22 |
| 8. | PERIODIC COMPLIANCE REVIEW..... | 22 |
| 8.1. | Initiation or Waiver of Review..... | 22 |
| 8.2. | Required Information from Developer..... | 23 |
| 8.3. | City Review..... | 23 |
| 8.4. | Certificate of Compliance..... | 23 |
| 8.5. | Public Hearings..... | 23 |
| 8.6. | Effect on Transferees..... | 23 |
| 8.7. | Notice and Cure Rights..... | 24 |
| 8.8. | No Limitation on City's Rights After Event of Default..... | 24 |
| 9. | DEFAULTS AND REMEDIES..... | 24 |
| 9.1. | Meet and Confer..... | 24 |
| 9.2. | Events of Default..... | 24 |
| 9.3. | Remedies for Events of Default..... | 25 |
| 9.4. | Changes to Existing City Laws and Standards..... | 26 |
| 10. | ASSIGNMENTS; LENDER RIGHTS..... | 26 |
| 10.1. | Successors' Rights..... | 26 |
| 10.2. | Effect of Assignment..... | 26 |
| 10.3. | Applicable Lender Protections Control Lender Rights..... | 27 |
| 10.4. | Requests for Notice..... | 27 |
| 10.5. | No Third-Party Beneficiaries..... | 27 |
| 11. | AMENDMENT OR TERMINATION..... | 28 |
| 11.1. | Amendment..... | 28 |
| 11.2. | Termination..... | 28 |
| 12. | DEVELOPER REPRESENTATIONS AND WARRANTIES..... | 28 |
| 12.1. | Due Organization and Standing..... | 28 |
| 12.2. | Valid Execution..... | 28 |
| 12.3. | Other Documents..... | 28 |

| | | |
|-------|--|----|
| 12.4. | No Bankruptcy | 28 |
| 13. | CITY REQUIREMENTS | 28 |
| 13.1. | Nondiscrimination in Contracts and Property Contracts | 28 |
| 13.2. | Prevailing Wages and Working Conditions in Construction Contracts..... | 29 |
| 13.3. | Tropical Hardwood and Virgin Redwood Ban | 29 |
| 13.4. | Conflicts of Interest..... | 29 |
| 13.5. | Sunshine | 29 |
| 13.6. | Contribution Limits-Contractors Doing Business with the City..... | 30 |
| 13.7. | Implementing the MacBride Principles - Northern Ireland | 30 |
| 14. | MISCELLANEOUS | 30 |
| 14.1. | Addresses for Notice..... | 30 |
| 14.2. | Limitations on Actions..... | 31 |
| 14.3. | Attachments | 31 |

APPENDIX

Consent to Development Agreement (Port Commission)
Consent to Development Agreement (SFMTA)
(with Transportation Program and Pier 70 TDM Program attachments)
Consent to Development Agreement (SFPUC)

EXHIBITS

DA Exhibit A: Legal description and Site Plan
DA Exhibit B: Project Approvals
DA Exhibit C: Chapter 56 as of the DA Ordinance Effective Date

[Remainder of page intentionally left blank.]

DEVELOPMENT AGREEMENT (Pier 70 28-Acre Site)

This **DEVELOPMENT AGREEMENT** ("**Development Agreement**") is between the **CITY AND COUNTY OF SAN FRANCISCO**, a political subdivision and municipal corporation of the State of California (including its agencies and departments, the "**City**"), and **FC Pier 70, LLC**, a Delaware limited liability company ("**Developer**") (each, a "**Party**"), is dated as of the Reference Date that appears on the title sheet hereof, and is made in conjunction with that certain Disposition and Development Agreement (the "**DDA**") between the City, acting by and through the San Francisco Port Commission (the "**Port Commission**" or "**Port**"), and Developer dated concurrently herewith. The DDA establishes the relative rights and obligations of the Port and Developer for the 28-Acre Site development project, some of which will be implemented as described in other Transaction Documents.

RECITALS

A. The City owns about 7 miles of tidelands and submerged lands along San Francisco Bay, including approximately 72 acres known as Pier 70 or Seawall Lot 349 under Port jurisdiction in the central waterfront area of San Francisco. Pier 70 is generally bounded by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east. The National Park Service listed approximately 66 acres of Pier 70 as the *Union Iron Works Historic District* in the National Register of Historic Places in 2014.

B. The City and Developer have negotiated this Development Agreement to vest in Developer and its successors certain entitlement rights with respect to the 28-Acre Site, the legal description of which is attached as **DA Exhibit A**.

C. The City has established a 35-acre Pier 70 Special Use District that includes the 28-Acre Site and adjacent parcels called the Illinois Street Parcels. Developer is the master developer for the 28-Acre Site and is responsible for subdividing and improving the 28-Acre Site and a portion of the Illinois Street Parcel known as Parcel K with Horizontal Improvements needed or desired to serve vertical development. Under the DDA, Developer has an Option to develop Vertical Improvements on designated Development Parcels known as Option Parcels. Horizontal and vertical development of the 28-Acre Site Project will be subject to the Project Requirements in the DDA, which include Regulatory Requirements.

D. The Development Agreement Statute authorizes local governments to enter into development agreements with persons having a legal or equitable interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development. In accordance with the Development Agreement Statute, the City adopted Chapter 56 to establish local procedures and requirements for development agreements. The Parties are entering into this Development Agreement in accordance with the Development Agreement Statute and Chapter 56. This Development Agreement is consistent with the requirements of section 65865.2 of the Development Agreement Statute, which requires a development agreement to state its duration, permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes.

E. The City and the Port have determined that the development of the 28-Acre Site Project in accordance with the DA Requirements will provide public benefits greater than the City and the Port could have obtained through application of pre-existing City ordinances, regulations, and policies. Public benefits include:

1. revitalizing a portion of the former industrial site that currently consists of asphalt lots and deteriorating buildings behind chain link fences that prevent open public access to the waterfront;

2. building a network of waterfront parks, playgrounds, and recreational facilities on the 28-Acre Site that, with development of the Illinois Street Parcels, will more than triple the amount of parks in the neighborhood;
3. creating significant amounts of on-site affordable housing units on the 28-Acre Site and Parcel K South;
4. restoring three deteriorating historic structures that are significant contributors to the historic district for reuse;
5. providing substantial new and renovated space for arts/cultural nonprofits, small-scale manufacturing, local retail, and neighborhood services;
6. preserving the artist community currently located in the Noonan Building in new state-of-the-art, on-site space that is affordable, functional, and aesthetically pleasing;
7. creating an estimated 10,000 permanent jobs and 11,000 temporary construction jobs and implementing a robust workforce development plan to encourage local business participation;
8. investing over \$200 million to build transportation and other infrastructure critical to serving the 28-Acre Site, the historic district, the historic ship repair operations, and the surrounding neighborhood; and
9. implementing sustainability measures to enhance livability, health and wellness, mobility and connectivity, climate protection, resource efficiency, and ecosystem stewardship and provide funding sources needed to protect the Pier 70 shoreline from sea level rise.

F. The Project Approvals listed on **DA Exhibit B** entitle Developer's proposed 28-Acre Site Project, and authorize Developer to proceed with development in accordance with the Project Requirements under the DDA, which include this Development Agreement. The Parties intend for all acts referred to in this Development Agreement to comply with CEQA, the CEQA Guidelines, and the CEQA Procedures (collectively, "**CEQA Laws**"), the Development Agreement Statute, Chapter 56, and the DA Ordinance (together, "**DA Laws**"), the Planning Code, and all other Applicable Laws in effect on the DA Ordinance Effective Date. This Development Agreement does not limit either the City's obligation to comply with CEQA Laws before taking any further discretionary action regarding the 28-Acre Site or Developer's obligation to comply with all Applicable Laws in the development of the 28-Acre Site Project.

AGREEMENT

1. DEFINITIONS

1.1. Role of Appendix. The attached **Appendix**, which includes Part A (Standard Provisions and Rules of Interpretation) and Part B that includes pertinent definitions used in this Development Agreement, is an integral part of this Development Agreement.

2. CERTAIN TERMS

2.1. Effective Date. Pursuant to Administrative Code section 56.14(f), this Development Agreement will be effective on the date that the Parties fully execute and deliver their respective counterparts to each other, as specified on the title page hereof, the DA Ordinance having become effective and operative on December 15, 2017 (the "**DA Ordinance Effective Date**").

2.2. DA Term. The term of this Development Agreement will begin on the Reference Date and continue separately for horizontal development and vertical development as described in this Section (the "DA Term").

(a) Horizontal Development.

(i) If the DDA Term is extended, expires, or is terminated as to a portion of a Phase, the 28-Acre Site Project, or the 28-Acre Site, the DA Term will be extended, expire, or terminate as to the same portion of the Phase, the 28-Acre Site Project, or the 28-Acre Site automatically, without any action of the Parties.

(ii) When the DDA Term expires or is terminated as to the entire 28-Acre Site Project and 28-Acre Site, the DA Term will expire or terminate automatically, without any action of the Parties.

(b) Vertical Development. When a Vertical DDA is extended, expires, or is terminated as to a Development Parcel, the DA Term will be extended, expire, or terminate as to the Development Parcel automatically, without any action of the Parties.

2.3. Relationship to DDA.

(a) DDA Parameters. The Board of Supervisors has approved this Development Agreement in conjunction with its approval of the DDA, other Transaction Documents, and Project Approvals to entitle the 28-Acre Site Project and granted other Project Approvals as described in **DA Exhibit B**. The DDA is the overarching Transaction Document for the development of the 28-Acre Site Project, which cannot proceed independently of the DDA. This Development Agreement is a Transaction Document under the DDA, and is intended to be included in all references to the Transaction Documents.

(b) DDA Requirements. This Development Agreement incorporates by reference certain public benefits that Developer is required to provide and obligations that Developer is required to perform, as more fully described in the DDA and outlined in **Section 4.1 (Public Benefits)**.

2.4. Roles of City and Port. Developer acknowledges the following.

(a) City Obligations. The City will undertake its obligations under this Development Agreement through the Planning Director or, as necessary under Chapter 56, the Planning Commission or the Board of Supervisors.

(b) Port Obligations. References in this Development Agreement to obligations of the "City" include the Port and Other City Agencies unless explicitly and unambiguously stated otherwise. References to both the City and the Port are intended to emphasize the Port's jurisdiction under Applicable Port Laws.

2.5. Recordation and Effect.

(a) Recordation. The Clerk of the Board of Supervisors will have this Development Agreement and any amendment to this Development Agreement recorded in the Official Records within 10 days after receiving fully executed and acknowledged original documents in compliance with section 65868.5 of the Development Agreement Statute and Administrative Code section 56.16.

(b) Binding Covenants. Pursuant to section 65868.5 of the Development Agreement Statute, from and after recordation of this Development Agreement, this Development Agreement will be binding on the Parties and, subject to **Section 10.2 (Effect of Assignment)**, their respective successors. Subject to the limitations on Transfers in **Section 10.2 (Effect of Assignment)**, all provisions of this Development

Agreement will be enforceable during the DA Term as equitable servitudes and will be covenants and benefits running with the land pursuant to Applicable Law, including California Civil Code section 1468.

(c) Constructive Notice. This Development Agreement, when recorded, gives constructive notice to every person. Recordation will cause it to be binding in its entirety on, and burden and benefit, any Interested Person to the extent of its interest in the FC Project Area.

(d) Nondischargeable Obligations. Obligations under this Development Agreement are not dischargeable in Insolvency.

2.6. Relationship to Project.

(a) Planning as Regulator. This Development Agreement relates to Planning's regulatory role with respect to development of the 28-Acre Site and implementation of the 28-Acre Site Project under the DDA in accordance with the SUD.

(b) Other City Agencies. Transaction Documents for the 28-Acre Site Project that describe the roles of the Port and Other City Agencies with respect to the 28-Acre Site Project include the following:

(i) The ICA between the Port and the City, which describes the process for City Agency review and approval of Improvement Plans, Subdivision Maps, and other documents, primarily in relation to horizontal development.

(ii) The Tax Allocation MOU, in which the City, through the Treasurer-Tax Collector and the Controller, will agree to assist the Port in implementing the public financing for the FC Project Area.

(c) Port as Regulator. The Port in its regulatory capacity will:

(i) issue all Construction Permits, certificates of occupancy, and certificates of completion;

(ii) coordinate Other City Agency review of Improvement Plans and Subdivision Maps for the FC Project Area in accordance with the Infrastructure Plan and the ICA; and

(iii) monitor Developer's compliance with Applicable Laws in coordination with Other City Agencies.

(d) Port as Fiduciary. The City has appointed the Port to act in a fiduciary capacity as the IFD Agent and the IRFD Agent responsible for implementing Appendix G-2, the RMAs, and the IRFD Financing Plan, respectively, and has agreed to appoint the Port to act in a fiduciary capacity as the CFD Agent responsible for implementing the RMAs in the formation proceedings for the CFDs. In doing so, the City agreed to take actions at the Port's request to comply with the Financing Plan attached to the DDA as *DDA Exh C1*.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1. Project.

(a) Vested Right to Develop. Developer will have the vested right to develop the 28-Acre Site Project in accordance with and subject to this Development Agreement and the DDA.

(b) Future Approvals. The City, excluding the Port, will consider and process all Future Approvals for the development of the 28-Acre Site Project in accordance with

and subject to this Development Agreement and the ICA. The Port's Future Approvals will be governed by this Development Agreement, the ICA, and the DDA.

(c) Project Approvals. The Parties acknowledge that Developer:

(i) has obtained all Project Approvals from the City required to begin construction of the 28-Acre Site Project, other than any required Future Approvals; and

(ii) may proceed in accordance with this Development Agreement and the DDA with the construction and, upon completion, use and occupancy of the 28-Acre Site Project as a matter of right, subject to obtaining any required Future Approvals.

3.2. Timing of Development. The DDA permits the development of the FC Project Area in Phases. The Phasing Plan and Schedule of Performance, respectively, each as modified from time to time in accordance with the DDA, will govern the construction phasing and timing of the 28-Acre Site Project. The time for performance of obligations under this Development Agreement will be coordinated with the DDA and the Vertical DDAs, each as extended to the extent permitted under their respective performance schedules.

3.3. Horizontal Improvements Dedicated for Public Use. Development of the FC Project Area requires Horizontal Improvements to support the development and operation of all Development Parcels, including any Affordable Housing Parcel designated in accordance with the AHP, whether located in or outside of the 28-Acre Site. Under the DDA, Developer will take all steps necessary to construct and dedicate Horizontal Improvements to public use in accordance with the Subdivision Code.

3.4. Private Undertaking. Developer's proposed development of the FC Project Area is a private undertaking. Under the DDA and the Master Lease, Developer will have possession and control of the Master Lease Premises, subject only to any obligations and limitations imposed by the Master Lease, the DDA, and the DA Requirements. Except to the extent specified in the Transaction Documents, the City will have no interest in, responsibility for, or duty to third persons concerning the Horizontal Improvements until they are accepted.

4. DEVELOPER OBLIGATIONS

4.1. Public Benefits.

(a) Benefits Exceed Legal Requirements. The Parties acknowledge that development of the 28-Acre Site Project in accordance with the DDA and this Development Agreement will provide public benefits to the City beyond those achievable through existing laws.

(b) Consideration for Benefits.

(i) The City acknowledges that a number of the public benefits would not be achievable without Developer's express agreements under the DDA and this Development Agreement.

(ii) Developer acknowledges that: (1) the benefits it will receive under the DDA and this Development Agreement provide adequate consideration for its obligation to deliver the public benefits under the DDA and this Development Agreement; and (2) the Port would not be willing to enter into the DDA, and the City would not be willing to enter into this Development Agreement, without Developer's agreement to provide the public benefits.

(c) Specific Benefits. The public benefits that Developer must deliver in connection with the DDA include those described in the 28-Acre Site Project implementation listed below.

(i) The FC Project Area will be improved with new Shoreline Improvements, Public Spaces, Public ROWs, and Utility Infrastructure as shown in *DDA Exh B8 (Infrastructure Plan)*, the Design for Development, the Streetscape Master Plan, and any Master Utilities Plans approved by the responsible Acquiring Agencies.

(ii) Developer is responsible for the historic rehabilitation of Historic Building 12 and Historic Building 21 under *DDA § 7.14 (Historic Buildings 12 and 21)* and Historic Building 2 if Developer elects to exercise its Option under *DDA § 7.1 (Developer Option)*.

(iii) Developer has agreed that at least 30% of the residential units developed in the AHP Housing Area, currently consisting of the 28-Acre Site and Parcel K South (or other parcels designated in accordance with the AHP), will be affordable to low- and moderate-income households in compliance with the AHP (*DDA Exh B3*) by implementing the following measures.

(1) Developer will deliver two construction-ready Affordable Housing Parcels on-site and one on Parcel K South to the Port, which will lease them rent-free to MOHCD or its selected Affordable Housing Developers for development of Affordable Housing Projects.

(2) In lieu of including on-site Inclusionary Units under Planning Code sections 415-415.6, each Vertical Developer of a Market-Rate Condo Project on the 28-Acre Site will pay the 28-Acre Site Affordable Housing Fee described in the AHP.

(3) Each Vertical Developer of a Market-Rate Rental Project will provide Inclusionary Units.

(4) Each Vertical Developer of office and other nonresidential uses otherwise subject to the City's Jobs/Housing Linkage Program under Planning Code sections 413.1-413.11 will pay the 28-Acre Site Jobs/Housing Equivalency Fee, which MOHCD will use for development of Affordable Housing Projects in accordance with the AHP.

(iv) Under *DDA Exh B5 (Transportation Program)*, Developer will pay a fee specific to the 28-Acre Site (the "**Transportation Fee**") in lieu of the City's Transportation Sustainability Fee, which SFMTA will apply towards transit, bicycle, and pedestrian improvements that will improve transportation access and mobility in the surrounding neighborhoods. Developer will also implement the Pier 70 SUD TDM Program (the "**Pier 70 TDM Program**") attached as Schedule 1 to the Transportation Program to reduce estimated daily one-way vehicle trips by at least 20% from the number of trips identified in the 28-Acre Site Project's Transportation Impact Study at the 28-Acre Site Project build-out.

(v) Developer will: (1) develop the FC Project Area with sustainable measures required under the Design for Development, Infrastructure Plan, Pier 70 TDM Program, and MMRP and endeavor to meet sustainability targets in the Sustainability Plan seeking to enhance livability, health and wellness, mobility and connectivity, ecosystem stewardship, climate protection, and resource efficiency of the FC Project Area; and (2) submit a report with each Phase Submittal after Phase 1 that will describe the 28-Acre Site Project's performance towards the sustainable construction measures and sustainability targets.

(vi) Developer will comply with training and hiring goals for hiring San Francisco residents and formerly homeless and economically disadvantaged individuals for temporary construction and permanent jobs under *DDA Exh B4*

(*Workforce Development Plan*), including a Local Hiring mandatory participation level of 30% per trade consistent with the policy set forth in Administrative Code section 6.22(g)(3)(B).

(vii) Under Vertical DDAs with the Port, Vertical Developers will be required to provide opportunities for local business enterprises to participate in the economic opportunities created by the vertical development of the FC Project Area in compliance with the LBE requirements under *DDA Exh B4 (Workforce Development Plan)*.

(viii) Developer will promote equality by complying with **Section 13.1** (Nondiscrimination in Contracts and Property Contracts).

(ix) Developer will provide the replacement space for the artists leasing space at the Noonan Building at Pier 70 in a newly constructed arts building or elsewhere at the 28-Acre Site and provide other space for arts and light-industrial uses, all as described in *DDA Exh B6 (Arts Program)*.

(x) Vertical Developers will provide a minimum of 50,000 gsf of PDR-restricted space within the 28-Acre Site Project under *DDA § 7.17 (PDR)*.

(xi) Vertical Developers will provide at least two on-site child care facilities for a minimum of 50 children per site to serve area residents and workers under *DDA § 7.18 (Child Care)*.

(xii) If requested by Port, Developer or a Vertical Developer will make available to the City at least 15,000 gsf of community space in one or more commercial buildings under *DDA § 7.19 (Community Facilities)*.

(xiii) Owners and tenants in the 28-Acre Site Project will bear the cost of long-term maintenance and management of Public Spaces developed at the 28-Acre Site through Services Special Taxes that the Services CFDs will levy. Each Services CFD will require its respective Public Spaces operator/manager to adhere to standards ensuring public access to and quality maintenance, as described in *DDA § 15.10 (Maintenance of Horizontal Improvements)*.

4.2. Delivery; Failure to Deliver.

(a) Obligation to Provide. Developer's obligation to deliver certain public benefits is tied to a specific Phase or Development Parcel as described in *DDA Exh B2 (Schedule of Performance)*, subject to Excusable Delay.

(i) After Developer obtains its First Construction Permit for Horizontal Improvements within a Phase, Developer's obligation to deliver public benefits tied to that Phase will survive until the pertinent public benefits are completed in accordance with the requirements of the DDA.

(ii) After a Vertical Developer obtains its First Construction Document for a Development Parcel that is tied to a specific public benefit, the Vertical Developer's obligation to deliver the pertinent public benefit will survive until it is completed in accordance with the requirements of the applicable Vertical DDA.

(b) Conditions to Delivery. Developer's obligation to deliver public benefits required in a Phase or in association with development of a Development Parcel is expressly conditioned as specified below, unless Developer's actions or inaction, including failure to meet the Schedule of Performance, causes the failure of condition.

(i) Developer's obligation to deliver public benefits to be provided in a Phase is conditioned on obtaining all Future Approvals required to begin construction of Phase Improvements.

(ii) Developer's obligation to deliver a public benefit specific to or dependent on vertical development will be coordinated with the applicable Vertical Developer's construction of Vertical Improvements and may be an obligation of the Vertical Developer under the related Vertical DDA.

4.3. Developer Mitigation Measures. Under the DDA, Developer is obligated to implement Developer Mitigation Measures identified in the MMRP. At the Port's request, Planning may agree to undertake monitoring Developer's compliance with specified Developer Mitigation Measures on behalf of the Port.

4.4. Payment of Planning Costs. Under the DDA, Developer must reimburse the City for all Other City Costs, including those incurred by Planning in its implementation of this Development Agreement, exclusive of Administrative Fees. Planning agrees to comply with the procedures and limitations described in *FP § 9.2 (Port Accounting and Budget)* and *ICA § 3.6 (Cost Recovery)* as a condition to obtaining reimbursement of Planning's costs. More specifically, Planning will provide quarterly statements for payment to Developer through the Port, which will be responsible for disbursing reimbursement payments from Developer.

4.5. Indemnification of City. In addition to the indemnities provided under the DDA, Developer agrees to indemnify the City Parties from Losses caused directly or indirectly by an act or omission of Developer or any of its Agents in relation to this Development Agreement, except to the extent caused by gross negligence or willful misconduct of a City Party. Developer's indemnification obligation under this Section includes an indemnified City Party's reasonable attorneys' fees and related costs, including the cost of investigating any Claims against the City, and will survive the expiration or earlier termination of this Development Agreement.

4.6. Costa-Hawkins Waiver.

(a) **State Policies.** California directs local agencies regulating land use to grant density bonuses and incentives to private developers for the production of affordable and senior housing in the Costa-Hawkins Act (Cal. Gov't Code §§ 65915-65918). The Costa-Hawkins Act prohibits limitations on rental rates for dwelling units certified for occupancy after February 1, 1995, with certain exceptions. Section 1954.52(b) of the Costa-Hawkins Act creates an exception for dwelling units built under an agreement between the owner of the rental units and a public entity in consideration for a direct financial contribution and other incentives specified in section 65915 of the California Government Code.

(b) **Waiver.** Developer, on behalf of itself and its successors and assigns, agrees not to challenge and expressly waives any right to challenge Developer's obligations under the AHP as unenforceable under the Costa-Hawkins Act. Developer acknowledges that the City would not be willing to enter into this Development Agreement without Developer's agreement and waiver under this Section. Developer agrees to include language in substantially the following form in all Assignment and Assumption Agreements and consents to its inclusion in all Vertical DDAs and in recorded restrictions for any Development Parcel on which residential use is permitted.

The Development Agreement and the DDA, which includes the AHP, provide regulatory concessions and significant public investment to the 28-Acre Site and Parcel K South that directly reduce development costs at the 28-Acre Site. The regulatory concessions and public investment include a direct financial contribution of net tax increment and other forms of public assistance specified in California Government Code section 65915. These public contributions result in identifiable, financially sufficient, and actual cost reductions for the

benefit of Developer and Vertical Developers under California Government Code section 65915. In consideration of the City's direct financial contribution and other forms of public assistance, the parties understand and agree that the Costa-Hawkins Act does not apply to any BMR Units and Inclusionary Units developed under the AHP for the 28-Acre Site.

5. VESTING AND CITY OBLIGATIONS

5.1. Vested Rights.

(a) Policy Decisions. By the Project Approvals, the Board of Supervisors and the Port Commission each made an independent policy decision that development of the 28-Acre Site Project is in the City's best interests and promotes public health, safety, general welfare, and Applicable Port Laws.

(b) Vested Elements. Developer will have the vested right to develop the 28-Acre Site Project, including the following elements (collectively, the "**Vested Elements**"):

- (i) proposed land use plan and parcelization;
- (ii) locations and numbers of Vertical Improvements proposed;
- (iii) proposed height and bulk limits, including maximum density, intensity, and gross square footages;
- (iv) permitted uses; and
- (v) provisions for open space, vehicular access, and parking.

(c) Applicable Laws. The Vested Elements are subject to and will be governed as set specified in **Subsection 5.2(a)** (Agreement to Follow). The expiration of any Construction Permit or other Project Approval will not limit the Vested Elements. Developer will have the right to seek and obtain Future Approvals at any time during the DA Term, any of which will be governed by the DA Requirements.

(d) Future Approvals.

(i) Each Future Approval, when final, will be a Project Approval that is automatically incorporated into and vested under this Development Agreement.

(ii) The terms of this Development Agreement on the Reference Date will prevail over any conflict with any Future Approval or amendment to a Project Approval unless the Parties concurrently take action to harmonize the conflicting provisions.

5.2. Existing City Laws and Standards.

(a) Agreement to Follow.

(i) The City will process, consider, and review all Future Approvals in accordance with the following (collectively, the "**DA Requirements**"): (i) the Project Approvals; (ii) the Transaction Documents; and (iii) all other applicable City Laws in effect on the DA Ordinance Effective Date (collectively, the "**Existing City Laws and Standards**"), subject to **Section 5.3** (Changes to Existing City Laws and Standards).

(ii) The City agrees not to exercise its discretionary authority in considering any application for a Future Approval in a manner that would change the policy decisions reflected in the DA Requirements or otherwise prevent or

delay development of the 28-Acre Site Project as approved, subject to **Subsection 5.8(d)** (Effect of Final EIR).

(b) Pier 70 TDM Program.

(i) Section 169 is excluded from the Existing City Laws and Standards in accordance with "the Board of Supervisors' strong preference that Development Agreements should include similar provisions that meet the goals of the TDM Program." (Planning Code § 169.1(h)).

(ii) Mitigation Measure M-AQ-1f requires "a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20% compared to the total number of one-way vehicle trips identified in the project's Transportation Impact Study at project build-out."

(iii) The MMRP identifies Mitigation Measure M-AQ-1f as a Developer Mitigation Measure which is binding on Developer under the DDA. Developer has prepared the Pier 70 TDM Program that meets the requirements of Mitigation Measure M-AQ-1f and incorporates many of the TDM strategies described in Section 169.

(iv) The City has determined that the Pier 70 TDM Program will exceed the goals under Section 169 if implemented for the required compliance period. In the DA Ordinance, the Board of Supervisors stated that the FC Project Area will be exempt from Section 169 as long as Developer implements and complies with the Pier 70 TDM Program for the required compliance period. The Transportation Program requires Developer to comply with the procedures of Planning Code section 169.4(e), which requires the Zoning Administrator to approve and cause the recordation of the Pier 70 TDM Program against the FC Project Area.

(c) Construction Codes. Nothing in this Development Agreement will preclude the City or the Port from applying then-current Construction Codes applicable to all Horizontal Improvements and all Vertical Improvements in the FC Project Area and the AHP Housing Area.

(d) Applicability of Uniform Codes. Nothing in this Development Agreement will preclude the Port from applying to the FC Project Area and the AHP Housing Area then-current provisions of the California Building Code, as amended and adopted in the Port Building Code.

(e) Applicability of Utility Infrastructure Standards.

(i) Nothing in this Development Agreement will preclude the City from applying to the FC Project Area and the AHP Housing Area then-current standards and City Laws for Utility Infrastructure for each Phase so long as:

(1) the standards for Utility Infrastructure are in place, applicable citywide, and imposed on the 28-Acre Site Project concurrently with the applicable Phase Approval;

(2) the standards for Utility Infrastructure as applied to the applicable Phase are compatible with; and would not require the retrofit, removal, supplementation, or reconstruction of Utility Infrastructure approved in Prior Phases; and

(3) if the standards for Utility Infrastructure deviate from those applied in Prior Phases, the deviations would not cause a Material Cost Increase in the Hard Costs and Soft Costs of Utility Infrastructure in the Phase.

(ii) If Developer claims a Material Cost Increase has occurred, it will submit to the City reasonable documentation of its claim through bids, cost estimates, or other supporting documentation reasonably acceptable to the City, comparing costs (or cost estimates, if not yet constructed) for any applicable Components of Utility Infrastructure in the immediately Prior Phase, Indexed to the date of submittal, to cost estimates to construct the applicable Components in the current Phase if then-current standards for Utility Infrastructure were to be applied.

(iii) If the Parties are unable to agree on whether the application of then-current standards for Utility Infrastructure cause Developer to incur a Material Cost Increase, the Parties will submit the matter to dispute resolution procedures described in *DDA art. 10 (Resolution of Certain Disputes)*.

(f) Subdivision Code and Map Act.

(i) The DDA authorizes Developer, from time to time and at any time, to file Subdivision Map applications with respect to some or all of the FC Project Area and to subdivide, reconfigure, or merge the parcels in the FC Project Area as necessary or desirable to develop a particular part of the 28-Acre Site Project. The specific boundaries of parcels will be set by Developer, subject to Port consent, and approved by the City during the subdivision process.

(ii) Nothing in this Development Agreement: (1) authorizes Developer to subdivide or use any part of the FC Project Area for purposes of sale, lease, or financing in any manner that conflicts with the Subdivision Map Act, the Subdivision Code, or the DDA; or (2) prevents the City from enacting or adopting changes in the methods and procedures for processing Subdivision Maps so long as the changes do not conflict with the DA Requirements.

(iii) The Parties acknowledge that so long as the Port is the landowner, it must both: (1) approve the specific boundaries that Developer proposes for Development Parcels; and (2) sign all Final Maps for the FC Project Area.

(g) Chapter 56 as Existing City Laws and Standards. The text of Chapter 56 on the DA Ordinance Effective Date is attached as **DA Exhibit C**. The DA Ordinance contains express waivers and amendments to Chapter 56 consistent with this Development Agreement. Chapter 56, as amended by the DA Ordinance for the 28-Acre Site Project, is Existing City Laws and Standards under this Development Agreement that will prevail over any conflicting amendments to Chapter 56 unless Developer elects otherwise under **Subsection 5.3(c) (Developer Election)**.

5.3. Changes to Existing City Laws and Standards.

(a) Applicability. Existing City Laws and Standards and any Change to Existing City Laws and Standards will apply to the 28-Acre Site Project except to the extent that they would conflict with the Project Approvals, the Transaction Documents, or Applicable Port Laws. In the event of a conflict, the terms of the Project Approvals, Transaction Documents, and Applicable Port Laws will prevail, subject to **Section 5.6 (Public Health and Safety and Federal or State Law Exceptions)**.

(b) Circumstances Causing Conflict. Any Change to Existing City Laws and Standards will be deemed to conflict with the Project Approvals and the Transaction Documents (including this Development Agreement) and be a Material Change if the change would:

(i) impede the timely implementation of the 28-Acre Site Project in accordance with the DA Requirements, including: (1) Developer's rights and obligations under the Financing Plan and the Acquisition Agreement; and (2) the

rate, timing, phasing, or sequencing of site preparation, development, or construction in any manner, including the demolition of existing buildings at the 28-Acre Site;

(ii) limit or reduce the density or intensity of uses permitted under the DA Requirements on any part of the AHP Housing Area, otherwise require any reduction in the square footage or number or change the location of proposed Vertical Improvements, or change or reduce other Horizontal or Vertical Improvements from that permitted under the DA Requirements;

(iii) limit or reduce the height or bulk of any part of the 28-Acre Site Project, or otherwise require any reduction in the height or bulk of individual proposed Vertical Improvements that are part of the 28-Acre Site Project from that permitted under the DA Requirements;

(iv) limit, reduce, or change the location of vehicular access or parking or the number and location of parking or loading spaces from that permitted under the DA Requirements;

(v) limit any land uses for the 28-Acre Site Project from that permitted under the DA Requirements;

(vi) change or limit the Project Approvals or Transaction Documents;

(vii) limit or control the availability of public utilities, services, or facilities or any privileges or rights to public utilities, services, or facilities for the 28-Acre Site Project as contemplated by the Project Approvals and Transaction Documents;

(viii) materially and adversely limit the processing or procurement of Future Approvals that are consistent with the DA Requirements;

(ix) increase or impose any new Impact Fees or Exactions as they apply to the 28-Acre Site Project, except as permitted under **Section 5.4** (Fees and Exactions);

(x) preclude Developer's or any Vertical Developer's performance of or compliance with the DA Requirements, or result in a Material Cost Increase for Developer or any Vertical Developer, as applicable;

(xi) increase the obligations of Developer, any Vertical Developer, or their contractors under any provisions of the DDA or any Vertical DDA addressing contracting and employment above those in the Workforce Development Plan;

(xii) require amendments or revisions to the forms of Vertical DDA or Parcel Lease, or the Other City Requirements applicable to either, whenever they are later executed, except as set forth in Section 5.3(d).

(xiii) require the City or the Port to issue permits or approvals other than those required under the DA Requirements; or

(xiv) extend the DA Term, decrease the public benefits required to be provided, reduce the Impact Fees or Exactions, increase the maximum height, density, bulk, or size of the 28-Acre Site Project, or otherwise materially alter the City's rights, benefits, or obligations under this Development Agreement.

(c) Developer Election.

(i) Developer may elect to have a Change to Existing City Laws and Standards that conflicts with the DA Requirements (except those described in

clause (xiii) and clause (xiv) of Subsection 5.3(b) (Circumstances Causing Conflict)) applied to the 28-Acre Site Project by giving the City notice of Developer's election. Developer's election notice will cause the Change to Existing City Laws and Standards to be deemed to be Existing City Laws and Standards. But if the application of the Change to Existing City Laws and Standards would be a Material Change to the City's obligations under this Development Agreement, the application of the Change to Existing City Laws and Standards will require the concurrence of any affected City Agencies.

(ii) Nothing in this Development Agreement will preclude: (1) the City from applying any Change to Existing City Laws and Standards to any development that is not a part of the 28-Acre Site Project under this Development Agreement; or (2) Developer from pursuing any challenge to the application of any Changes to Existing City Laws and Standards to any part of the 28-Acre Site Project.

(d) **Circumstances Not Causing Conflict.** The Parties expressly agree that the Port will only be entitled to amend the forms approved by the Project Approvals and update the Other City Requirements to incorporate a Change to Existing City Laws and Standards if either of the following apply: (1) the Change to Existing City Laws and Standards is related to building or reconstructing the seawall, protection from or adaptation to sea level rise, or environmental protection measures directly related to the waterfront location of the 28-Acre Site Project where such Changes to Existing City Laws and Standards would not result in a Material Cost Increase; or (2) the Change to Existing City Laws and Standards would not impose City remedies and penalties that could result in termination, loss, or impairment of a Vertical Developer's rights under any Vertical DDA or Parcel Lease, or debarment from future contract opportunities with the City due to a Vertical Developer's or its subtenant's noncompliance with the Change to Existing City Laws and Standards.

(e) **Port Role.** The Port does not have the authority to approve a Change to Existing City Laws and Standards that is solely an exercise of the City's police powers, with or without Developer's consent under this Section. The City agrees to obtain the Port's concurrence before applying any Change to Existing City Laws and Standards that does not have citywide application to the FC Project Area or other land under Port jurisdiction.

5.4. Fees and Exactions.

(a) **Generally.** This Section will apply to the 28-Acre Site Project for as long as this Development Agreement remains in effect.

(i) The 28-Acre Site Project will be subject only to the Impact Fees and Exactions listed in this Section. The City will not impose any new Impact Fees or Exactions on development of the 28-Acre Site Project or impose new conditions or requirements for the right to develop the FC Project Area (including required contributions of land, public amenities, or services) except as set forth in the Transaction Documents.

(ii) The Parties acknowledge that this Section is intended to implement the Parties' intent that: (1) Developer has the right to develop the 28-Acre Site Project pursuant to specified and known criteria and rules; and (2) the City receive benefits that will be conferred as a result of the FC Project Area's development without abridging the City's right to act in accordance with its powers, duties, and obligations, except as specifically provided in this Development Agreement.

(iii) Developer acknowledges that: (1) this Section does not limit the City's discretion if Developer requests changes under *DDA § 3.4 (Changes to Project after Phase 1)*; (2) the Chief Harbor Engineer will require proof of payment of applicable Impact Fees to the extent then due and payable as a condition to issuing certain Construction Permits; and (3) Impact Fees will be subject to increases permitted by Section 409 and will be payable at the fee schedule in effect when payment is due.

(b) **Impact Fees and Exactions.** Developer or Vertical Developers as applicable must satisfy the following Exactions and pay the following Impact Fees for the 28-Acre Site Project as and when due or payable by their terms.

(i) **Transportation Fees.** Each Vertical DDA for an Option Parcel will require the Vertical Developer to pay to SFMTA the Transportation Fee, and the Transportation Sustainability Fee under Planning Code sections 411A.1-411A.8 will not apply to the 28-Acre Site Project. The Transportation Program attached to the DDA as *DDA Exh B5* and to the SFMTA Consent describes: (1) the manner in which each Vertical Developer will pay the Transportation Fee; (2) transportation projects in the vicinity of the FC Project Area that are eligible uses for Transportation Fees; and (3) procedures that SFMTA will use to allocate an amount equal to or greater than the Total Fee Amount (as defined in the Transportation Program) for eligible transportation projects.

(ii) **28-Acre Site Jobs/Housing Equivalency Fee.** Each Vertical DDA for an Option Parcel to be developed for office and other nonresidential uses will require the Vertical Developer to pay to MOHCD the fee described in this clause (the "**28-Acre Site Jobs/Housing Equivalency Fee**"), and the Jobs/Housing Linkage Program fee under Planning Code sections 413.1-413.11 will not apply to the 28-Acre Site Project. MOHCD will administer and use the 28-Acre Site Jobs/Housing Equivalency Fees for development of Affordable Housing Parcels in the SUD in accordance with the AHP.

(1) The 28-Acre Site Jobs/Housing Equivalency Fees for net additional gsf of office use is \$28/gsf in 2017, subject to annual calendar year escalation by the same percentage increase applied to the Jobs/Housing Linkage Program fee for office use under Section 409.

(2) The 28-Acre Site Jobs/Housing Equivalency Fees will be the same as the Jobs/Housing Linkage Program fees for other uses listed on the San Francisco Citywide Development Impact Fee Register published annually with annual escalation in accordance with Section 409.

(3) Because Parcel E4, Historic Building 12, and Historic Building 21 are not Option Parcels under the DDA, Vertical Developers will not be required to pay the 28-Acre Site Jobs/Housing Equivalency Fees for space on Parcel E4 that is developed and dedicated to arts and nonprofit uses and space available for reuse in Historic Building 12 and Historic Building 21 after rehabilitation.

(iii) **Affordable Housing.** Under the AHP, each Vertical Developer of a Market-Rate Rental Project on the 28-Acre Site must provide Inclusionary Units and each Vertical Developer of a Market-Rate Condo Project must pay the 28-Acre Site Affordable Housing Fee, all in accordance with the terms and conditions of the AHP. In consideration of these requirements, Planning Code sections 415.1-415.11 will not apply to the 28-Acre Site Project.

(iv) Child Care.

(1) Under *DDA § 7.18 (Child Care)*, one Vertical Developer in Phase 1 and one Vertical Developer in Phase 2 or Phase 3 must provide on-site child care facilities within the potential child care locations identified on the map attached to the DDA as *DDA Exh B7 (Potential Child Care Locations)*. Developer will designate the two selected Development Parcels in the pertinent Phase Submittal. Each facility must have a capacity of a minimum of 50 children and be available for lease to a qualified nonprofit operator at a cost not to exceed actual operating and tenant improvement costs reasonably allocated to similar facilities in similar buildings, amortized over the term of the lease. In consideration of these requirements, subject to **Paragraph 2**, Planning Code sections 414.1-414.15 and sections 414A.1-414A.8 will not apply to the 28-Acre Site Project.

(2) If Developer proposes to eliminate one or both of the childcare facilities from the 28-Acre Site Project, Developer will be required to pay an amount equal to the Impact Fees that would have been collected from Vertical Developers of the designated sites under Planning Code sections 414.1-414.15 and sections 414A.1-414A.8 as a condition to the City's approval. Any Developer payments under this Paragraph will be at its sole, unreimbursable expense.

(v) Community Facilities. At the City's request, which must be made during the Phase Submittal process under the DDA, Developer must designate up to 15,000 gsf of ground floor space for community facilities consistent with the requirements and limitations of *DDA § 7.19 (Community Facilities)*. If requested, Developer must make contiguous space in any one building available for up to the full 15,000 gsf if that amount of nonresidential space (excluding the specific frontages that are designated in the Design for Development/SUD as "priority retail") is proposed in that Phase. But community facility space may be distributed among two or more buildings by the Parties' agreement. Developer, in its sole discretion, may designate the location of each of the community facilities.

(vi) School Facilities Fees. Each Vertical Developer must pay the school facilities impact fees imposed under state law (Educ. Code §§ 17620-17626, Gov't Code §§ 65970-65981, & Gov't Code §§ 65995-65998) at the rates in effect at the time of assessment.

(c) Utility Fees.

(i) SFPUC Wastewater Capacity Charge. Each Vertical Developer must pay the SFPUC Wastewater Capacity Charge in effect on the connection or other applicable date specified by SFPUC.

(ii) SFPUC Water Capacity Charge. Each Vertical Developer must pay the SFPUC Water Capacity Charge in effect on the connection or other applicable date specified by SFPUC.

(iii) AWSS. Developer will make a fair share contribution to the City's system-wide improvements for auxiliary water supply system (AWSS) proposed in the vicinity of the 28-Acre Site as set forth in Section 13.4 of the Infrastructure Plan. The City will determine the amount, timing, and procedures for payment consistent with the AWSS requirements of the Infrastructure Plan as a condition of approval to the Master Tentative Map for the 28-Acre Site Project.

(iv) Office Allocation.

(1) An Office Development Authorization from the Planning Commission under Planning Code sections 321 and 322 and approval from the Planning Department are not required for new office development on land under the jurisdiction of the Port Commission. However, new office development on land under the jurisdiction of the Port Commission will count against the annual maximum limit under Planning Code section 321.

(2) For the purposes of the 28-Acre Site Project, the amount of office development located on the 28-Acre Site to be applied against the annual maximum set in Planning Code subsection 321(a)(1) will be based on the approved building drawings for each office development. But to provide for the orderly development of new office space citywide, office development for the 28-Acre Site Project will be subject to the schedule and criteria described in *DDA Exh A5 (Provisions for Office Development)*.

(d) Administrative Fees. Developer will pay timely to the City all Administrative Fees as and when due. If further environmental review is required for a Future Approval, Developer must reimburse the City or pay directly all reasonable and actual costs to hire consultants and perform studies necessary for the review. Before engaging any consultant or authorizing related expenditures under this provision, the City will consult with Developer in an effort to reach agreement on: (i) the scope of work to be performed; (ii) the projected costs associated with the work; and (iii) the consultant to be engaged to perform the work.

5.5. Limitations on City's Future Discretion.

(a) Extent of Limitation. In accordance with **Section 5.3** (Changes to Existing City Laws and Standards), the City in granting the Project Approvals and, as applicable, vesting the 28-Acre Site Project through this Development Agreement is limiting its future discretion with respect to the 28-Acre Site Project and Future Approvals to the extent that they are consistent with the DA Requirements. For elements included in a request for a Future Approval that have not been reviewed or considered by the applicable City Agency previously (including additional details or plans for Horizontal Improvements or Vertical Improvements), the reviewing City Agency will exercise its discretion consistent with Planning Code section 249.79, the other DA Requirements and otherwise in accordance with customary practice.

(b) Consistency with Prior Approvals. In no event may a City Agency deny issuance of a Future Approval based on items that are consistent with the DA Requirements and matters previously approved. Consequently, the City will not use its discretionary authority to: (i) change the policy decisions reflected by the DA Requirements; or (ii) otherwise prevent or delay development of the 28-Acre Site Project as contemplated in the DA Requirements.

(c) ICA. Although Planning is not a signatory or consenting party to the ICA, the Planning Commission is familiar with its contents and agrees that Planning will comply with the ICA's procedural requirements to the extent applicable to Planning.

(d) When Future Discretion Is Unaffected. Nothing in this Section affects or limits the City's discretion with respect to proposed Future Approvals that seek a Material Modification not contemplated by the DA Requirements.

5.6. Public Health and Safety and Federal or State Law Exceptions.

(a) City's Exceptions.

(i) Each City Agency having jurisdiction over the 28-Acre Site Project has police power authority to exercise its discretion under the Project Approvals and Transaction Documents in a manner that is consistent with the public health, safety, and welfare and at all times will retain its authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in federal or state law affecting the physical environment (the "**Federal or State Law Exception**").

(ii) Accordingly, a City Agency will have the authority to condition or deny a Future Approval or to adopt a Change to Existing City Laws and Standards applicable to the 28-Acre Site Project so long as the condition, denial, or Change to Existing City Laws and Standards is: (1) limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public; (2) required to comply with a federal or state law and in each case not for independent discretionary policy reasons that are inconsistent with the DA Requirements; or (3) applicable citywide or portwide, as applicable, to the same or similarly situated uses and applied in an equitable and nondiscriminatory manner.

(b) Meet and Confer; Right to Dispute.

(i) Except for emergency measures, upon request by Developer, the City will meet and confer with Developer in advance of the adoption of a measure under **Subsection 5.6(a)** (City's Exceptions) to the extent feasible. But the City will retain sole discretion with regard to the adoption of any Changes to Existing City Laws and Standards that fall within the Public Health and Safety Exception or the Federal or State Law Exception.

(ii) Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception. If the Parties are not able to reach agreement on the dispute following a reasonable meet and confer period, then Developer or the City can seek a judicial relief with respect to the matter.

(c) **Amendments to Comply with Federal or State Law Changes.** If a change in federal or state law that becomes effective after the DA Ordinance Effective Date materially and adversely affects either Party's rights, benefits, or obligations under this Development Agreement, or would preclude or prevent either Party's compliance with any provision of the DA Requirements to which it is a Party, the Parties may agree to amend this Development Agreement. Any amendment under this Subsection will be limited to the extent necessary to comply with the law, subject to **Subsection 5.6(a)** (City's Exceptions), **Subsection 5.6(e)** (Effect on Project Performance), and **Section 11.1** (Amendment).

(d) **Changes to Development Agreement Statute.** The Parties have entered into this Development Agreement in reliance on the Development Agreement Statute in effect on the DA Ordinance Effective Date. Any amendment to the Development Agreement Statute that would affect the interpretation or enforceability of this Development Agreement or increase either Party's obligations, diminish Developer's development rights, or diminish the City's benefits will not apply to this Development Agreement unless the changed law or a final judgment mandates retroactive application of the amended statute.

(e) Effect on Project Performance.

(i) If Developer determines that adoption of any Change to Existing City Laws and Standards that fall within the Public Health and Safety Exception or the Federal or State Law Exception would make the 28-Acre Site Project infeasible due to material and adverse effects on construction, development, use, operation, or occupancy, then Developer may deliver a Requested Change Notice to the Port (with a copy to the City) in accordance with *DDA § 3.4 (Changes to Project after Phase I)* and *App ¶ A.5 (Notices)*.

(ii) If the City determines that adoption of any Change to Existing City Laws and Standards that fall within the Public Health and Safety Exception or the Federal or State Law Exception would have a material and adverse effect on the delivery of Horizontal Improvements or Associated Public Benefits required under the DDA or the Port's ability to meet future Project Payment Obligations under the Financing Plan, then the Port may deliver a Requested Change Notice to Developer (with a copy to the City) in accordance with *DDA § 3.4 (Changes to Project after Phase I)* and *App ¶ A.5 (Notices)*.

(iii) The Requested Change Notice will initiate the negotiation period under *DDA § 3.4(b) (Effect of Requested Change Notice)*, subject to extension by agreement, during which obligations under this Development Agreement will be tolled except to the extent the Parties expressly agree otherwise.

(iv) If the Port and Developer agree on changes to Transaction Documents during the negotiation period under *DDA § 3.4(b) (Effect of Requested Change Notice)*, the City will reasonably consider conforming changes to this Development Agreement and Project Approvals to the extent required.

(v) If at the end of the negotiation period under *DDA § 3.4(b) (Effect of Requested Change Notice)*, the Parties have failed to agree and obtain amendments to the Transaction Documents, and the Port is entitled to exercise its termination right under *DDA § 12.4(b) (Port Election to Terminate)* as to any portion of the FC Project Area, then this Development Agreement will terminate to the same extent as specified in **Section 2.2 (DA Term)**.

5.7. Future Approvals.

(a) No Actions to Impede. Except and only as required under **Section 5.6** (Public Health and Safety and Federal or State Law Exceptions), the City will take no action under this Development Agreement or impose any condition on the 28-Acre Site Project that would conflict with the DA Requirements. An action taken or condition imposed will be deemed to be in conflict with the DA Requirements if the actions or conditions result in the occurrence of one or more of the circumstances identified in **Subsection 5.3(b) (Circumstances Causing Conflict)**.

(b) Expeditious Processing. City Agencies must process: (i) with due diligence all submissions and applications by Developer on all permits, approvals, and construction or occupancy permits for the 28-Acre Site Project; and (ii) any Future Approval requiring City action in accordance with **Section 5.8 (Criteria for Future Approvals)** and in accordance with the ICA with respect to Horizontal Improvements and the SUD and Design for Development for Vertical Improvements.

5.8. Criteria for Future Approvals.

(a) Standard of Review Generally. The City:

(i) must not disapprove any application for a Future Approval based on any item or element that is consistent with the DA Requirements;

(ii) must consider each application for a Future Approval in accordance with its customary practices, subject to the DA Requirements;

(iii) may subject a Future Approval to any condition that is necessary to bring the Future Approval into compliance with the DA Requirements; and

(iv) will in no event be obligated to approve an application for a Future Approval that would effect a Material Change.

(b) Denial. If the City denies any application for a Future Approval that implements a portion of the 28-Acre Site Project as contemplated by the Project Approvals and the Transaction Documents, the City must specify in writing the reasons for denial and suggest modifications required for approval of the application. Any specified modifications must be consistent with the DA Requirements. The City must approve the re-submitted application if it: (i) corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with the DA Requirements; and (ii) does not include new or additional information or materials that give the City a reason to object to the application under the standards in this Development Agreement.

(c) Public ROWs. The Parties agree that the Project Approvals include the City's and the Port's approvals of Public ROW widths which will be consistent with the City's policy objective to ensure street safety for all users while maintaining adequate clearances for utilities and vehicles, including fire apparatus vehicles.

(d) Effect of Final EIR.

(i) The Parties acknowledge that: (1) the Final EIR prepared for development of the FC Project Area and the Illinois Street Parcels complies with CEQA; (2) the Final EIR contains a thorough analysis of the 28-Acre Site Project and possible alternatives; (3) the City adopted the Mitigation Measures in the MMRP to eliminate or reduce to an acceptable level certain adverse environmental impacts of the 28-Acre Site Project; and (4) the Board of Supervisors adopted CEQA Findings, including a statement of overriding considerations in connection with the Project Approvals, pursuant to CEQA Guidelines section 15093, for those significant impacts that could not be mitigated to a less than significant level.

(ii) For the reasons listed above, the City: (1) does not intend to conduct any further environmental review or require additional mitigation under CEQA for any aspect of the 28-Acre Site Project vested under this Development Agreement, and (ii) will rely on the Final EIR to the greatest extent possible in accordance with Applicable Laws in all future discretionary actions related to the 28-Acre Site Project.

(iii) Developer acknowledges that: (1) nothing in this Agreement prevents or limits the City's discretion to conduct additional environmental review in connection with any Future Approvals for construction, including some of the Associated Public Benefits, to the extent required by Applicable Laws, including CEQA; and (2) Changes to Existing City Laws and Standards or changes to the 28-Acre Site Project may require additional environmental review and additional Mitigation Measures.

(e) Effect of General Plan Consistency Findings.

(i) In Resolution No. 19978 adopting General Plan Consistency Findings for the 28-Acre Site Project, the Planning Commission specified that the findings also would support all Future Approvals that are consistent with the Project Approvals. To the maximum extent practicable, Planning will rely

exclusively on these General Plan Consistency Findings when processing and reviewing all Future Approvals, including schematic review under the SUD, proposed Subdivision Maps, and any other actions related to the 28-Acre Site Project requiring General Plan determinations.

(ii) Developer acknowledges that these General Plan Consistency Findings do not limit the City's discretion in connection with any Future Approval that requires new or revised General Plan consistency findings because of amendments to any Project Approval or Material Changes.

(f) Subdivision Maps. The Director of Public Works' approval of a Tentative Map for a Phase will extend the term of the map to the end of the DDA Term. But the term of a Tentative Map that is approved less than five years before the DDA Term ends will be extended for the maximum period permitted under Subdivision Code section 1333.3(b).

5.9. Public Financing.

(a) Financing Districts. The Project Approvals include formation of Sub-Project Area G-2, Sub-Project Area G-3, Sub-Project Area G-4, and the IRFD and Future Approval of the formation of the CFDs as described in the Financing Plan. The City agrees not to: (i) initiate proceedings for any new or increased special tax or special assessment that is targeted or directed at the 28-Acre Site except as provided in the Financing Plan; or (ii) take any other action that is inconsistent with the Financing Plan or the Tax Allocation MOU without Developer's consent.

(b) Limitation on New Districts. The City will not form any new financing or assessment district over any portion of the 28-Acre Site unless the new district applies to similarly-situated property citywide or Developer gives its prior written consent to or requests the proceedings.

(c) Permitted Assessments. Nothing in this Development Agreement limits the City's ability to impose new or increased taxes or special assessments, any equivalent or substitute tax or assessment, or assessments for the benefit of business improvement districts or community benefit districts formed by a vote of the affected property owners.

6. NO DEVELOPMENT OBLIGATION

This Development Agreement does not obligate Developer to begin or complete development of any portion of the 28-Acre Site Project or impose a schedule or a phasing plan for Developer to start or complete development. But the Parties have entered into this Development Agreement as one of the Transaction Documents that implements the DDA, which includes a Phasing Plan and a Schedule of Performance for horizontal development. The Parties have entered into this Development Agreement, and the Port and Developer have agreed to the Schedule of Performance and Phasing Plan in the DDA, with the express intent of avoiding a result similar to that in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465.

7. MUTUAL OBLIGATIONS

7.1. Cooperation by Parties.

(a) Generally. The Parties agree to cooperate with one another to expeditiously implement the 28-Acre Site Project in accordance with the Project Approvals and Transaction Documents and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Project Approvals and Transaction Documents are implemented. Nothing in this Development Agreement obligates the City to incur any costs except Other City Costs or

costs that Developer must reimburse through the payment of Administrative Fees or otherwise.

(b) City.

(i) Through the procedures in the DDA and the ICA, the Port and the City have agreed to process Developer's submittals and applications for horizontal development diligently and to facilitate an orderly, efficient approval process that avoids delay and redundancies. The SUD specifies procedures for design review of vertical development.

(ii) The City, acting through the Treasurer-Tax Collector and the Controller, intends to enter into the Tax Allocation MOU with the Port, which establishes procedures to implement provisions of the Financing Documents that apply to future levy, collection, and allocation of Mello-Roos Taxes, Tax Increment, and Housing Tax Increment and to the issuance of Bonds for use at the 28-Acre Site and any Affordable Housing Parcel in the AHP Housing Area.

(c) Developer. Developer agrees to provide all documents, applications, plans, and other information necessary for the City to comply with its obligations under the Transaction Documents as reasonably requested with respect to any Developer submittal or application.

7.2. Other Regulators. The Port's obligations with respect to Regulatory Approvals that Developer and Vertical Developers must obtain from Other Regulators for Horizontal Improvements and Vertical Improvements are addressed in *DDA § 15.5 (Regulatory Approvals)* and *VDDA § 12.9 (Regulatory Approvals)*, respectively.

7.3. Third-Party Challenge.

(a) Effect. The filing of any Third-Party Challenge will not delay or stop the development of the 28-Acre Site Project or the City's issuance of Future Approvals unless the third party obtains a court order preventing the activity.

(b) Cooperation in Defense. The Parties agree to cooperate in defending any Third-Party Challenge to any City discretionary action on the 28-Acre Site Project. The City will notify Developer promptly after being served with any Third-Party Challenge filed against the City.

(c) Developer Cooperation. Developer at its own expense will assist and cooperate with the City in connection with any Third-Party Challenge. The City Attorney in his sole discretion may use legal staff of the Office of the City Attorney with or without the assistance of outside counsel in connection with defense of the Third-Party Challenge.

(d) Cost Recovery. Developer must reimburse the City for its actual defense costs, including the fees and costs of legal staff and any consultants. Subject to further agreement, the City will provide Developer with monthly invoices for all of the City's defense costs.

(e) Developer's Termination Option. Instead of bearing the defense costs of any Third-Party Challenge, Developer may terminate this Development Agreement (and the DDA under *DDA § 12.6(a) (Mutual Termination Right)*) by delivering a notice to the City, with a copy to the Port, specifying a termination date at least 10 days after the notice is delivered. If Developer elects this option, the Parties will promptly cooperate to file a request for dismissal. Developer's and the City's obligations to cooperate in defending the Third-Party Challenge, and Developer's responsibility to reimburse the City's defense costs, will end on the Termination Date, but Developer must indemnify

the City from any other liability caused by the Third-Party Challenge, including any award of attorneys' fees or costs.

(f) Survival. The indemnification, reimbursement, and cooperation obligations under this Section will survive termination under **Subsection 7.3(e)** (Developer's Termination Option) or any judgment invalidating any part of this Development Agreement.

7.4. Estoppel Certificates.

(a) Contents. Either Party may ask the other Party to sign an estoppel certificate as to the following matters to the best of its knowledge:

(i) This Development Agreement is in full force and effect as a binding obligation of the Parties.

(ii) This Development Agreement has not been amended, or if amended, identifying the amendments or modifications and stating their date and nature.

(iii) The requesting Party is not in default in the performance of its obligations under this Development Agreement, or is in default in the manner specified.

(iv) The City's findings in the most recent Annual Review under **Article 8** (Periodic Compliance Review).

(b) Response Period. A Party receiving a request under this Section must execute and return the completed estoppel certificate within 30 days after receiving the request. A Party's failure to either execute and return the completed estoppel certificate or provide a detailed written explanation for its failure to do so will be an Event of Default following notice and opportunity to cure as set forth in **Section 9.1** (Meet and Confer).

(c) Reliance. Each Party acknowledges that Interested Persons may rely on an estoppel certificate provided under this Section. At an Interested Person's request, the City will provide an estoppel certificate in recordable form, which the Interested Person may record in the Official Records at its own expense.

8. PERIODIC COMPLIANCE REVIEW

8.1. Initiation or Waiver of Review.

(a) Statutory Provision. Under section 65865.1 of the Development Agreement Statute, the Planning Director must conduct annually a review of developers' good faith compliance with approved development agreements (each, an "**Annual Review**"). The Planning Director will follow the process set forth in this Article and in Chapter 56 for each Annual Review.

(b) No Waiver. The City's failure to timely complete an Annual Review of Developer's good faith compliance with this Development Agreement in any year during the DDA Term will not waive the City's right to do so at a later date.

(c) Planning Director's Discretion. The DA Ordinance waives certain provisions of compliance review procedures specified in Chapter 56 and grants discretion to the Planning Director with respect to Annual Reviews as follows.

(i) For administrative convenience, the Planning Director will designate the annual date when each Annual Review of Developer's compliance will begin, which may be the same or different from the date specified in

Chapter 56 (the date, as specified by the Planning Director, the "Annual Review Date").

(ii) The Planning Director may elect to forego an Annual Review for any of the following reasons: (1) before the designated Annual Review Date, Developer reports that no significant construction work occurred on the FC Project Area during that year; (2) either Developer or the Port has initiated procedures to terminate the DDA; or (3) the Planning Director otherwise decides an Annual Review is unnecessary.

8.2. Required Information from Developer.

(a) **Contents of Report.** No later than the Annual Review Date each year (unless otherwise waived by the Planning Director under **Subsection 8.1(c)(ii)**), Developer will submit a letter to the Planning Director setting forth in reasonable detail the status of Developer's compliance with its obligations under this Development Agreement and the other Transaction Documents with respect to delivery of the public benefits described in **Section 4.1** (Public Benefits). Developer must provide the requested letter within 60 days after each Annual Review Date during the DA Term, unless the Planning Director specifies otherwise. The letter to the Planning Director must include appropriate supporting documentation, which may include an estoppel certificate from the Port in a form acceptable to the Port, the Planning Director, and Developer.

(b) **Standard of Proof.** An estoppel certificate from the Port, if submitted with Developer's letter, will be conclusive proof of Developer's compliance with specified obligations under the DDA and be binding on the City. Each Other City Agency responsible for monitoring and enforcing any part of Developer's compliance with the Vested Elements and its obligations under **Article 4** (Developer Obligations) and **Article 7** (Mutual Obligations) must confirm Developer's compliance or provide the Planning Director with a statement specifying the details of noncompliance. Developer has the burden of proof to demonstrate compliance by substantial evidence of matters not covered in the Port's estoppel certificate or any Other City Agency's letter.

8.3. City Review. The Annual Review will include determining Developer's compliance with **Article 4** (Developer Obligations) and **Article 7** (Mutual Obligations) and whether an Event of Default or a Material Breach has occurred and is continuing under the DDA.

8.4. Certificate of Compliance. Within 60 days after Developer submits its letter, the Planning Director will review the information submitted by Developer and all other available evidence on Developer's compliance with **Article 4** (Developer Obligations) and **Article 7** (Mutual Obligations). The Planning Director must provide copies to Developer of any evidence provided by sources other than Developer promptly after receipt. The Planning Director will summarize his determination as to each item in a letter to Developer. If the Planning Director finds Developer in compliance, then the Planning Director will follow the procedures in Administrative Code section 56.17(b).

8.5. Public Hearings. If the Planning Director finds Developer is not in compliance or that a public hearing is in the public interest, or a member of the Planning Commission or the Board of Supervisors requests a public hearing on Developer's compliance, the Planning Director will follow the procedures in Administrative Code section 56.17(c), and the City may enforce its rights and remedies under this Development Agreement and Chapter 56.

8.6. Effect on Transferees. If Developer has Transferred its rights and obligations for any Phase in compliance with the DDA, then each Transferee must provide a separate letter reporting compliance for itself and for each Vertical Developer in the Phase. The procedures, rights, and remedies under this Article and Chapter 56 will apply separately to Developer and any Transferee, each with respect only to obligations attaching to each Phase for which it is obligated. This requirement does not apply to Vertical Developers.

8.7. Notice and Cure Rights.

(a) Amended Rights. This Section reflects an amendment to Chapter 56 in the DA Ordinance that is binding on the Parties and all other persons affected by this Development Agreement.

(b) Required Findings. If the Planning Commission makes a finding of noncompliance, or if the Board of Supervisors overrules a Planning Commission finding of compliance, in a public hearing under Administrative Code section 56.17(c), then the Planning Commission or the Board of Supervisors, as applicable, must specify to the Breaching Party in reasonable detail how it failed to comply and specify a reasonable time for the Breaching Party to cure its noncompliance.

(c) Cure Period. The Breaching Party must have a reasonable opportunity to cure its noncompliance before the City begins proceedings to modify or terminate this Development Agreement under Administrative Code section 56.17(f) or section 56.18. The cure period under this Section must not be less than 30 days and must in any case provide a reasonable amount of time for the Breaching Party to effect a cure. City proceedings to modify or terminate this Development Agreement under Administrative Code section 56.17(f) or section 56.18 must not begin until the specified cure period has expired.

8.8. No Limitation on City's Rights After Event of Default. The City's rights and powers under this Article are in addition to, and do not limit, the City's rights to terminate or take other action under this Development Agreement after an event of Event of Default by Developer.

9. DEFAULTS AND REMEDIES

9.1. Meet and Confer. Before sending a notice of default under **Section 9.2** (Events of Default), the Aggrieved Party must follow the process in this Section.

(a) Good Faith Effort. The Aggrieved Party must make a written request that the Breaching Party meet and confer to discuss the alleged breach within three business days after the request is delivered. If, despite the Aggrieved Party's good faith efforts, the Parties have not met to confer within seven business days after the Aggrieved Party's request, the Aggrieved Party will be deemed to have satisfied the meet and confer requirement.

(b) Opportunity to Cure. If the Parties meet in response to the Aggrieved Party's request, the Aggrieved Party must allow a reasonable period of not less than 10 days for the Breaching Party to respond to or cure the alleged breach.

(c) Exclusions. The meet and confer requirement does not apply to a Breaching Party's failure to pay amounts when due under this Development Agreement or in circumstances where delaying the Aggrieved Party's right to send a notice of default under **Section 9.2** (Event of Default) would impair the Aggrieved Party's rights under this Development Agreement.

9.2. Events of Default.

(a) Specific Events. The occurrence of any of the following will be an Event of Default under this Development Agreement (each, an "**Event of Default**").

(i) A Breaching Party fails to make any payment when due if not cured within 30 days after the Aggrieved Party delivers notice of nonpayment.

(ii) A Breaching Party fails to satisfy any other material obligation under this Development Agreement when required if not cured within 60 days after the Aggrieved Party delivers notice of noncompliance or if the breach cannot

be cured within 60 days, the Breaching Party fails to take steps to cure the breach within the 60-day period and diligently complete the cure within a reasonable time.

(b) Cross-Defaults. *DDA § 5.7 (Defaults and Breaches)* will apply to Events of Default by Developer and any finding of Developer's noncompliance under this Development Agreement.

(c) Certain Payment Defaults. Developer or the applicable Transferee will have a complete defense if the City alleges an Event of Default in Developer's obligation to pay Other City Costs in the following circumstances.

(i) If Developer or the applicable Transferee made a payment to the Port that included the allegedly unpaid Other City Costs, but the Port failed to disburse the portion of the amount payable to the aggrieved City Agency.

(ii) If a City Agency claiming nonpayment did not submit a timely statement for reimbursement of the claimed Other City Costs under *ICA § 3.6 (Cost Recovery)*.

9.3. Remedies for Events of Default.

(a) Specific Performance. After an Event of Default under this Development Agreement, the Aggrieved Party may file an action and seek injunctive relief against or specific performance by the Breaching Party. Nothing in this Section requires an Aggrieved Party to delay seeking injunctive relief if it believes in good faith that postponement would cause it to suffer irreparable harm.

(b) Limited Damages. The Parties agree as follows.

(i) Monetary damages are an inappropriate remedy for any Event of Default other than a payment Event of Default under this Development Agreement.

(ii) The actual damages suffered by an Aggrieved Party under this Development Agreement for any Event of Default other than a payment Event of Default would be extremely difficult and impractical to fix or determine.

(iii) Remedies at law other than monetary damages and equitable remedies are particularly appropriate for any Event of Default other than a payment Event of Default under this Development Agreement. Except to the extent of actual damages, neither Party would have entered into this Development Agreement if it were to be liable for consequential, punitive, or special damages under this Development Agreement.

(c) Exclusive Remedy for Material Breach under DDA. For any Material Breach that results in the termination of the DDA in whole or in part, this Development Agreement will automatically and concurrently terminate on the Termination Date as to the affected portion of the 28-Acre Site Project.

(d) City Processing. The City may suspend action on any Developer requests for approval or take other actions under this Development Agreement during any period in which payments from Developer are past due.

(e) Port's Rights if Not Delivered. The Port has rights and remedies under the DDA and Vertical DDAs to secure the delivery of public benefits under *DDA § 12.2 (Material Breaches by Developer)*, *DDA § 15.7 (SOP Compliance)*, and *VDDA § 15.1 (Default by Vertical Developer)*, which variously entitle the Port to withhold an SOP Compliance Determination, declare Developer to be in Material Breach of the DDA, and

declare a Vertical Developer Default under the applicable Vertical DDA on specified conditions.

9.4. Changes to Existing City Laws and Standards. Under section 65865.4 of the Development Agreement Statute, either Party may enforce this Development Agreement regardless of any Changes to Existing City Laws and Standards unless this Development Agreement has been terminated by agreement under **Article 11** (Amendment or Termination), as a remedy for an Event of Default under **Subsection 9.3(c)** (Exclusive Remedy for Material Breach under DDA), by termination proceedings under Chapter 56, or by termination of the DDA.

10. ASSIGNMENTS; LENDER RIGHTS

10.1. Successors' Rights. Applicable provisions of this Development Agreement will apply to Vertical Developers, and Developer's and Vertical Developers' successors (any of the foregoing, a "**DA Successor**") in accordance with procedures under *DDA art. 6 (Transfers)* and *VDDA art. § 19 (Transfer and Assignment)*. Each Vertical Developer and each DA Successor will be assigned specified rights and obligations under the Development Agreement by an Assignment and Assumption Agreement in the form of *DDA Exh D8* (for each Developer DA Successor), in the form of *VDDA Exh R* (for each Vertical Developer DA Successor subsequent to the initial Vertical Developer) and *VDDA Exh S* (for the initial Vertical Developer of each Development Parcel) (each, a "**DA Assignment**"). Each DA Assignment will be recorded in accordance with the DDA, Vertical DDA or Parcel Lease, as applicable. Each DA Assignment will provide for Developer or the pertinent Vertical Developer to be released from obligations under this Development Agreement to the extent assumed by the DA Successor, and will be effective as to the City when evidenced by the signature of the City's Planning Director or his or her designee, and approved as to form by the City Attorney.

10.2. Effect of Assignment. On the effective date of a DA Assignment, the following will apply.

(a) **DA Successor as Party.** The DA Successor will have all rights assigned and obligations assumed under the DA Assignment and will be deemed a Party to this Development Agreement to the extent of its rights and obligations.

(b) **Direct Enforcement Against Successors.** The City will have the right to enforce directly against any DA Successor every obligation that it assumed under its DA Assignment. A DA Successor's claim that its default is caused by Developer's or a Vertical Developer's, as applicable, breach of any duty or obligation to the DA Successor arising out of the DA Assignment or other related transaction will not be a valid defense to enforcement by the City.

(c) **Partial Developer Release.** Developer will remain liable for obligations under this Development Agreement only to the extent that Developer retains liability under the applicable DA Assignment. Developer will be released from any prospective liability or obligation, and its DA Successor will be deemed to be subject to all future rights and obligations of Developer under this Development Agreement to the extent specified in the DA Assignment.

(d) **Partial Vertical Developer Release.** A Vertical Developer will remain liable for obligations under this Development Agreement only to the extent that it retains liability under the applicable DA Assignment. A Vertical Developer will be released from any prospective liability or obligation, and its DA Successor will be deemed to be subject to all future rights and obligations of the Vertical Developer, under this Development Agreement to the extent specified in the DA Assignment.

(e) **No Cross-Default.** An Event of Default under this Development Agreement, any Vertical DDA, or any Parcel Lease, as applicable, by a DA Successor (in

each case, a “**Successor Default**”) with respect to any part of the 28-Acre Site Project will not be an Event of Default by Developer with respect to any other part of the 28-Acre Site Project. The occurrence of a Successor Default will not entitle the City to terminate or modify this Development Agreement with respect to any part of the 28-Acre Site Project that is not the subject of the Successor Default.

10.3. Applicable Lender Protections Control Lender Rights.

(a) Rights to Encumber Horizontal Interests. Developer, Vertical Developers, and DA Successors have or will have the right to encumber their real property interests in and development rights at the FC Project Area in accordance with the Applicable Lender Protections, which are incorporated by this reference.

(b) Lender’s Rights and Obligations. The rights and obligations of a Lender under this Development Agreement will be identical to its rights and obligations under the Applicable Lender Protections.

(c) City’s Rights and Obligations.

(i) The City’s obligations with respect to a Lender, including any Successor by Foreclosure, will be identical to those of the Port under the Applicable Lender Protections.

(ii) The City will reasonably cooperate with the request of a Lender or Successor by Foreclosure to provide further assurances to assure the Lender or Successor by Foreclosure of its rights under this Development Agreement, which may include execution, acknowledgement, and delivery of additional documents reasonably requested by a Lender confirming the applicable rights and obligations of the City and Lender with respect to a Mortgage.

(iii) No breach by Developer, a Vertical Developer, or a DA Successor of any obligation secured by a Mortgage will defeat or otherwise impair the Parties’ rights or obligations under this Development Agreement.

(d) Successor by Foreclosure. A Successor by Foreclosure will succeed to all of the rights and obligations under and will be deemed a Party to this Development Agreement to the extent of the defaulting Borrower’s rights and obligations.

10.4. Requests for Notice.

(a) Lender Request. If the City receives a written request from a Lender, or from Developer or a DA Successor requesting on a Lender’s behalf, a copy of any notice of default that the City delivers under this Development Agreement that provides the Lender’s address for notice, then the City will deliver a copy to the Lender concurrently with delivery to the Breaching Party. The City will have the right to recover its costs to provide notice from the Breaching Party or the applicable Lender.

(b) City Request. This provision is the City’s request under California Civil Code section 2924 that a copy of any notice of default or notice of sale under any Mortgage be delivered to City at the address shown on the cover page of this Development Agreement.

10.5. No Third-Party Beneficiaries. Except for DA Successors with vested rights at the FC Project Area and to the extent of any Interested Person’s rights, the City and Developer do not intend for this Development Agreement to benefit or be enforceable by any other persons. More specifically, this Development Agreement has no unspecified third-party beneficiaries.

11. AMENDMENT OR TERMINATION

11.1. Amendment. This Development Agreement may be amended only by the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56. The Port Commission, the Planning Commission, and the Board of Supervisors must all approve any amendment that would be a Material Change. Following an assignment, the City and Developer or any DA Successor may amend this Development Agreement as it affects Developer, the DA Successor, or the portion of the FC Project Area to which the rights and obligations were assigned without affecting other portions of the FC Project Area or other Vertical Developers and DA Successors. The Planning Director may agree to any amendment to this Development Agreement that is not a Material Change, subject to the approval of any City Agency that would be affected by the amendment.

11.2. Termination. This Development Agreement may be terminated in whole or in part by: (a) the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56; or (b) by termination of the DDA as provided by Section 2.2 (DA Term).

12. DEVELOPER REPRESENTATIONS AND WARRANTIES

12.1. Due Organization and Standing. Developer represents that it has the authority to enter into this Development Agreement. Developer is a Delaware limited liability company duly organized and validly existing and in good standing under the laws of Delaware. Developer has all requisite power to own its property and authority to conduct its business in California as presently conducted.

12.2. Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Development Agreement and it has no knowledge of any inability to perform its obligations under this Development Agreement. Developer's execution and delivery of this Development Agreement have been duly and validly authorized by all necessary action. This Development Agreement will be a legal, valid, and binding obligation of Developer, enforceable against Developer on its terms.

12.3. Other Documents. To the current, actual knowledge of Jack Sylvan, after reasonable inquiry, no document that Developer furnished to the City in relation to this Development Agreement, nor this Development Agreement, contains any untrue statement of material fact or omits any material fact that makes the statement misleading under the circumstances under which the statement was made.

12.4. No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any petition under federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no action is threatened.

13. CITY REQUIREMENTS

13.1. Nondiscrimination in Contracts and Property Contracts (Admin. Code ch. 12B, ch. 12C).

In the performance of the Development Agreement, Developer covenants and agrees not to discriminate against or segregate any person or group of persons on any basis listed in section 12955 of the California Fair Employment and Housing Act (Calif. Gov't Code §§ 12900-12996), or on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, AIDS/HIV status, weight, height, association with members of protected classes, or in retaliation for opposition to any forbidden practices against any employee of, any City employee working with, or applicant for employment with Developer, or against any

person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social, or other establishment or organization operated by Developer.

13.2. Prevailing Wages and Working Conditions in Construction Contracts (Calif. Labor Code §§ 1720 et seq.; Admin. Code § 6.22(e)).

(a) Labor Code Provisions. Certain contracts for work at the 28-Acre Site may be public works contracts if paid for in whole or part out of public funds, as the terms "public work" and "paid for in whole or part out of public funds" are defined in and subject to exclusions and further conditions under California Labor Code sections 1720-1720.6.

(b) Requirement. Developer agrees that all workers performing labor in the construction of public works or Improvements for the City under the DDA will be: (i) paid the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e); and (ii) subject to the hours and days of labor provisions in Administrative Code section 6.22(f). All contracts or subcontracts for public works or Improvements for the City must require that all persons performing labor under the contract be paid the Prevailing Rate of Wages for the labor so performed, as provided by Administrative Code section 6.22(e). Any contractor or subcontractor performing a public work or constructing Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. For current Prevailing Wage Rates, see the OLSE website or call the OLSE at 415-554-6235.

13.3. Tropical Hardwood and Virgin Redwood Ban (Env. Code ch. 8).

The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Environment Code sections 802(b) and 803(b). Developer agrees that, except as permitted by the application of Environment Code sections 802(b) and 803(b), Developer will not use or incorporate any tropical hardwood or virgin redwood in the construction of the Improvements or provide any items to the construction of the 28-Acre Site Project, or otherwise in the performance of the DDA that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Developer fails to comply in good faith with any of Environment Code chapter 8, Developer will be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or 5% of the total amount of the contract dollars, whichever is greater.

13.4. Conflicts of Interest (Calif. Gov't Code §§ 87100 et seq. & §§ 1090 et seq.; Charter § 15.103; Campaign and Govt'l Conduct Code art. III, ch. 2).

Through its execution of this DA, Developer acknowledges that it is familiar with Charter section 15.103, Campaign and Governmental Conduct Code article III, chapter 2, and California Government Code sections 87100 et seq. and sections 1090 et seq., certifies that it does not know of any facts that would violate these provisions and agrees to notify the City if Developer becomes aware of any such fact during the DA Term.

13.5. Sunshine (Calif. Gov't Code § 6250 et seq.; Admin. Code ch. 67).

Developer understands and agrees that under the California Public Records Act (Calif. Gov't Code §§ 6250 et seq.) and the City's Sunshine Ordinance (Admin. Code ch. 67), the Transaction Documents and all records, information, and materials that Developer submits to the City may be public records subject to public disclosure upon request. Developer may mark materials it submits to the City that Developer in good faith believes are or contain trade secrets or confidential proprietary information protected from disclosure under public disclosure laws,

and the City will attempt to maintain the confidentiality of these materials to the extent provided by law. Developer acknowledges that this provision does not require the City to incur legal costs in any action by a person seeking disclosure of materials that the City received from Developer.

13.6. Contribution Limits-Contractors Doing Business with the City (Campaign and Govt'l Conduct Code § 1.126).

(a) Application. Campaign and Governmental Conduct Code section 1.126 ("Section 1.126") applies only to agreements subject to approval by the Board of Supervisors, the Mayor, any other elected officer, or any board on which an elected officer serves. Section 1.126 prohibits a person who contracts with the City for the sale or lease of any land or building to or from the City from making any campaign contribution to: (i) any City elective officer if the officer or the board on which that individual serves or a state agency on whose board an appointee of that individual serves must approve the contract; (ii) a candidate for the office held by the individual; or (iii) a committee controlled by the individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for the contract or six months after the date the contract is approved.

(b) Acknowledgment. Through its execution of this DA, Developer acknowledges the following.

(i) Developer is familiar with Section 1.126.

(ii) Section 1.126 applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.

(iii) If applicable, the prohibition on contributions applies to: (1) Developer; (2) each member of Developer's governing body; (3) Developer's chairperson, chief executive officer, chief financial officer, and chief operating officer; (4) any person with an ownership interest of more than 20% in Developer; (5) any subcontractor listed in the contract; and (6) any committee, as defined in Campaign and Governmental Conduct Code section 1.104, that is sponsored or controlled by Developer.

13.7. Implementing the MacBride Principles - Northern Ireland (Admin. Code ch. 12F).

The City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourage them to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

14. MISCELLANEOUS

The following provisions apply to this Development Agreement in addition to those in **Appendix Part A (Standard Provisions and Rules of Interpretation).**

14.1. Addresses for Notice. Notices given under this Development Agreement are governed by *App ¶ A.5 (Notices)*. Notice addresses are listed below.

To the City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94102

With a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Land Use Team Leader

And:

City Attorney's Office
Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111
Attn: Port General Counsel

To Developer:

FC Pier 70, LLC
949 Hope Street, Suite 200
Los Angeles, CA 90015
Attention: Mr. Kevin Ratner

With a copy to:

Forest City Enterprises, Inc.
50 Public Square
1360 Terminal Tower
Cleveland, OH 44113
Attention: Amanda Seewald, Esq.

14.2. Limitations on Actions. Administrative Code section 56.19 establishes certain limitations on actions to challenge final decisions made under Chapter 56, as follows:

(a) Board of Supervisors. Any action challenging a Board of Supervisors decision under Chapter 56 must be filed within 90 days after the decision is finally approved.

(b) Planning. Any action challenging any of the following Planning decisions under Chapter 56 must be filed within 90 days after any of the following becomes final: (i) a Planning Director decision under Administrative Code section 56.15(d)(3); or (ii) a Planning Commission resolution under section 56.17(e).

14.3. Attachments. The attached Appendix, Port Consent, SFMTA Consent, SFPUC Consent, and exhibits listed below are incorporated in and are a part of this Development Agreement.


APPENDIX

DA Exhibit A: Legal description and Site Plan
DA Exhibit B: Project Approvals
DA Exhibit C: Chapter 56 as of the DA Ordinance Effective Date

Developer and the City have executed this Development Agreement as of the last date written below.

DEVELOPER:

FC Pier 70, LLC,
a Delaware limited liability company

By: 
Robert G. O'Brien,
Vice President

Date: MARCH 28, 2018

CITY:

**CITY AND COUNTY OF SAN
FRANCISCO,** a municipal corporation

By: SIGNED IN COUNTERPART
John Rahaim
Director of Planning

Date: _____

Authorized by Ordinance No. 224-17 on
November 15, 2017

APPROVED AND AGREED:

By: SIGNED IN COUNTERPART
Naomi Kelly
City Administrator

By: SIGNED IN COUNTERPART
Mohammad Nuru,
Director of Public Works

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: SIGNED IN COUNTERPART
Joanne Sakai
Deputy City Attorney

[Remainder of page intentionally left blank.]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

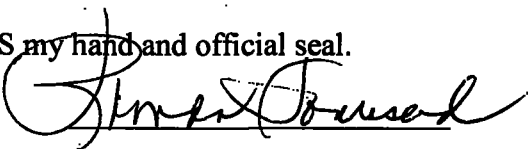
State of Ohio)
County of Cuyahoga)

On March 28, 2018, before me, Rhonda Townsend, a Notary Public, personally appeared Robert G. O'Brien, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Ohio that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



RHONDA TOWNSEND
Notary Public
STATE OF OHIO
My Commission Expires
August 15, 2021

Developer and the City have executed this Development Agreement as of the last date written below.

DEVELOPER:

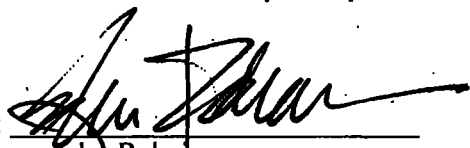
FC PIER 70, LLC,
a Delaware limited liability company

By: SIGNED IN COUNTERPART
Robert G. O'Brien,
Vice President

Date: _____

CITY:

**CITY AND COUNTY OF SAN
FRANCISCO,** a municipal corporation

By: 
John Rahaim
Director of Planning

Date: 5-4-18

Authorized by Ordinance No. 224-17 on
November 15, 2017


APPROVED AND AGREED:

By: SIGNED IN COUNTERPART
Naomi Kelly
City Administrator

By: SIGNED IN COUNTERPART
Mohammad Nuru,
Director of Public Works

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: 
for Joanne Sakai
Deputy City Attorney

[Remainder of page intentionally left blank.]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA)
County of SAN FRANCISCO)

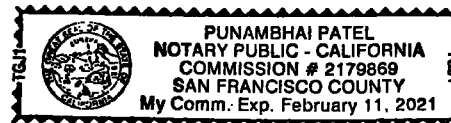
On 05/04/18, before me, PUNAMBHAI PATEL a Notary Public, personally appeared JOHN RAHAIN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

PATEL



Developer and the City have executed this Development Agreement as of the last date written below.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

CITY:

**CITY AND COUNTY OF SAN
FRANCISCO,** a municipal corporation

SIGNED IN COUNTERPART

By: _____
Robert G. O'Brien,
Vice President

Date: _____

SIGNED IN COUNTERPART

By: _____
John Rahaim
Director of Planning

Date: _____

Authorized by Ordinance No. 224-17 on
November 15, 2017

APPROVED AND AGREED:

By: Naomi Kelly
Naomi Kelly
City Administrator

SIGNED IN COUNTERPART

By: _____
Mohammad Nuru,
Director of Public Works

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

SIGNED IN COUNTERPART

By: _____
Joanne Sakai
Deputy City Attorney

[Remainder of page intentionally left blank.]

Developer and the City have executed this Development Agreement as of the last date written below.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

CITY:

**CITY AND COUNTY OF SAN
FRANCISCO,** a municipal corporation

SIGNED IN COUNTERPART
By: _____
Robert G. O'Brien,
Vice President

Date: _____

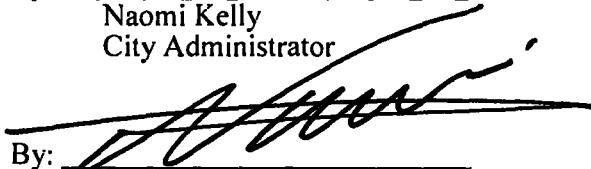
SIGNED IN COUNTERPART
By: _____
John Rahaim
Director of Planning

Date: _____

Authorized by Ordinance No. 224-17 on
November 15, 2017

APPROVED AND AGREED:

SIGNED IN COUNTERPART
By: _____
Naomi Kelly
City Administrator

By:  _____
Mohammad Nuru,
Director of Public Works

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

SIGNED IN COUNTERPART
By: _____
Joanne Sakai
Deputy City Attorney

[Remainder of page intentionally left blank.]



**CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR**

APPENDIX TO TRANSACTION DOCUMENTS

FOR THE

PIER 70 28-ACRE SITE PROJECT

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
LESLIE KATZ, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

TABLE OF CONTENTS

| | Page |
|---|------|
| 1. TRANSACTION DOCUMENTS | 1 |
| 1.1 ENTIRE AGREEMENT | 1 |
| 1.2 COUNTERPARTS | 1 |
| 1.3 EXHIBITS AND SCHEDULES..... | 1 |
| 1.4 ADVANCE WRITINGS REQUIRED..... | 1 |
| 1.5 TECHNICAL CHANGES..... | 1 |
| 1.6 OTHER NECESSARY ACTS | 2 |
| 1.7 ENFORCEABILITY | 2 |
| 1.8 NO GIFT OR DEDICATION | 2 |
| 2. PARTIES AND PERFORMANCE | 2 |
| 2.1 JOINT AND SEVERAL LIABILITY | 2 |
| 2.2 PERFORMANCE GENERALLY | 2 |
| 2.3 SUCCESSORS | 3 |
| 2.4 THIRD PARTY BENEFICIARIES | 3 |
| 2.5 NO LIMITATION ON UNRELATED RIGHTS..... | 4 |
| 2.6 NO JOINT VENTURE OR PARTNERSHIP | 4 |
| 2.7 SURVIVAL..... | 4 |
| 3. GOVERNING LAW..... | 4 |
| 3.1 CONSTRUCTION OF TRANSACTION DOCUMENTS..... | 4 |
| 3.2 COUNTERVAILING LAW | 4 |
| 3.3 GOOD FAITH AND FAIR DEALING..... | 4 |
| 4. ACTIONS | 4 |
| 4.1 ATTORNEYS' FEES..... | 4 |
| 4.2 JURISDICTION AND VENUE..... | 5 |
| 4.3 SEVERABILITY | 5 |
| 4.4 LIMITATIONS ON LIABILITY OF THE PARTIES | 5 |
| 5. NOTICES | 6 |
| 5.1 MANNER OF DELIVERY | 6 |
| 5.2 REQUIRED INFORMATION..... | 6 |
| 5.3 EFFECTIVE DATE | 6 |
| 5.4 INTERESTED PERSONS..... | 6 |
| 5.5 CHANGE OF ADDRESS..... | 6 |
| 5.6 CONVENIENCE COPIES..... | 6 |

| | |
|---|----|
| 6. PAYMENT DEMANDS..... | 7 |
| 6.1 APPLICATION..... | 7 |
| 6.2 DEMAND..... | 7 |
| 6.3 TIME FOR PAYMENT..... | 7 |
| 7. USAGE GUIDELINES FOR DEFINED TERMS | 7 |
| 7.1 DEFINITIONS IN GLOSSARY | 7 |
| 7.2 CAPITALIZATION..... | 7 |
| 7.3 CORRELATING TERMS INCLUDED..... | 7 |
| 7.4 DEFINITIONAL CONTEXT | 7 |
| 8. INCONSISTENT PROVISIONS | 7 |
| 8.1 GENERAL RULE | 7 |
| 8.2 EXAMPLES | 8 |
| 9. HEADINGS AND REFERENCES | 8 |
| 9.1 HEADINGS | 8 |
| 9.2 REFERENCES GENERALLY | 8 |
| 9.3 WITHIN TRANSACTION DOCUMENTS | 8 |
| 9.4 TO OTHER DOCUMENTS..... | 8 |
| 10. ATTRIBUTED AND DELEGATED ACTS AND OBLIGATIONS | 8 |
| 10.1 DELEGATED ACTIONS..... | 8 |
| 10.2 TRANSFERRED OBLIGATIONS..... | 8 |
| 10.3 SUCCESSOR PUBLIC BODIES | 8 |
| 10.4 SUCCESSOR PUBLIC OFFICIALS | 8 |
| 11. TRANSFERRED RIGHTS..... | 9 |
| 12. RECITALS | 9 |
| 13. WORDS OF INCLUSION..... | 9 |
| 14. GENDER AND NUMBER..... | 9 |
| 15. NUMERALS..... | 9 |
| 16. TIME PERIODS | 9 |
| 16.1 CALENDAR PERIODS | 9 |
| 16.2 BUSINESS DAYS | 9 |
| 17. STATUTORY REFERENCES | 9 |
| 18. NO PARTY DRAFTER | 9 |
| PART B: GLOSSARY OF DEFINED TERMS | 11 |

PART A: STANDARD PROVISIONS AND RULES OF INTERPRETATION

This Appendix is an integral part of all Transaction Documents for the 28-Acre Site Project and consists of:

- Part A: standard provisions and rules of interpretation.
- Part B: glossary of defined terms.

1. TRANSACTION DOCUMENTS.

1.1. Entire Agreement. The Transaction Documents collectively (including this Appendix and all preamble paragraphs, recitals, exhibits, schedules, other attachments, and Consents) contain all of the representations and warranties and the entire agreement, and supersede all prior correspondence, memoranda, agreements, warranties, and representations, between the Parties with respect to the matters they address. No prior drafts of any Transaction Document or changes from those drafts to the executed versions may be introduced as evidence in any litigation or other dispute resolution proceeding by any person, and no court or other body may consider those drafts in interpreting any Transaction Document.

1.2. Counterparts. The Transaction Documents may be executed in multiple counterparts, each of which will be deemed to be an original and that together will be one instrument. Parties may deliver their counterparts by electronic mail or other electronic means of transmission.

1.3. Exhibits and Schedules. This Appendix and each exhibit are a part of the Transaction Document to which they are attached or into which they are expressly incorporated by reference. Each schedule attached to a Transaction Document is provided for reference when implementing the Project. The Parties agree that this Appendix and all attachments may be revised from time to time by agreement based on changed circumstances and experience in the course of the Project. Each Party (including any applicable affected Transferee) will confirm its agreement by signing the revised document in counterparts, which will be deemed to be attached to each counterpart of the revised document and will supersede the document being revised.

1.4. Advance Writings Required.

(a) Amendments and Waivers. Any amendment or waiver of any provision of any Transaction Document must be in writing and signed on behalf of each Party by a person authorized to do so. Material modifications to Transaction Documents may require the approval of either or both the Port Commission and the Board of Supervisors, each of which may give or withhold approval in its sole discretion unless explicitly stated otherwise.

(b) Approvals and Waivers. Whenever a Party's approval or waiver is required: (i) the approval or waiver must be obtained in advance and in writing; and (ii) except as specified otherwise, the Party whose approval or waiver is sought must not unreasonably withhold, condition, or delay its approval or waiver, as applicable.

(c) Specific Application. A Party's waiver or consent in reference to another Party's performance of or any condition to its obligations under a Transaction Document will not be a waiver of or consent to any other performance or condition.

1.5. Technical Changes. The applicable Parties may correct any inadvertent error in any Transaction Document that is contrary to their mutual intention in the identification or characterization of or any reference to any title exception, legal description, boundaries of any parcel, map or drawing, or the text, or otherwise agree to minor changes that do not affect the delivery of Associated Public Benefits. Any agreed change will be effected by a signed memorandum or initialed replacement pages, neither of which will be deemed an amendment of a Transaction Document as long as any adjustments are relatively minor and do not result in a material change as determined by the Port in consultation with counsel. A change memorandum or replacement pages will become a part of the affected Transaction Document when fully executed or initialed.

1.6. Other Necessary Acts. Each Party will execute, acknowledge, and deliver to the other all other documents and take other actions that are reasonably necessary to implement, and provide each Party with all of its rights under any Transaction Document.

1.7. Enforceability. Developer and the Port each represents and warrants to the other that its execution and delivery of, and the performance of its obligations under, the Transaction Documents have been duly authorized by all necessary action, and will not conflict with, result in any violation of, or be a default under, any provision of any agreement or other instrument binding on or applicable to it, or any present law or court decree. If Developer signs as a corporation, limited liability company, or a partnership, each of the persons executing the Transaction Documents on behalf of Developer represents and warrants that Developer is a duly authorized and existing entity, that Developer has and is qualified to do business in California, that Developer has full right and authority to enter into the Transaction Documents, and that each of the persons signing on Developer's behalf is authorized to do so. At the Port's request, Developer must provide the Port with evidence satisfactory to the Port confirming these representations and warranties.

1.8. No Gift or Dedication. Unless explicitly stated otherwise, no Transaction Document will be deemed to be a gift or dedication of any portion of the 28-Acre Site to the general public, for the general public, or for any public use or purpose. Developer has the right to prevent or prohibit the use of any portion of the Project Site it owns or controls, including common areas and buildings and improvements, by any persons for any purpose inimical to the operation of a private, integrated mixed-use project as contemplated by the Transaction Documents.

2. PARTIES AND PERFORMANCE.

2.1. Joint and Several Liability. If Developer consists of more than one person, then the obligations of each under any Transaction Document to which it is a Party will be joint and several, but in no event will any Developer be jointly and severally liable with any other Developer under any Transaction Document.

2.2. Performance Generally.

(a) Time.

(i) Time is of the essence in the performance of all of the terms and conditions of each Transaction Document.

(ii) Subject to this Paragraph, all required performance dates including cure deadlines, expire at 5:00 p.m. Pacific Standard or Daylight Savings Time, as applicable, on the stated date, unless extended under the Transaction Document under which performance is due. Any reference to a week, quarter, or month without reference to a specific day will mean the last day in the period.

(iii) If a Party must give notice or take any other action within a specified minimum number of days that would not fall on a business day, then the Party must take the action on the preceding business day. For example, if a Party is required to give at least five days' prior notice of an action and the fifth day before the desired action falls on a Sunday, the Party must give notice by the preceding business day.

(iv) In all other cases, if the last day of any period to take an action occurs on a day that is not a business day, then the last day for undertaking the action is extended to the next business day. For example, if a Party has 30 days to cure an Event of Default, and the 30th day is a Saturday, the Party would have until the next business day to effect the cure.

(b) Extensions of Time.

(i) Each Party to a Transaction Document, acting in its sole discretion, may agree to extend the date for the other Party's performance of any term, covenant, or condition, or the other Party's exercise of any rights under the Transaction Document,

without executing an amendment. A Party may impose reasonable conditions on an extension of the other Party's time to cure a default. No extension of time will release any of the obligations subject to the extension or waive the granting Party's rights in relation to any other term, covenant, or condition of or any other default in the performance or breach of the Transaction Document under which the extension is granted.

(ii) The Port Director may, in her sole discretion, authorize a proposed extension if the additional time requested is 10% or less of the specified period. For example, if the Schedule of Performance allowed Developer two years for the submittal of a Phase Application, then the Port Director could authorize an extension of up to 73 days (*i.e.*, 730 days x 10%).

(iii) Any extension of time requiring Port Commission approval must be made by a resolution adopted at a public meeting. All other extensions will be made by a countersigned writing.

(c) No Deemed Approval or Consent Without Notice. Unless expressly and unequivocally stated in any Transaction Document or other agreement between the Parties, deemed approval or consent will only occur on the following conditions.

(i) The Party seeking consent must send notice by electronic mail, addressed to one or more line staff responsible for the specific matter for which consent is sought at least five, but no more than seven, business days before the response period has ended, stating in the subject line, "*Immediate Action Required To Avoid Deemed Consent*" or words to the same effect.

(ii) If the electronic mail notice under **clause (i)** is not delivered timely, the responding Party will not be deemed to have consented until the sixth business day after the notice is delivered. The response may be delivered by the addressee or other person authorized to act on the responding Party's behalf.

(d) Waivers. Unless otherwise specified in a Transaction Document, none of the following circumstances will waive an Aggrieved Party's rights or remedies with respect to an Event of Default or Material Breach, including its right to prosecute any actions it deems necessary to enforce its rights or remedies.

(i) Party's failure to give notice or delay in giving notice or asserting any of its rights or remedies as to an Event of Default or Material Breach will not waive or delay the date on which the Event of Default or Material Breach occurs.

(ii) A Party's waiver as to a specific Event of Default, Material Breach, right, or remedy will not be a waiver of any other Event of Default, Material Breach, right, or remedy.

(e) Responsibility for Costs. The Party on which any obligation is imposed in any Transaction Document will be solely responsible for paying all costs incurred in performing the obligation, unless specifically provided otherwise.

2.3. Successors. The Parties are entering into the Transaction Documents only for the protection and benefit of the Parties and their successors, subject to **DDA Art 6 (Transfers)**, **DDA Art 18 (Lenders' Rights)**, **DA Art 11 (Assignments; Lender Rights)**, and correlating provisions in any other Transaction Documents.

2.4. Third Party Beneficiaries. Developer is an explicitly recognized third-party beneficiary under the ICA and the Tax Allocation MOU. Transferees and Vertical Developers are third-party beneficiaries to the extent that they acquire development rights under the DDA. Interested Parties have rights as specified in the Applicable Lender Protections. No other persons have third-party rights under any Transaction Document.

2.5. No Limitation on Unrelated Rights. The rights and remedies under the Transaction Documents do not supersede or preclude any Party's exercise of its rights and remedies under other agreements and documents, or of the City, the Port, or any other Regulatory Agency to require compliance with any Regulatory Approval or other entitlement granted for the Project.

2.6. No Joint Venture or Partnership. Nothing in any Transaction Document to which Developer is a Party, or in any document Developer executes in connection with the Transaction Documents, will create a joint venture or partnership between the City and Developer or between the Port and Developer. Developer is not acting as the agent of the City or the Port, nor is the City or the Port acting as the agent of Developer or any Vertical Developer in any respect under any Transaction Document. Developer is not a state or governmental actor with respect to any of its activities under the Transaction Documents.

2.7. Survival. Except as provided otherwise, termination or expiration of the DDA or any other Transaction Document will not affect: (a) any obligation to indemnify under any Transaction Document; (b) any provision of any Transaction Document that expressly survives expiration or termination; (c) rights and obligations as to Adequate Security for an obligation arising before termination or expiration; or (d) rights and obligations under the Financing Plan or the Acquisition Agreement to the extent related to an obligation arising before termination or expiration of the DDA.

3. GOVERNING LAW.

3.1. Construction of Transaction Documents. The Transaction Documents are governed by and must be construed under the laws of the State of California and the Charter. All references in the Transaction Documents to local, regional, state, or federal laws means those laws as amended from time to time, except as limited by the Development Agreement or to the extent explicitly stated otherwise.

3.2. Countervailing Law. If any applicable state or federal law prevents or precludes compliance with any material provision of a Transaction Document, **App ¶ A.4.3 (Severability)** will apply. Alternatively, the Parties may agree to modify, amend, or suspend the affected Transaction Document to the extent necessary to comply with law in a manner that preserves to the greatest extent possible the intended benefits to the City, the Port, and Developer.

3.3. Good Faith and Fair Dealing. In all situations arising under the Transaction Documents, each Party must attempt to avoid and minimize the damages resulting from the other's conduct and take all reasonably necessary measures to implement the Transaction Documents. The Transaction Documents are subject to the covenant of good faith and fair dealing applicable to contracts under California law. Accordingly, Developer and the Port each covenants, on behalf of itself and its successors, to take all actions and to execute, with acknowledgment or affidavit if required, all documents necessary to achieve the objectives of the Transaction Documents to the extent consistent with applicable law.

4. ACTIONS.

4.1. Attorneys' Fees.

(a) Prevailing Party.

(i) Should any Party file an action permitted or required under any Transaction Document, the prevailing Party will be entitled to recover its reasonable costs, including attorneys' fees, plus interest at the maximum amount allowed under law, from the losing Party.

(ii) The ICA and the Tax Allocation MOU are specifically excepted from this prevailing party provision.

(b) Fee Schedules. For attorneys in the Office of the City Attorney, attorney fee rates will be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in law firms with approximately the same number

of attorneys as employed by the Office of the City Attorney. For in-house counsel, attorney fee rates will be based on the same criteria, with amounts based on law firm rates where the office of in-house counsel is located.

4.2. Jurisdiction and Venue. All obligations under each Transaction Agreement are to be performed in the City and County of San Francisco. Each Party, by executing a Transaction Document, agrees that venue is proper in and consents to the jurisdiction of the Superior Court for the City and County of San Francisco.

4.3. Severability. Unless specifically provided otherwise, a final judgment invalidating any provision of any Transaction Document, or its application to any person, will not affect any other provision of the Transaction Document or its application to any other person or circumstance. All other provisions of the Transaction Document will continue in full force and effect, except to the extent that enforcement of the Transaction Document as affected by the final judgment would be unreasonable or grossly inequitable under all the circumstances or would frustrate a fundamental purpose of the Transaction Documents.

4.4. Limitations on Liability of the Parties.

(a) No Personal Liability of City Parties. Under no circumstances will any individual board member, director, commissioner, officer, employee, official, or agent of the City or the Port be personally liable to Developer for any Event of Default by a City Party or for any amount payable to a Developer Party under any Transaction Document.

(b) No Personal Liability of Developer Parties. Under no circumstances will any individual board member, director, officer, employee, official, partner, employee, or agent of Developer or any Affiliate of Developer be personally liable to any City Party for any Event of Default by a Developer Party or for any amount payable to a City Party under any Transaction Document. DA Successors are specifically recognized as Developer Parties for the purpose of this provision.

(c) No Consequential, Punitive, or Special Damages. Developer, the Port, and the City would not have entered into the Transaction Documents to which they are Parties if they could be liable for indirect or consequential, punitive, or special damages. Accordingly, Developer, the Port, and the City each waives any Claims against, and covenants not to sue, the other Party to any Transaction Document for indirect, consequential, punitive, or special damages, including loss of profit, loss of business opportunity, or damage to goodwill.

(d) No Effect on Other Rights. This Paragraph will not affect any Party's right to recover actual damages and attorneys' fees awarded by an Arbitrator's decision or a court's final judgment for a Claim arising from a Breaching Party's failure to: (i) pay any sum when due under any Transaction Document; or (ii) satisfy an indemnity under any Transaction Document. The right to enforce a final decision or judgment will not be limited by subparagraph (e) of this Paragraph.

(e) Project Payment Sources. Except as otherwise provided in any Transaction Document, Developer agrees that its rights to payment in the implementation of the Project are limited as follows.

(i) All obligations of the Port or the City arising out of or related to each Transaction Document are special and limited obligations of the Port and the City, as applicable. The Port's and the City's respective obligations to make payments to implement any Transaction Document are restricted strictly to Project Payment Sources described in the Financing Plan, and only to the extent those sources are available.

(ii) More specifically, in no event may Developer compel: (1) the City to use funds in or obligate the City's General Fund; or (2) the Port to use funds in or obligate the Port Harbor Fund except as described in the Financing Plan, in either case to reimburse Developer's Horizontal Development Costs, pay any other costs associated with the Project, or satisfy any Developer Claim under any Transaction Document.

(f) **Liability of Others.** Unless specifically provided otherwise, the Parties agree that no Agents of the Port or of the City or of their successors or assigns will be personally liable to Developer or any Vertical Developer, and no Agents of Developer or any Vertical Developer or of their successors or assigns will be personally liable to the Port or the City, for any default or breach or for any payment or performance that becomes due under any Transaction Document. This Subsection does not release or waive the obligations of any person with a direct legal obligation under applicable law, such as the general partner of a limited partnership or any Obligor providing Adequate Security for a specified obligation.

5. NOTICES.

5.1. Manner of Delivery. Unless otherwise specified in a Transaction Document, any notices (including notice of approval or disapproval, demands, waivers, and responses to any of them) required or permitted under any Transaction Document must be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid, return receipt requested; or (c) overnight delivery by a nationally recognized delivery service or the United States Postal Service, delivery charges prepaid.

5.2. Required Information. To be effective, a notice must be in writing or be accompanied by a cover letter that, to the extent applicable:

- (a) cites the section of the Transaction Document under which the notice is given;
- (b) indicates whether a response or other action is required and, if so, the period of time within which the recipient must respond or otherwise act;
- (c) for a potential breach, is prominently marked "*Notice of Default*" or "*Notice of Material Breach*" and specifies the cure period;
- (d) is clearly marked "*Request for Approval*" if approval is being requested;
- (e) if denying or objecting to a request for approval, states with particularity the reasons for the disapproval or objection; and
- (f) if explicitly permitted under the Transaction Document, states that failure to respond to the notice within the stated time period will be deemed to be the recipient's approval of the subject matter of the notice.

5.3. Effective Date. A notice will be deemed to be delivered and effective:

- (a) on the date personal delivery actually occurs;
 - (b) on the business day after the business day it is deposited for overnight delivery;
- or
- (c) on the date of actual delivery or on which delivery is refused as shown on the return receipt if mailed.

5.4. Interested Persons. Interested Persons may request copies of notices that the Port or the City delivers to Developer by providing notice to the Port or the City. Developer will have the sole responsibility for providing information to any Interested Person desiring notice. Neither the Port nor the City will incur liability for failure to provide notice to any Interested Person.

5.5. Change of Address. Notices must be delivered to the addresses for notice as specified in the Transaction Documents, unless superseded by a notice of a change in address for notices that is delivered in accordance with App ¶ A.5.1 (Manner of Delivery).

5.6. Convenience Copies. Except as explicitly permitted under specific circumstances, a Party must not give notice by facsimile or electronic mail, but any Party may deliver a copy of a notice by facsimile or electronic mail as a courtesy or for convenience. The effective date of a notice will not be affected by delivery of a convenience copy by facsimile or electronic mail.

6. PAYMENT DEMANDS.

6.1. Application. The following procedures will apply to any demand from one Party to the other Party for payment whenever payment procedures are not specified in the Transaction Document under which demand is made. Examples where this Section will not apply are Payment Requests submitted under the Acquisition and Requisitions submitted under the Financing Plan.

6.2. Demand. The Party seeking payment must deliver its demand for payment to the other Party together with proof of payment. The Party obligated to pay will have the right to engage a CPA to review the other Party's claimed costs, and the Party seeking payment must cooperate in providing information necessary for the review. The Party conducting the review will bear its own costs unless the review reveals that the other Party's costs are overstated by 5% or more, in which case, the amount of the reimbursement will be reduced by the amount of the review costs.

6.3. Time for Payment. Except when other procedures are specified in a Transaction Document, or during any period of review or dispute resolution, the Party obligated to make payment must satisfy the payment demand within 30 days after receipt of the demand for payment.

7. USAGE GUIDELINES FOR DEFINED TERMS.

7.1. Definitions in Glossary.

(a) The glossary in **Appendix Part B** contains the definitions for terms used in the primary Transaction Documents, or specifies where terms are defined.

(b) When the glossary identifies a Transaction Document that defines a term and includes a definition, the definition in the Transaction Document will govern over any inconsistency with the definition in the glossary.

7.2. Capitalization. Defined terms that are not capitalized in this Appendix are not capitalized when used in the Transaction Documents.

7.3. Correlating Terms Included. Each defined term must be interpreted to encompass all correlating plural and singular nouns, verb tenses and forms, adjectives, adverbs, and other forms of the term. The following examples of the application of definitions to correlating terms are illustrative only and are not intended to limit the application of the examples used or the meaning of this Paragraph.

- "Assign" applies to "Assignment," "Assignee," "Assignor," and "Assigned."
- "Begin construction" applies to "began to construct," "beginning construction," and "has begun to construct."
- "Indemnify" applies to "indemnity," "indemnification," and "indemnitor."
- "substantial completion" applies to "Substantially Complete."
- "Third party" applies to "third-party" and "third parties."
- "Waive" applies to "waiver," "waivers," "waived," and "waiving."

7.4. Definitional Context. In some instances, defined terms apply only to certain circumstances or may have different meanings in different contexts. In those instances, the definition will be identified as specific to a situation. The following examples are illustrative only and are not intended to limit the application of the examples used or the meaning of this Paragraph.

- "final completion" and "substantial completion" as used in reference to Horizontal Improvements and Vertical Improvements incorporate conditions specific to each type of Improvement.
- The "Parties" to one Transaction Document may be different from the "Parties" to another Transaction Document.

8. INCONSISTENT PROVISIONS.

8.1. General Rule. Developer and the City Parties intend for any Transaction Document addressing specific rights and obligations to prevail over any inconsistent provisions in any other any Transaction Document for the Project. This general rule will apply to the primary Transaction Document as amended from time to time, whether or not the amendment is reflected in the Appendix.

8.2. Examples. The following examples are illustrative only and are not intended to limit the application of the examples used or the meaning of this Paragraph.

- Financing provisions in the Financing Plan will prevail over conflicting provisions regarding Project Payment Sources in any other Transaction Document that is not specific to a Project Payment Source.
- The RMA will prevail over conflicting provisions in any other Transaction Document, including the Financing Plan, with respect to rates and methods of assessing Mello-Roos Taxes.
- An RMA amendment revising the definition of "Tax-Exempt Parcel" will prevail over an inconsistent definition in this Appendix as applied to the levy of Mello-Roos Taxes.
- Review periods for Improvement Plans in the ICA will prevail over conflicting review periods in any other Transaction Document.

9. HEADINGS AND REFERENCES.

9.1. Headings. The headings preceding the articles, sections, and other parts of each Transaction Document and in the applicable table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of the Transaction Documents.

9.2. References Generally. Any reference to a provision "in the [Transaction Document]," "herein," "hereof," or similar terms will be deemed to refer to any reasonably related provisions of the Transaction Document in which the reference appears in the context of the reference, unless the reference refers solely to a specific provision of the Transaction Document.

9.3. Within Transaction Documents.

(a) Unless otherwise specified, whenever a Transaction Document, including all exhibits, schedules, and attachments, refers to the table of contents or any article, section, exhibit, attachment, or defined term, the reference is deemed to refer to the article, section, exhibit, attachment, or defined term of the Transaction Document or the referenced exhibit or attachment and all of the subsections, subparagraphs, clauses, exhibits, and attachments.

(b) The word "this" when used to refer to any document, article, section, paragraph, clause, or other distinct provision in a document means the referenced document or provision. For example, "this Paragraph" means **App ¶ 9.3**, and "this subparagraph" means **App ¶ 9.3(b)**.

9.4. To Other Documents. Unless otherwise specified, all references to a Transaction Document or a specific exhibit, attachment, schedule, supplement, Consent, addendum, or other document attached or deemed attached to a Transaction Document means the entire document as amended, replaced, supplemented, clarified, corrected, or superseded at any time while any obligations under the Transaction Document are outstanding.

10. ATTRIBUTED AND DELEGATED ACTS AND OBLIGATIONS.

10.1. Delegated Actions. References in any Transaction Document to a Party's acts or omissions mean acts or omissions by the Party and its Agents unless the context requires or specifically stated otherwise.

10.2. Transferred Obligations. References in any Transaction Document to a Party's obligations also mean the Party's obligation to ensure that its successors, Agents, and Transferees comply with all applicable obligations.

10.3. Successor Public Bodies. References to any public body acting in its regulatory or proprietary capacity also mean the named body or any successor public body designated by or under law to act in the same capacity.

10.4. Successor Public Officials. References to elected and appointed officials of public bodies also mean their duly appointed or elected, as applicable, successors to the extent authorized to

act in the same capacity, and designees to the extent authorized to take specific actions on behalf of the named officials.

11. TRANSFERRED RIGHTS.

All references to Developer in a Transaction Document pertaining to any right under that Transaction Document also mean a Transferee to the extent set forth in an Assignment and Assumption Agreement in form and content consistent with **DDA Art 6 (Transfers)**.

12. RECITALS.

Recitals are included to provide context for the Parties' agreement as set forth in the Transaction Document in which they appear and are not binding with respect to the Parties' rights and obligations. If the recitals conflict with other provisions of the Transaction Document, the other provisions will prevail.

13. WORDS OF INCLUSION.

The words "including," "such as," or similar terms when following any general term must not be construed to limit the term to the specific terms that follow, whether or not followed by language of non-limitation, such as "without limitation," "including, but not limited to," or similar words, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term and to be followed by the phrase "without limitation" or "but not limited to."

14. GENDER AND NUMBER.

Wherever the context requires, gender-specific and gender-neutral references are deemed to include the masculine, feminine, and gender-neutral, and references to the singular are deemed to include the plural and vice versa.

15. NUMERALS.

For purposes of calculations under any Transaction Document, fractions will not be rounded up or down. A numeral will prevail over any conflicting spelled out number.

16. TIME PERIODS.

16.1. Calendar Periods. References to days, months, quarters, and years mean calendar days, months, quarters, and years unless otherwise specified.

16.2. Business Days. References to a business day means a day other than a Saturday, Sunday, or a holiday recognized by the City. A business day begins at 8 a.m. and ends at 5 p.m., Pacific Standard Time or Pacific Daylight Savings Time, whichever is in effect on the date in question.

17. STATUTORY REFERENCES.

References to specific code sections mean San Francisco Municipal Ordinances unless otherwise specified or required by context. References to any law mean the law as in effect on the Reference Date and as amended at the time in question, unless specifically stated otherwise.

18. NO PARTY DRAFTER.

The Transaction Documents have been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of the Transaction Documents must be construed as a whole according to their common meaning to achieve the Parties' intent and purpose, without any presumption (under Cal. Civ. Code §§ 1649, 1654, or otherwise) against the Party responsible for drafting any part of any Transaction Document.

PART B: GLOSSARY OF DEFINED TERMS

This glossary is provided to assist in understanding and interpreting the Transaction Documents and will never override the provisions in any Transaction Document. Defined terms that are not capitalized in this glossary are not capitalized when used in the Transaction Documents.

"4% LIHTC" means tax credits available for affordable housing development under the Tax Code.

"20th/Illinois Parcel" means a parcel within Pier 70 bounded by 20th Street on the north, the Hoedown Yard on the south, Illinois Street on the west, and the 28-Acre Site on the east, which the Port will merge with a portion of Michigan Street then subdivide to create Parcel K North and Parcel K South, separated by 21st Street.

"20th/Illinois Plaza" means a Public Space adjacent to Parcel K North that the Vertical Developer of Parcel K North will be obligated to build.

"20th/Illinois Plaza offset" means the estimated cost to construct that is deemed to have been deducted from Parcel K North Proceeds, subject to true-up under FP § 3.1(c) (20th/Illinois Plaza).

"20th Street" means the area within Pier 70 that the Port has parcel leased to Historic Pier 70, LLC, with the same boundaries as Sub-Project Area G-1 and the 20th Street CFD.

"20th Street CFD" means a CFD that the City has agreed to establish to finance Ongoing Maintenance Costs of 20th Street Maintained Facilities.

"20th Street Maintained Facilities" means the following improvements, for which Ongoing Maintenance Costs will be paid by Services Special Taxes levied on Taxable Parcels in the 20th Street CFD:

- (i) Public Spaces in the 20th Street CFD;
- (ii) Public ROWs in the 20th Street CFD;
- (iii) other Public Spaces outside of the FC Project Area and the Illinois Street Parcels;
- (iv) other Public ROWs in Pier 70 north of 20th Street and outside of the Illinois Street Parcels; and
- (v) costs for Shoreline Protection Facilities north of 20th Street.

"28-Acre Site" is an approximately 28-acre area located in the southeast corner of Pier 70 with the legal description and site plan shown in DDA Exh A1 (Legal Description), DDA Exh A2 (Site Plan), and DA Exh A (Legal Description and Site Plan).

"28-Acre Site Affordable Housing Fee" means the Project-specific Impact Fee imposed on Market-Rate Condo Projects under AHP § 6.2 (Market-Rate Condo Projects).

"28-Acre Site Louisiana Parcel" is defined in DDA § 15.1(d) (Louisiana Parcel Improvements).

"28-Acre Site Jobs/Housing Equivalency Fee" means the Impact Fee defined in DA § 5.4(b) (Impact Fees and Exactions) that Vertical Developers of non-residential property will pay in lieu of the Jobs/Housing Linkage Fee payable under Planning Code sections 413.1-413.11.

"28-Acre Site Project" means the development of the 28-Acre Site in accordance with the DDA, subject to the DA Requirements.

"30% Commercial Trigger" means, for purposes of DDA § 4.5 (Down Market Delay Procedures), that commercial-office use occupies 30% or more of the total gsf of market-rate residential and commercial use approved in a Phase Approval (excluding commercial-office use on Flex Parcels, and affordable housing, parking, retail, restaurant, and arts/light-industrial uses).

"100-year flood" means a flood having a 1% chance of occurrence in a given year.

"AA" is an acronym for the Acquisition Agreement.

"AA Allocation" means the allocation of Horizontal Development Costs for Horizontal Improvements requested by a Payment Request to specific Horizontal Improvements or Components.

"AB 418" means Assembly Bill 418 (stats. 2011, ch. 477).

"accept" means an Acquiring Agency's or the Board of Supervisors' final actions to accept any Horizontal Improvement for public ownership.

"Acceptance MOA" means the Acceptance and Maintenance Memorandum of Agreement that the Port will enter into with Other City Agencies regarding completed Horizontal Improvements.

"Acquiring Agency" means the City Agency (the Port, SFPUC, or Public Works) that will acquire Horizontal Improvements in accordance with the Transaction Documents and Existing City Laws and Standards.

"Acquisition Agreement" means the Acquisition and Reimbursement Agreement between Developer and the Port in the form of **FP Exh A** that lists Horizontal Improvements that Acquiring Agencies will purchase from Developer, establishes the Acquisition Prices of Horizontal Improvements, and provides forms and procedures for Developer to request inspection of and payment for Horizontal Improvements.

"Acquisition Price" means the amount that the Port will pay Developer on behalf of Acquiring Agencies to purchase Horizontal Improvements under the Acquisition Agreement, which will be the sum of the Horizontal Development Costs incurred for Horizontal Improvements and accrued Developer Return on the date of payment.

"Acquisition Cost Update" means one or more updates to the Phase Improvements, Components, and the preliminary Horizontal Development Cost estimates for Horizontal Improvements listed in **AA Exh B** that Developer submits to the Port for Phase Improvements.

"action" when used in reference to any Claim or Loss means any administrative, judicial, quasi-judicial, or nonjudicial proceeding, including any alternative dispute resolution proceeding; and includes any complaint, cross-complaint, counterclaim, bankruptcy case, adversary proceeding, and appeal.

"actual damages" means the exact amount of any sum due and owing, together with interest until paid and all costs of collection.

"Adequate Security" means all Phase Security and Loss Security that Developer provides to the Port under the DDA:

- (i) to secure the faithful performance or payment, or both, of the obligations secured thereby under **DDA Art 17** (Security for Project Activities);
- (ii) issued by a person that meets the Obligor Net Worth Requirement and is approved by the Port Director;
- (iii) limiting the Obligor's liability to the Secured Amount plus the Port's costs of enforcement; and
- (iv) that is in form and substance proposed by Developer and approved by the Port Director, including but not limited to a Guaranty, bonds, letters of credit, certificates of deposit or any other form that provides reasonable assurances regarding the obligations secured thereby. Any Adequate Security required by the Subdivision Code in connection with a final subdivision map shall conform to the requirements of the Subdivision Code.

"Adequate Security Requirements" means Developer's obligations under **DDA Art 17** (Security for Project Activities).

"Administrative Delay" means an Excusable Delay caused when:

- (i) a Regulatory Agency fails to act on a Developer request or application within a reasonable time under its standard practices or as otherwise specified in the ICA, the Development Agreement, or the DDA;
- (ii) an appeal body or court determines that a Regulatory Agency's act or failure to act on an application was improper following a challenge by Developer or a Vertical Developer Affiliate; or
- (iii) the Port delays or fails to execute and deliver a Vertical DDA or Parcel Lease to the applicable Vertical Developer after it has proffered the partially executed agreement substantially in the form attached to the DDA.

"Administrative Delay" excludes any delay caused by Developer's failure to meet any Outside Date due to its failure to submit timely all required and requested information supporting a request or application.

"Administrative Fee" means:

- (i) a City fee imposed citywide or portwide in effect and payable when a developer submits an application for any Regulatory Approval, intended to cover only the estimated actual costs to the City or the Port of processing the application, addressing any related hearings or other actions, and inspecting work under the Regulatory Approval; and
- (ii) the amount that Developer or a Vertical Developer must pay to the City or the Port under any Transaction Document to reimburse the City or the Port for its administrative costs in processing applications for any Regulatory Approvals required under the Project Requirements.

"Administrative Fee" excludes:

- (1) any Impact Fee or Exaction;
- (2) Port Costs; and
- (3) Other City Costs.

"ad valorem tax" means a tax levied on a real property interest based on its assessed value, subject to the limitations of section 1 of article XIII A of the California Constitution.

"Advance" means a loan that the Port makes to the Pier 70 CFDs under **FP Art 7** (Port Advances).

"Advance of Land Proceeds" means a loan of Land Proceeds that the Port makes to the Pier 70 CFDs under **FP Art 7** (Port Advances).

"Advance of Land Proceeds Account" means the segregated account in the Mello-Roos Improvement Fund or the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, hold, and disburse Allocated Tax Increment or Facilities Special Taxes, as applicable, to pay the Pier 70 CFDs' obligations under Promissory Note-LP.

"Affiliate" when used in reference to a specified person, means any other person that directly or through intermediaries Controls, is Controlled by, or is under Common Control with the specified person.

"affordable housing" means rental or ownership housing affordable to persons of low and moderate income, as described in the Affordable Housing Plan.

"Affordable Housing Cost" when used in reference to a BMR Unit or an Inclusionary Unit means a monthly rental charge (including the applicable Utility Allowance but excluding Parking Charges) that does not exceed 30% of the maximum Area Median Income permitted for the applicable type of Residential Unit, based on Household Size.

"Affordable Housing Developer" means a qualified developer selected by MOHCD to develop an Affordable Housing Parcel.

"Affordable Housing Fees" means Impact Fees paid in lieu of providing onsite Inclusionary Units under Planning Code sections 415.1-415.11.

"Affordable Housing Fund" means the segregated account that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Housing Tax Increment.

"Affordable Housing Parcel" means a Development Parcel on which 100% affordable housing might be constructed under the Affordable Housing Plan, anticipated to be Parcel C1B, Parcel C2A, and Parcel K South.

"Affordable Housing Parcel Completion Date" means the date on which Developer has satisfied the requirements of AHP § 3.3(a) (Required Improvements), subject to AHP § 3.4 (Developer's Reimbursement Option).

"Affordable Housing Plan" means DDA Exh B3, which sets forth certain requirements for BMR Units, Inclusionary Units, and Condo Units in the AHP Housing Area.

"Affordable Housing Project" means the building that an Affordable Housing Developer builds on an Affordable Housing Parcel in which 100% of the Residential Units are BMR Units, with the exception of the manager's unit.

"Affordable Self Storage Site" means the premises under the lease between the Port and Affordable Self Storage, Inc., depicted in ML Exh A-2.

"Agent" means any officer, director, employee, legal or other authorized representative, attorney, or contractor of any person and any of their respective Agents.

"Aggrieved Party" means the Party alleging that a Breaching Party has committed an Event of Default or is in Material Breach under the terms of a Transaction Document.

"agree" means an accord, mutual consent, or binding decision reached by two or more persons.

"agree" excludes any unilateral decision.

"AHP" is an acronym for the Affordable Housing Plan (DDA Exh B3).

"AHP Deferred Infrastructure" means Horizontal Improvements, primarily consisting of Utility Infrastructure, Public ROWs, and other Improvements installed between the edge of a Public ROW and the boundary of an Affordable Housing Parcel, such as sidewalks and curb cuts, street lights, furnishings and landscaping, and utility boxes and laterals serving the parcel, that Affordable Housing Developers may be required to construct under an agreement with MOHCD.

"AHP Housing Area" means the area subject to the Affordable Housing Plan, consisting of the 28-Acre Site and Parcel K South.

"Allocated" when modifying any reference to Housing Tax Increment, Mello-Roos Taxes, or Tax Increment means the portion of the applicable taxes that the City collects from the financing district that the City has agreed to allocate to the financing district for uses approved in the related formation proceedings or financing plans.

"Allocation Period" for purposes of DDA Exh A5 means the period ending on October 17 each year.

"allonge" means a document that is affixed to and is a part of a negotiable instrument.

"Allowed Developer Return" means Developer Return on Developer Capital up to the Interest Cost Limitation.

"Allowed Return" means Allowed Developer Return or Allowed Return on Port Capital, or both, as appropriate in the context.

"Allowed Return on Port Capital" means Return on Port Capital up to the Interest Cost Limitation.

"ALTA" is an acronym for the American Land Title Association.

"Amendment Action" means a discretionary action to approve a termination by agreement or amendment, supplement, or addition to any of the Transaction Documents or Project Requirements.

"AMI" means Area Median Income.

"Annual" when modifying any reference to Housing Tax Increment, Mello-Roos Taxes, or Tax Increment means the amount that the Port receives, as the agent of a financing district, in a City Fiscal Year.

"Annual Ground Rent" means ground rent for an Option Parcel that is payable to the Port in annual installments over the Parcel Lease term as provided in **FP § 3.7(b)** (Hybrid Lease).

"Annual Port Budget" means the amount of Port Costs and Other City Costs that the Parties agree will be charged against the 28-Acre Site Project in any City Fiscal Year covering any part of the DDA Term.

"Annual Review" means the periodic review under **DA Art 8** (Periodic Compliance Review) of Developer's compliance with the Development Agreement, as required under section 65865.1 of the Development Agreement Statute and Administrative Code section 56.17.

"Annual Review Date" means the date established by Administrative Code section 56.17 by which the Annual Review must begin, subject to **DA § 8.1(c)** (Planning Director's Discretion).

"App" and **"Appendix"** mean this Appendix.

"Appendix G-1" means the infrastructure financing plan for Sub-Project Area G-1 that the Board of Supervisors approved by Ordinance No. 27-16, which is attached as Appendix G-1 to the IFD Financing Plan.

"Appendix G-2" means the Project-specific infrastructure financing plan for Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4 that the Port has submitted to the Board of Supervisors for approval, which will be attached as Appendix G-2 to the IFD Financing Plan when approved.

"Applicable Law" means, individually or collectively, any law that applies to development, use, or occupancy of or conditions at the FC Project Area.

"Applicable Lender Protections" means provisions of **DDA Art 18** (Lenders' Rights), **VDDA Art 16** (Financing; Rights of Lenders), and **PL Art 40** (Mortgages) that protect the rights of Permitted Lenders making loans to Borrowers to finance Improvements at the FC Project Area.

"Applicable Port Laws" means the Burton Act as amended by AB 418, the statutory trust imposed by the Burton Act, Charter Appendix B, and the common law public trust for navigation, commerce, and fisheries.

"Appraisal Instructions" means directions to Qualified Appraisers substantially in the form of **DDA Exh D4**.

"Appraisal Notice" means a notice from Developer to the Port initiating the appraisal process for an Option Parcel under **DDA § 7.3** (Option Parcel Appraisals).

"Approved Arbitrators Pool" means **DDA Sch 1**, as revised under **DDA § 10.1** (Arbitrators).

"Approved Payment" means any or all of the final Entitlement Cost Statement, Approved Payment Request, or Approved Requisition, as appropriate in the context.

"Approved Payment Request" means a Payment Request in the form of **AA Exh C** for Horizontal Development Costs of Horizontal Improvements that the Chief Harbor Engineer has approved or is deemed to have approved under **AA § 4.2(c)** (Deemed Approval).

"Approved Requisition" means a Requisition in the form of **FP Exh B** for Horizontal Development Costs (other than for Horizontal Improvements) that the Port Director has approved under **FP § 2.2(b)** (Requisitions).

"Arbitration Start Date" means the date on which a selected Arbitrator confirms in writing to the Parties that the Arbitrator is available and willing to serve.

"Arbitrator" means the neutral party who will preside over any arbitration proceeding regarding a Transaction Document.

"Architect" means the licensed architect of record for any Improvements.

"Architect's Certificate" means a certificate signed by the Architect verifying that a Vertical Developer has completed the specified Vertical Improvement under the Construction Documents.

"Area Median Income" when used in reference to Inclusionary Units and BMR Units means the current unadjusted median income for the San Francisco area as published by HUD, adjusted solely for Household Size. If HUD ceases to publish the AMI data for San Francisco for 18 months or more, MOHCD and Developer will make good faith efforts to agree on other publicly available and credible substitute data for AMI.

"Army Corps" means the Army Corps of Engineers.

"Artist Transition Plan" means a transition plan for the Noonan Tenants prepared in accordance with **DDA § 7.13(c)** (Artist Transition Plan).

"Arts Building" means a new building on Parcel E4 with space dedicated and restricted to arts/light industrial uses in accordance with **DDA § 7.12** (Arts Building) and the Arts Program, which may include the Noonan Replacement Space.

"Arts Building Account" means the segregated account in the Facilities Special Tax Fund that the Port will establish with the Special Fund Trustee to receive, administer, and disburse Arts Building Special Taxes as specified in the Financing Plan.

"Arts Building Costs" means all reasonable and customary hard and soft costs to build the Arts Building.

"Arts Building Funding" means Arts Building Proceeds that the Port will provide to fund the Arts Building if conditions in **DDA § 7.12** (Arts Building) are met.

"Arts Building Proceeds" means the Arts Building Special Taxes and any Mello-Roos Bond Proceeds secured by the Arts Building Special Taxes, which may be used in accordance with **DDA § 7.12** (Arts Building) to finance:

- (i) the Noonan Replacement Space;
- (ii) the Arts Building provided certain conditions are met as set forth in the Financing Plan; and
- (iii) community facilities provided the CF Conditions are met; or
- (iv) a public building on Parcel E4.

"Arts Building Schedule" means a schedule that Developer maintains to account for the application of funds to the Arts Building Funding.

"Arts Building Special Taxes" means Improvement Special Taxes that are levied to finance the Noonan Replacement Space and, under certain conditions, the Arts Building Funding and the community facilities in accordance with the RMA for:

- (i) the Pier 70 Leased Property CFD; or
- (ii) the Pier 70 Condo CFD.

"Arts Master Tenant" means a master tenant of the Arts Building that meets the qualifications set forth in **DDA § 7.12(h)** (Arts Master Tenant Qualifications).

"Arts Program" means the eligible uses and arts tenant qualifications for the Arts Building, which are described in **DDA Exh B6**.

"As-Built Drawings" means Permit Set drawings and specifications of Improvements in their final form and as-built field documents prepared during the course of construction.

"Assessed Parcel" means a Taxable Parcel that meets all four of the following conditions:

- (i) one or more buildings have been constructed or rehabilitated on the Taxable Parcel for which the Port has issued a TCO;
- (ii) the buildings have been finally assessed;
- (iii) the Assessor has levied ad valorem taxes on the Taxable Parcel; and
- (iv) at least one year of ad valorem taxes levied under **clause (iii)** have been paid.

"Assessed Parcel Credit Report" means a report that the CFD Administrator will prepare for the Treasurer-Tax Collector that specifies the amount of the Facilities Special Tax Credit to be applied to Assessed Parcels.

"Assessment Shortfall" means the positive difference between:

- (i) the amount of property taxes that would have been levied on a Taxable Parcel by application of the ad valorem tax on its Baseline Assessed Value, as escalated to the date of determination by annual increases and reassessment following a transfer; and
- (ii) the amount of property taxes actually levied on the Taxable Parcel after Reassessment.

"Assessor" means the Assessor-Recorder of the City and County of San Francisco.

"Assignment" means to assign, convey, or otherwise transfer any part of the assigning party's interest in the DDA as permitted under an Assignment and Assumption Agreement.

"Assignment and Assumption Agreement" means an agreement in the form of **DDA Exh D8** or in a form otherwise mutually acceptable to the Parties.

"Associated Public Benefits" means the Developer Construction Obligations identified as Associated Public Benefits in the Schedule of Performance and Public Benefit Costs.

"attorneys' fees" means reasonable attorneys' fees and related costs incurred in an action or as otherwise indicated in the DDA, including all costs of litigation, such as fees and related costs of attorneys, consultants, testing, and experts, litigation costs of the action, and costs for document copying, exhibit preparation, carriers, postage, and communications.

"Available Credit Tax Increment" means:

- (i) Project Tax Increment on deposit with the Special Fund Trustee that is available to pay Special Debt Service on Mello-Roos Bonds, as determined under **FP § 6.5(h)** (Application of Tax Increment to Special Debt Service); or
- (ii) the sum of Project Tax Increment and Port Tax Increment from Historic Building 12 or Historic Building 21 on deposit with the Special Fund Trustee that is available to pay Special Debt Service on Mello-Roos Bonds issued to finance the applicable Historic Building Feasibility Gap, as determined under **FP § 6.5(h)** (Application of Tax Increment to Special Debt Service) and **FP § 11.1(b)** (Application of HB Tax Increment to Special Debt Service).

"AWSS" means the City's auxiliary water supply system.

"base flood" means a 100-year flood.

"Baseline Assessed Value" means the final assessed value of a Taxable Parcel in the SUD after the Chief Harbor Engineer issues the related Temporary Certificate of Occupancy or Final Certificate of Occupancy.

"Basis of Design Report" means a type of Improvement Plan for Horizontal Improvements that will be generally in the form of ICA Att B.

"BCDC" is an acronym for the San Francisco Bay Conservation and Development Commission.

"BMR Credit" means a credit equal to the number of BMR Units anticipated to be developed on each Affordable Housing Parcel in a Phase for purposes of calculating the Interim Affordable Percentage. BMR Credit will be given for an Affordable Housing Parcel only on the applicable Affordable Housing Parcel Completion Date. Unless the Parties agree otherwise, Parcel C1B will have 142 BMR Credits, Parcel C2A will have 105 BMR Credits, and Parcel K South will have 80 BMR Credits.

"BMR Unit" as defined in the Affordable Housing Plan means a below-market-rate Residential Unit constructed in an Affordable Housing Project.

"BMR Unit" excludes Inclusionary Units.

"Board of Supervisors" means the legislative branch of the City and County of San Francisco with all powers and authority granted under the Charter and state law.

"Bona Fide Institutional Lender" means any one or more of the following, whether acting in its own interest and capacity or in an agency or a fiduciary capacity for one or more persons, none of which need be Bona Fide Institutional Lenders:

- (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a licensed California finance lender, any agency or instrumentality of the United States government or any state or city governmental authority, a real estate investment trust, a religious, educational or charitable institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any entity directly or indirectly sponsored or managed by any of the foregoing, or other lender, all of which, at the time a Permitted Lien is recorded in favor of such entity, owns or manages assets of at least \$500 million in the aggregate or the equivalent in foreign currency; or
- (ii) an Affiliate of an entity described in clause (i).

"Bond Counsel" means an attorney or firm of attorneys with experience in public finance matters that has been engaged by the City or the Port.

"Bond Proceeds" means proceeds of any Bonds that are available for disbursement after funding the costs of issuance, capitalized interest, reserves, and any other amounts specified in the applicable Indenture.

"Bonds" means any bonds or other forms of indebtedness secured and payable by one or more of Housing Tax Increment, Mello-Roos Taxes, or Tax Increment issued on behalf of any financing district, to implement the Financing Documents.

"Books and Records" means books and records that Developer and the Port will prepare and maintain under FP § 9.5 (Books and Records).

"Borrower" when used in reference to a Permitted Lien means:

- (i) Developer;
- (ii) a Vertical Developer;

- (iii) a permitted Transferee with rights and obligations under the DDA directly or through a Vertical DDA or an Assignment or Assumption Agreement or both; or
- (iv) a person that holds a direct or indirect Controlling Interest in any of the above.

"Breaching Party" means a Party alleged to have committed an Event of Default or to be in Material Breach under the DDA.

"Building 11" means the structure in Pier 70 that currently houses the Noonan Tenants.

"Building 11 Relocation Plan" is defined in DDA § Section 7.23(a) (Potential Relocation of Building 11).

"Building 11 Site" means the site of Building 11 and certain adjacent areas as depicted in ML Exh A-2.

"Building 21 Site" means the site of Historic Building 21 and certain adjacent common areas depicted in ML Exh A-2.

"Burton Act" means Assembly Bill 190 (stats. 1968, ch. 1333), authorizing the State to grant tidelands and submerged lands comprising San Francisco Harbor to San Francisco under the management and control of the Port Commission.

"Capital Costs" means the sum of Horizontal Development Costs funded by Developer Capital (as reflected in the Developer Capital Schedule), Port Capital (as reflected in the Port Capital Schedule), plus accrued Developer Return or Return on Port Capital, as applicable, on the date of determination.

"Capital Improvements Account" means a subaccount of the Facilities Special Tax Fund of the Special Fund Trust Account that the Pier 70 CFDs will establish; as described in the Financing Plan.

"cash" means United States currency delivered in legal tender or other forms of immediately available funds.

"CEQA" is an acronym for the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000-21189.3).

"CEQA Findings" means findings adopted under CEQA Laws in connection with the Project Approvals.

"CEQA Guidelines" means the California Guidelines for Implementation of CEQA (Cal. Admin. Code §§ 15000-15387).

"CEQA Laws" means CEQA, the CEQA Guidelines, and the CEQA Procedures.

"CEQA Procedures" means Administrative Code chapter 31.

"CF Conditions" means all of the following:

- (i) no Third-Party Challenge is pending;
- (ii) the City has approved the location and conditions of the community facilities;
- (iii) the funding for the community facility will be administered by the City or a City Agency; and
- (iv) the community facility receives a building permit.

"CF Election" means the Port's notice that the City will accept Developer's proffer of Community Facility Space under clause (i) of DDA § 7.19(c) (Exercise of Right).

"CFD" is an acronym for a community facilities district or a special tax district formed under CFD Law and, when preceded by a name, means the real property in any CFD in the SUD. References to a CFD also mean the district itself and any area within it designated as a Zone, if required by the context.

"CFD Administrative Costs" means the proportionate share of reasonable costs that the Port, as CFD Agent for each CFD in the SUD, actually incurs and pays for:

- (i) services of any Indenture Trustee (including its counsel) for any Bonds that the City issues for any CFD described in the Financing Plan;
- (ii) marketing or remarketing Bonds; and
- (iii) all other reasonable administrative services provided by the Port, any CFD Administrator, the City, the Special Fund Trustee, and any other third-party professionals necessary for the Port to perform its duties under the DDA, the Tax Allocation MOU, the Special Fund Administration Agreement, and each RMA.

"CFD Administrator" means a special tax consultant or any other person that the Director of Public Finance or the Port Director, as applicable, designates to administer Mello-Roos Taxes from any CFD according to the applicable RMAs.

"CFD Agent" means the Port, acting on behalf of each CFD.

"CFD Formation Proceedings" means, with respect to each CFD, the proceedings taken by the Board of Supervisors to form the CFD.

"CFD Goals" means the *Local Goals and Policies for Community Facilities Districts*, approved by Board of Supervisors Resolution No. 387-09 on October 6, 2009, as amended from time to time solely to the extent required under CFD Law or other controlling state or federal law.

"CFD Improvements" means Horizontal Improvements financed by Mello-Roos Bond Proceeds and Improvement Special Taxes.

"CFD Law" means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Community Facilities Act of 1982 (Cal. Gov't Code §§ 53311-53368).

"CFD Report" means the annual report that a CFD must file with the Treasurer-Tax Collector under CFD Law.

"Change to Existing City Laws and Standards" means any change to Existing City Laws and Standards or other laws, plans, or policies adopted by the City or the Port or by voter initiative after the DA Ordinance Effective Date that would conflict with the Project Approvals, the Transaction Documents, or Applicable Port Laws as specified in DA § 5.3 (Changes to Existing City Laws and Standards).

"Change to Existing City Laws and Standards" *excludes regulations, plans, and policies that change only procedural requirements of Existing City Laws and Standards.*

"Chapter 56" means Administrative Code chapter 56, which the Board of Supervisors adopted under the Development Agreement Statute.

"Charter" means the Charter of the City and County of San Francisco adopted on November 7, 1995, as amended and in effect on the Reference Date.

"Chief Harbor Engineer" means the Port's Deputy Director, Engineering, or his designee.

"City" means the City and County of San Francisco, California, a municipal corporation organized as a charter city under the California Constitution.

"City Agency" means any public body or an individual authorized to act on behalf of the City in its municipal capacity, including the Board of Supervisors or any City commission, department, bureau, division, office, or other subdivision, and officials and staff to whom authority is delegated, on matters within the City Agency's jurisdiction.

"City Delay Notice" means a notice from Planning to the Port that the City has reasonably determined that delaying office development at the 28-Acre Site is necessary to allow the City to balance its

planning objectives for Pending Projects elsewhere in the City under procedures described in DDA Exh A5.

"City Engineer" means the person designated by the Director of Public Works under the Administrative Code.

"City Fiscal Year" means the period beginning on July 1 of any year and ending on the following June 30.

"City General Fund" means San Francisco's general operating fund, into which taxes are deposited, excluding dedicated revenue sources for certain municipal services, capital projects, and debt service.

"City Law" means any City ordinance or Port code provision and implementing regulations and policies governing zoning, subdivisions and subdivision design, land use, rate of development, density, building size, public improvements and dedications, construction standards, new construction and use, design standards, permit restrictions, development impacts, terms and conditions of occupancy, and environmental guidelines or review at the FC Project Area, including, as applicable:

- (i) the Waterfront Plan and the Design for Development;
- (ii) the Construction Codes, applicable provisions of the Planning Code, including Planning Code section 249.79 and Zoning Maps, the Subdivision Code, and the General Plan,
- (iii) local Environmental Laws and the City's Health Code; and
- (iv) the Other City Requirements (DDA Exh A7).

"City Party" means the City, including the Port and Other City Agencies, and their respective Agents, including commissioners, supervisors, and other elected and appointed officials.

"City Share of Tax Increment" means 64.59% of Gross Tax Increment on the Reference Date.

"citywide" means all real property within the territorial limits of San Francisco, not including any property owned or controlled by the United States or the State that is exempt from City Law.

"Claim" means a demand made in an action or in anticipation of an action for money, mandamus, or any other relief available at law or in equity for a Loss arising directly or indirectly from acts or omissions occurring in relation to the 28-Acre Site Project or at the 28-Acre Site during the DDA Term.

"Claim" *excludes any demand made to an insurer under an insurance policy or to an Obligor of Adequate Security.*

"Close of Escrow," "Close Escrow," "Close," and "Closing" mean that all conditions to a Port conveyance of a Development Parcel have been satisfied or waived and actions required to effect the conveyance are complete.

"Closing Date" means Developer's projected date to Close Escrow on the Master Lease under DDA § 8.5(b) (Closing Deliveries).

"Closing Deadline," means the date that is 90 days before the Outside Date for Commencement of Construction of the Phase 1 Improvements, as set forth in the Schedule of Performance.

"CLTA" is an acronym for the California Land Title Association.

"Commence Construction" means the start of substantial physical construction as part of a sustained and continuous construction plan.

"Commercial Parcel" means a Development Parcel on which office and other nonresidential uses are permitted in the SUD, excluding the Public Use Parcels.

"Commercial Test Parcel" means an Option Parcel that is selected under **DDA § 4.5(a)** (Timing) to determine whether a Down Market Delay has occurred with respect to commercial-office use.

"Common Control" means that two persons are both Controlled by the same other Person.

"Community Benefits Costs" means Arts Building Funding and costs of Community Facilities Space and Noonan Replacement Space funded by Developer Capital, plus accrued Developer Return.

"Community Facility Space" means space that the City may sublease for community facilities under **DDA § 7.19(a)** (Right to Sublease).

"Completed Affordable Housing Parcel" means an Affordable Housing Parcel for which Developer has satisfied the requirements of **AHP § 3.3(a)** (Required Improvements).

"Completed Residential Unit" means a Residential Unit in the AHP Housing Area for which the Port has issued a TCO.

"Component" as defined in the CFD Law means:

- (i) for a Horizontal Improvement with an estimated cost of over \$1 million, a discrete portion or phase that may be financed whether or not the Component is capable of serviceable use; or
- (ii) for a Horizontal Improvement with an estimated cost of \$1 million or less, a discrete portion or phase that may be financed when the Component is capable of serviceable use.

"Condo Transfer Fee" means a fee payable to the Port at the Close of Escrow for any Condo Unit owner's sale of 50% or more of the ownership interests in the Condo Unit.

"Condo Unit" means a Residential Unit that is intended to be offered for sale in fee for individual ownership, which will be treated as a Taxable Parcel in the Financing Documents.

"Consent" means Developer's or a City Agency's consent to the Transaction Document to which the Consent is attached.

"Consolidated Response Date" means three days after the date on which the Port receives comments from all Other City Agencies under **ICA § 4.4(h)** (Delivery of Compiled Comments).

"Construction Codes" means the Port Building Code and all Municipal Codes regulating construction of new Improvements and alteration or rehabilitation of existing Improvements, including the International Building Code and the California Building Code to the extent incorporated and as modified by the Port Commission or the Board of Supervisors.

"Construction Document" means any Improvement Plan or Master Utilities Plan submitted to the Port or the City in accordance with the ICA or the DDA.

"Construction Permit" means:

- (i) for Horizontal Improvements, any permit that Developer must obtain from the Port or Other City Agencies before Commencement of Construction at the 28-Acre Site; and
- (ii) for Vertical Improvements, building permits or site permits and addenda.

"Control" of an entity means that a person holds any of the following:

- (i) ownership of more than 50% of the entity's equity interests;
- (ii) the right to dictate its major decisions, subject to customary rights of non-controlling partners or members; or
- (iii) the right to appoint 50% or more of its managers or directors.

"Controller" means the Controller of the City and County of San Francisco.

- "Controlling Interest"** means the interest held by a person with the power to Control an entity.
- "convey"** means to transfer an interest in real property by Parcel Lease, deed, or other instrument.
- "conveyance agreement"** means a Vertical DDA, Parcel Lease, grant deed, quitclaim deed, or any implementing documents (such as recorded covenants) used to convey Development Parcels to Vertical Developers under the DDA.
- "Costa-Hawkins Act"** means the Costa-Hawkins Rental Housing Act (Cal. Civ. Code §§ 1954.50-1954.535).
- "costs"** means actual and reasonable expenses, fees, and other charges directly arising from or relating to the matter giving rise to a right to payment.
- "CPA"** is an acronym for an independent certified public accounting firm approved by the Port and Developer or Obligor, if applicable.
- "CPI"** is an acronym for the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose region (base period 1982-1984=100) that the United States Department of Labor, Bureau of Labor Statistics, publishes in February, April, June, August, October, and December of each year. If the index is changed after the Reference Date to use a different base year, CPI will be calculated using the published conversion factor. If publication is discontinued and not replaced, the Parties will confer to reach agreement on a substitute measure.
- "CPI (Residential)"** means the portion of the CPI for the "Housing" expenditure category only.
- "Credit Bid"** means a Vertical Developer Affiliate's deemed payment of Land Proceeds to the Port, subject to the limitations and conditions of FP § 3.3 (Right to Credit Bid) and FP § 3.4 (Amount of Credit Bid) or the act of paying by the deemed payment when used as a verb.
- "Credit Bid Determination Date"** means 15 days before Developer exercises an Option on an Option Parcel.
- "Cumulative IRR"** means Developer's cumulative internal rate of return calculated through the date of determination.
- "Current Assessed Value"** means a Taxable Parcel's Baseline Assessed Value as escalated or reassessed on the date of determination.
- "Current Parcel"** means an Assessed Parcel for which no delinquencies exist under the most recent ad valorem tax bill.
- "Current Phase"** means the Phase of the 28-Acre Site Project during which an event or determination occurs.
- "CWAG"** means the Port of San Francisco's Central Waterfront Advisory Group.
- "DA"** is an acronym for the Development Agreement.
- "DA Laws"** as defined in DA Recital F means the Development Agreement Statute, Chapter 56, and the DA Ordinance.
- "DA Ordinance"** means Ordinance No. 224-17 adopting the Development Agreement, incorporating by reference the CEQA Findings, public trust findings, and General Plan Consistency Findings for the 28-Acre Site Project, waiving specified provisions of the Municipal Code, and authorizing the Planning Director to execute the Development Agreement on behalf of the City.
- "DA Ordinance Effective Date"** as defined in DA § 2.1 (Effective Date) means December 15, 2017.
- "DA Requirements"** as defined in DA § 5.2(a) (Agreement to Follow) means:
- (i) Project Approvals;
 - (ii) the Transaction Documents; and

(iii) all Existing City Laws and Standards, subject to DA § 5.3 (Changes to Existing City Laws and Standards).

"DA Successor" as defined in DA § 10.1 (Successors' Rights) means Vertical Developers and Developer's and Vertical Developers' successors.

"DA Term" means the term of the Development Agreement, which applies separately to horizontal development and vertical development, as described in DA § 2.2 (DA Term).

"DBI" is an acronym for the City's Department of Building Inspection.

"DDA" is an acronym for the Disposition and Development Agreement between the Port and Developer specifying the terms and conditions for Developer's master development of the 28-Acre Site.

"DDA Term" means the period beginning on the Reference Date and ending when the DDA expires by its own terms or by early termination.

"debt" means, when required by the context, financial obligations as defined in section 53395.1 and section 53395.8(c)(4) of the IFD Law.

"debt service" means the principal and interest payable on Bonds under an Indenture.

"debt service" *excludes capitalized interest and any other amounts that are funded from gross bond proceeds for the payment of debt service before net bond proceeds are available for disbursement under an Indenture when used in reference to payments to be funded with Mello-Roos Taxes or Tax Increment in any year, or other capital requirements of the debt such as funding and replenishment of reserves, administrative costs, and coverage ratios.*

"defend" when used in reference to a Claim means the defense, compromise, or other resolution of the Claim in or outside of an action.

"Deferred Infrastructure" means the Horizontal Improvements included with the Permit Set approved in compliance with all Applicable Laws that may be constructed, completed, and accepted in connection with the associated Vertical Improvements but separate from the rest of the other Horizontal Improvements approved in the Permit Set, but only upon agreement and approval by the Permitting Agency and an Acquiring Agency and in compliance with all Applicable Laws. Any approved Deferred Infrastructure other than Public Spaces in Park Parcels must be constructed and completed no later than the associated Vertical Improvements. Any approved Deferred Infrastructure for Public Spaces in Park Parcels will be completed no later than the applicable Outside Date for Completion in the Schedule of Performance.

"Deferred Infrastructure" *excludes utility improvements and fixtures customarily installed as part of a Vertical Improvement.*

"Deferred Infrastructure Zone" as defined and further described in DDA § 15.6(b) (Deferred Infrastructure Zones) means areas in which Deferred Infrastructure will be constructed, as identified by Developer in each Phase Submittal and Basis of Design Report.

"Design Advisory Committee" means a Port Director-appointed committee composed of qualified design professional to make design recommendations to the Port Commission on Schematic Design Applications under DDA § 13.6(d) (Review of Complete Applications).

"Design for Development" means the Pier 70 Design for Development that the Port Commission and the Planning Commission approved by Resolution No. 17-45 and Motion No. 19980, respectively.

"Developed Property" means, in any City Fiscal Year, Taxable Parcels that are categorized as such in the RMA for the Pier 70 CFD in which the parcels are located.

"Developer" means FC Pier 70, LLC, a Delaware limited liability company, together with its permitted successors and assigns.

"Developer Audit" means a financial review performed by a CPA on behalf of Developer under FP § 9.4(b) (Developer Audit).

"Developer Balance" means the sum of Developer's unreimbursed Horizontal Development Costs up to the date of determination as shown on the Developer Capital Schedule, plus accrued and unpaid Developer Return.

"Developer Balance" excludes vertical development costs, the Arts Building Funding, and the Historic Building Feasibility Gap.

"Developer Capital" means funds expended by Developer under the Financing Plan on Horizontal Development Costs.

"Developer Capital Schedule" means an accounting schedule that Developer maintains that shows:

- (i) the expenditures and reimbursements of Developer Capital; and
- (ii) accrued and unpaid Developer Return, for all Phases of the 28-Acre Site Project individually and in the aggregate, which will be used to determine the Developer Balance at any given time.

"Developer Closing Costs" means the Escrow costs customarily assigned to a real estate buyer or ground lessee, such as escrow and all associated fees, title insurance premiums and endorsement charges, transfer taxes, ad valorem taxes and assessments, if any, prorated as of the applicable Closing Date.

"Developer Construction Obligations" means Developer's duty under the DDA to perform or provide, in accordance with applicable Project Requirements and Regulatory Requirements, for:

- (i) construction of the Horizontal Improvements for Phase 1, which is a nontransferable obligation under DDA § 6.1 (Transfer Limitations in Phase 1);
- (ii) construction of the Horizontal Improvements for all other Phases;
- (iii) rehabilitation of the Historic Buildings for reuse in accordance with the Secretary's Standards;
- (iv) Developer Mitigation Measures; and
- (v) Associated Public Benefits.

"Developer Construction Obligations" excludes Port Improvements and any Deferred Infrastructure, Developer Mitigation Measures, and Associated Public Benefits that any Vertical Developer will construct or provide in accordance with its Vertical DDA.

"Developer Marketing Costs" means costs associated with marketing the 28-Acre Site Project, including interim activation, events associated with openings of public improvements and other activities that benefit Project land and user absorption, overall Pier 70 site branding and recognition, subject to a maximum of \$920,000 (NPV 2018\$) in reimbursable costs unless otherwise approved by the Port in its sole discretion.

"Developer Marketing Costs" exclude expenditure of funds received from the Master Marketing Fee.

"Developer Mitigation Measure" means any Mitigation Measure in the MMRP (DDA Exh A6) that is identified as the responsibility of the "project sponsors" that arises in connection with Developer's obligations under **DDA § 14.8(a)** (Horizontal Improvements), or otherwise undertaken by Developer at its expense, excluding Mitigation Measures that are specific to the construction or operation of particular Vertical Improvements that are otherwise the responsibility of the Vertical Developer.

"Developer Party" means Developer and its direct and indirect partners, members, shareholders, officers, and Affiliates, individually or collectively.

"Developer pass-through" means a Horizontal Development Cost that is paid directly to one or more of Developer's contractors, consultants, or suppliers, or to a Vertical Developer obligated to construct Deferred Infrastructure, at Developer's direction in a Payment Request.

"Developer Quarterly Report" means a quarterly financial report on the 28-Acre Site Project by Phase as described in **FP § 9.1(b)** (Developer Quarterly Reports).

"Developer Reimbursement Obligations" means Developer's duty under the DDA to indemnify the City Parties and pay Port Costs and Other City Costs.

"Developer Reimbursement Obligations" excludes Developer's use of Developer Capital to finance Horizontal Improvements.

"Developer Return" means a return that results in an 18% Cumulative IRR, calculated quarterly on unreimbursed Developer Capital as shown in the sample calculation in **FP Sch 2**. Under the Financing Plan, Developer Return accrues on:

- (i) Entitlement Costs incurred up to the Reference Date, added together in the Entitlement Sum;
- (ii) Entitlement Sum from the Reference Date to the date paid in full; and
- (iii) unreimbursed Horizontal Development Costs from the date that Developer incurs the costs until repaid in full.

"Developer ROFR" means a right of first refusal in favor of Developer under **clause (ii) of DDA § 7.5(b)** (Offering Document), which it may exercise in any Public Offering of an Option Parcel if the highest third-party offer exceeds the Down Market Threshold for the parcel but is less than its Fair Market Value.

"Developer Share" means 45% of the Interim Satisfaction Balance or Project Surplus, as applicable.

"Development Agreement" means the agreement that the City entered into with Developer under Chapter 56 and the Development Agreement Statute between specifying the entitlement rights that the City agreed to vest in Developer for development of the 28-Acre Site by adoption of the DA Ordinance.

"Development Agreement Statute" means California Government Code sections 65864-65869.5.

"Development Opportunity" means Developer's development rights under the DDA that the Port terminates under **DDA § 12.8** (Effects of Termination on Development Rights).

"Development Parcel" means a buildable parcel in the SUD, including each Option Parcel.

"Director of Public Finance" means the director of the Public Finance Division of the Controller's Office.

"Director of Public Works" means the Director of San Francisco Public Works.

"Director of Transportation" means the Director of the San Francisco Municipal Transportation Agency.

"Disputing Party" means a person affected by a dispute that is subject to **DDA Art 10** (Resolution of Certain Disputes).

"district" means any of the public financing districts described in the Financing Plan.

"Down Market" means a period of economic and other conditions causing a significant decline in the real estate market, as determined under **DDA § 4.5 (Down Market Delay Procedures)**.

"Down Market Delay" means an Excusable Delay meeting the criteria in **DDA § 4.5 (Down Market Delay Procedures)**.

"Down Market Notice" means a Party's notice delivered under **DDA § 4.5(a) (Timing)**.

"Down Market Test" means the procedures in **DDA § 4.5 (Down Market Delay Procedures)** by which the Parties have agreed to determine whether a Down Market exists.

"Down Market Test Date" means the date a Down Market Test is final.

"Down Market Threshold" means 85% of the Land Value Indicator in the Initial Summary Proforma, as escalated to the Down Market Test Date under **clause (i) of DDA § 4.5(c) (Down Market Test)**.

"Early Lease Parcel" means the first Option Parcel to be conveyed to a Vertical Developer Affiliate by Parcel Lease in each of Phase 1 and Phase 2 under **DDA § 2.2(f) (Early Lease Parcels)**.

"Early Mello-Roos Bonds" means Mello-Roos Bonds that the City issues on behalf of the Pier 70 CFDs to finance Phase Improvements at the Port's request early in a Phase.

"Easement Action" means any proceeding to abandon, remove, relocate, or otherwise modify a Street and Utility Easement to permit construction of Phase Improvements in accordance with **DDA § 8.1(e) (Street and Utility Easements)**.

"eligible" means Entitlement Costs, Capital Costs, and Interest on Land Proceeds that may be paid from Public Financing Sources under Governing Law and Policy.

"ENA" is an acronym for the Exclusive Negotiation Agreement dated as of July 12, 2011, between the Parties, as amended by the First Amendment to Exclusive Negotiation Agreement dated as of January 14, 2014, and the Second Amendment to Exclusive Negotiation Agreement dated as of April 28, 2015.

"Encumbered Property" means the specific real property interest in the 28-Acre Site that is the collateral under a Permitted Lien.

"Engineer" means the licensed engineer of record for Horizontal Improvements.

"Entitlement Cost Statement" means Developer's report on Entitlement Costs, prepared by a third party or subject to third-party review, as updated under **FP § 2.3(a) (Entitlement Cost Statement)**.

"Entitlement Costs" means Soft Costs actually incurred and paid by the Developer between July 12, 2011, and the Reference Date to entitle the 28-Acre Site Project, including:

- (i) preliminary planning, design work, and due diligence;
- (ii) environmental review under CEQA;
- (iii) negotiating the financial and other terms of the Transaction Documents; and
- (iv) obtaining Project Approvals, including community outreach.

"Entitlement Costs" *excludes any costs Developer incurred to lobby or campaign for any ballot measure affecting the 28-Acre Site Project.*

"Entitlement Sum" means the sum of the Entitlement Costs and accrued Developer Return up to the Reference Date as shown in the final Entitlement Cost Statement.

"Environmental Covenants" means certain deed restrictions that the Water Board approved in the Port's Feasibility Study and Remedial Action Plan and a Risk Management Plan for Pier 70, which impose conditions under which the Water Board will allow certain land uses to occur at designated portions of the 28-Acre Site.

"Environmental Delay" means an Excusable Delay caused when:

- (i) the Port or the City is required to conduct additional environmental review or prepare additional environmental documents after the Planning Commission and Port Commission have certified the Final EIR and City staff has filed a notice of determination;
- (ii) a third party files an action challenging the certification or sufficiency of the Final EIR or any other additional environmental review, even if development activities are not stayed, enjoined, or otherwise prohibited;
- (iii) the unanticipated need to investigate, remediate, or otherwise correct previously unknown environmental or geotechnical conditions on or affecting any portion of the FC Project Area, but only if the conditions were not reasonably discoverable in the course of Developer's due diligence before the Reference Date; or
- (iv) the unanticipated need to comply with any Mitigation Measures adopted for the 28-Acre Site Project for conditions on or affecting any portion of the FC Project Area, but only if the conditions were not reasonably discoverable before the Reference Date and by their nature require a delay or work stoppage for investigation, remediation, or related activities, as long as the Party claiming delay is proceeding in a diligent manner to resolve the unforeseen issues.

"Environmental Law" means any law pertaining to handling, release, or remediation of Hazardous Materials, conditions in the environment, including structures, soil, air, bay water, and groundwater, the protection of the environment, natural resources, wildlife, and human health and safety, industrial hygiene and employee safety, and community right-to-know requirements, including CEQA, the Mitigation Measures, and the Environmental Covenants, applicable to the 28-Acre Site or related to the work being performed under the DDA or any conveyance agreement.

"Environmental Regulatory Action" means any inquiry, investigation, enforcement, remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a release of Hazardous Materials.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the United States Department of Labor, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the Water Board, the California Division of Occupational Safety & Health, Department of Industrial Relations, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, SFFD, SFPUC, the Port, and any Other Regulator now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other Regulatory Approval required or issued by any Environmental Regulatory Agency, including any closure permit and any hazardous waste generator identification numbers relating to operations at any portion of the 28-Acre Site and any closure permit.

"ERAF" is an acronym for the State Educational Revenue Augmentation Fund.

"ERAF Debt Period" means the period ending 20 City Fiscal Years after the City Fiscal Year in which any IFD subject to a Pier 70 enhanced financing plan first issues Bonds, during which the IFD may issue Bonds secured and payable by ERAF Tax Increment under and subject to any exceptions in the IFD Law.

"ERAF Tax Increment" means the county ERAF portion of Gross Tax Increment, which is 25.33% on the Reference Date, but subject to change through the State's budget process.

"ERH" is an acronym referring to the City's emergency ride home program.

"Escrow" and "Escrow Account" mean an account established with an Escrow Agent for the delivery, recordation, and distribution as applicable of title documents, funds, and any other items necessary to Close a conveyance of a real property interest.

"Escrow Agent" means a local branch of a title company on the approved list maintained by the Real Estate Division of the San Francisco General Services Agency selected to handle a conveyance under the DDA.

"Event of Default" means a Breaching Party's failure to cure a noticed breach within the cure period specified in a Transaction Document.

"exacerbate" when used in reference to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a release of Hazardous Materials that had been contained until the act or omission, or otherwise requires investigation or remediation that would not have been required but for the act or omission.

"Exaction" means any requirement to construct improvements for a public purpose, dedicate a real property interest, or other burden that the City imposes as a condition of approval to mitigate the impacts of increased demand for public services, facilities, or housing caused by a development project, which may or may not be an impact fee governed by the Mitigation Fee Act, including a fee paid in lieu of complying with a City requirement.

"Exaction" excludes Mitigation Measures and any federal, state, or regional impositions.

"Excess Return" means the amount by which Developer, Return or Return on Port Capital exceeds the Interest Cost Limitation.

"Excluded Transfer" means :

- (i) a Borrower's grant of a Permitted Lien to a Permitted Lender;
- (ii) a Permitted Lender's exercise of remedies under a Permitted Lien;
- (iii) the sale, transfer, or issuance of stock that is listed on a national or internationally recognized stock exchange; or
- (iv) a change resulting from death or legal incapacity of an individual.

"Excusable Delay" means an allowed delay in performance caused by an event of Force Majeure.

"Excusable Delay" excludes:

- (1) *Developer's lack of Developer Capital needed for a Phase except when caused by an event of Force Majeure;*
- (2) *Developer's Insolvency; and*
- (3) *an Administrative Delay or Environmental Delay if the Party claiming delay fails to take required actions or attempt to resolve the issues causing delay in a timely and diligent manner.*

"Exempt Parcel" means any assessor's parcel that is exempt from taxation, including any levy of Mello-Roos Taxes under an RMA, or under any state or federal tax exempt determination.

"Existing City Laws and Standards" as defined in DA § 5.2(a) (Agreement to Follow) means:

- (i) the Project Approvals;
- (ii) the Transaction Documents; and
- (iii) all other applicable City Laws in effect on the DA Ordinance Effective, subject to DA § 5.3 (Changes to Existing City Laws and Standards).

"Existing Geotechnical Condition" means the physical, geotechnical condition of the 28-Acre Site, including soils and groundwater conditions, before Developer took possession of the 28-Acre Site.

"Existing Geotechnical Condition" excludes the Existing Hazardous Material Condition of the 28-Acre Site.

"Existing Hazardous Material Condition" means the presence or release of Hazardous Materials in, on, or about any portion of the 28-Acre Site that occurred before Developer took possession of the 28-Acre Site.

"Experience Requirement" means the Port's requirement that a proposed Transferee, including its consultant and management team, have direct and substantial experience (in the Port's reasonable judgment) as a master developer of projects similar in size and complexity to the development opportunity being Transferred.

"Facilities CFD" means a CFD or part of a CFD that authorizes the levy of Improvement Special Taxes to finance eligible Improvements.

"Facilities CFD Administrative Costs" means CFD Administrative Costs payable from Improvement Special Taxes in accordance with the applicable RMA.

"Facilities Special Tax Credit" means the amount by which the Potential Facilities Special Tax levy for a Current Parcel in the Pier 70 Leased Property CFD will be reduced by the application of Allocated Tax Increment under:

- (i) **FP § 6.5(h)** (Application of Tax Increment to Special Debt Service) for NOI Property in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD; or
- (ii) **FP § 11.1(b)** (Application of HB Tax Increment to Special Debt Service) for Historic Building 12 or Historic Building 21.

"Facilities Special Tax Fund" means the segregated accounts in the Special Fund Trust Account that the Port, as CFD Agent, will establish with the Special Fund Trustee to receive, administer, and disburse Mello-Roos Taxes on behalf of the CFDs through the Special Fund Administration Agreement, which are expected to consist of:

- (i) the Pier 70 CFD Facilities Account;
- (ii) the Project Reserve Account;
- (iii) the Shoreline Account;
- (iv) the Arts Building Account; and
- (v) the Hoedown Yard Facilities Account.

"Facilities Special Taxes" means Improvement Special Taxes that are levied to finance eligible Improvements in accordance with the RMA for:

- (i) the Pier 70 Leased Property CFD;
- (ii) the Pier 70 Condo CFD; and
- (iii) the Hoedown Yard CFD.

"Fair Market Value" means the value conclusion for real property reached according to procedures described in the DDA for Development Parcels in the 28-Acre Site, by a proprietary appraisal for Parcel K North, or by an appraisal submitted by Developer to determine the Historic Building Value for purposes of **DDA § 9.2(c)** (Effect on Historic Buildings), in each case expressed as the price that a prospective buyer with reasonable knowledge of the relevant facts would be willing to pay on the open market for fee title or the leasehold interest that the Port will convey.

"FC Project Area" means the 28-Acre Site and 20th Street, 21st Street, and 22nd Street east of Illinois Street, and areas outside of the 28-Acre Site where the Developer will construct Improvements serving the 28-Acre Site.

"FC Project Area Maintained Facilities" means the following Improvements, for which Ongoing Maintenance Costs will be paid by Services Special Taxes levied on Taxable Parcels in the Pier 70 Leased Property CFD and Taxable Parcels in Zone 2 of the Pier 70 Condo CFD:

- (i) Public Spaces in the FC Project Area;
- (ii) Public ROWs in the FC Project Area, including any portion of the Building 15 structure over 22nd Street; and
- (iii) Shoreline Improvements in and adjacent to the FC Project Area.

"FC Project Area Maintained Facilities" *excludes any private open space or other private facilities.*

"Federal or State Law Exception" as defined in DA § 5.6(a) (City's Exceptions) means a City Agency's retained police power authority to exercise its discretion under the Project Approvals and Transaction Documents over matters under its jurisdiction in a manner that is reasonably calculated and narrowly drawn to comply with applicable changes in federal or state law affecting the physical environment.

"Fee Value" means the Fair Market Value as defined by California Code of Civil Procedure section 1263.320 of the fee interest in an Option Parcel used to establish its purchase price.

"FEHA" is an acronym for the Fair Employment and Housing Act (Cal. Gov't Code §§ 12900-12996).

"FEIR" is an acronym for the final EIR for the SUD Project.

"FEMA" is an acronym for the Federal Emergency Management Agency.

"final" when used to refer to any Project Approval or Future Approval means that:

- (i) no administrative or judicial appeal has been filed by the applicable deadline;
- (ii) if an administrative or judicial appeal has been timely filed, the Project Approval or Future Approval has been upheld by a final decision; or
- (iii) the Board of Supervisors has certified the results of an election under the Elections Code at which a referendum petition regarding a Project Approval is rejected.

"Final Affordable Percentage" as defined in AHP § 2.1(a) (Final Affordable Percentage) means 30% or more of the total number of Residential Units constructed in the AHP Housing Area, at Final Completion of all Residential Projects, will be Inclusionary Units and BMR Units, taking BMR Credits into account.

"Final Appraisal" means the appraisal report that will be used for the conveyance of any Option Parcel, which can be either the Joint Appraisal as provided in DDA § 7.3(e) (Joint Appraisal) or the result of a dispute resolution process under DDA § 7.3(f) (Appraisal Disputes).

"Final Audit" means Developer's final financial report for the 28-Acre Site Project as described in FP § 9.3(b) (Final Audit).

"Final Audit Date" means the due date for the Final Audit under FP § 9.3(b) (Final Audit).

"Final Certificate of Occupancy" means a certificate of occupancy that the Chief Harbor Engineer issues under the Port Building Code allowing all portions of a building to be occupied.

"Final Completion of all Residential Projects" means the date that the Chief Harbor Engineer has issued a Temporary Certificate of Occupancy for all Residential Units to be developed in the AHP Housing Area.

"Final EIR" means the environmental impact report for the Project that the Planning Commission certified on August 24, 2017.

"final judgment" means an order, judgment, award, settlement, consent decree, stipulated judgment, or other partial or complete termination of an action with respect to a Claim or a Loss issued by an administrative, judicial, quasi-judicial, or nonjudicial body that is effective and binding after any appeal is finally adjudicated and all rights to appeal have been exhausted, or the time to appeal has expired.

"Final Map" means a final Subdivision Map meeting the requirements of the Subdivision Code and the Map Act.

"Final Option Parcel" means the last Option Parcel to be developed in the 28-Acre Site.

"Final Phase" means the last Phase of development under the Phasing Plan.

"Final Port Report" means the Port's final financial report for the 28-Acre Site Project as described in FP Art 9 (Reporting).

"Final Transfer Map" means a Transfer Map meeting the requirements for recordation under the Subdivision Code and the Map Act.

"Financing Document" means any one or more of the Financing Plan, Appendix G-2, the IRFD Financing Plan, the RMA for any CFD, the Tax Allocation MOU, the CFD Formation Proceedings for any CFD, the IFD Formation Proceedings, the IRFD Formation Proceedings, and all related ordinances and resolutions that the Board of Supervisors adopted in connection with the formation of the Sub-Project Areas, the IRFD, and the CFDs.

"Financing Document" includes Appendix G-1 solely in relation to the Waterfront Set-Aside requirement under IFD Law.

"Financing Plan" means DDA Exh C1, the part of the DDA that will govern the application of Project Payment Sources to meet the Project Payment Obligation and other matters relating to financing the 28-Acre Site Project and revenue-sharing.

"Fire Safety Infrastructure" means Horizontal Improvements for utilities serving the 28-Acre Site that will be under SFFD jurisdiction when accepted.

"First Construction Document" means the first Construction Permit issued for a Vertical Improvement that authorizes its construction to begin.

"First Construction Document" excludes any Construction Permit for Site Preparation.

"Flex Parcel" means a Development Parcel that may be developed for residential or commercial use under the SUD.

"Floodplain Management Plan" means the document described in Port Building Code §§ 104A.2.1.1-104A.2.1.2.

"Floodplain Ordinance" means the law (Admin. Code art. XX) managing construction in flood-prone areas of San Francisco and authorizing the City's participation in the National Flood Insurance Program.

"Force Majeure" means an event that is not caused by and is outside the reasonable control of the Party claiming an Excusable Delay, but only to the extent that the event delays or prevents a Party's performance, and includes:

- (i) domestic or international events disrupting civil activities, such as war, acts of terrorism, insurrection, acts of the public enemy, and riots;
- (ii) acts of nature, including floods, earthquakes, unusually severe weather, and resulting fires and casualties;

- (iii) epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions;
- (iv) inability to secure necessary labor, materials, or tools (but only if the Party claiming delay has taken reasonable action to obtain them on a timely basis) due to any of the above events, freight embargoes, lack of transportation, or failure or delay in delivery of utilities serving the 28-Acre Site;
- (v) government action or inaction after the Reference Date that precludes or substantially increases Developer's cost to perform or comply with any provision of the DDA;
- (vi) litigation that enjoins construction or other work on any portion of the 28-Acre Site, causes a lender to refuse to fund a draw request or to accelerate payment on a loan, or prevents or suspends construction work on the 28-Acre Site except to the extent caused by the Party claiming an extension;
- (vii) Administrative Delay;
- (viii) Environmental Delay; and
- (ix) Down Market Delay.

"Foreclosed Property" means a real property interest that has transferred through a Lender Acquisition.

"FP" is an acronym for **DDA Exh C1**, the Financing Plan.

"Funding Goals" means the Parties' financial objectives under **FP § 1.2** (Funding Goals).

"Future Annexation Area" means Development Parcels that are designated for possible annexation into the Pier 70 Leased Property CFD and the Pier 70 Condo CFD, identified as Parcels E1, F, G, H1, H2, C1A, E4, and Parcel K South of the SUD as of the Reference Date.

"Future Approval" means any Regulatory Approval adopted or issued after the DA Ordinance Effective Date that is required to begin Site Preparation, construct Improvements in the FC Project Area, or otherwise implement the 28-Acre Site Project.

"FY" is an acronym for "fiscal year" in reference to a City Fiscal Year.

"FYE" is an acronym for "fiscal year end," which occurs on June 30 of each City Fiscal Year.

"GAAP" means generally accepted accounting principles consistently applied.

"General Plan" means goals, policies, and programs for the future physical development of the City, as adopted by the Planning Commission and approved by the Board of Supervisors, taking into consideration social, economic, and environmental factors.

"General Plan Consistency Findings" means findings made by the Planning Commission by Resolution No. 19978 that the 28-Acre Site Project as a whole and in its entirety is consistent with the objectives, policies, general land uses, and programs specified in the General Plan and the planning principles in Planning Code section 101.1.

"GMP contract" means a guaranteed maximum price contract or negotiated contract with cost-efficiency measures.

"Governing Law and Policy" when referring to Public Financing Sources collectively or individually as applicable, means the CFD Law, the IFD Law, the IRFD Law, the Tax Code, the CFD Goals, and the Port IFD Guidelines.

"Gross Tax Increment" means, in any portion of any financing district authorized to use Tax Increment or Housing Tax Increment, 100% of the revenue produced by application of the 1% ad valorem tax against the increase in aggregate assessed values of Taxable Parcels over the base year set

forth in the IFD Financing Plan or IRFD Financing Plan, as applicable, including all real property and possessory interest taxes, whether collected on the regular or supplemental tax roll.

"gsf" is an acronym for gross square feet in any structure, as measured under applicable provisions of the Design for Development.

"Guaranty" means a guaranty substantially in the form of **DDA Exh B12**, or as revised by agreement of Developer and the Port Director in their respective sole discretion.

"handle" when used in reference to Hazardous Materials means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"Hard Cost" means the reasonable and customary out-of-pocket costs actually incurred and paid after the Reference Date by Developer or the Port in connection with Horizontal Improvements, including:

- (i) labor and materials;
- (ii) building and site permit fees;
- (iii) Port permit fees; and
- (iv) any other amount specifically identified in the Financing Plan or the DDA as a Hard Cost (such as Deferred Infrastructure).

"Hard Cost" excludes:

- (1) *Soft Costs;*
- (2) *costs incurred before the Reference Date; and*
- (3) *work that must be repaired or replaced at no additional cost due to failure to satisfy quality, quantity, types of materials, and workmanship in accordance with Improvement Plans approved under the DDA and ICA.*

"Hazardous Material" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted, or otherwise regulated under Environmental Laws as a "hazardous constituent," "hazardous material," "hazardous waste constituent," "infectious waste," "medical waste," "biohazardous waste," "extremely hazardous waste," "pollutant," "toxic pollutant," or "contaminant," or any other designation intended to classify substances by properties deleterious to the environment, natural resources, wildlife, or human health or safety, including:

- (i) ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity;
- (ii) any form of natural gas, petroleum products, or any fraction;
- (iii) asbestos, asbestos-containing materials, and presumed asbestos-containing materials;
- (iv) PCBs, PCB-containing materials; and
- (v) any other substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures, or byproducts, damages or threatens to damage the environment, natural resources, wildlife, or human health or safety.

"Hazardous Material Claim" means a Claim arising from the presence, alleged presence, release, or threatened release of any Hazardous Materials in, on, under, or about any portion of the 28-Acre Site.

"Hazardous Materials Indemnification" means the indemnification against Hazardous Materials Claims and Losses that the Tenant and Related Third Parties must provide under **ML Art 19** (Indemnification of Port).

"HB Bonds" means, as applicable, (i) Mello-Roos Bonds issued by the Pier 70 Leased Property CFD that are secured by Facilities Special Taxes levied on Taxable Parcels of Historic Building 12 in Zone 3 of the Pier 70 Leased Property CFD, and (ii) Mello-Roos Bonds issued by the Pier 70 Leased Property CFD that are secured by Facilities Special Taxes levied on Taxable Parcels of Historic Building 21 in Zone 3 of the Pier 70 Leased Property CFD.

"HB Tax Increment" means, as applicable, (i) the Project Tax Increment and the Port Tax Increment generated from Taxable Parcels of Historic Building 12, and (ii) the Project Tax Increment and the Port Tax Increment generated from Taxable Parcels of Historic Building 21.

"HB2 Project Materials" as defined in clause (vii) of **DDA § 7.11(a)** (Option Exercise Procedures) means studies, applications, reports, permits, plans, drawings, and similar work product prepared for the rehabilitation of Historic Building 2.

"HDY1," "HDY2," and "HDY3" are the designations for three developable parcels that may be created by the land area created by merging the Hoedown Yard with the bisecting public right-of-way, as shown in the Land Use Plan attached to the DDA.

"Historic Building" means any one of the historic structures in the 28-Acre Site known as Building 2, Building 12, and Building 21, each of which is classified as a significant contributing historic resource to the Union Iron Works Historic District.

"Historic Building Account" means the segregated account in the Facilities Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, hold, and disburse Historic Building Special Taxes as specified in the Financing Plan.

"Historic Building Cost" means the sum of the following amounts, calculated separately for Historic Building 12 and Historic Building 21:

- (i) all reasonable and customary hard and soft costs of rehabilitation determined in accordance with the Appendix of 28-Acre Site Parcel Lease Provisions for Historic Buildings 2, 12 and 21 attached to the form of Parcel Lease, plus

- (ii) 10% developer profit on actual rehabilitation costs, unescalated; and

- (iii) subtracting from both (i) and (ii) the following: (i) Gross Income from the applicable Historic Building (determined in accordance with the applicable Parcel Lease); less (ii) operating expenses for the applicable Historic Building to the extent not otherwise included in hard costs or soft costs (as those terms are defined in the Appendix of 28-Acre Site Parcel Lease Provisions for Historic Buildings 2, 12 and 21 attached to the form of Parcel Lease).

"Historic Building Feasibility Gap" means, calculated separately for Historic Building 12 and Historic Building 21, the amount calculated under **FP § 11.1** (Subsidy for Historic Buildings 12 and 21).

"Historic Building Schedule" means a schedule that the Vertical Developer Affiliate that rehabilitates Historic Building 12 or Historic Building 21 maintains to account for funds applied to the applicable Historic Building Feasibility Gap.

"Historic Building Proceeds" means the Historic Building Special Taxes and Mello-Roos Bond Proceeds secured by the Historic Building Special Taxes, which will be the primary source to fund the Historic Building Feasibility Gap.

"Historic Building Special Taxes" means the Improvement Special Taxes that are levied to finance the Historic Building Feasibility Gap.

"Historic Building Value" means the fair market value of the applicable Historic Building immediately prior to the date of casualty, as determined by an appraisal prepared by a Qualified Appraiser submitted by Developer to the Port.

"Historic District" is a short-hand designation sometimes used to refer to the *Union Iron Works Historic District*.

"Historic Pier 70 Premises" means the property that the Port has leased to Historic Pier 70, LLC.

"Historic Tax Credits" means tax credits that may be obtained under the Historic Preservation Tax Incentives Program jointly administered by the National Park Service and the State Historic Preservation Office, codified at Tax Code section 47.

"Hoedown Yard" is the designation for two parcels owned by PG&E along Illinois Street roughly between 21st Street and 22nd Street, bisected by a public right-of-way, which is subject to an Option Agreement for the Purchase and Sale of Real Property between the City and PG&E under which the City has a transferable option to purchase the Hoedown Yard, which the Board of Supervisors approved by Resolution No. 275-14 and, when required by the context, means the Hoedown Yard merged with the public right-of-way, then subdivided into HDY1, HDY2, and HDY3.

"Hoedown Yard CFD" means the CFD that the City has agreed to establish over the Hoedown Yard. Although the CFD number designation may change depending on the timing of the formation, the name of the Hoedown Yard CFD is expected to be *"City and County of San Francisco Special Tax District No. [TBD] (Illinois Street)"*.

"Hoedown Yard CFD Proceeds" means Facilities Special Taxes and proceeds of Bonds secured by Facilities Special Taxes from Taxable Parcels in the Hoedown Yard CFD.

"Hoedown Yard Facilities Account" means the segregated account in the Facilities Special Tax Fund that the Port will establish with the Special Fund Trustee to receive, administer, and disburse Hoedown Yard Facilities Special Taxes from the Hoedown Yard CFD.

"Hoedown Yard Facilities Special Taxes" means Facilities Special Taxes from the Hoedown Yard that are levied in the Hoedown Yard Facilities CFD.

"Hoedown Yard Maintained Facilities" means the improvements for which Ongoing Maintenance Costs will be paid by Services Special Taxes levied on Taxable Parcels in the Hoedown Yard CFD, as specified in the Financing Plan.

"Hoedown Yard Services Account" means the segregated account in the Services Special Tax Fund that the Port will establish with the Special Fund Trustee to receive, administer, and disburse Services Special Taxes from the Hoedown Yard CFD.

"Hoedown Yard Services Special Taxes" means Services Special Taxes from the Hoedown Yard that are allocated to the Hoedown Yard Services CFD.

"horizontal development" means the preparation of unimproved or predominantly unimproved land for vertical development.

"Horizontal Development Costs" means costs incurred by Developer or the Port that are reimbursable under the DDA or the Financing Plan, for the following:

- (i) Entitlement Costs;
- (ii) Hard Costs and Soft Costs;
- (iii) Developer Mitigation Measures;
- (iv) Deferred Infrastructure if funded by Developer;

- (v) Associated Public Benefits; and
- (vi) costs associated with implementing the DDA, including any additional costs that the Parties have agreed shall be incurred by the Developer for the Project.

"Horizontal Development Costs" excludes:

- (1) *any claimed costs that are not verified by proof of payment;*
- (2) *the portion of any cost that is commercially unreasonable as of the date incurred;*
- (3) *costs to rehabilitate Historic Building 2, Historic Building 12, and Historic Building 21, including the Historic Building Feasibility Gap;*
- (4) *Arts Building Costs, construction costs associated the Noonan Replacement Space, and costs to build the Community Facility Space;*
- (5) *costs that any Vertical Developer incurs to implement Mitigation Measures and provide any other Associated Public Benefits; and*
- (6) *other costs of Vertical Improvements.*

"Horizontal Improvements" means:

- (i) capital facilities and infrastructure and their constituent Components that Developer builds or installs in or to serve the FC Project Area or for other public purposes, including Site Preparation, Shoreline Improvements, Public Spaces, Public ROWs, and Utility Infrastructure; and
- (ii) Deferred Infrastructure.

"Horizontal Improvements" excludes Vertical Improvements.

"Horizontal Phase Costs" means, on the date of determination, the amount of Developer Capital spent on Phase Improvements that is allocated to horizontal development under FP § 2.4 (Horizontal Development Costs).

"household" means one or more related or unrelated individuals who live together in a Residential Unit as their primary dwelling.

"Household Size" means the number of persons in a household occupying a Residential Unit.

"Housing Impact Fees" means the 28-Acre Site Affordable Housing Fees and the 28-Acre Site Jobs/Housing Equivalency Fees collected from development on the 28-Acre Site.

"Housing Map" means AHP Att A.

"Housing Tax Increment" means Tax Increment from the IRFD.

"Housing Tax Increment Bonds" means any Bonds of the IRFD, including obligations incurred under a Pledge Agreement, secured and payable by a pledge of or otherwise payable from Housing Tax Increment.

"Housing Tax Increment Bonds" excludes Mello-Roos Bonds and Tax Increment Bonds.

"HUD" means the United States Department of Housing and Urban Development.

"Hybrid Lease" means a Parcel Lease of an Option Parcel under which the Developer Share of the Interim Satisfaction Balance is paid as Prepaid Rent and the Port Share is paid as Annual Ground Rent under FP § 3.7(b) (Hybrid Lease).

"ICA" is an acronym for "interagency cooperation agreement" that refers to the Memorandum of Understanding (Interagency Cooperation).

"IFD" is an acronym for Infrastructure Financing District No. 2 (Port of San Francisco), formed by Ordinance No. 27-16.

"IFD Administrative Costs" means the reasonable costs that the Port, as IFD Agent, actually incurs and pays for:

- (i) services of any Indenture Trustee (including its counsel) for any Bonds that the IFD issues or the City issues on behalf of the IFD;
- (ii) marketing or remarketing Bonds; and
- (iii) all other administrative services provided by the Port, the IFD Administrator, the City, the Special Fund Trustee, and third-party professionals necessary for the Port to perform its duties under the DDA, Tax Allocation MOU, Special Fund Administration Agreement, and Appendix G-2, including the City's costs under section 53369.5 of the IFD Law.

"IFD Administrator" means the tax increment consultant or any other person that the Port Director designates to administer Tax Increment from Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4 of Project Area G in accordance with Appendix G-2.

"IFD Agent" means the Port, acting on behalf of the IFD with respect to the Sub-Project Areas.

"IFD Cap" means the maximum dollar amount of Tax Increment from each Sub-Project Area that the City agrees to allocate to the IFD.

"IFD Financing Plan" means the infrastructure financing plan for the IFD Project Area, including all appendices implementing project-specific infrastructure financing plans for sub-project areas.

"IFD Formation Proceedings" means legislation that the Board of Supervisors will adopt to form Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4, approve Appendix G-2, and related authorizations.

"IFD Law" means California law governing infrastructure financing districts, beginning at Government Code section 53395, as amended from time to time.

"IFD Project Area" means any designated project area within the IFD, including all Sub-Project Areas and Taxable Parcels in the 28-Acre Site.

"IFD Termination Date" means the respective dates on which all allocations to the IFD of Tax Increment from each Sub-Project Area and the IFD's authority to repay indebtedness with Tax Increment from each Sub-Project Area end under Appendix G-2.

"Illinois Street Parcels" means the 20th/Illinois Parcel and the Hoedown Yard in their current ownership and configuration and as they may later be conveyed and reconfigured substantially as shown in the Land Use Plan (designated as Parcel K North, Parcel K South, HDY1, HDY2, and HDY3 on the Reference Date).

"Impact Fee" means any fee that the City imposes as a condition of approval to mitigate the impacts of increased demand for public services, facilities, or housing caused by the development project that may or may not be an impact fee governed by the Mitigation Fee Act, including in-lieu fees.

"Impact Fee" excludes any Administrative Fee, school district fee, or federal, state, or regional fee, tax, special tax, or assessment.

"Improvement" means any physical change required or permitted to be made to property, including Horizontal Improvements and Vertical Improvements.

"Improvement Bonds" means adequate security that Developer will be required to provide Public Works in connection with the subdivision of the 28-Acre Site.

"Improvement Plan Submittal" means a set of Improvement Plans for Horizontal Improvements associated with a Public Improvement Agreement for review by Other City Agencies and the Port under ICA § 4.4(d) (Plan Submittals).

"Improvement Plans" means drawings and other documents for Horizontal Improvements that Developer (or Vertical Developers, if applicable) submit for approval in accordance with the ICA.

"Improvement Special Taxes" means all categories of Mello-Roos Taxes that the City levies in a City Fiscal Year on Taxable Parcels and residential units in a CFD to finance eligible Improvements authorized through CFD Formation Proceedings, which include:

- (i) for the Pier 70 Leased Property CFD, Facilities Special Taxes, Shoreline Special Taxes, and Arts Building Special Taxes;
- (ii) for the Pier 70 Condo CFD, Facilities Special Taxes and Arts Building Special Taxes; and
- (iii) for the Hoedown Yard CFD, Facilities Special Taxes.

"Improvements" means all physical changes required or permitted to be made to or in the vicinity of the FC Project Area and the Illinois Street Parcels under the DDA, including Horizontal Improvements and Vertical Improvements.

"Inclusionary Obligation" means the requirement under AHP § 6.1(a) (Development) that 20% of all Residential Units in each Market-Rate Rental Project be Inclusionary Units rented at a level affordable to households with incomes between 55% and 110% of AMI, not to exceed a maximum average of 80% of AMI in each building.

"Inclusionary Unit" means a Rental Unit that is:

- (i) available to and occupied by a household with an income not exceeding the Maximum Inclusionary AMI; and
- (ii) rented at an Affordable Housing Cost for households with incomes at or below the Maximum Inclusionary AMI, subject to adjustment as provided in AHP § 9.2 (Potrero Terrace and Annex) and AHP § 9.3 (Housing for Special Populations) if applicable.

"Inclusionary Unit" excludes BMR Units.

"Indemnified Party" means, as applicable, a City Party or Developer Party with the right to indemnification by an Indemnitor under the DDA.

"indemnify" means reimburse, indemnify, defend, and hold harmless.

"Indemnitor" means, as applicable, a City Party or a Developer Party with an indemnification obligation under the DDA.

"Indenture" means one or more indentures, trust agreements, fiscal agent agreements, financing agreements, or other documents containing the terms of any Bonds secured and payable by a pledge of and to be paid by any combination of Mello-Roos Taxes and Project Tax Increment.

"Indenture Trustee" means the fiscal agent or trustee under an Indenture.

"Index" means the Construction Cost Index, San Francisco, published monthly by *Engineering News-Record* or a replacement index as agreed by the Parties.

"Indexed" means the product of a cost estimate or actual cost that Developer established for Vertical Improvements or any Component of Horizontal Improvements in a Prior Phase, multiplied by the percentage of any increase between the Index published in the month in which the earlier actual cost or cost estimate was established and the Index published in the month in which Developer claims a Material Cost Increase.

"individual" when referring to a person means a human.

"Infrastructure Plan" means the Infrastructure Plan attached as **DDA Exh B8**, including the Streetscape Master Plan and each Master Utility Plan when later approved by the applicable City Agency.

"Initial Summary Proforma" means the Summary Proforma attached as **FP Sch 1** to the Financing Plan.

"Initial Transition Notice" means the notice prepared and delivered to the Noonan Tenants under clause (l) of **DDA § 7.13(c)** (Artist Transition Plan).

"in-lieu fee" means a fee a developer may pay instead of complying with an Exaction.

"Insolvency" means a person's financial condition that results in any of the following:

- (i) a receiver is appointed for some or all of the person's assets;
- (ii) the person files a petition for bankruptcy or makes a general assignment for the benefit of its creditors;
- (iii) a court issues a writ of execution or attachment or any similar process is issued or levied against any of the person's property or assets; or
- (iv) any other action is taken by or against the person under any bankruptcy, reorganization, moratorium or other debtor relief law.

"Inspection Request" means Developer's written request that the Chief Harbor Engineer arrange for the applicable Acquiring Agency to inspect Horizontal Improvements or Components for compliance with Project Requirements and City Law.

"Interest Cost Limitation" means the statutory limit on the amount of interest that an infrastructure financing district is authorized to pay to acquire infrastructure under IFD Law section 53395.2, specifically, "a rate of interest not to exceed the bond buyer index rate on the day that the agreement to repay is entered into."

"Interest on Land Proceeds" means annual rate of 3.890% compounded quarterly until paid, the rate at which interest accrues on the principal amount of Promissory Note-LP and Promissory Note-X.

"Interested Person" means a person that acquires a property interest or security interest in any portion of the 28-Acre Site by a conveyance or Lender Acquisition.

"Interim Affordable Percentage" is defined in **AHP § 2.2(b)** (Required Interim Threshold) means the requirement that, when the Port has issued TCOs for all Residential Projects within any Phase other than the Final Phase, the sum of Inclusionary Units plus any earned BMR Credits must be 20% or more of the number of all Completed Residential Units plus earned BMR Credits.

"Interim Lease Revenues" means Percentage Rent generated from the Master Lease (determined under **ML Exh D**), which will be treated as Land Proceeds under the Financing Plan.

"Interim Satisfaction" means that all of the conditions specified **FP § 3.6(b)** (Interim Satisfaction Event at Closing) have been satisfied.

"Interim Satisfaction Balance" means any Land Proceeds available for interim revenue-sharing under **FP § 3.6** (Interim Satisfaction), subject to the Port's rights under **FP § 3.7** (Parcel Lease Options).

"Interim Satisfaction Event" means the occurrence of Interim Satisfaction in a Phase.

"investigate" when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be released in, on, under, or about any portion of the 28-Acre Site, other Port property, or the environment, including:

- (i) preparation and publication of site history;
- (ii) sampling, and monitoring reports;

- (iii) performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks; and
- (iv) sampling and analysis of environmental conditions before, during, and after remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

"Invitee" means a person's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, vendors, suppliers, assignees, tenants and subtenants, any other person whose rights arise through them, and members of the general public present on any property under the person's possession and control.

"IRFD" means City and County of San Francisco Infrastructure and Revitalization Financing District No. 2, which the Board of Supervisors will establish over the Hoedown Yard.

"IRFD Administrative Costs" means the reasonable costs that the Port, as IRFD Agent, actually incurs and pays for:

- (i) services of any Indenture Trustee (including its counsel) for any Bonds that the IRFD issues or the City issues on behalf of the IRFD;
- (ii) marketing or remarketing Bonds issued by or for the IRFD; and
- (iii) all other administrative services provided by the Port, the IRFD Administrator, the City, the Special Fund Trustee, and third-party professionals necessary for the Port to perform its duties under the DDA, Tax Allocation MOU, Special Fund Administration Agreement, and IRFD Financing Plan.

"IRFD Administrator" means the tax increment consultant or any other person that the Port Director designates to administer Housing Tax Increment from the IRFD in accordance with the IRFD Financing Plan.

"IRFD Agent" means the Port, acting on behalf of the IRFD.

"IRFD Cap" means the maximum dollar amount of Housing Tax Increment from the IRFD that the City agreed to allocate to the IRFD.

"IRFD Financing Plan" means the infrastructure financing plan for the IRFD.

"IRFD Formation Proceedings" means the legislation that the Board of Supervisors adopts to establish and authorize implementation of the IRFD.

"IRFD Law" means the law governing infrastructure and revitalization financing districts (Calif. Gov't Code §§ 53369-53369.49).

"IRFD Termination Date" means the date on which all allocations to the IRFD of Housing Tax Increment and the IRFD's authority to repay indebtedness with Housing Tax Increment will end under the IRFD Financing Plan.

"Irish Hill Playground" means the public playground shown in the Design for Development.

"ISCOTT" is an acronym for the Interdepartmental Staff Committee on Traffic and Transportation.

"issue" when used in reference to any form of indebtedness in the Financing Plan means to complete all actions required to obtain the proceeds for authorized uses under the Financing Plan.

"Joint Appraisal" means the appraisal report that a Qualified Appraiser delivers to both Parties under DDA § 7.3(e) (Joint Appraisal).

"Joint Escrow Instructions" means the Parties' joint instructions to the Escrow Agent for the Escrow concerning the Port's conveyance of an Option Parcel.

"Land Proceeds" means any of the following revenues paid in cash or by Credit Bid or both to the Port:

- (i) Interim Lease Revenues;
- (ii) Parcel K North Proceeds;
- (iii) proceeds of the sale of any Option Parcel, net of Port costs of conveyance and any offset for Deferred Infrastructure that a Vertical Developer will build;
- (iv) Prepaid Rent paid to the Port under a Prepaid Lease;
- (v) PNL Payments to the Port under Promissory Note-LP; and
- (vi) net proceeds from the Port's conveyance of Historic Building 12 or Historic Building 21, if positive.

"Land Proceeds" excludes:

- (1) *Prepaid Rent paid to Developer under a Hybrid Lease;*
- (2) *Annual Ground Rent paid to the Port under a Hybrid Lease;*
- (3) *net proceeds of the Port's conveyances of Public Use Parcels; and*
- (4) *net proceeds from the Port's conveyance of Historic Building 12 or Historic Building 21, if negative.*

"Land Proceeds Fund" means the segregated account in the Special Fund Trust Account, which will hold certain Land Proceeds as described in FP § 2.5 (Trust Account for Special Funds).

"Land Use Plan" means the Land Use Concept Plan shown in *D4D Fig 2.1.1* and attached to the DDA as **DDA Exh A4**.

"Land Value Indicator" means dollar value per usable square foot within the building envelope assumed in the Final EIR for each Option Parcel for its proposed use, initially based on the Land Use Plan attached to the DDA and the residual land values in the Summary Proforma attached to the Financing Plan on the Reference Date, which will be used solely for a Down Market Test under **DDA Art 4** (Performance Dates), which will be determined in accordance with **DDA § 4.5(b)** (Land Value Indicators).

"Later Phase" means any Phase for which Developer obtains Phase Approval after a Current Phase.

"law" means any of the following validly in effect as of the Reference Date and as later amended, supplemented, clarified, corrected, or replaced during the DDA Term, whether or not within the present contemplation of the Parties:

- (i) federal, state, regional, or local constitution, charter, law, statute, ordinance, code, rule of common law, resolution, rule, regulation, standard, directive, requirement, proclamation, order, decree, policy (including the Waterfront Plan and Port and City construction requirements);
- (ii) judicial order, injunction, writ, or other decision interpreting any law;
- (iii) requirement or condition of any Regulatory Approval of a Regulatory Agency affecting any portion of the 28-Acre Site; and
- (iv) recorded covenants, conditions, or restrictions affecting any portion of the 28-Acre Site.

"LBE" is an acronym for a local business enterprise as defined in Administrative Code chapter 14B.

"Leased Property Backup Fund" means the fund or account held by the Special Fund Trustee to be used exclusively as a backup source to pay Special Debt Service on Mello-Roos Bonds secured by Facilities Special Taxes levied in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD as described in **clause (v) of FP § 6.5(h)** (Application of Tax Increment to Special Debt Service).

"Leased Property Backup Fund Requirement" means, at any date of calculation, the maximum annual debt service due in any year on all outstanding Mello-Roos Bonds secured by Facilities Special Taxes in the Pier 70 Leased Property CFD.

"Leasing Costs" means customary and usual costs incurred by a landlord with respect to leased property, such as costs associated with tenant defaults, costs of collection, vacancies, assignments and subleases, estoppel certificates, nondisturbance agreements, and Insolvency.

"Legislature" means the legislative branch of the State.

"Lender Acquisition" means a Permitted Lender or its nominee taking title to Encumbered Property under its Permitted Lien through a foreclosure proceeding, a conveyance or other action in lieu of foreclosure, or its exercise of any other power of sale or other remedy.

"License" means the contract by which the Port will grant Developer the right of entry to portions of the FC Project Area that are outside of the Master Lease Premises for construction of Horizontal Improvements, substantially in the form of DDA Exh B11.

"Loss" when used in reference to a Claim means any personal injury, property damage, or other loss, liability, actual damages, compensation, contribution, cost recovery, lien, obligation, interest, injury, penalty, fine, action, judgment, award, or costs (including reasonable attorneys' fees), or reasonable costs to satisfy a final judgment of any kind, known or unknown, contingent or otherwise, except to the extent specified in the DDA or other Transaction Document.

"Loss Security" means Adequate Security that Developer is required to provide to secure the Developer Reimbursement Obligations for each Phase.

"Loss Security End Date" means the date that is the earliest to occur of the following events:

- (i) issuance of an SOP Compliance Determination for all Phase Improvements within the Phase;
- (ii) the expiration or termination of the DDA with respect to Developer; or
- (iii) the expiration or termination of all of Developer's rights to develop or submit Phase Submittal applications to develop any portion of the Project Site.

"LRV" is an acronym for light rail vehicle.

"Maintained Facilities" means, as the context requires, the FC Project Area Maintained Facilities, the Hoedown Yard Maintained Facilities, or both.

"Map Act" means the Subdivision Map Act of California (Calif. Gov't Code §§ 66410-66499.37).

"Marketing and Operations Guidelines" as defined in AHP § 6.1(d) (Marketing) means, for a Market-Rate Residential Project, the Vertical Developer's MOHCD-approved:

- (i) Marketing and Operations Guidelines, which must include any preferences required by the MOHCD Manual or the Affordable Housing Plan;
- (ii) conformity of the proposed Affordable Housing Cost for Inclusionary Units with the Affordable Housing Plan; and
- (iii) project-specific eligibility and income qualifications for tenant households.

"Market-Rate Condo Project" means a Market-Rate Project containing Condo Units.

"Market-Rate Parcel" means a Development Parcel other than an Affordable Housing Parcel on which development of residential use is permitted.

"Market-Rate Project" means a Residential Parcel constructed by a Vertical Developer that contains Market-Rate Units and Inclusionary Units if required and may include other uses permitted under the SUD.

"Market-Rate Rental Project" means a Market-Rate Project containing Rental Units.

"Market-Rate Units" means any Residential Unit constructed on a Market-Rate Parcel that is not subject to affordability restrictions under the Affordable Housing Plan.

"Master CC&Rs" means Master Conditions, Covenants, and Restrictions that the Parties will approve under DDA § 8.6 (Master CC&Rs), which will be recorded against all Taxable Parcels in the 28-Acre Site.

"Master Lease" means a lease for the Master Lease Premises in the form of DDA Exh B10 that allows Developer to take possession of the described premises and construct Horizontal Improvements on portions of the 28-Acre Site under the DDA.

"Master Lease Permitted Exceptions" means exceptions to title that Developer has marked as "approved" on the Preliminary Title Report for the Master Lease Premises under DDA § 8.1(c) (Permitted Exceptions), as set forth in DDA Exh D1, and new title exceptions approved by Developer under DDA § 8.3 (New Title Matters).

"Master Lease Premises" means the areas of the 28-Acre Site that are subject to the Master Lease, as adjusted from time to time under its terms.

"Master Marketing Fee" means a private fee collected from each Vertical Developer in the amount and in accordance with the terms set forth in VDDA § 12.16 (Master Marketing Fee).

"Master Tentative Map" means the Tentative Map approved for the entire 28-Acre Site.

"Master Utilities Plan" means any of the following plans for Utility Infrastructure, which will be deemed incorporated into the Infrastructure Plan when approved by the SFPUC:

- (i) Low Pressure Water Master Plan;
- (ii) Non-Potable Water System Master Plan;
- (iii) Grading and Combined Sewer System Master Plan;
- (iv) Dry Utilities Joint Trench Master Plan; and
- (v) Master Electrical Infrastructure Plan.

"Material Breach" means the occurrence of any of the events described in DDA Art 12 (Material Breaches and Termination).

"Material Change" means any circumstance that would create a conflict between a Change to Existing City Laws and Standards and the Project Approvals that is described in DA § 5.3(b) (Circumstances Causing Conflict).

"Material Change Order" means any agreed-upon change order for construction of Phase Improvements that would exceed a \$250,000 threshold per occurrence.

"Material Cost Increase" means a material cost increase in the costs of Vertical Improvements or any Component of Horizontal Improvements, as applicable.

"Material Modification" means an amendment to the DDA that would materially increase an Acquiring Agency's costs of ownership or impair the operations of Horizontal Improvements, or that would materially decrease the benefits to the Port or the City, as determined by the Port Director under DDA § 3.4(c) (Amendment of the DDA).

"Maximum Inclusionary AMI" means household income levels meeting the requirements of AHP § 6.1(a) (Development).

"Maximum Special Tax Rate" means the highest rate at which any category of Mello-Roos Taxes is authorized to be levied on a Taxable Parcel under an RMA.

"McEnerney Act" means the Destroyed Land Records Relief Law (Calif. Code of Civ. Proc. §§ 751.01-751.28).

"McEnerney action" means a lawsuit under the McEnerney Act.

"Mello-Roos Bond Proceeds" means the proceeds of Mello-Roos Bonds that are available for use in accordance with the applicable Indenture.

"Mello-Roos Bonds" means one or more series of taxable or tax-exempt bonds, including refunding bonds, or any other debt (as defined in CFD Law) that the City issues for a Facilities CFD, secured and payable by a pledge of Improvement Special Taxes, Allocated Tax Increment, or both, for any purpose authorized under Governing Law and Policy.

"Mello-Roos Improvement Fund" means the funds or accounts, however denominated, that an Indenture Trustee establishes to hold, administer, and disburse Mello-Roos Bond Proceeds to be used to finance eligible Horizontal Development Costs, Shoreline Protection Facilities, or for any other purpose authorized under the Financing Plan and the applicable Indenture.

"Mello-Roos-only Bonds" means Mello-Roos Bonds that are secured only by Improvement Special Taxes.

"Mello-Roos-only Bonds" *excludes Bonds with debt service paid by Tax Increment.*

"Mello-Roos Taxes" means special taxes that the City levies in a City Fiscal Year on Taxable Parcels in any CFD in accordance with the applicable RMA, including delinquent special taxes collected at any time by payment or through foreclosure.

"Memorandum of Deemed Approval" means the document in the form of DDA Exh B9-2 that Developer will be entitled to record if deemed to be in compliance with Schedule of Performance Obligations under DDA § 15.7 (SOP Compliance).

"Memorandum of Understanding (Interagency Cooperation)" means an interagency agreement between the Port and the City, through the Mayor, the Controller, the City Administrator, and the Director of Public Works, with the Consents of SFMTA, SFPUC and Developer, establishing procedures for interagency cooperation in City Agency review and approval of Construction Documents, inspection of Horizontal Improvements, and related matters, as authorized under Charter section B7.340 by Port Resolution No. 17-48 and Board of Supervisors Resolution No. 403-17.

"Memorandum of Understanding (Levy and Allocation of Taxes)" means an interagency agreement between the City, through the Controller and the Treasurer-Tax Collector, and the Port establishing procedures for levying Mello-Roos Taxes, allocating Mello-Roos Taxes to each CFD, allocating Tax Increment to the IFD, allocating Housing Tax Increment to the IRFD, and related matters, as authorized under Charter section B7.340 by Port Resolution No. 17-50 and to be presented to the Board of Supervisors for approval.

"Mezzanine Loan" means a loan secured by a pledge of equity interests in Developer, subject to DDA § Art 18 (Lenders' Rights).

"Mezzanine Lender" is an entity that makes a Mezzanine Loan to a direct or indirect owner of Borrower, subject to DDA § 18.2(c) (Mezzanine Loans).

"Michigan Street segment" means the portion of Michigan Street located in the SUD.

"Minimum Bid Price" means the minimum price that the Port will accept in a Public Offering for an Option Parcel under DDA § 7.5 (Public Offering Procedures).

"Mitigation Fee Act" means chapter 5, division 1, title 7 of California Government Code, beginning with section 66000.

"Mitigation Measure" means any measure identified in the MMRP required to minimize or eliminate material adverse environmental impacts of the 28-Acre Site Project and any additional measures

necessary to mitigate adverse environmental impacts that are identified through the CEQA process for any Future Approval.

"**ML**" is an acronym for the Master Lease.

"**MMRP**" is an acronym for the Mitigation Monitoring and Reporting Program that the Planning Commission adopted by Motion No. 19977 and the Port Commission adopted by Resolution No. 17-43.

"**MOD**" is an acronym for the Mayor's Office of Disabilities.

"**MOHCD**" is an acronym for the Mayor's Office of Housing and Community Development.

"**MOHCD Manuals**" as defined in **AHP § 6.1(c)** (Procedures for Monitoring and Enforcement) means the *City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual*, subject to any update in effect when Inclusionary Units in a Market-Rate Rental Project are available for rent to the extent the update does not result in a Material Change.

"**MOU Resolution**" means the proposed Board of Supervisors resolution approving under Charter section B7.340 the Tax Allocation MOU and the Port's designation as the agent for:

- (i) the Facilities CFD and the Services CFD for the Pier 70 CFDs;
- (ii) the Services CFD for the 20th Street CFD;
- (iii) the Facilities CFD and the Services CFD for the Hoedown Yard CFD;
- (iv) Sub-Project Areas G-2, G-3, and G-4;
- (v) the IRFD;
- (vi) the administration of Mello-Roos Taxes and any proceeds of Bonds secured and payable by Mello-Roos Taxes;
- (vii) the administration of Allocated Housing Tax Increment and any proceeds of Bonds secured and payable by Housing Tax Increment; and
- (viii) the administration of Allocated Tax Increment and any proceeds of Bonds secured and payable by Tax Increment.

"**Muni**" means the municipal public transit systems operated by SFMTA.

"**Municipal Code**" means, collectively, the Charter and ordinances adopted by the Board of Supervisors and by San Francisco voters through initiatives.

"**MUP**" is an acronym for Master Utilities Plan.

"**net present value**" means the difference between the present value of the future cash flows from an investment, calculated by discounting the future cash flows at the required rate of return, and the amount of investment.

"**Net Worth**" when used in reference to a Transferee or Obligor means the equity of an entity's owners (e.g., equity interest of shareholders of a corporation or members of a limited liability company) calculated in accordance with GAAP or the income tax basis of accounting consistently applied.

"**Net Worth Requirement**" when used in reference to a Transfer means, for each Transferred Phase in which Phase Improvements are not complete, a Net Worth of at least \$27.5 million, increased automatically by 10% on each fifth anniversary of the Reference Date for the remainder of the DDA Term, unless otherwise approved by the Port Director.

"**Next Phase**" means a Phase that immediately follows a Current Phase.

"**NOI Property**" means any Commercial Parcel or Market-Rate Rental Project in the 28-Acre Site.

"**NOI Property Project Tax Increment**" means the Project Tax Increment derived from any NOI Property.

"nontrust revenues" means the Port's revenues from leases or other agreements for Development Parcels from which the public trust use restrictions have been lifted by the Public Trust Exchange authorized under AB 418 and other 28-Acre Site Project-based revenues that are available for the 28-Acre Site Project, such as Mello-Roos Taxes, Tax Increment, and proceeds of Bonds secured and payable by either or both, credits that may be applied to offset any portion of Impact Fees or Exactions that would otherwise be due, and proceeds of general obligation bonds.

"Noonan Phase Security" is defined in **DDA § 17.3(d)** (Noonan Replacement Space).

"Noonan Replacement Space" means space to accommodate the Noonan Space Parcel Lease in a new or rehabilitated building that meets the requirements of **DDA § 7.13** (Noonan Replacement Space) for which the Port has issued a Temporary Certificate of Occupancy.

"Noonan Replacement Space Election" is defined in **DDA § 7.13(b)** (Noonan Replacement Space Election).

"Noonan Space Lease" means the applicable Parcel Lease for the building or in an amendment to the Master Lease reasonably approved by the Parties as a condition to the issuance of the Initial Transition Notice for any Master Lease Premises in which any Temporary or Permanent Noonan Replacement Space will be located, as described in **DDA § 7.13(c)** (Artist Transition Plan).

"Noonan Tenant" means a named tenant or Port-approved subtenant under a lease with the Port for space in Building 11 (or the applicable Noonan Replacement Space) that is in effect and in good standing as of the date of the Initial Transition Notice or Second Transition Notice, as applicable.

"Noonan Tenant Rent" means the base rent for the Noonan Replacement Space determined in accordance with **DDA § 7.13(c)(iv)** (Rent).

"notice" means a written notification, demand, request for information or consent, or response to a request delivered in accordance with **App ¶ A.5** (Notices) and any pertinent provisions of the Transaction Document under which the notice is given.

"Notice of Special Tax" is defined in **VDDA § Exh D**.

"Notice of Termination" means a notice given under **DDA § 12.7** (Termination Procedures).

"NPS" is an acronym for the National Park Service of the United States Department of the Interior.

"Obligor" means the person contractually obligated to perform under any form of Adequate Security provided under **DDA Art 17** (Security for Project Activities).

"Obligor Net Worth" when used in reference to an issuer of Adequate Security means a person's net worth calculated in accordance with GAAP or the income tax basis of accounting consistently applied.

"Obligor Net Worth Requirement" when used in reference to Adequate Security means a person with an Obligor Net Worth that is (i) greater than the Secured Amount, and in no event less than \$27.5 million, subject to an automatic increase of 10% on the fifth anniversary of the Reference Date and every succeeding fifth year during the DDA Term; or (ii) as otherwise approved by the Port Director.

"OEWD" is an acronym for the Office of Economic and Workforce Development.

"Office Development Authorization" means a Planning Commission approval of an application for a large office application under the Planning Code.

"Official Records" means official real estate records that the Assessor records and maintains.

"OLSE" is an acronym for the Office of Labor Standards Enforcement of the San Francisco Department of Administrative Services.

"Ongoing Maintenance Costs" means maintenance and capital repair and replacement costs of Maintained Facilities that will be paid by Services Special Taxes, including:

- (i) landscaping and irrigation systems and other equipment, material, and supplies directly related to maintaining and replacing landscaped areas and water features;
- (ii) maintenance and replacement as needed of Public Spaces and Public ROWs, including street cleaning and paving (but not street reconstruction);
- (iii) lighting, rest rooms, trash receptacles, park benches, planting containers, picnic tables, and other furniture and fixtures and signage;
- (iv) utilities;
- (v) general liability insurance for any Public ROWs or structures in Public ROWs that Public Works does not submit to the Board of Supervisors for City acceptance for City General Fund liability purposes and other commercially reasonable insurance coverages;
- (vi) security;
- (vii) replacement reserves; and
- (viii) Port, City, or third party personnel, administrative, and overhead costs related to maintenance or to contracting for and managing third-party maintenance.

"Option" means development rights granted to Developer for Option Parcels under the DDA.

"Option Exercise Deadline" means the 30th day after delivery of any Final Appraisal, which is the last day Developer may deliver notice of its exercise of the Option on an Option Parcel to the Port under DDA § 7.4(a) (Option Exercise Deadline).

"Option Parcel" means a Development Parcel for which Developer has an Option under DDA Art 7 (Parcel Conveyances and Delivery of Associated Public Benefits), which Developer will exercise through a Vertical Developer Affiliate.

"Orton Louisiana Parcel" is defined in DDA § 15.1(d) (Louisiana Parcel Improvements).

"Other Acquiring Agency" means an Acquiring Agency other than the Port.

"Other City Agency" means a City Agency other than the Port.

"Other City Costs" means costs that Other City Agencies incur to perform their obligations under the ICA, the Development Agreement, and the Tax Allocation MOU to implement or defend actions arising from the 28-Acre Site Project, including staff costs determined on a time and materials basis, third-party consultant fees, attorneys' fees, and costs to administer the financing districts to the extent not paid by Public Financing Sources.

"Other City Costs" *excludes* Port Costs, Administrative Fees, Impact Fees, and Exactions.

"Other City Parties" means the Mayor, the Board of Supervisors, the City Administrator, the Director of Public Works, the San Francisco Municipal Transportation Agency, and the San Francisco Public Utilities Commission.

"Other City Requirements" means ordinances and policies described in DDA Exh A7 and approved plans to implement City and Port ordinances and policies, including those attached to the DDA at DDA Exh Tab B.

"Other Regulator" means a federal, state, or regional body, administrative agency, commission, court, or other governmental or quasi-governmental organization with regulatory authority over Port land, including any Environmental Regulatory Agency.

"Outside Date" means the last date by which Developer must perform identified obligations for the 28-Acre Site Project, as specified in the Schedule of Performance.

"Parcel" means a specific Development Parcel within the SUD when used with a modifier corresponding to the Land Use Plan.

"Parcel E4 Option 1" as defined in **clause (i) of DDA § 7.12(b)** (Development Options) means Developer's election to build a single-phase Arts Building on the entirety of Parcel E4 that will include the Noonan Replacement Space and will provide other arts uses that are consistent with Section 249.79 and the Arts Program.

"Parcel E4 Option 2" as defined in **clause (ii) of DDA § 7.12(b)** (Development Options) means Developer's election to build a single-phase project that will include a stand-alone building to accommodate the Noonan Replacement Space on approximately 1/3 of Parcel E4.

"Parcel E4 Option 3" as defined in **clause (iii) of DDA § 7.12(b)** (Development Options) means Developer's election to build a phased project that will include the Stand-Alone Noonan Building on approximately 1/3 of Parcel E4 and a separate Arts Building on the remainder of Parcel E4.

"Parcel E4 Outside Date" as defined in **paragraph (1) of clause (i) of DDA § 7.12(d)** (Development Options and Schedule of Performance) means, for Parcel E4 Option 1, the date on which the Port issues a TCO for Office Building B-2.

"Parcel Increment Amount" means, as applicable, (i) for Taxable Parcels in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD, the amount of Project Tax Increment collected in the current City Fiscal Year from an Assessed Parcel in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD, as reported in the Payment Report, and (ii) for Taxable Parcels in Zone 3 of the Pier 70 Leased Property CFD, the amount of HB Tax Increment collected in the current City Fiscal Year from an Assessed Parcel in Zone 3 of the Pier 70 Leased Property CFD.

"Parcel K North" means the northerly parcel that the Port intends to create by subdividing the 20th/Illinois Parcel as shown in **DDA Sch 4**.

"Parcel K North Maintained Facilities" means the Horizontal Improvements that will be operated and maintained using Services Special Taxes from Zone 1 of the Pier 70 Condo CFD, consisting of:

- (i) Public Spaces and Public ROWs in the FC Project Area;
- (ii) Public Spaces outside of both the FC Project Area and the 20th Street CFD;
- (iii) Public ROWs in Pier 70 north of 20th Street and outside of the 20th Street CFD; and
- (iv) Shoreline Protection Facilities.

"Parcel K North Proceeds" means the funds available for disbursement according to the Port's escrow instructions at the Close of Escrow for its sale of Parcel K North.

"Parcel K South" mean the southerly parcel that the Port intends to create by subdividing the 20th/Illinois Parcel as shown in **DDA Sch 4**.

"Parcel Lease" means a contract in the form of **DDA Exh D3** by which the Port will convey a leasehold interest in an Option Parcel to a Vertical Developer.

"Parcel Lease Election" means the Port's right to elect to convey an Option Parcel in a Current Phase by a Hybrid Lease under **FP § 3.7** (Parcel Lease Options).

"Parcel Lease Permitted Exceptions" is defined in **DDA § 8.1(c)** (Permitted Exceptions).

"Park Parcel" means any of the Park Parcels identified in the Land Use Plan as Parcel OS1, Parcel SC1, Parcel SC2, Parcel WP1, Parcel WTP, or Parcel WP2.

"Park Parcel Improvement Plans" means a Permit Set of Improvement Plans for Park Parcels that the Port has approved under clause (iii) of ICA § 4.4(d) (Plan Submittals).

"Parking Charge" means the market-rate charge for a Parking Space that is accessory to one or more Market-Rate Projects on the 28-Acre Site.

"Parking Space" means a parking space constructed by or on behalf of any Vertical Developer, including an Affordable Housing Developer.

"Party" means, individually or collectively as the context requires, Developer, Port, City, and any Transferee that is made a Party to the DDA under the terms of an Assignment and Assumption Agreement.

"Party Appraisal" means the appraisal report that a Party obtains under DDA § 7.3(f) (Appraisal Disputes).

"Payment Agent" means an Escrow Agent, an Indenture Trustee, or the Special Fund Trustee that will disburse funds to pay an Approved Payment or make PNL P Payments as directed by the Port Finance Director.

"Payment Report" means a report prepared by the Treasurer-Tax Collector by May 30 of each City Fiscal Year that:

- (i) specifies the NOI Property Project Tax Increment and the Residential Condo Project Tax Increment collected from each Taxable Parcel in the IFD;
- (ii) specifies the Port Tax Increment collected from Historic Building 12 and Historic Building 21; and
- (iii) identifies each Current Parcel in the Pier 70 Leased Property CFD.

"Payment Request" means Developer's request to the Port in the form of AA Exh C for payment of Horizontal Development Costs of Horizontal Improvements under the Acquisition Agreement.

"PBC" is an acronym for the Port Building Code.

"PCBs" is an acronym for polychlorinated biphenyls.

"PDR" means Industrial/Production, Distribution, Repair.

"PDR Requirement" means Developer's obligation to provide at least 50,000 gsf of space in the 28-Acre Site that is restricted for PDR use in accordance with DDA § 7.17 (PDR).

"Pending Projects" for purposes of DDA Exh A5 means:

- (i) office development projects for which large office allocation applications (50,000 gsf or more) have been submitted to the Planning Department that have not received Planning Commission approval by the end of the Allocation Period; plus
- (ii) additional office space that is located in structures owned or otherwise under the jurisdiction of the State, the federal government, or any state, federal, or regional government agency that is exempt from Prop M and has been fully approved and for which occupancy is reasonably anticipated to occur during the Allocation Period; plus
- (iii) new office development projects on Port land outside of the 28-Acre Site for 50,000 gsf or more for which the Port and the applicable project sponsors have entered into conveyance agreements that would allow construction, but that have not received Port Construction Permits by the end of the Allocation Period.

"Percentage Rent" means 100% of Net Income generated at or from the Premises as further defined in ML Exh D.

"Permanent Noonan Replacement Space" means the permanent transition space provided for the Noonan Tenants under **DDA § 7.13** (Noonan Replacement Space).

"Permit Set" means a subset of Improvement Plans as described in **clause (ii)** and **clause (iii)** of **ICA § 4.4(d)** (Plan Submittals).

"Permitted Lender" means a Bona Fide Institutional Lender or a Mezzanine Lender that makes a Permitted Loan.

"Permitted Lien" means a deed of trust or other security instrument, given to secure a Borrower's repayment obligation to a Permitted Lender, that encumbers:

- (i) a real property interest in the FC Project Area (including Borrower's Option rights under this Agreement); or
- (ii) Borrower's ownership interests in Developer or the right to receive Project Payment Sources and the Developer Share of the Interim Satisfaction Balance and Project Surplus during the course of horizontal development or as later payable on Promissory Note-LP; or
- (iii) both.

"Permitted Loan" means a loan or Mezzanine Loan that a Permitted Lender makes to fund or refinance the cost of Developer Construction Obligations for the 28-Acre Site Project, secured by a Permitted Lien.

"Permitting Agency" means the City Agency responsible for issuing permits for construction and installation of Horizontal Improvements and related work, including coordination of plan reviews, approvals, construction inspections, and determining whether Improvements are complete all in accordance with the ICA.

"person" means any individual, corporation (including any business trust), limited liability entity, partnership, trust, joint venture, or any other entity or association, or governmental or other political subdivision or agency.

"personal injury" means any physical or emotional trauma or injury to or death of any individual.

"PG&E" means Pacific Gas & Electric Company.

"PG&E Remediation Site" is described in *ML (Basic Lease Information)*.

"Phase" means one of the integrated stages of horizontal and vertical development for the 28-Acre Site as shown in the Phasing Plan, subject to revision under **DDA art 3** (Phase Approval).

"Phase 1" means the first Phase of development under the Phasing Plan.

"Phase Account" means a bookkeeping account for any Phase.

"Phase Approval" means the Port's approval of a Phase Submittal in accordance with the procedures of **DDA § 3.2** (Phase Approval Procedures).

"Phase Area" means the Development Parcels and other land at the 28-Acre Site that are to be developed in a Phase.

"Phase Audit" means Developer's final financial report for a Phase as described in **FP § 9.3(a)** (Phase Audit).

"Phase Audit Date" means the due date for each Phase Audit under **FP § 9.3(a)** (Phase Audit).

"Phase Budget" means the Summary Proforma for a Phase that is submitted and updated under **DDA art 3** (Phase Approval).

"Phase Closing Date" means the date on which the Port accepts a Phase Audit under **FP § 9.3(a)** (Phase Audit).

"Phase Developer Balance" means, separately for each Phase, the sum of Developer's unpaid Capital Costs from the Current Phase (including the Entitlement Sum if not paid in Phase 1), as shown on the Phase Developer Capital Schedule.

"Phase Developer Balance" excludes vertical development costs, the Arts Building Funding, and the Historic Building Feasibility Gap.

"Phase Developer Capital Schedule" means an accounting schedule that Developer maintains that shows:

- (i) the expenditures and reimbursements of Developer Capital for each Phase of the 28-Acre Site Project; and
- (ii) accrued and unpaid Developer Return, for each Phase of the 28-Acre Site Project, which will be used to determine the Phase Developer Balance at any given time.

"Phase Final Map" means a Final Map for a Phase Area.

"Phase Improvement Costs" means Horizontal Development Costs of Phase Improvements.

"Phase Improvements" means Horizontal Improvements that are to be constructed in a Phase, including Deferred Infrastructure.

"Phase Port Balance" means, separately for each Phase, the sum of any unreimbursed Port Capital Costs in a Current Phase, as shown on the Phase Port Capital Schedule.

"Phase Port Capital Schedule" means a Port accounting schedule that will be used to determine the Phase Port Balance at any given time, that shows:

- (i) the expenditures and reimbursements of Port Capital for each Phase of the 28-Acre Site Project; and
- (ii) accrued and unpaid Return on Port Capital for each Phase of the 28-Acre Site Project.

"Phase Satisfaction" means that both the Phase Developer Balance on the Phase Developer Capital Schedule and the Phase Port Balance on the Phase Port Capital Schedule for the Current Phase have been satisfied in full.

"Phase Security" means Adequate Security for the obligations to be secured under **DDA § 17.3** (Phase Security).

"Phase Submittal" means Developer's application for Port Commission approval of a proposed Phase under **DDA Art 3** (Phase Approval).

"Phasing Goals" means measures and objectives described in **DDA § 2.4** (Phasing Goals) to which the Parties have agreed to achieve their mutual goal of an economically feasible project that balances competing policy interests.

"Phasing Plan" means **DDA Exh B1**, which shows the order of development of the Phases and the Development Parcels in each Phase Area, subject to revision under **DDA Art 3** (Phase Approval).

"Pier 70" is a designation for approximately 72 acres of Port-owned land in the central waterfront area of San Francisco.

"Pier 70 CFD Facilities Account" means the segregated account or accounts in the Facilities Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Improvement Special Taxes from Taxable Parcels in either or both of the Pier 70 CFDs.

"Pier 70 CFD Proceeds" means Improvement Special Taxes and proceeds of Bonds secured by Improvement Special Taxes from Taxable Parcels in either or both of the Pier 70 CFDs.

"Pier 70 CFDs" refers collectively to the Pier 70 Leased Property CFD and the Pier 70 Condo CFD.

"Pier 70 Condo CFD" means the CFD that will include Parcel K North and all Option Parcels in the 28-Acre Site that the Port sells for development as Residential Condo Projects, to be named *"City and County of San Francisco Special Tax District No. [TBD] (Pier 70 Condominiums)."*

"Pier 70 Condo CFD Proceeds" means Improvement Special Taxes and proceeds of Bonds secured by Improvement Special Taxes from Taxable Parcels in the Pier 70 Condo CFD.

"Pier 70 Condo CFD Services Account" means the segregated account in the Services Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Services Special Taxes from Taxable Parcels in the Pier 70 Condo CFD.

"Pier 70 Facilities Special Taxes" means the Facilities Special Taxes that are levied in the Pier 70 CFDs.

"Pier 70 IFDs" refers collectively to Sub-Project Area G-2; Sub-Project Area G-3, and Sub-Project Area G-4.

"Pier 70 Leased Property" means all Option Parcels in the 28-Acre Site that the Port will convey by Parcel Leases for development as Market-Rate Rental Projects and Taxable Commercial Parcels.

"Pier 70 Leased Property CFD" means the CFD that will include all Pier 70 Leased Property, to be named *"City and County of San Francisco Special Tax District No. [TBD] (Pier 70 Leased Property)."*

"Pier 70 Leased Property CFD Proceeds" means Improvement Special Taxes and proceeds of Bonds secured by Improvement Special Taxes from Taxable Parcels in the Pier 70 Leased Property CFD.

"Pier 70 Leased Property Services Account" means the segregated account in the Services Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Services Special Taxes from Taxable Parcels in the Pier 70 Leased Property CFD.

"Pier 70 Master Plan" means the *Pier 70 Preferred Master Plan*, which the Port Commission endorsed by Resolution No. 10-27.

"Pier 70 Shoreline Protection Facilities" means future waterfront Improvements to protect the shoreline east of Pier 70 from perils associated with seismic events and climate change, including sea level rise and floods, and other public improvements approved by the Port Commission and the Board of Supervisors.

"Pier 70 TDM Program" as defined in DA § 4.1(c) (Specific Benefits) means the Pier 70 Special Use District TDM Program attached as TP Schedule 1 to the Transportation Program.

"PL" is an acronym for the form of Parcel Lease.

"Planning" means the San Francisco Planning Commission, acting by motion or resolution or by delegation of its authority to the Planning Department and the Planning Director.

"Planning Commission" means the San Francisco Planning Commission.

"Planning Department" means staff of the City's Planning Department.

"Planning Director" means the City's Director of Planning.

"Pledge Agreement" means:

- (i) a pledge of Project Tax Increment, Port Tax Increment, or both, to Mello-Roos Bonds under a pledge agreement between the Port, as IFD Agent, CFD Agent, or both, and the Indenture Trustee for the Mello-Roos Bonds; or

- (ii) a pledge of Housing Tax Increment, Port Tax Increment, or both, to Bonds under a pledge agreement between the Port, as IRFD Agent and the Indenture Trustee for the Bonds.

"PNLP Payments" means Public Financing Sources that are disbursed to the Special Fund Trustee to apply to the unpaid balance of Promissory Note-LP for use and distribution in accordance with the Financing Plan.

"Port" means the San Francisco Port Commission.

"Port Acceptance Items" means the completed Horizontal Improvements listed in **DDA § 15.7(b)** (Acceptance of Park Parcels and Components of Phase Infrastructure) that the Port will accept.

"Port Account" means the segregated account in the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, hold, and disburse Port Tax Increment.

"Port Advance" means a Port Capital Advance or an Advance of Port Capital.

"Port Audit" means a financial review performed by a CPA on behalf of the Port under **FP § 9.4(a)** (Port Audit).

"Port Balance" means, on the date of determination, the sum of any unreimbursed Port Capital Advances for Horizontal Development Costs in a Current Phase and related accrued and unpaid Return on Port Capital, including any carryover of Port Capital Advances for Horizontal Development Costs from a Prior Phase.

"Port Capital" means Port Harbor Revenues that the Port in its sole discretion elects to use to fund Horizontal Development Costs.

"Port Capital" excludes Land Proceeds and Project Payment Sources.

"Port Capital Advance" means a Port loan of Port Capital to the Pier 70 CFDs to pay for Horizontal Development Costs.

"Port Capital Advance Fund" means the segregated account that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Port Capital Advances.

"Port Capital Plan" means the Port's most recent 10-year capital plan as adopted or amended by the Board of Supervisors under Administrative Code sections 3.20-3.21.

"Port Capital Schedule" means an accounting schedule that the Port maintains that shows:

- (i) expenditures and reimbursements of Port Capital; and
- (ii) accrued and unpaid Return on Port Capital, for all Phases of the 28-Acre Site Project individually and in the aggregate for the Port Balance.

"Port Consent" means the Consent to Development Agreement signed by the Port Director as authorized by the Port Commission Resolution No. 17-47.

"Port Costs" means costs that the Port incurs to perform its obligations to Developer and otherwise implement the DDA and the Master Lease, including staff costs on a time and materials basis, third-party costs, and costs to administer the Pier 70 CFDs, the Pier 70 IFDs, and the IRFD to the extent not paid by Public Financing Sources.

"Port Costs" excludes Other City Costs, Advances of Land Proceeds, and Port Capital Advances.

"Port Director" means the Executive Director of the Port.

"Port Finance Director" means the Port's Deputy Director, Finance and Administration.

- "Port FY Budget"** means the budget for each City Fiscal Year that the Port submits to the Board of Supervisors for approval until all Project Payment Obligations to Developer under the Financing Plan have been satisfied as described in FP § 9.2 (Port Accounting and Budget).
- "Port Harbor Fund"** means the harbor trust fund that the Port must maintain in compliance with section 4 of the Burton Act, AB 418, the Agreement Regarding the Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco, and Charter section B6.406.
- "Port Harbor Revenues"** means funds that the Port is entitled to deposit into the Port Harbor Fund without any restrictions under the Financing Plan.
- "Port IFD Guidelines"** means the *Guidelines for the Establishment and Use of an Infrastructure Financing District with Project Areas on Land under the Jurisdiction of the San Francisco Port Commission*, adopted April 23, 2013, by Board of Supervisors Resolution No. 123-13, as amended from time to time solely to the extent required under IFD Law or other controlling state or federal law.
- "Port Improvements"** means Horizontal Improvements in the SUD that the Port funds, such as the Michigan Street segment.
- "Port Master Indenture"** means the Indenture of Trust dated as of February 1, 2010, as supplemented by a First Supplement to Indenture of Trust, dated as of February 1, 2010, a Second Supplement to Indenture of Trust, dated as of May 1, 2014, and as further supplemented from time to time.
- "Port Quarterly Report"** means any of the Port's periodic reports to Developer on Port Costs, Other City Costs, and Project Payment Sources under FP § 9.2(e) (Reporting).
- "Port Revenue Bonds"** means Port Commission of the City and County of San Francisco Revenue Bonds Series 2010A (Non-AMT Tax-Exempt), Series 2010B (Taxable), Series 2014A (Non-AMT Tax-Exempt), and Series 2014B (Taxable).
- "Port Share"** means 55% of the Interim Satisfaction Balance or Project Surplus, as applicable.
- "Port Tax Increment"** means 8.89% of Allocated Tax Increment.
- "Port Title Covenant"** means the Port's agreement not to voluntarily permit or cause to be created any new exceptions to title other than the Permitted Exceptions under DDA § 8.3 (New Title Matters).
- "portwide"** means any matter applicable to all real property under the jurisdiction of the Port Commission.
- "potential breach"** means the existence of an event properly noticed in compliance with the applicable Transaction Document that would be an Event of Default or Material Breach by the Breaching Party under the applicable Transaction Document. A potential breach will not exist if the potential breach is cured or the notice of such breach is withdrawn.
- "Potential Facilities Special Tax Levy"** means, as applicable, (i) for Zone 1 and Zone 2 of the Pier 70 Leased Property CFD, the amount of Facilities Special Taxes that the Pier 70 Leased Property CFD would levy on each Taxable Parcel in Zone 1 and Zone 2, after applying capitalized interest, delinquency collections, and other sources in the RMA but before applying any Facilities Special Tax Credit, and (ii) for Zone 3 of the Pier 70 Leased Property CFD, the amount of Facilities Special Taxes that the Pier 70 Leased Property CFD would levy on each Taxable Parcel of Historic Building 12 or Historic Building 21, after applying capitalized interest, delinquency collections, and other sources in the RMA but before applying any Facilities Special Tax Credit.
- "pre-filing conference"** means one or more optional meetings under Subdivision Code section 1320 between the County Surveyor and a person proposing to subdivide land in San Francisco to discuss preliminary Subdivision Maps and other subdivision matters before the person submits a Subdivision Map application for approval under the Subdivision Code.
- "Prepaid Lease"** means a Parcel Lease under which a Vertical Developer prepays ground rent in the amount of an Option Parcel's Fair Market Value, which a Vertical Developer Affiliate may pay in

cash or by Credit Bid or both subject to the limitations and conditions of **FP § 3.3** (Right to Credit Bid) and **FP § 3.4** (Amount of Credit Bid).

"Prepaid Lease Value" means the Fair Market Value of the Leasehold Interest, as a 99-year lease, prepaid.

"Prepaid Rent" means rent that is payable to the Port at the Closing of a Prepaid Lease.

"Preliminary Title Report" means the preliminary title report that the Title Company delivered to the Port and Developer as described in **DDA § 8.1(b)** (Title Report).

"Principal Payment Date" means:

- (i) before Bonds are issued, September 1 of each year; and
- (ii) after Bonds are issued, the date on which principal or sinking fund payments are due in each year until the Bonds are defeased.

"Prior Phase" means any Phase for which Developer obtained Phase Approval before a Current Phase.

"Product Type" when used in reference to a Development Parcel to be developed for residential use means a building with a typical unit count and building typology that allows for general assumptions regarding construction costs, which may differ between residential units for rent and for sale. Examples of Product Types are townhomes, low-rise (heights to 70 feet), and mid-rise (71- to 90-foot heights).

"Proforma" means, for illustrative purposes only, the financial model of the Parties' projections for the Horizontal Improvements, the rehabilitation of Historic Building 2, Historic Building 12, and Historic Building 21, the construction of Arts Building, including the anticipated timing of spending requirements, the aggregate sum of Horizontal Development Costs of Horizontal Improvements, and the timing and amounts of Developer Capital, Port Capital Advances, Advances of Land Proceeds, Public Financing Sources, and other sources expected to be used to finance Horizontal Development Costs, the Historic Building Feasibility Gap, and the Arts Building Funding.

"Project" means the entitlement of the SUD and, on the Reference Date, the development of the FC Project Area, consisting of the horizontal and vertical development of the 28-Acre Site, the rehabilitation of the Historic Buildings for reuse in accordance with the Secretary's Standards, and the construction of 20th Street, 21st Street, and 22nd Street east of Illinois Street in accordance with the Regulatory Requirements and the Project Requirements.

"Project Account" means the segregated account in the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Project Tax Increment.

"Project Approval" means:

- (i) a Regulatory Approval by a City Agency that is necessary to entitle the 28-Acre Site Project and permit Developer to begin Site Preparation and construction of Horizontal Improvements, including those shown on **DDA Exh A3** and **DA Exh B**; and
- (ii) as specified in **DA § 5.1(d)** (Future Approvals), includes all Future Approvals for the Project.

"Project Area G" means the IFD project area formed by Ordinance No. 27-16.

"Project Assignment" means a contractual assignment of all of Developer's rights under a consulting contract with a Project Consultant, including any rights to use the Project Consultant's work product.

"Project Consultant" means any architect, engineer, or other consultant that provided Project Materials for the 28-Acre Site Project.

"Project Materials" means all public, final, and material studies, applications, reports, permits, plans, drawings, and similar work product, including Structural Materials, prepared by Developer's Project Consultants.

"Project Payment Obligation" means the Port's contractual obligation to use Project Payment Sources on terms described in the Financing Plan to pay:

- (i) the Developer Balance to Developer;
- (ii) the Port Balance to the Port;
- (iii) Horizontal Development Costs directly; and
- (iv) the Historic Building Feasibility Gap.

"Project Payment Obligation" *excludes* payment obligations under the Financing Plan for Project Surplus, any PNLP Payments after the Developer Balance is satisfied, the Interim Satisfaction Balance, the Arts Building Funding, and Promissory Note-X.

"Project Payment Sources" means, separately or collectively, Port Capital Advances, Advances of Land Proceeds, and Public Financing Sources, each applied as specified in the Financing Plan.

"Project Requirements" means:

- (i) Developer's obligations for the 28-Acre Site Project under the Project Approvals and Transaction Documents, including the Developer Construction Obligations and Developer Reimbursement Obligations; and
- (ii) Vertical Developers' obligations for the 28-Acre Site Project under the Project Approvals and applicable conveyance agreements.

"Project Reserve Account" means the segregated account in the Facilities Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse funds for the purposes and on the conditions of FP § 4.7(c) (Project Reserve).

"Project Surplus" means Land Proceeds, including payments on Promissory Note-LP, available for revenue-sharing under the Financing Plan after the Project Payment Obligation has been satisfied.

"Project Tax Increment" means 91.11% of Allocated Tax Increment.

"Project Tax Increment Account" means the segregated account in the Tax Increment Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Project Tax Increment.

"Promissory Note-LP" means a promissory note in the form of FP Exh C that is payable as described in FP § 7.3(b) (Promissory Note-LP and Promissory Note-X).

"Promissory Note-X" means a promissory note in the form of FP Exh D that is payable as described in FP § 7.3(b) (Promissory Note-LP and Promissory Note-X).

"proof of payment" means a cancelled check, a wire confirmation demonstrating delivery of a direct transfer of funds, an executed and acknowledged unconditional lien release, statements or invoices marked "paid" by the billing person, or other reasonably satisfactory evidence verifying that the person seeking payment actually incurred the claimed costs and the date on which each cost was incurred.

"Prop F" and **"Proposition F"** mean the *Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative* that San Francisco voters approved on November 4, 2014.

"Prop M" and **"Proposition M"** mean, for purposes of the DDA, Planning Code sections 320-325, approved by the *Planning Initiative* that San Francisco voters approved on November 4, 1986.

"Prop M Constraint" means, for the purpose of **DDA Exh A5**, that the total square footage available for Pending Projects exceeds the then-current total square footage available for large allocation projects at the end of an Allocation Period.

"Prop M Draw Down" means the amount of office space to be applied against the City's annual maximum limit under Planning Code section 321(a)(1), based on the approved building drawings, which the Port will report to Planning when the Port issues a site or the building permit for an office project in the 28-Acre Site under **DDA Exh A5**.

"Prop M Schedule" means the schedule in **DDA Exh A5** that provides the dates when Planning will determine whether a Prop M Constraint exists.

"property damage" means any injury to or impairment or destruction of any property or other pecuniary interest of any person, including goodwill, intellectual property, and business and leasing opportunities.

"proprietary appraisal" means an appraisal report on the fair market value of a real property interest that is not subject to appraisal procedures in **DDA § 7.3** (Option Parcel Appraisals).

"proprietary offering" means a public solicitation for offers to purchase or Parcel Lease any real property interest owned by the Port or the City that is not subject to the procedures in **DDA § 7.5** (Public Offering Procedures).

"pro rata" means the proportion that each part of a sum bears to the sum.

"Public Benefit Cost" means any of the following:

- (i) Noonan Tenant moving expenses under **DDA § 7.13** (Noonan Replacement Space);
- (ii) \$1 million in Job Readiness and Training Funds under **WDP § B.1** (Application);
- (iii) \$250,000 for CityBuild programs under **WDP § B.2** (CityBuild Program);
- (iv) \$100,000 to Young Community Developers under **WDP § B.3** (CityBuild Services);
- (v) funds paid to SFMTA for specified capital costs in compliance with Mitigation Measure M-TR-5; and
- (vi) Developer's contribution to the City's system-wide improvements for auxiliary water supply system (AWSS) proposed in the vicinity of the 28-Acre Site, as set forth in **clause (iii) of DA § 5.4(c)** (AWSS)

"Public Benefit Cost" excludes any such cost incurred by a Vertical Developer.

"Public Facilities" means Horizontal Improvements that are or will be publicly owned or serve a public purpose.

"Public Financing Sources" means, separately or collectively, any source of financing available under CFD Law, IFD Law, and IRFD Law, including Mello-Roos Taxes, Allocated Tax Increment, Allocated Housing Tax Increment, and Bonds issued to finance Improvements in the FC Project Area and the AHP Housing Area.

"Public Health and Safety Exception" as defined in **DA § 5.6(a)** (City's Exceptions) means a City Agency's retained police power authority to exercise its discretion under the Project Approvals and Transaction Documents over matters under its jurisdiction in a manner that is consistent with the public health, safety, and welfare and as necessary to protect the physical health and safety of the public.

"Public Improvement Agreement" means:

- (i) an agreement between the City and Developer under the Subdivision Code for the completion of required Horizontal Improvements that are not complete when the Final Map is approved; or
- (ii) a similar agreement between the City and Developer for the completion of the Developer Construction Obligations, such as a Street Excavation Improvement Agreement or other Port-issued construction agreement for Park Parcels.

"Public Offering" means a public solicitation by the Port for bids for the purchase or Parcel Lease of an Option Parcel following the termination of Developer's Option for that Option Parcel, using procedures described in **DDA § 7.5** (Public Offering Procedures).

"Public ROWs" means Horizontal Improvements consisting of public streets, sidewalks, shared public ways, bicycle lanes, and other paths of travel, associated landscaping and furnishings, and related amenities.

"Public ROWs Signage Plan" means a concept level Signage Plan for Public ROWs.

"Public Space" means Horizontal Improvements for public enjoyment, such as public parks, public recreational facilities, public access, open space, and other public amenities, some of which may be rooftop facilities.

"Park Parcel Improvement Plans" means Improvement Plans for Park Parcels, which Developer will submit under **DDA § 13.6** (Schematic Design Review of Park Parcels).

"public trust" means, collectively, the common law public trust for commerce, navigation, and fisheries and the statutory trust created by the Burton Act.

"Public Trust Exchange" means a transaction between State Lands and the Port under which the public trust is terminated from certain portions of Pier 70, including all Development Parcels in the 28-Acre Site and the 20th/Illinois Parcel, and the public trust is confirmed on the remainder of Pier 70, as approved by State Lands under AB 418.

"Public Use Parcel" means any of Historic Building 12, Historic Building 21, the Arts Building, and the Affordable Housing Parcels.

"Public Works" means the San Francisco Public Works Department.

"Qualified Appraiser" means an appraiser who meets the qualifications of **DDA § 7.3(b)** (Appraiser Qualifications).

"Qualified Appraiser Pool" means the list of Qualified Appraisers attached as **DDA Sch 2** and as revised from time to time under **DDA § 7.3(c)** (Qualified Appraiser Pool).

"Qualified Bidder" means a bidder at a Public Offering that meets the qualifications of **DDA § 7.5(c)** (Bidder Prequalification).

"Qualified Broker" means a licensed real estate broker with at least five years' experience in the Bay Area market for commercial or multifamily residential sales and leasing, or both.

"Qualified Broker Pool" means the list of Qualified Brokers attached as **DDA Sch 3** and as revised from time to time under **DDA § 7.5(a)** (Broker-Managed Offerings).

"Rate and Method of Apportionment" means a Financing Document that the Board of Supervisors will adopt by each CFD resolution of formation that will prescribe how and at what rates the City will levy and collect Mello-Roos Taxes from taxpayers in the designated CFD.

"Ready for Close" means, when referring to the Pier 70 CFD Facilities Accounts, the Hoedown Yard Facilities Account, or the Project Reserve Account, that all of the following have occurred:

- (i) the Port has accepted the Final Audit for the 28-Acre Site Project;

- (ii) the Project Payment Obligation is satisfied in full;
- (iii) all Land Proceeds have been distributed under the Financing Plan; and
- (iv) Promissory Note-LP has been paid in full.

"Reassessed Parcel" means a Taxable Parcel that Developer or a Vertical Developer Affiliate holds in fee or by Parcel Lease on which the assessed value is lowered through a Reassessment.

"Reassessment" means a reduction in ad valorem taxes assessed against a Taxable Parcel through a proceeding under the California Revenue & Taxation Code.

"Reassessment Date" means the date on which a Reassessment is final.

"Receipt Date" means each date that the Port, as agent of the IFD, the IRFD, or any CFD, receives Allocated Tax Increment, Allocated Housing Tax Increment, or Mello-Roos Taxes from the City by the deposit of funds into the Special Fund Trust Account.

"Reduction Target" means the target objective for the Pier 70 TDM Program.

"Reference Date" means, for the DDA, the date on which the DDA is fully executed, and for the Development Agreement, the date on which the Development Agreement is fully executed.

"Regulatory Action" means any inquiry, investigation, enforcement, agreement, order, consent decree, compromise, or other administrative or judicial action that is threatened, instituted, filed, or completed by a Regulatory Agency in relation to any alleged failure to comply with or direct violation of any Regulatory Approval or any laws, including those relating to access.

"Regulatory Agency" means a City Agency or any Other Regulator.

"Regulatory Approval" means any motion, resolution, ordinance, permit, approval, license, registration, permit, utility services agreement, Final Map, or other action, agreement, or entitlement required or issued by any Regulatory Agency with jurisdiction over any portion of the 28-Acre Site, as finally approved.

"Regulatory Requirement" means laws or policies applicable to the development, occupancy, and use of the 28-Acre Site Project, subject to the Port's authority as trustee under the Burton Act as amended by AB 418, including:

- (i) Existing City Laws and Standards and other Regulatory Approvals;
- (ii) Changes to Existing City Laws and Standards to the extent permitted under the DA;
- (iii) Impact Fees and Exactions applicable to the 28-Acre Site Project under the DA; and
- (iv) Environmental Laws, and
- (v) the Other City Requirements.

"release" when used in reference to Hazardous Materials means any actual or threatened, accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment, including abandoning or discarding barrels, containers, and other closed receptacles containing any Hazardous Material.

"release" excludes any passive migration of a Hazardous Material through the air, soil gas, land, surface water, or groundwater after a third party has previously spilled, leaked, pumped, poured, emitted, discharged, injected, escaped, leached, dumped, or disposed of the Hazardous Material into the air, soil, gas, land, surface water, or groundwater.

"remediate" when used in reference to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency under applicable Environmental Laws and any additional Port requirements.

"Rent Conversion Factor" means the formula specified in a Final Appraisal that is used to convert the Port Share of the Fair Market Value of an Option Parcel from Prepaid Rent to Annual Ground Rent.

"Rental Unit" means a room or suite of two or more rooms with provisions for sleeping, eating, and sanitation that is designed for residential occupancy for 32 consecutive days or more by one household and may include senior and assisted living facilities.

"Requested Change Notice" means Developer's notice to the Port requesting changes to the Phasing Plan under DDA § 3.4 (Changes to Project after Phase 1).

"Requisition" means a payment request for Horizontal Development Costs (other than for Horizontal Improvements) and Developer Return in the form of FP Exh B that Developer submits to the Port for payment under FP § 2.2(b) (Requisitions).

"Required Element" means a substantial and material element of any Construction Document requiring Port approval under DDA Art 13 (Improvement Plans).

"Residential Condo Project" means a Residential Parcel that is developed with Condo Units.

"Residential Condo Project Tax Increment" means the Project Tax Increment derived from all Residential Condo Units in a Residential Condo Project.

"Residential Parcel" means a Development Parcel that may be developed for residential use under the SUD.

"Residential Project" means a Development Parcel that is developed for residential use.

"Residential Test Parcel" means a Residential Parcel that is selected for a Down Market Test under DDA § 4.5(a) (Timing).

"residential unit" means a separate unit in a developed Residential Parcel and includes any apartment unit, condominium or cooperative unit, hotel or motel room, or other structure containing toilet facilities that is designed and available under Applicable Law for use and occupancy as a residence by one or more individuals.

"Restrictive Covenant" means a recorded document encumbering:

- (i) a Development Parcel conveyed in fee to a Vertical Developer under a Vertical DDA that imposes obligations and covenants that run with the land; and
- (ii) for purposes of the Affordable Housing Plan only, a Market-Rate Project that specifies the required number of Inclusionary Units at specified affordability levels in accordance with the Affordable Housing Plan.

"Return on Port Capital" means the annual rate of 10%, compounded quarterly, the rate at which interest will accrue on Port Capital Advances.

"Revenue Account" means a segregated account in the Land Proceeds Fund to hold and disburse Land Proceeds for revenue-sharing.

"revenue-sharing" means the Parties' agreement to split the Interim Satisfaction Balance and the Project Surplus (including PNLP Payments) by the Port Share and the Developer Share. Any funds that are disbursed for revenue-sharing are not an Advance of Land Proceeds or a Port Capital Advance.

"RMA" is an acronym for the Rate and Method of Apportionment for each CFD to be established under the Financing Plan in conformity with the outline in FP Exh E.

"Rooftop Open Space" as defined in **DDA § 7.15 (Rooftop Open Space)** means 20,000 gsf of contiguous rooftop open space that could be used for active recreation that may be built in the 28-Acre Site.

"RPP" is an acronym for a residential parking permit that the City may issue in designated areas of San Francisco.

"Schedule of Performance" means **DDA Exh B2**, as revised under the DDA.

"Schedule of Performance Obligation" means each of the categories referenced **DDA § 15.7(a)** (Schedule of Performance Obligations).

"Schematic Design Application" means each schematic design application for Park Parcels that Developer submits to the Port under **DDA § 13.6(a)** (Applications).

"Second Transition Notice" means a notice prepared and delivered to the Noonan Tenants under **clause (ii) of DDA § 7.13(c)** (Artist Transition Plan).

"Secretary's Standards" means the *Standards for Rehabilitation of Historic Properties* (for historic tax credit projects) and related Guidelines published in the Secretary of the Interior's Standards for the Treatment of Historic Properties.

"Section 1.126" as defined in **DA § 13.6(a)** (Application) and **DDA Exh A7** means Campaign and Governmental Conduct Code section 1.126.

"Section 169" means Planning Code sections 169-169.6, which set forth the San Francisco policy requiring development projects to incorporate TDM measures in their proposed projects.

"Section 249.79" means the SUD text provisions at Planning Code section 249.79.

"Section 409" means Planning Code section 409, which establishes citywide reporting requirements for Impact Fees and timing and mechanisms for annual adjustments to Impact Fees.

"Section 411A" means Planning Code sections 411A.1-411A.8, under which the City imposes the TSF.

"Section 415" means the City's Inclusionary Affordable Housing Program (Planning Code §§ 415 and 415.1 through 415.11).

"Secured Amount" means the amount of Phase Security required under **clause (iii) of DDA § 17.3(e)** (Form and Secured Amount).

"Services Account" means a segregated account that the Port will establish with the Special Fund Trustee to receive, administer, and disburse Services Special Taxes from a Services CFD.

"Services CFD" means a CFD or part of a CFD that authorizes the levy of Services Special Taxes to finance Ongoing Maintenance Costs.

"Services CFD Administrative Costs" means CFD Administrative Costs payable from Services Special Taxes.

"Services Special Tax Fund" means the segregated accounts in the Special Fund Trust Account consisting of the Pier 70 Leased Property Services Account, the Pier 70 Condo CFD Services Account (for Zone 1 and Zone 2), and the Hoedown Yard Services Account that the Port, as CFD Agent, establishes with the Special Fund Trustee to receive, administer, and disburse Services Special Taxes on behalf of the CFDs through the Special Fund Administration Agreement.

"Services Special Taxes" means Mello-Roos Taxes that the City levies in a City Fiscal Year on Taxable Parcels in a CFD to fund Ongoing Maintenance Costs as specified in the applicable RMA.

"SFAC" is an acronym for the San Francisco Arts Commission.

"SFFD" is an acronym for the San Francisco Fire Department.

"SFMTA" is an acronym for the San Francisco Municipal Transportation Agency.

"SFMTA Consent" means the Consent of the Municipal Transportation Agency of the City and County of San Francisco that is attached to and incorporated in the DA or the ICA, as applicable.

"SFPUC" is an acronym for the San Francisco Public Utilities Commission.

"SFPUC Consent" means the Consent of the Public Utilities Commission of the City and County of San Francisco that is attached to and incorporated in the DA or the ICA, as applicable.

"SFPUC General Manager" means the General Manager of the SFPUC.

"SFPUC Wastewater Capacity Charge" means the wastewater capacity charge and connection charge imposed by the SFPUC.

"SFPUC Water Capacity Charge" means the water capacity charge and connection charge imposed by the SFPUC.

"Shoreline Account" means the segregated account in the Facilities Special Tax Fund that the Port establishes with the Special Fund Trustee to receive, administer, and disburse Shoreline Special Taxes, including transfers from the Project Reserve Account, in accordance with **FP § 4.7(d)** (Shoreline Account).

Shoreline Adaptation Studies means analysis and planning to characterize the preferred and Shoreline Protection Project and alternatives, including pre-entitlement planning and design work, environmental review, negotiation, and Regulatory Approvals related to the Shoreline Protection Facilities, conducted in accordance with **FP § 4.7(f)** (Determining Pier 70 Shoreline Protection Facilities).

"Shoreline Improvements" means Horizontal Improvements such as shoreline restoration, including installation of stone columns, pilings, secant walls, and other structures to stabilize the seawall or shoreline, removal of bay fill, creation of waterfront public access to or environmental remediation of the San Francisco waterfront, all of which are permitted uses of the Waterfront Set-Aside.

"Shoreline Protection Facilities" means future waterfront Improvements at the San Francisco shoreline to protect the area from perils associated with seismic events and climate change, including sea level rise and floods, and other public improvements approved by the Port Commission and the Board of Supervisors.

"Shoreline Protection Project" means the construction of Shoreline Protection Facilities.

"Shoreline Special Taxes" means Improvement Special Taxes that are identified as Shoreline Special Taxes and levied in accordance with the RMA for the Pier 70 Leased Property CFD on conditions described in **FP § 4.7** (Project Reserve and Shoreline Accounts).

"SHPO" means the California State Historic Preservation Office.

"Signage Plan" means one of the comprehensive signage plans that will cover the Park Parcels, Public ROWs, and buildings and provide for an interpretive signage program that Developer will submit to the Port under **DDA § 13.7** (Signage).

"Significant Adverse Change" means a final judgment is entered against Developer in an amount greater than \$100 million that it does not satisfy or bond.

"Significant Change" means:

- (i) any change in the direct or indirect ownership of Developer that results in a change in Control of Developer; or
- (ii) a change in the person with the power to direct or cause the direction of the day-to-day management of Developer (exclusive of a so-called "major decision" and similar rights).

"Significant Change to Obligor" means the occurrence of any of the following:

- (i) the Obligor's Insolvency;
- (ii) a final judgment is entered against the Obligor in an amount greater than 20% of the Obligor Net Worth, which the Obligor does not satisfy or bond; or
- (iii) an Obligor no longer meets the Obligor Net Worth Requirement.

"Site Preparation" means physical work to prepare and secure the 28-Acre Site for installation and construction of Horizontal Improvements, such as demolition or relocation of existing structures, excavation and removal of contaminated soils, fill, grading, soil compaction and stabilization, and construction fencing and other security measures and delivery of the Affordable Housing Parcels as required under the AHP.

"Site Preparation Plans" mean Improvement Plans for demolition, utility relocation, mass grading, ground improvement, and shoreline repair.

"Soft Costs" means the reasonable and customary out-of-pocket costs actually paid by Developer or the Port in connection with both construction of Horizontal Improvements and implementation of Developer's obligations under the DDA, including:

- (i) architectural, engineering, consultant, attorney, and other professional fees, including the cost of any Qualified Appraiser and the costs of consultants related to public financing to the extent not reimbursed by Public Financing Sources;
- (ii) property insurance (including general liability, automobile liability, worker's compensation, personal property, flood, pollution legal liability, comprehensive personal liability, watercraft liability, marine general liability, vessel pollution liability, builder's risk, and professional services insurance);
- (iii) construction management fees paid to or by Developer, a Transferee of Developer, or their respective Affiliates; project management costs incurred by the Developer; and asset management costs incurred by Developer, limited in the aggregate to 15% of Hard Costs, subject to Developer's right to request reimbursement of actual costs in excess of this threshold, which the Port will reimburse if it reasonably finds that the charges are commercially reasonable;
- (iv) regulatory fees other than building and site permit fees;
- (v) Developer Mitigation Measures and any additional environmental review required for horizontal development;
- (vi) Impact Fees associated with Horizontal Improvements;
- (vii) Port Costs and Other City Costs;
- (viii) costs to use sources other than the Project Payment Sources to the extent not otherwise reimbursed;
- (ix) Improvement Special Taxes and any other taxes, assessments, or fees levied by the City and paid by Developer as Tenant under the Master Lease, excluding any penalties or interest assessed due to Developer's failure to make payment before delinquency;
- (x) security required under the DDA or otherwise in connection with the Horizontal Improvements, including any Adequate Security;
- (xi) safety and security measures;
- (xii) community outreach associated with the 28-Acre Site Project;

- (xiii) in carrying out Developer's obligations under **DDA § 7.13** (Noonan Replacement Space), including all eligible costs under the Artist Transition Plan.
- (xiv) maintenance of parks, streets, and public areas to the extent not paid by Services Special Taxes;
- (xv) third-party costs to prepare and store Developer Quarterly Reports, Phase Audits, Final Audits, and Developer's Books and Records;
- (xvi) Developer Closing Costs;
- (xvii) Developer Marketing Costs;
- (xviii) the Entitlement Sum;
- (xix) any other amount specifically identified in a Transaction Document as a Soft Cost or a category of Soft Costs.

"Soft Costs" excludes:

- (1) *Hard Costs;*
- (2) *Developer's (or any Affiliate's) corporate office, personnel, and overhead costs;*
- (3) *staff, consultant, advertising, and any other costs incurred to lobby or campaign for any ballot measure affecting the 28-Acre Site Project or for other political purposes;*
- (4) *construction financing costs (loan fees and interest) for Horizontal Improvements; and*
- (5) *vertical development costs, and other costs paid by Vertical Developers or allocated to vertical development.*

"SOP" is an acronym for the Schedule of Performance (**DDA Exh B2**).

"SOP Compliance Determination" means the Chief Harbor Engineer's approval of an SOP Compliance Request in accordance with **DDA § 15.7** (SOP Compliance), which will be confirmed in a recordable document in the form of **DDA Exh B9-1**.

"SOP Compliance Request" means a packet that Developer submits the Port containing the materials listed in **DDA Exh B9** in accordance with **DDA § 15.7(c)** (Request to Port).

"Special Debt Service" means, as applicable, (i) that portion of the debt service on, or replenishment of reserve funds for, CFD Bonds secured by Facilities Special Taxes in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD in an amount equal to the Facilities Special Taxes levied on NOI Property in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD, (ii) that portion of the debt service on, or replenishment of reserve funds for, CFD Bonds issued based on Facilities Special Taxes levied on Taxable Parcels of Historic Building 12 in Zone 3 of the Pier 70 Leased Property CFD in an amount equal to the Facilities Special Taxes levied on Taxable Parcels of Historic Building 12 in Zone 3 in the Pier 70 Leased Property CFD, or (iii) that portion of the debt service on, or replenishment of reserve funds for, CFD Bonds issued based on Facilities Special Taxes levied on Taxable Parcels of Historic Building 21 in Zone 3 of the Pier 70 Leased Property CFD in an amount equal to the Facilities Special Taxes levied on Taxable Parcels of Historic Building 21 in Zone 3 in the Pier 70 Leased Property CFD.

"Special Facility" means the SUD and any other Port facility designated as such under the Port Master Indenture.

"Special Facility Revenue" means revenue that the Port earns from or with respect to any Special Facility designated in the Port Master Indenture.

- "Special Facility Revenue Bonds"** means Bonds issued by or on behalf of the CFD or the IFD that is secured and payable by a pledge of Special Facility Revenue.
- "Special Fund Administration Agreement"** means an agreement conforming to the outline in FP Exhibit F between the Port in its proprietary capacity, as CFD Agent, and as IFD Agent, and the Special Fund Trustee authorizing the trustee to receive, administer, and disburse funds in the Special Fund Trust Account to implement the Financing Plan.
- "Special Fund Trust Account"** means, collectively, the Land Proceeds Fund, the Facilities Special Tax Fund, and the Tax Increment Fund, including segregated accounts in each fund.
- "Special Fund Trustee"** means a bank, national banking association, or a trust company having a combined capital (exclusive of borrowed capital) and surplus of at least \$50 million, and that is subject to supervision or examination by federal or state authority.
- "Special Taxes"** when used with a modifier means Mello-Roos Taxes levied in the designated CFD.
- "Stand-Alone Noonan Building"** as defined in clause (ii) of DDA § 7.12(b) (Development Options) means a stand-alone building to accommodate the Noonan Replacement Space on 1/3 of Parcel E4.
- "State"** means the State of California.
- "State Lands"** means the California State Lands Commission.
- "Statement of Indebtedness"** means the annual report that the IFD must file with the Treasurer-Tax Collector under IFD Law and the Port IFD Guidelines.
- "Stormwater Master Plan"** means a submittal required with each Basis of Design Report under ICA § 4.12(b) (Stormwater Master Plan).
- "Street and Utility Easement"** means an easement or similar agreement relating to Public ROWs and various public utilities, including gas, sewer, water, and electrical service.
- "Street Excavation Improvement Agreement"** means an agreement between Developer and the City, executed before a Final Map is recorded, that allows construction of Horizontal Improvements to begin.
- "Streetscape Master Plan"** means the master plan for Public ROW Improvements within the 28-Acre Site, to be submitted by Developer and approved by the Port under DDA § 3.5(b) (Submittal for Review).
- "Streetscape Submittal Date"** means the date by which Developer will submit its final Streetscape Master Plan application to the Port under DDA § 3.5(b) (Submittal for Review).
- "Structural Consultant"** means any Project Consultant who prepared Structural Materials.
- "Structural Materials"** means Project Materials relating to structural strengthening, maintenance, and repair of the substructure and superstructure of piers and wharves, Horizontal Improvements for, and subsurface stabilization of, any part of the 28-Acre Site.
- "Subdivision Code"** means the San Francisco Subdivision Code and Subdivision Regulations, subject to applicable amendments or procedures in the DA Ordinance and Development Agreement.
- "Subdivision Map"** means any map that Developer submits for the FC Project Area under the Map Act and the Subdivision Code.
- "Subdivision Regulations"** means subdivision regulations adopted by Public Works from time to time.
- "Subordination Event"** means the termination of any part of the DDA with respect to Developer's rights following a Material Breach under the DDA.
- "Sub-Project Area"** means, individually or collectively, Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4.

"Sub-Project Area G-1" means the sub-project area of IFD Project Area G consisting of the 20th Street Historic Core.

"Sub-Project Area G-2" means the sub-project area of IFD Project Area G described in Appendix G-2.

"Sub-Project Area G-3" means the sub-project area of IFD Project Area G described in Appendix G-2.

"Sub-Project Area G-4" means the sub-project area of IFD Project Area G described in Appendix G-2.

"Substantially Complete" means that Developer has obtained an SOP Compliance Determination as to the applicable Phase Improvement.

"successor" means heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring any portion of or any interest in the FC Project Area, Developer, or a Vertical Developer, whether by sale, operation of law, or in any other manner.

"Successor Default" as defined in DA § 10.2(e) (No Cross-Default) means an Event of Default under the Development Agreement, a Vertical DDA, or a Parcel Lease, as applicable, by a DA Successor with respect to any part of the 28-Acre Site Project.

"Successor by Foreclosure" means any person who obtains title to all or any portion of or any interest in the FC Project Area as a result of foreclosure proceedings, conveyance or other action in lieu of foreclosure on a Permitted Lien, or other remedial action, including:

- (i) any other person who obtains title to all or any portion of or any interest in the FC Project Area or a Borrower from or through a Permitted Lender, including a Permitted Lender's nominee;
- (ii) any other purchaser at a foreclosure sale; and
- (iii) any successor to either of the above.

"SUD" is an acronym for the Pier 70 Special Use District established by Planning Code section 249.79, which incorporates the Design for Development, and related amendments to the City's Zoning Map with zoning and other land use controls applicable to the 28-Acre Site and adjoining parcels, approved by Ordinance No. 225-17.

"SUD Project" means the project as defined in the FEIR.

"Summary Proforma" means, for illustrative purposes only, the detailed document that Developer prepared to provide an accurate summary of the Proforma, a copy of which is attached to the Financing Plan as **FP Sch 1**, and any superseding or revised summaries prepared from time to time in accordance with the DDA.

"Sustainability Plan" means the Sustainability Plan presented to the Port Commission on September 12, 2017, a copy of which is on file with the Secretary of the Port Commission.

"Tax Allocation MOU" means the Memorandum of Understanding (Levy and Allocation of Taxes).

"Tax Code" means the Internal Revenue Code of 1986, as amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the United States Internal Revenue Code.

"Tax Increment" refers to one or more of Allocated Tax Increment, Housing Tax Increment, the City Share of Tax Increment, ERAF Tax Increment, Gross Tax Increment, Port Tax Increment, and Project Tax Increment, as appropriate in the context.

"Tax Increment Bonds" means any Bonds of the IFD with respect to Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4, including obligations incurred under a Pledge Agreement, secured and payable by a pledge of or otherwise payable from Allocated Tax Increment.

"Tax Increment Bonds" *excludes Mello-Roos Bonds and Housing Tax Increment Bonds.*

"Tax Increment Debt Service Requirement" means the debt service payable on Tax Increment Bonds in a City Fiscal Year before the next expected Receipt Date of Allocated Tax Increment.

"Tax Increment Fund" means the segregated accounts that will be outlined in **FP Exh F** that the Port, as IFD Agent, establishes with fund consisting of the Special Fund Trustee to receive, administer, and disburse Annual Allocated Tax Increment on behalf of the IFD through the Special Fund Administration Agreement.

"Tax Revenues" means any Improvement Special Taxes or Tax Increment deposited in a Special Fund for use in accordance with the Financing Plan.

"Taxable Commercial Parcels" means a Taxable Parcel that is a Commercial Parcel.

"Taxable Parcel" means an assessor's parcel of real property or other real estate interest that is not exempt from taxation and assessments, including Taxable Commercial Parcels, Taxable Residential Units, and leased space occupied for private use in an Exempt Parcel.

"Taxable Residential Unit" means a Taxable Parcel that is a residential unit.

"TCO" is an acronym for a Temporary Certificate of Occupancy.

"TDM" is an acronym for transportation demand management.

"TDM Coordinator" and **"TC"** mean the lead staff person of the TMA.

"TDM Measures" means measures outlined in the Pier 70 TDM Program or in consultation with the relevant City Agencies, to achieve the Reduction Target.

"Temporary Certificate of Occupancy" means a certificate of occupancy that the Chief Harbor Engineer issues under the Port Building Code allowing a discrete portion of a building to be occupied or conditional occupancy of a building.

"Temporary Noonan Replacement Space" means a temporary replacement space to house the Noonan Tenants within the 28-Acre Site that will allow for the demolition of Building 11 in accordance with **DDA § 7.13 (Noonan Replacement Space)**.

"Tenant" means the tenant under the Master Lease.

"Tentative Map" means a Tentative Transfer Map, Vesting Tentative Transfer Map, Tentative Map, or Vesting Tentative Map as defined in the Subdivision Code.

"Terminated Phase" means a Phase that is terminated under **DDA Art 12 (Material Breaches and Termination)**.

"Term Sheet" is defined in the Recitals to the DDA.

"Termination Date" means the date on which a termination under **DDA Art 12 (Material Breaches and Termination)** becomes effective.

"third party" means a person that is not Developer, the Port, the City, or any of their Agents or Affiliates.

"Third-Party Challenge" means an action challenging the validity of any provision of the DDA or the Development Agreement, the 28-Acre Site Project, any Project Approval or Future Approval, the adoption or certification of the Final EIR, other actions taken under CEQA, or any other Project Approval.

"Time-Sensitive Matter" means a Party's obligations that are due at a specific time under the DDA, including under the Schedule of Performance and the Financing Plan.

"TMA" is an acronym for the transportation management association that will be formed to administer, monitor, and adjust the Pier 70 TDM Program.

"Total Fee Amount" is defined **Transportation Plan ¶ 1.B (Accounting and Use of Transportation Fee by SFMTA)**.

"Transaction Document" means any of the following, individually or collectively:

- (i) the DDA, including the Financing Plan, this Appendix, and all attached exhibits, schedules, and implementing agreements and plans;
- (ii) each Vertical DDA and associated documents by which the Port conveys a Development Parcel;
- (iii) each Assignment and Assumption Agreement governing a Transferee's rights and obligations for the 28-Acre Site Project;
- (iv) the ICA;
- (v) the Development Agreement;
- (vi) the Master Lease;
- (vii) any Guaranty given to the Port as Adequate Security; and
- (viii) any other agreement governing the Parties' respective rights and obligations with respect to the development or operation of any portion of the 28-Acre Site.

"Transfer" means Assignment or Significant Change.

"Transfer" excludes:

- (1) any agreement under which a Vertical Developer is required to build Deferred Infrastructure; or
- (2) an Excluded Transfer.

"Transfer Map" means a map for the 28-Acre Site under the Subdivision Map Act filed by the Developer that creates a separate legal parcel for each Development Parcel, which may include Condo Units.

"Transferee" means any person to which Developer Transfers its rights and corresponding obligations relating to a Phase, Horizontal Improvements, or horizontal development as permitted under DDA Art 6 (Transfers).

"Transferee" excludes any Vertical Developer, Lender, or successor to either except to the extent of assumed horizontal development rights or obligations (not including Deferred Infrastructure) as permitted under the DDA.

"Transferee Affiliate" means a Transferee that is an Affiliate of Developer.

"Transferred Phase" means a Phase that Developer proposes to Transfer or that has been Transferred in accordance with DDA Art 6 (Transfers).

"Transition Notice" means notice delivered to the Noonan Tenants at least 24 months before Developer will provide them with the opportunity to relocate to the Noonan Replacement Space under DDA § 7.13 (Noonan Replacement Space).

"Transportation Fee" means the Impact Fee imposed on vertical development at the 28-Acre Site under DA § 4.1(c) (Specific Benefits) and payable as specified in Transportation Plan ¶ I.A (Payment by Vertical Developers).

"Transportation Impact Study" means the Project's Transportation Impact Study attached to the Final EIR and referenced in the Pier 70 TDM Program.

"Transportation Infrastructure" means Improvements and technology necessary for transportation and public transit services on or serving the SUD, including vehicular traffic and transit signaling and signs; parking meters and other parking control devices; bicycle parking facilities; bicycle rental/sharing facilities; protected bikeways; bus boarding islands or bulb-outs and shelters; pedestrian traffic controls; overhead traction power cabling and supports; street lighting supports;

wayside control and communication systems and devices; electrical substations, junction boxes, underground conduit and duct banks; transit stops; and street and curb striping.

"Transportation Program" means DDA Exh B5, which contains strategies that Developer is required to implement to address movement in and around the 28-Acre Site.

"Transportation-Related Mitigation Measures" means any Mitigation Measure, including aspects of the Transportation Program that SFMTA is responsible for monitoring or implementing.

"Treasurer-Tax Collector" means the Treasurer and Tax Collector of the City and County of San Francisco.

"TSF" is an acronym for the Transportation Sustainability Fee imposed under Section 411A.

"TSF Fund" means the account holding funds collected under Section 411A.

"UIWH District" means the Union Iron Works Historic District.

"Unanimous Approval" means a written certificate executed by 100% of the owners of a Development Parcel requesting annexation of the Development Parcel to a CFD, under the CFD Law.

"Union Iron Works Historic District" means the approximately 66 acre-area of Pier 70 that was listed in the National Register of Historic Places in 2014.

"Unpermitted Exception" means a title exception marked as such in DDA Exh D1.

"Unrelated Transferee" means a Transferee that is not an Affiliate of Developer.

"Unrelated Vertical Developer" means a Vertical Developer that is not Developer or an Affiliate of Developer.

"USPAP" means the Uniform Standards of Professional Appraisal Practice originally adopted by Congress in 1989 and updated biannually by The Appraisal Foundation.

"Utility Allowance" means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include an amount published periodically by the San Francisco Housing Authority based on standards established by HUD, for the cost of basic utilities for households, adjusted for Household Size. If both the San Francisco Housing Authority and HUD cease publishing a Utility Allowance, then Vertical Developers may use another publicly available and credible dollar amount approved by MOHCD.

"Utility Infrastructure" means Horizontal Improvements for utility systems that serve the FC Project Area, including subsurface systems for power, stormwater, sewer, domestic water, recycled water, AWSS, and above-ground facilities, such as streetlights, stormwater controls, and switchgears.

"Utility Infrastructure" excludes telecommunications infrastructure and any privately owned utility improvements (other than any part of WTRS that is privately-owned).

"Utility-Related Mitigation Measure" means any Mitigation Measure that SFPUC is responsible for monitoring or implementing.

"VDDA" is an acronym for Vertical DDA.

"VDDA Notice" for purposes of DDA Exh A5 means the Port's notice to Planning that the Port is prepared to enter into a Vertical DDA with a Vertical Developer that will have the right to develop an office project on its Option Parcel.

"Vertical Coordination Agreement" means an agreement between a Vertical Developer and Developer in coordination with the Vertical DDA.

"Vertical DDA" means the agreement between the Port and a Vertical Developer governing vertical development of a Development Parcel in the form of DDA Exh D2.

"Vertical Developer" means a person that acquires Parcel K North or a Development Parcel from the Port under a Vertical DDA for the development of Vertical Improvements.

"Vertical Developer Affiliate" means a Vertical Developer that is an Affiliate of Developer.

"Vertical Developer Default" is defined in VDDA § 15.1 (Default by Vertical Developer).

"Vertical Developer Party" means any Vertical Developer, its Affiliates, their Agents, and Invitees to the 28-Acre Site, individually or collectively.

"vertical development" means planning, design, and construction or rehabilitation of buildings and other structures on the 28-Acre Site.

"Vertical Improvement" means a new building that is built or a Historic Building that is rehabilitated at the 28-Acre Site.

"Vested Element" means a specific component of the land use entitlements granted to Developer by the Project Approvals, as described in DA § 5.1(b) (Vested Elements).

"Water Board" means the San Francisco Bay Regional Water Quality Control Board of the California Water Resources Control Board.

"Waterfront Plan" means the Port's Waterfront Land Use Plan, including the Waterfront Design and Access Element, which is the basis for the Port's regulation of land uses on Port property.

"Waterfront Set-Aside" means a minimum of 20% of Annual Allocated Tax Increment and 20% of ERAF Tax Increment from Project Area G, which under IFD Law must be spent for shoreline restoration, removal of bay fill, and creation of waterfront public access to or environmental remediation of the San Francisco waterfront.

"WDP" is an acronym for the Workforce Development Plan.

"Workforce Development Plan" means DDA Exh B4.

"WTRS" is an acronym for wastewater treatment and recycling system.

"WTRS Election" is defined in DDA § 7.22 (Wastewater Treatment and Recycling System).

"WTRS MOU" means a memorandum of understanding that the Port will enter into with SFPUC should Developer exercise the WTRS Election under DDA § 7.21 (Wastewater Treatment and Recycling System).

"Zone" means a numerically designated group of Taxable Parcels in a CFD (e.g., Zone 1 and Zone 2), which will be specified in the CFD Formation Proceedings.

"Zoning Administrator" means the Planning Department staff person who is authorized to grant variances through administrative review under the Planning Code.

CONSENT TO DEVELOPMENT AGREEMENT

Port Commission

The Port Commission of the City and County of San Francisco has reviewed the Development Agreement between the City and Developer relating to the proposed 28-Acre Site Project to which this Consent to Development Agreement is attached and incorporated. Capitalized terms used in this Port Consent have the meanings given to them in the Development Agreement or the Appendix.

By executing this Port Consent, the undersigned confirms the following.


1. The Port Commission, at a duly noticed public hearing, adopted the CEQA Findings, including the Statement of Overriding Considerations, and the MMRP, including Mitigation Measures for which the Port is the responsible agency.
2. At that meeting, the Port Commission considered and consented to the Development Agreement as it relates to matters under Port jurisdiction and delegated to the Port Director or her designee any future Port approvals under the Development Agreement, subject to Applicable Laws, including the City Charter.
3. The Port Commission directed the Chief Harbor Engineer to: (a) require evidence that Developer has paid any Impact Fees that are required as a condition to issuing any Construction Permit for horizontal development; (b) require evidence that Vertical Developers have paid all Impact Fees that are required as a condition to issuing any Construction Permit for vertical development; and (c) report promptly to the Planning Director the location, date, and amount of office space approved for construction in any Construction Permit as provided in *DDA Exh A5 (Provisions for Office Development)*.
4. The Port Commission also authorized Port staff to take any measures reasonably necessary to assist the City in implementing the Development Agreement in accordance with Port Resolution No. 17-47.

[Remainder of page intentionally left blank.]

By authorizing the Port Director to execute this Port Consent, the Port Commission affirms that it does not intend to limit, waive, or delegate in any way its exclusive authority or rights under Applicable Port Law.

PORT:

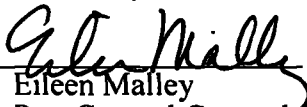
CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
San Francisco Port Commission

By: 
Elaine Forbes,
Executive Director

Date: May 2, 2018

Authorized by Port Resolution No. 17-47
and Board of Supervisors Resolution No. 224-17

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: 
Eileen Malley
Port General Counsel

[Remainder of page intentionally left blank.]

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco has reviewed the Development Agreement between the City and Developer relating to the proposed 28-Acre Site Project to which this Consent to Development Agreement is attached and incorporated. Capitalized terms used in this SFMTA Consent have the meanings given to them in the Development Agreement or the Appendix.

By executing this SFMTA Consent, the undersigned confirms the following:

1. The SFMTA Board of Directors, after considering at a duly noticed public hearing the CEQA Findings for the 28-Acre Site Project, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, consented to and agreed to be bound by the Development Agreement as it relates to matters under SFMTA jurisdiction and delegated to the Director of Transportation or his designee any future SFMTA approvals under the Development Agreement, subject to Applicable Laws, including the City Charter.
2. The SFMTA Board of Directors also:
 - a. approved Mitigation Measure M-AQ-1f, which requires “a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20% compared to the total number of one-way vehicle trips identified in the project’s Transportation Impact Study at project build-out,” which is a Developer Mitigation Measure under the MMRP;
 - b. approved Developer’s Pier 70 TDM Program for the Transportation Program (attached to this SFMTA Consent) and found that the Pier 70 TDM Program meets the requirements of Mitigation Measure M-AQ-1f and incorporates many of the Pier 70 TDM Program strategies described in Section 169;
 - c. directed the Director of Transportation to administer and direct the allocation and use of Transportation Fees in an amount no less than the Total Fee Amount as provided in the Transportation Program; and
 - d. delegated to the Director of Transportation the authority to approve the Streetscape Master Plan for the FC Project Area.
3. The SFMTA Board of Directors also authorized SFMTA staff to take any measures reasonably necessary to assist the City in implementing the Development Agreement in accordance with SFMTA Resolution No.170905-112, including the Transportation Program and the transportation-related Mitigation Measures.

[Remainder of page intentionally left blank.]

By authorizing the Director of Transportation to execute this SFMTA Consent, the SFMTA does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA as set forth in Article VIIIA of the City Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
San Francisco Municipal Transportation Agency

By: _____

Edward D. Reiskin,
Director of Transportation

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Susan Cleveland-Knowles
SFMTA General Counsel

SFMTA Resolution No. 170905-112

Adopted: September 5, 2017

Attachment: Pier 70 Transportation Program and TDM Program

[Remainder of page intentionally left blank.]

ATTACHMENT TO SFMTA CONSENT

Transportation Program and Pier 70 TDM Program

EXHIBIT TO SFMTA CONSENT

TRANSPORTATION PROGRAM

I. Transportation Fee.

A. **Payment by Vertical Developers.** Each Vertical Developer shall pay to SFMTA a "Transportation Fee" that SFMTA will use and allocate in accordance with Section I.B below. The Transportation Fee must meet all requirements of and will be payable on all vertical development in the 28-Acre Site in accordance with Planning Code sections 411A.1-411A.8. Under the Development Agreement and this Transportation Program:

- The Transportation Fee will be payable on any development project on the 28-Acre Site, except Affordable Housing Projects pursuant to Planning Code section 406(b), and Historic Building 21, Historic Building 12, and Parcel E4.
- The Transportation Fee will be calculated at 100% of the applicable TSF rate without a discount under Section 411A.3(d). The 28-Acre Site Project shall be subject to 100% of the applicable TSF rate as if it were a project submitted under 411A.3(d)(3). The amount of the Transportation Fee for each applicable land use category will be identical to the amount for the same land use category in the Fee Schedule in Planning Code section 411A.5 as in effect when the Port issues the first Construction Permit for each building.

B. **Accounting and Use of Transportation Fee by SFMTA.** Section 411A.7 will apply except as follows. The Treasurer will account for all Transportation Fees paid for each development project on the 28-Acre Site (the "Total Fee Amount"). SFMTA will use an amount equal to or greater than the Total Fee Amount to pay for uses permitted by the TSF Fund under Planning Code section 411A.7, including SFMTA and other agencies' costs to design, permit, construct, and install a series of transportation improvements in the area surrounding the SUD. SFMTA and other implementing agencies will be responsible for all costs associated with the design, permitting, construction, installation, maintenance, and operation of these improvements above the Total Fee Amount. SFMTA will report to the Planning Director on any use of the Total Fee Amount in any reporting period for the Annual Review under the Development Agreement. Examples of projects that SFMTA may fund with the Total Fee Amount include:

- **16th Street Ferry Landing.** Construction of a new ferry terminal at Mission Bay and support of other water transit, including a network of water taxi/small water ferry docks along the waterfront.
- **T-Third Enhancements.** Reliability and capacity enhancements, including flashing "Train Coming" signs, in-ground detectors at to-be-identified intersections, and additional light rail vehicles (LRV) as needed to serve the growing population along the line.
- **10, 11, 12, and other MUNI lines that are planned to serve 28-Acre Site Project neighborhood.¹** Capital improvements, including buses, associated with newly proposed MUNI routes, and re-routing of existing MUNI lines to better serve transit riders in the Dogpatch, Mission Bay, and Potrero Hill neighborhoods. Operation plans for all Muni service is contingent on the SFMTA Board of Directors adoption of an operating budget.
 - Consulting in good faith with the neighborhood stakeholders, SFMTA will design and implement, in a timely manner, new MUNI routes, alignments, and/or other service enhancements in the Pier 70 area to improve service for residents, visitors, and workers, to the extent technically feasible. Emphasis will be placed on connecting existing and developing population and job centers, neighborhood destinations and regional transit, including, but not limited to, connections to 16th Street BART and the 22nd Street Caltrain Station.

¹ Project payment for Mitigation Measure M-TR-5 will not be requested by the SFMTA until after Project's contribution to the 10, 11, 12, and other Muni lines planned to serve the 28-Acre Site Project neighborhood are expended, provided relevant impacts still exist.

- Muni Metro East. Capital costs associated with an expanded facility for on-site rebuilds, capacity for expanded bus and LRV fleet, and tracks for storage.
- Mission Bay E-W Bike Connector. Implementation of a connection across tracks, likely between 17th Street and Owens Street, to connect the 4th Street bikeway on east side and the 17th Street bikeway on west side.
- Terry A. Francois Boulevard Cycletrack. Implementation of bicycle access on Terry A. Francois Boulevard, including multi-use (peds/bikes) access on the 3rd Street Bridge and associated signal modifications.
- North-south bike connection on Indiana Street. Implementation of bicycle connection along Indiana Street from Cesar Chavez Boulevard to Mariposa Street.
- Upgraded bicycle access on Cesar Chavez Boulevard. Implementation of a lane along Cesar Chavez Boulevard from US 1-280/Pennsylvania to Illinois Street, including elements such as bulbs, islands, and restriping.
- Pedestrian improvements. Implement improved sidewalks and crosswalks as needed at various gap locations throughout the adjacent Dogpatch neighborhood, as identified in partnership with community and City partners.

Nothing in this Transportation Program will prevent or limit the City's absolute discretion to: (i) conduct environmental review in connection with any future proposal for improvements; (ii) make any modifications or select feasible alternatives to future proposals that the City deems necessary to conform to any applicable laws, including CEQA; (iii) balance benefits against unavoidable significant impacts before taking final action; (iv) determine not to proceed with such future proposals; or (v) obtain any required approvals for the improvements.

II. TDM Plan.

Developer shall implement the Transportation Demand Management ("TDM") Plan attached as **TP Schedule 1** and otherwise comply with EIR Mitigation Measure M-AQ-1f, attached as **TP Schedule 2**. Under Planning Code section 169.4(e), the Zoning Administrator shall approve and order the recordation of the TDM Plan against the 28-Acre Site, and it shall be enforceable through the Notice of Violation procedures in the Planning Code, or any other applicable provision of law. The Zoning Administrator shall retain the discretion to determine what constitutes a separate violation in this context. The Planning Code procedures shall apply, except that the Zoning Administrator shall have discretion to impose a penalty of up to \$250 per violation. Developer agrees to a TDM Plan that vehicle trips associated with the 28-Acre Site will not exceed 80% of the vehicle trips calculated for 28-Acre Site Project in the Transportation Impact Study. The TDM measures (the "**TDM Measures**") outlined in the TDM Plan, or made in consultation with the relevant agencies, must achieve the TDM Plan.

In accordance with the Pier 70 TDM Plan, Pier 70 shall operate a free public shuttle to riders, funded by the Pier 70 TMA, providing direct connections between Pier 70 and regional transit. The Pier 70 shuttle routes will be designed to provide an attractive alternative to using private vehicles to access Pier 70, and shall take into account area congestion and neighborhood input. In compliance with mitigation measure M-AQ-1f, Pier 70 will provide the SFMTA with shuttle ridership data. The SFMTA will use the resulting data to monitor on-going demand for new or modified MUNI service and to inform further MUNI service planning in the Pier 70 area.

Developer's TDM Plan and related obligations under this Transportation Program will begin when the Port or DBI issues a Temporary Certificate of Occupancy for the first building at the 28-Acre Site and remain in effect for the life of the 28-Acre Site Project.

III. SFMTA Contact

SFMTA commits to designating a staff person to follow up on the transportation related components of the 28-Acre Site Project, including DDA Exhibit B5, the DA, and the FEIR. This staff person will be a point person for the Developer and the community.

IV. RPP Permits

The 28-Acre Site Project will not be eligible for Residential Parking Permits under Transportation Code section 405. Developer has agreed that such restriction will be included in the Conditions, Covenants and Restrictions (CC&Rs) of the Project.

TP SCHEDULE 1

TDM Plan

(see attached)



Pier 70 Special Use District TDM Program

July 24, 2017

TRANSPORTATION DEMAND MANAGEMENT

The Project (defined as the area within the Pier 70 Special Use District) will implement TDM measures designed to produce 20% fewer driving trips than identified by the project's Transportation Impact Study ("Reduction Target") for project build out, as identified in Table 1, below.

Table 1: Trip Reduction Target from EIR Trip Estimates

| Period | EIR Auto Trip Estimate at Project Build-Out | Auto Trips Reflecting 20% Reduction ("Reduction Target") |
|---------------|--|---|
| Daily | 34,790 | 27,832 |

To do this, the TDM Plan creates a TDM Program that will support and promote sustainable modes and disincentivize the use of private automobiles, particularly single-occupancy vehicles, among residents, employees, and visitors. This chapter outlines the different strategies that Project, initially, will employ to meet those goals, including the formation of a Transportation Management Association (TMA). The TMA will be responsible for the administration, monitoring, and adjustment of the TDM Plan and program over time. In addition to meeting the Reduction Target, the following overall TDM goals are proposed to ensure that the Project creates an enjoyable, safe, and inviting place for residents, workers, and visitors.

1.1 TDM Goals

In addition to meeting the Reduction Target described above, the TDM program will include measures that contribute to the following goals:

- Encourage residents, workers, and visitors to the Project site to use sustainable transportation modes and provide resources and incentives to do so.
- Make the Project site an appealing place to live, work and recreate by reducing the number of cars on the roadways and creating an active public realm.
- Integrate the Project into the existing community by maintaining the surrounding neighborhood character and seamlessly integrating the Project into the established street and transportation network.
- Provide high quality and convenient access to open space and the waterfront.
- Promote pedestrian and bike safety by integrating bicycle and pedestrian-friendly streetscaping throughout the Project site.
- Improve access to high quality transit, including Caltrain, BART, and Muni light rail.
- Reduce the impact of the Project on neighboring communities, including reducing traffic congestion and parking impacts.

1.2 TDM Approach

The fundamental principle behind the TDM program is that travel habits can be influenced through incentives and disincentives, investment in sustainable transportation options, and educational and marketing efforts. Recognizing this principle, the following section describes the TDM program, including its basic structure, as well as logistical issues, such as administration and maintenance of the program.

The Project's land use and site design principles, including creating a dense, mixed-use area that provides neighborhood and office services within walking distance from residential and commercial buildings and the creation of walkable and bicycle-friendly streets, will work synergistically with the TDM program to achieve the Project's transportation goals.

Planning Code Section 169 (TDM) requires that master planned projects such as Pier 70 meet the spirit of the TDM Ordinance, and acknowledges that there may be unique opportunities and strategies presented by master planned projects to do so. If, in the future, the Port establishes its own TDM program across its various properties, the Project will have the right, but not the obligation, to consolidate TDM efforts with this larger plan. In all cases, the Project will coordinate with a Port-wide TDM program, should it exist. In the absence of such a Port-wide program now, the Project is proposing the site-specific TDM program structure outlined below.

As previously mentioned, in order to meet the Project goals to reduce Project-related one-way vehicular traffic by 20%¹—and to create a sustainable development, the Project's TDM program will be administered and maintained by a TMA. Existing examples of TMAs include the Mission Bay TMA and TMA SF Connects.

The TMA will provide services available to all residents and workers at the Project site. The TMA will be funded by an annual assessment of all buildings in the Pier 70 Special Use District area (excluding Buildings 12, 21 and E4). The TMA will be responsible for working with future subtenants of the site (e.g., employers, HOAs, property managers, residents) to ensure that they are actively engaging with the TDM program and that the Program meets their needs as it achieves or exceeds the driving trip reduction targets. Upon agreeing to lease property at the Project, these subtenants will become "members" of the TMA and able to take advantage of the TDM program services provided through the TMA. The TMA will be led by a board of directors which will be composed of representatives from diverse stakeholders that will include the Port (as the current property owner), the SFMTA (as the public agency responsible for oversight of transportation in the City), and representatives of various buildings that have been constructed at the site. The board of directors may also include representatives from commercial office tenants or homeowners' associations.

Day-to-day operations of the TMA will be handled by a staff that would work under the high-level direction provided by the board of directors. The lead staff position will serve as the onsite Transportation Coordinator (TC) (also referred to as the "TDM Coordinator"), functioning as the TMA's liaison with subtenants in the implementation of the TDM program and as the TMA's representative in discussions with the City.

The TC will perform a variety of duties to support the implementation of the TDM program, including educating residents, employers, employees, and visitors of the Project site about the range of

¹ Reduction in trips is in comparison to trip generation expectations from the EIR.

transportation options available to them. The TC would also assist with event-specific TDM planning and monitoring, and reporting on the success and effectiveness of the TDM program overall. The TC may be implemented as a full-time position, or as a part-time position shared with other development projects. The TMA will have the ability to adjust TDM program to respond to success or failure of certain components.

1.2.1 The TMA Website

The TMA, through the onsite TC, would be responsible for the creation, operation, and maintenance of a frequently updated website that provides information related to the Project's TDM program. The TMA's website would include information on the following (and other relevant transportation information):

- Connecting shuttle service (e.g., routes and timetables);
- General information on transit access (e.g., route maps and real-time arrival data for Muni, Caltrain, and BART);
- Bikesharing stations on site and in the vicinity;
- On- and off-street parking facilities pricing (e.g., pricing, location/maps and real-time occupancy);
- Carsharing pods on site and in the vicinity,
- Ridematching services; and
- Emergency Ride Home (ERH) program.

1.3 Summary of TDM Measures

Table 2 provides a summary of the TDM measures to be implemented at the Project by the TMA. The following sections provide more detail on the measures as organized by measures that are applicable site-wide, those that target residents only, and those that target non-residents (workers and visitors) only. The applicable measures will be ready to be implemented upon issuance of each certificate of occupancy.

Table 2: Summary of Pier 70 TDM Measures

| Measure ² | Description | Applicability | | |
|----------------------------|--|---------------|-------------|-----------------|
| | | Site-wide | Residential | Non-Residential |
| Improve Walking Conditions | Provide streetscape improvements to encourage walking | ✓ | | |
| Bicycle Parking | Provide secure bicycle parking | ✓ | | |
| Showers and Lockers | Provide on-site showers and lockers so commuters can travel by active modes | | | ✓ |
| Bike Share Membership | Property Manager/HOA to offer contribution of 100% toward first year membership; one per dwelling unit | | ✓ | |

² Where applicable, measure names attempt to be consistent with names of measures in San Francisco's TDM Program

| Measure ² | Description | Applicability | | |
|--|--|---------------|-------------|-----------------|
| | | Site-wide | Residential | Non-Residential |
| Bicycle Repair Station | Each market-rate buildings shall provide one bicycle repair station | | ✓ | |
| Fleet of Bicycles | Sponsor at least one bikeshare station at Pier 70 for residents, employees, and/or guests to use | ✓ | | |
| Bicycle Valet Parking | For large events (over 2,000), provide monitored bicycle parking for 20% of guests | ✓ | | |
| Car Share Parking & Membership | Provide car share parking per code. Property Manager/HOA to offer contribution of 100% toward first year membership; one per dwelling unit | | ✓ | |
| Delivery Supportive Amenities | Facilitate deliveries with a staffed reception desk, lockers, or other accommodations, where appropriate. | ✓ | | |
| Family TDM Amenities | Encourage storage for car seats near car share parking, cargo bikes and shopping carts | ✓ | | |
| On-site Childcare | Provide on-site childcare services | ✓ | | |
| Family TDM Package | Require minimum number of cargo or trailer bike parking spaces | | ✓ | |
| Contributions or Incentives for Sustainable Transportation | Property Manager/HOA to offer one subsidy (40% cost of MUNI "M" pass) per month for each dwelling unit | | ✓ | |
| Shuttle Bus Service | Provide shuttle bus services | ✓ | | |
| Multimodal Wayfinding Signage | Provide directional signage for locating transportation services (shuttle stop) and amenities (bicycle parking) | ✓ | | |
| Real Time Transportation Information Displays | Provide large screen or monitor that displays transit arrival and departure information | ✓ | | |
| Tailored Transportation Marketing Services | Provide residents and employees with information about travel options | ✓ | | |
| On-site Affordable Housing | Provide on-site affordable housing as part of a residential project | | ✓ | |
| Unbundle Parking | Separate the cost of parking from the cost of rent, lease or ownership | ✓ | | |
| Prohibition of Residential Parking Permits (RPP) | No RPP area may be established at or expanded into the Project site | | ✓ | |
| Parking Supply | Provide less accessory parking than the neighborhood parking rate | ✓ | | |
| Emergency Ride Home Program | Ensure that every employer is registered for the program and that employees are aware of the program | | | ✓ |

1.4 Site-wide Transportation Demand Management Strategies

The following are site-wide TDM strategies that will be provided to support driving trip reductions by all users of the Project.

1.4.1 *Improve Walking Conditions*

The Project will significantly improve walking conditions at the site by providing logical, accessible, lighted, and attractive sidewalks and pathways. Sidewalks will be provided along most new streets and existing streets will be improved with curbs and sidewalks as necessary. The street design includes improvements to streets and sidewalks to enhance the pedestrian experience and promote the safety of pedestrians as a top priority. In addition, ground floor retail will create an active ground plan that promotes comfortable and interesting streetscapes for pedestrians.

1.4.2 *Encourage Bicycling*

Bicycling will be encouraged for all users of the site by providing well-designed and well-lit bike parking in residential and commercial buildings, in district parking, and also in key open space and activity nodes. Bicycle parking will be provided in at least the amounts required by the Planning Code at the time a building secures building permits. Furthermore, valet bicycle parking will be provided for large events (over 2,000) to accommodate 20% of guests. In addition to bicycle parking, the Project will fund at least one bikeshare station on site, including the cost of installation and operation for three years, for residents, employees, and or guests to use. This will help reduce the cost-burden of purchasing a bike and increase convenience. Bicycle facilities provided at the Project site will help improve connectivity to existing bike facilities on Illinois Street and the Bay Trail.

1.4.3 *Tailored Transportation Marketing Services and Commuter Benefits*

Tailored marketing services will provide information to the different users of the site about travel options and aid in modal decision making. For example, the TMA will be responsible for notifying employers about the San Francisco Commuter Benefits Ordinance, the Bay Area Commuter Benefits Program, and California's Parking Cash-Out law when they sign property leases at the site and disseminating general information about the ordinances on the TMA's website. The TMA will provide information and resources to support on-site employers in enrolling in pre-tax commuter benefits, and in establishing flex time policies.

Employers will be encouraged to consider enrolling in programs or enlisting services to assist in tracking employee commutes, such as Luum and Rideamigos. The services offered by these platforms include the development of incentive programs to encourage employees to use transit, customized commute assistance resources, tracking the environmental impact of employee commutes, and assessing program effectiveness. As the TMA works with on-site employers, other useful resources that support sustainable commute modes may be identified and provided by the TMA.

1.4.4 *Car Share Parking*

The Project will provide car share parking in the amounts specified by Planning Code Section 166 for applicable new construction buildings.

1.4.5 Shuttle Service

A shuttle will be operated at Pier 70 serving to connect site users (residents, employees, and visitors) with local and regional transit hubs. The shuttle service will aim to augment any existing transit services and it is not intended to compete with or replicate Muni service. Shuttle routes, frequencies, and service standards will be planned in cooperation with SFMTA staff. In addition, coordination and integration of the shuttle program with other developments in the area will be considered, including with Mission Bay and future development at the former Potrero Power Plant. The necessity of the shuttle service will continue to be assessed as transit service improves in the Pier 70 area over time.

Any shuttles operated by the Project will secure safe and legal loading zones for passenger boarding and alighting, both in the site and off-site. Shuttles will be free and open to the public and be accessible per ADA standards. Shuttles will comply with any applicable laws and regulations.

1.4.6 Parking

The Project is subject to an aggregate, site-wide parking maximum based on the following ratios:

- Residential parking maximums are set to 0.60 spaces per residential unit; and
- Commercial Office parking maximums are set to 1 space per 1,500 gross square feet; and
- Retail shall have 0 parking spaces.

The cost of parking will be unbundled, or separate from the cost of rent, lease, or ownership at the Project. Complying with San Francisco Planning Code, residential parking will not be sold or rented with residential units in either for-sale or rental buildings. Residents or workers who wish to have a car onsite will have to pay separately for use of a parking space. Residential and non-residential parking spaces will be leased at market rate.

Non-residential parking rates shall maintain a rate or fee structure such that:

- Base hourly and daily parking rates are established and offered;
- Base daily rates shall not reflect a discount compared to base hourly parking rates; calculation of base daily rates shall assume a ten-hour day.
- Weekly, monthly, or similar-time specific periods shall not reflect a discount compared to base daily parking rates, and rate shall assume a five-day week.
- Daily or hourly rates may be raised above base rate level to address increased demand, for instance during special events.

1.4.7 Displays and Wayfinding Signage

Real time transportation information displays (e.g., large television screens or computer monitors) will be provided in prominent locations (e.g., entry/exit areas, lobbies, elevator bays) on the project site highlighting sustainable transportation options. The displays shall be provided at each office building larger than 200,000 SF and each residential building of more than 150 units, and include arrival and departure information, such as NextBus information, as well as the availability of car share vehicles and shared bicycles as such information is available. In addition, multimodal wayfinding signage will be provided to help site users locate transportation services (such as shuttle stops) and amenities (such as bicycle parking). Highly visible information and signage will encourage and facilitate the use of these resources.

1.4.8 Family Amenities

Five percent of residential Class 1 bicycle parking will be designated for cargo and trailer bicycles. In addition, services and amenities will be encouraged to support the transportation needs of families, including storage for strollers and car seats near car share parking. On-site child care services will also be provided to further support families with children and reduce commuting distances between households, places of employment, and childcare.

1.5 Residential Transportation Demand Management Strategies

Strategies for reducing automobile use for residents of Pier 70 are discussed in the following sections.

1.5.1 Encourage Transit

All homeowners' associations and property managers will offer one subsidy (equivalent to 40% cost of Muni M pass or future equivalent Muni monthly pass) per month for each dwelling unit. These would likely consist of Clipper Cards that work for Muni, BART, and Caltrain and are auto-loaded with a certain cash value each month. In addition, tailored marketing services will provide information to residents about travel options and aid in modal decision making.

1.5.2 Bicycles

Indoor secure bicycle parking will be provided for residents in at least the amounts required by the Planning Code at the time the building secures building permits. Property Managers and HOA's will offer a contribution of 100% towards the first year's membership cost in a bikeshare program at a rate of one membership per dwelling unit. In addition, each market-rate residential building shall provide a bicycle repair station in a secure area of the building.

1.5.3 Car Share Membership

Property managers and HOA's will offer a contribution of 100% towards the first year's membership cost in a car share program at a rate of one membership per dwelling unit. Any user fees will be the responsibility of the resident member.

1.5.4 Family TDM Package

Amenities for families residing at the Project will be encouraged, such as car share memberships and other family amenities, including stroller and car seat storage and cargo bicycle parking.

1.5.5 Prohibition of Residential Parking Permits

Residential permit parking (RPP) will be prohibited at the Project site, and residents of Pier 70 will not be eligible for the neighboring Dogpatch RPP. This restriction is recorded within the Project's Master Covenants, Codes and Restrictions (CC&R) documents. This approach to RPP is intended to complement the Project's unbundled parking policy by ensuring that residents pay market rate for parking and that residential parking does not spill over onto neighborhood RPP streets.

1.6 Non-residential Transportation Management Strategies

As with residents, there are several ways to encourage public transit and other sustainable modes of travel for employees and visitors to the Project site.

1.6.1 Emergency Ride Home Program

San Francisco provides an emergency ride home (ERH) program that reimburses the cost of a taxi ride home for an employee who commutes to work by a sustainable mode (transit, bicycling, walking, or carpool/vanpool) and has an unexpected emergency such as personal or family related illness or unscheduled overtime. Any employee in San Francisco is eligible as long as the employer has registered. Registration is free for employers. The ERH program is a safety net that may remove a barrier to sustainable commute choices. The TMA will ensure that every employer tenant on-site is registered for the Emergency Ride Home program and that employees are aware of the program.

1.6.2 Bicycles

Indoor secure bicycle parking will be provided for employees at least in the amount required by the Planning Code at the time the building secures building permits. Showers and lockers for employee use will also be provided at least in the amount required by the Planning Code in order to support active travel modes for commuting. Employees will be encouraged to participate in Bike to Work Day events by the TMA. As previously mentioned, the Project will provide at least one bikeshare station that would be available to residents, employees, and visitors.

1.7 Special Event Transportation Management Strategies

The Project's open spaces will host a variety of public events, including evening happy hours, outdoor film screenings, music concerts, fairs and markets, food events, street festivals art exhibitions and theatre performances. Typical events may occur several times a month, with an attendance from 500 to 750 people. Larger-scale events would occur approximately four times a year, with an attendance up to 5,000 people. All events in parks or open spaces require permitting approval by the Port.

The TMA will work with the open space management team and any building managers or retailers to establish and implement transportation management plans for specific events. Transportation management plans will consider best practices and lessons learned from other San Francisco events and event venues. Event scheduling will attempt to minimize overlapping of events with AT&T Park and the Chase Event Center as required by the Environmental Impact Report. Event transportation management plans can include the following mechanisms:

- Directional signage for vehicles accessing the site
- Charging event pricing for parking associated with special events;
- Dedicated passenger loading zones in the site;
- Staffed and secure bicycle valet parking;
- Identifying and rewarding guests who ride their bicycles, walk, or transit to events (i.e., free giveaways);
- Encouraging customers at the time of ticket sales to take public transportation, walk, or bicycle to the events, and providing reminders and trip planning tools to support them in doing so;
- Disseminating the recommended transportation options on different marketing outlets (with ticket receipt, online channels, Pier 70-website, TMA website, etc.);

- Identifying offsite parking and using shuttles to transport visitors between the event venues, offsite parking, and transit hubs, as needed; and,
- Encouraging guests to arrive early and stay onsite longer by promoting local vendors, restaurants, etc., to spread and reduce pre- and post-event peaking effects.

Successful special event transportation management plans will minimize driving trips and promote sustainable modes of access to events. The TMA will monitor the effectiveness of these event management strategies, and at SFMTA's request, meet with SFMTA to consider revised approaches to event management.

1.7.1 Street Closures

During larger events and temporary programming, Maryland Street between 21st and 22nd Streets is expected to seek permits to be closed to motor vehicle traffic through the City's Interdepartmental Staff Committee of Traffic and Transportation (ISCOTT) process. Street closures would be in effect anywhere from a few hours to an entire day. In advance and during any street closure, event organizers must provide sufficient street signage to discourage driving to the site during the event and to route motor vehicles through the site and minimize queuing and impacts to circulation in and around the Project site. The recommended vehicular loop will be through 22nd Street (west of Louisiana Street), Louisiana Street (south of 21st Street), and 21st Street (west of Louisiana Street), with drop-off zones located on Louisiana Street. 21st Street (east of Louisiana Street) would serve as a loading/service alley for events.

1.8 Monitoring, Evaluation, and Refinement

The Pier 70 TMA, through an on-site Transportation Coordinator, shall collect data and make monitoring reports available for review and approval by the Planning Department staff. Monitoring data shall be collected and reports shall be submitted to Planning Department staff every year (referred to as "reporting periods"), until five consecutive reporting periods display the project has met the reduction goal, at which point monitoring data shall be submitted to Planning Department staff once every three years. The first monitoring report is required 18 months after issuance of the First Certificate of Occupancy for buildings that include off-street parking or the establishment of surface parking lots or garages that bring the project's total number of off-street parking spaces to greater than or equal to 500. Each trip count and survey (see below for description) shall be completed within 30 days following the end of the applicable reporting period. Each monitoring report shall be completed within 90 days following the applicable reporting period. The timing shall be modified such that a new monitoring report shall be required 12 months after adjustments are made to the TDM Plan in order to meet the reduction goal, as may be required in the "TDM Plan Adjustments" heading below. In addition, the timing may be modified by the Planning Department as needed to consolidate this requirement with other monitoring and/or reporting requirements for the project.

Table 3 below provides the EIR trip estimates for each phase identified in the EIR, as well as the number of trips for each phase reflecting a 20 percent reduction. Annual monitoring reports will compare progress against the trip estimates in Table 3 to assess progress, however the Project will not be considered out of compliance with either this Plan or Project mitigation measure M-AQ-1f unless the Reduction Target calculated for the fully built out project (see Table 1) has been exceeded.

The findings will be reported out to the Planning Department, as described in the Mitigation Monitoring and Reporting Program (MMRP). The monitoring reports are intended to satisfy the requirements of Project mitigation measure M-AQ-1f, M-TR-5, M-C-TR-4A, and M-C-TR-4B. If, however, separate reporting is preferred by the TMA, separate reports are acceptable.

Based on findings from the evaluation and with input from SFMTA and the Planning Department, the Project will refine the TDM Plan by improving existing measures (e.g., additional incentives, changes to shuttle schedule), including new measures (e.g., a new technology), or removing existing measures, in order to achieve the Project's Reduction Target, as well as monitor progress against the trip estimates for each phase outlined below. It will be especially important to refine strategies as new transportation options are put into place in the area and as the TMA learns which strategies are most effective in shaping the transportation behaviors of the site users.

Table 3: Auto Trip Estimates by Phase

| Phase | Residential | | | Commercial | | | Phase Trip Estimates | |
|---------|-------------|------------|------|------------|-----------|------|------------------------------------|-------------------------------|
| | Units | Cum. Units | % | GSF | Cum. GSF | % | EIR Auto Trip Estimates (by phase) | Auto Trip Target ¹ |
| Phase 1 | 300 | 300 | 18% | 6,600 | 6,600 | 0% | 1,072 | 858 |
| Phase 2 | 690 | 990 | 60% | 348,200 | 354,800 | 16% | 9,970 | 8,834 |
| Phase 3 | 375 | 1,365 | 83% | 673,900 | 1,028,700 | 45% | 7,662 | 14,963 |
| Phase 4 | 280 | 1,645 | 100% | 747,450 | 1,776,150 | 79% | 12,241 | 24,756 |
| Phase 5 | 0 | 1,645 | 100% | 486,200 | 2,262,350 | 100% | 3,845 | 27,832 |

Notes:

1. Represents 20 percent reduction target.

1.8.1 Purpose

The Plan has a commitment to reduce daily one-way vehicle trips by 20 percent compared to the total number of one-way vehicle trips identified in the project's Transportation Impact Study at project build-out ("Reduction Target"). To ensure that this reduction goal could be reasonably achieved, the TDM Plan will have a monitoring goal of reducing by 20 percent the one-way vehicle trips calculated for each building that has received a Certificate of Occupancy and is at least 75% occupied compared to the one-way vehicle trips anticipated for that building based on anticipated development on that parcel, using the trip generation rates contained within the project's Transportation Impact Study. The Plan must be adjusted if three consecutive monitoring results demonstrate that the TDM program is not achieving the TDM objectives. TDM adjustments will be made in consultation with the SFMTA and the Planning Department until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved.

If the TDM Plan does not achieve the Reduction Target for three consecutive monitoring results, the Plan must also be adjusted as described above. If, following the three consecutive monitoring periods, the TDM Plan still does not achieve the Reduction Target, the Planning Department may impose additional measures on the Project including capital or operational improvements intended to reduce

VMT, or other measures that support sustainable trip making, until the Plan achieves the Reduction Target.

1.8.2 Monitoring Methods

The Transportation Coordinator shall collect data (or work with a third party consultant to collect this data) and prepare annual monitoring reports for review and approval by the Planning Department and the SFMTA. The monitoring report, including trip counts and surveys, shall include the following components or comparable alternative methodology and components as approved or provided by Planning Department staff:

- **Trip Count and Intercept Survey:** Trip count and intercept survey of persons and vehicles arriving and leaving the project site for no less than two days of the reporting period between 6:00 a.m. and 8:00 p.m. One day shall be a Tuesday, Wednesday, or Thursday during one week without federally recognized holidays, and another day shall be a Tuesday, Wednesday, or Thursday during another week without federally recognized holidays. The trip count and intercept survey shall be prepared by a qualified transportation or qualified survey consultant and the methodology shall be approved by the Planning Department prior to conducting the components of the trip count and intercept survey. It is anticipated that the Planning Department will have a standard trip count and intercept survey methodology developed and available to project sponsors at the time of data collection.
- **Travel Demand Information:** The above trip count and survey information shall be able to provide travel demand analysis characteristics (work and non-work trip counts, origins and destinations of trips to/from the project site, and modal split information) as outlined in the Planning Department's Transportation Impact Analysis Guidelines for Environmental Review, October 2002, or subsequent updates in effect at the time of the survey.
- **Documentation of Plan Implementation:** The TDM Coordinator shall work in conjunction with the Planning Department to develop a survey (online or paper) that can be reasonably completed by the TDM Coordinator and/or TMA staff to document the implementation of TDM program elements and other basic information during the reporting period. This survey shall be included in the monitoring report submitted to Planning Department staff.
- **Degree of Implementation:** The monitoring report shall include descriptions of the degree of implementation (e.g., how many tenants or visitors the TDM Plan will benefit, and on which locations within the site measures will be/have been placed, etc.)
- **Assistance and Confidentiality:** Planning Department staff will assist the TDM Coordinator on questions regarding the components of the monitoring report and shall ensure that the identity of individual survey responders is protected.

Additional methods (described below) may be used to identify opportunities to make the TDM program more effective and to identify challenges that the program is facing.

1.8.3 Monitoring Documentation

Monitoring data and efforts will be documented in an Annual TMA Report. Monitoring data shall be collected and reports shall be submitted to Planning Department staff every year (referred to as "reporting periods"), until five consecutive reporting periods display the project has met the reduction goal, at which point monitoring data shall be submitted to Planning Department staff once every three years. The first monitoring report is required 18 months after issuance of the First Certificate of Occupancy for buildings that include off-street parking or the establishment of surface parking lots or

garages that bring the project's total number of off-street parking spaces to greater than or equal to 500. Each trip count and survey (see section 1.8.2 for description) shall be completed within 30 days following the end of the applicable reporting period. Each monitoring report shall be completed within 90 days following the applicable reporting period. The timing shall be modified such that a new monitoring report shall be required 12 months after adjustments are made to the TDM Plan in order to meet the reduction goal, as may be required in the "Compliance and TDM Plan Adjustments" heading below. In addition, the timing may be modified by the Planning Department as needed to consolidate this requirement with other monitoring and/or reporting requirements for the project.

1.8.4 Compliance and TDM Plan Adjustments

The Project has a compliance commitment of achieving a 20 percent daily one-way vehicle trip reduction from the EIR's analysis of full build out, as described in Table 1. To ensure that this reduction could be reasonably achieved, the project will employ TDM measures to ensure that each phase's auto trips generated are no more than 80% of the trips estimated for the development within that phase, as shown in Table 3.

Monitoring data will be submitted to Planning Department staff every year, starting 18 months after the certificate of occupancy of the first building, until five consecutive reporting periods indicate that the fully-built Project has met the Reduction Target. Following the initial compliance period, monitoring data will be submitted to the Planning Department staff once every three years.

If three consecutive reporting periods demonstrate that the TDM Plan is not achieving the Reduction Target, or the interim target estimates identified in Table 3 above, TDM adjustments will be made in consultation with the SFMTA and the Planning Department and may require refinements to existing measures (e.g., change to subsidies, increased bicycle parking), inclusion of new measures (e.g., a new technology), or removal of existing measures (e.g., measures shown to be ineffective or induce vehicle trips).

If three consecutive reporting periods' monitoring results demonstrate that measures within the TDM Plan are not achieving the Reduction Target, or the interim target estimates identified in Table 3 above,, the TDM Plan adjustments shall occur within 270 days following the last consecutive reporting period. The TDM Plan adjustments shall occur until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved. If the TDM Plan does not achieve the Reduction Target then the Planning Department shall impose additional measures to reduce vehicle trips as prescribed under the development agreement, which may include restriction of additional off-street parking spaces beyond those previously established on the site, capital or operational improvements intended to reduce vehicle trips from the project, or other measures that support sustainable trip making, until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved.

TP SCHEDULE 2

EIR Mitigation Measure M-AQ-1f

| MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT | | | | | |
|---|---|--|---|--|----------------------|
| MEASURES ADOPTED AS CONDITIONS OF APPROVAL | Implementation Responsibility | Mitigation Schedule | Monitoring/ Reporting Responsibility | Monitoring Schedule | Monitoring Agency |
| <i>Air Quality Mitigation Measures</i> | | | | | |
| <p>Mitigation Measure M-AQ-1f: Transportation Demand Management.</p> <p>The project sponsors shall prepare and implement a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20 percent compared to the total number of daily one-way vehicle trips identified in the project's Transportation Impact Study at project build-out. To ensure that this reduction goal could be reasonably achieved, the TDM Plan will have a monitoring goal of reducing by 20 percent the daily one-way vehicle trips calculated for each building that has received a Certificate of Occupancy and is at least 75% occupied compared to the daily one-way vehicle trips anticipated for that building based on anticipated development on that parcel, using the trip generation rates contained within the project's Transportation Impact Study. There shall be a Transportation Management Association that would be responsible for the administration, monitoring, and adjustment of the TDM Plan. The project sponsor is responsible for identifying the components of the TDM Plan that could reasonably be expected to achieve the reduction goal for each new building associated with the project, and for making good faith efforts to implement them. The TDM Plan may include, but is not limited to, the types of measures summarized below for explanatory example purposes. Actual TDM measures selected should include those from the TDM Program Standards, which describe the scope and applicability of candidate measures in detail and include:</p> <ul style="list-style-type: none"> • Active Transportation: Provision of streetscape improvements to encourage walking, secure bicycle parking, shower and locker facilities for cyclists, subsidized bike share memberships for project occupants, bicycle repair and maintenance services, and other bicycle-related services; • Car-Share: Provision of car-share parking spaces and subsidized | Developer to prepare and implement the TDM Plan, which will be implemented by the Transportation Management Association and will be binding on all development parcels. | Developer to prepare TDM Plan and submit to <u>Planning Staff</u> prior to approval of the project | <p>Project sponsors to submit the TDM Plan to <u>Planning Staff</u> for review.</p> <p>Transportation Demand Management Association to submit monitoring report annually to <u>Planning Staff</u> and implement TDM Plan Adjustments (if required).</p> | <p>The TDM Plan is considered complete upon approval by the <u>Planning Staff</u>.</p> <p>Annual monitoring reports would be on-going during project buildout, or until five consecutive reporting periods show that the project has met its reduction goals, at which point reports would be submitted every three years.</p> | Planning Department |

**MITIGATION MONITORING AND REPORTING PROGRAM FOR
PIER 70 MIXED-USE DISTRICT PROJECT**

| MEASURES ADOPTED AS CONDITIONS OF APPROVAL | Implementation Responsibility | Mitigation Schedule | Monitoring/ Reporting Responsibility | Monitoring Schedule | Monitoring Agency |
|---|----------------------------------|------------------------|--|------------------------|----------------------|
| <p>memberships for project occupants;</p> <ul style="list-style-type: none"> • Delivery: Provision of amenities and services to support delivery of goods to project occupants; • Family-Oriented Measures: Provision of on-site childcare and other amenities to support the use of sustainable transportation modes by families; • High-Occupancy Vehicles: Provision of carpooling/vanpooling incentives and shuttle bus service; • Information and Communications: Provision of multimodal wayfinding signage, transportation information displays, and tailored transportation marketing services; • Land Use: Provision of on-site affordable housing and healthy food retail services in underserved areas; • Parking: Provision of unbundled parking, short term daily parking provision, parking cash out offers, and reduced off-street parking supply. <p>The TDM Plan shall include specific descriptions of each measure, including the degree of implementation (e.g., for how long will it be in place), and the population that each measure is intended to serve (e.g. residential tenants, retail visitors, employees of tenants, visitors, etc.). It shall also include a commitment to monitoring of person and vehicle trips traveling to and from the project site to determine the TDM Plan's effectiveness, as outlined below.</p> <p>The TDM Plan shall be submitted to the City to ensure that components of the TDM Plan intended to meet the reduction target are shown on the plans and/or ready to be implemented upon the issuance of each certificate of occupancy.</p> | | | | | |

**MITIGATION MONITORING AND REPORTING PROGRAM FOR
PIER 70 MIXED-USE DISTRICT PROJECT**

| MEASURES ADOPTED AS CONDITIONS OF APPROVAL | Implementation Responsibility | Mitigation Schedule | Monitoring/ Reporting Responsibility | Monitoring Schedule | Monitoring Agency |
|--|----------------------------------|------------------------|--|------------------------|----------------------|
| <p><i>TDM Plan Monitoring and Reporting:</i> The Transportation Management Association, through an on-site Transportation Coordinator, shall collect data and make monitoring reports available for review and approval by the Planning Department staff.</p> <ul style="list-style-type: none"> • Timing: Monitoring data shall be collected and reports shall be submitted to Planning Department staff every year (referred to as "reporting periods"), until five consecutive reporting periods display the fully-built project has met the reduction goal, at which point monitoring data shall be submitted to Planning Department staff once every three years. The first monitoring report is required 18 months after issuance of the First Certificate of Occupancy for buildings that include off-street parking or the establishment of surface parking lots or garages that bring the project's total number of off-street parking spaces to greater than or equal to 500. Each trip count and survey (see below for description) shall be completed within 30 days following the end of the applicable reporting period. Each monitoring report shall be completed within 90 days following the applicable reporting period. The timing shall be modified such that a new monitoring report shall be required 12 months after adjustments are made to the TDM Plan in order to meet the reduction goal, as may be required in the "TDM Plan Adjustments" heading below. In addition, the timing may be modified by the Planning Department as needed to consolidate this requirement with other monitoring and/or reporting requirements for the project. • Components: The monitoring report, including trip counts and surveys, shall include the following components OR comparable alternative methodology and components as approved or provided by Planning Department staff: <ul style="list-style-type: none"> ○ Trip Count and Intercept Survey: Trip count and intercept survey of persons and vehicles arriving and leaving the project site for no less than two days of the reporting period between 6:00 a.m. and 8:00 p.m. One day shall be a Tuesday. | | | | | |

**MITIGATION MONITORING AND REPORTING PROGRAM FOR
PIER 70 MIXED-USE DISTRICT PROJECT**

| MEASURES ADOPTED AS CONDITIONS OF APPROVAL | Implementation Responsibility | Mitigation Schedule | Monitoring/ Reporting Responsibility | Monitoring Schedule | Monitoring Agency |
|---|-------------------------------|---------------------|--------------------------------------|---------------------|-------------------|
| <p>Wednesday, or Thursday during one week without federally recognized holidays, and another day shall be a Tuesday, Wednesday, or Thursday during another week without federally recognized holidays. The trip count and intercept survey shall be prepared by a qualified transportation or qualified survey consultant and the methodology shall be approved by the Planning Department prior to conducting the components of the trip count and intercept survey. It is anticipated that the Planning Department will have a standard trip count and intercept survey methodology developed and available to project sponsors at the time of data collection.</p> <ul style="list-style-type: none"> ○ Travel Demand Information: The above trip count and survey information shall be able to provide travel demand analysis characteristics (work and non-work trip counts, origins and destinations of trips to/from the project site, and modal split information) as outlined in the Planning Department's <i>Transportation Impact Analysis Guidelines for Environmental Review</i>, October 2002, or subsequent updates in effect at the time of the survey. ○ Documentation of Plan Implementation: The TDM Coordinator shall work in conjunction with the Planning Department to develop a survey (online or paper) that can be reasonably completed by the TDM Coordinator and/or TMA staff to document the implementation of TDM program elements and other basic information during the reporting period. This survey shall be included in the monitoring report submitted to Planning Department staff. ○ Degree of Implementation: The monitoring report shall include descriptions of the degree of implementation (e.g., how many tenants or visitors the TDM Plan will benefit, and on which locations within the site measures will be/have been placed, etc.) ○ Assistance and Confidentiality: Planning Department staff will assist the TDM Coordinator on questions regarding the components of the monitoring report and shall ensure that the | | | | | |

**MITIGATION MONITORING AND REPORTING PROGRAM FOR
PIER 70 MIXED-USE DISTRICT PROJECT**

| MEASURES ADOPTED AS CONDITIONS OF APPROVAL | Implementation Responsibility | Mitigation Schedule | Monitoring/ Reporting Responsibility | Monitoring Schedule | Monitoring Agency |
|--|--|--------------------------------|---|--------------------------------|------------------------------|
| <p>identity of individual survey responders is protected.</p> <p><i>TDM Plan Adjustments.</i> The TDM Plan shall be adjusted based on the monitoring results if three consecutive reporting periods demonstrate that measures within the TDM Plan are not achieving the reduction goal. The TDM Plan adjustments shall be made in consultation with Planning Department staff and may require refinements to existing measures (e.g., change to subsidies, increased bicycle parking), inclusion of new measures (e.g., a new technology), or removal of existing measures (e.g., measures shown to be ineffective or induce vehicle trips). If three consecutive reporting periods' monitoring results demonstrate that measures within the TDM Plan are not achieving the reduction goal, the TDM Plan adjustments shall occur within 270 days following the last consecutive reporting period. The TDM Plan adjustments shall occur until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved. If the TDM Plan does not achieve the reduction goal then the City shall impose additional measures to reduce vehicle trips as prescribed under the development agreement, which may include restriction of additional off-street parking spaces beyond those previously established on the site, capital or operational improvements intended to reduce vehicle trips from the project, or other measures that support sustainable trip making, until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved.</p> | | | | | |

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Public Utilities Commission

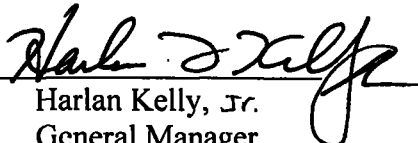
The San Francisco Public Utilities Commission of the City and County of San Francisco has reviewed the Development Agreement between the City and Developer relating to a proposed 28-Acre Site Project to which this Consent to Development Agreement is attached and incorporated. Capitalized terms used in this SFPUC Consent have the meanings given to them in the Development Agreement or the Appendix.

By executing this SFPUC Consent, the undersigned confirms the following.

1. The SFPUC, after considering at a duly noticed public hearing the CEQA Findings for the 28-Acre Site Project, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program (MMRP), approved the Utility-Related Mitigation Measures and consented to and agreed to be bound by the Development Agreement as it relates to matters under SFPUC jurisdiction.
2. Vertical Developers will be required to pay the SFPUC Wastewater Capacity Charge and the SFPUC Water Capacity Charge, each at rates in effect on the applicable connection dates.
3. Developer will be required to pay a fair share contribution to the City's AWSS consistent with the Infrastructure Plan, the terms and timing of payment to be established as a condition of approval to the master tentative subdivision map for the FC Project Area.
4. The SFPUC will coordinate and cooperate with the Port and the Public Works Department regarding public infrastructure inspection and acceptance. The SFPUC's responsibilities for the permitting, acceptance, operations and maintenance of utility related components constructed pursuant to this agreement are contingent on execution of a memorandum of understanding between the Port, SFPUC and other relevant City agencies regarding the implementation of such responsibilities.
5. In accordance with Chapter 99 of the San Francisco Administrative Code, the SFPUC has performed a feasibility study and has determined that it will provide electric power to the 28-Acre Site Project. SFPUC agrees that electrical service will be reasonably available for the 28-Acre Site Project's needs and that the projected price for electrical service is comparable to rates in San Francisco for comparable service. The SFPUC agrees to work with the Developer to provide temporary construction and permanent electric services pursuant to its Rules and Regulations for Electric Service. The SFPUC has provided their space requirements for related infrastructure to the Port, and WDT facilities will be provided in accordance with Infrastructure Plan Section 16.2.1


By authorizing the General Manager to execute this SFPUC Consent, the SFPUC does not intend to in any way limit, waive or delegate the exclusive authority of the SFPUC as set forth in Article XIII B of the City Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
San Francisco Public Utilities Commission

By: 
Harlan Kelly, Jr.
General Manager

Authorized by SFPUC Resolution No. 17-0209

APPROVED AS TO FORM:
DENNIS J. HERRERA City Attorney

By: 
Francesca Gessner
SFPUC General Counsel

San Francisco Public Utilities Commission
Resolution No. 17-0209
Adopted: September 26, 2017

[Remainder of page intentionally left blank.]

DA EXHIBIT A
LEGAL DESCRIPTION

for
28 ACRE SITE

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF 22ND STREET (66 FEET WIDE), THE WESTERLY LINE OF FORMER GEORGIA STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTIONS No. 1759, DATED FEBRUARY 27, 1884, No. 10787, DATED MARCH 30, 1914 AND No. 1376, DATED OCTOBER 15, 1940 AND THE GENERAL WESTERLY LINE OF PARCEL 1 OF THAT PARCEL OF LAND DESCRIBED IN DEED GRANTED TO THE STATE OF CALIFORNIA, RECORDED NOVEMBER 13, 1967 IN BOOK B192, PAGE 384, OFFICIAL RECORDS (B192 O.R. 384), CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE NORTHERLY LINE OF FORMER 22ND STREET, AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 1376, DATED OCTOBER 15, 1940 AND ALONG THE LINE OF SAID PARCEL 1 (B192 O.R. 384), NORTH 85°38'01" EAST 40.00 FEET TO THE CENTERLINE OF SAID FORMER GEORGIA STREET; THENCE ALONG SAID CENTERLINE AND LINE OF PARCEL 1 (B192 O.R. 384), NORTH 04°21'59" WEST 270.00 FEET TO THE MOST SOUTHEASTERLY CORNER OF PARCEL 2 OF THAT PARCEL OF LAND AS DESCRIBED IN GRANT DEED TO THE CITY AND COUNTY OF SAN FRANCISCO, RECORDED DECEMBER 16, 1982, AS DOCUMENT NO. D275576, IN BOOK D464, PAGE 628, OFFICIAL RECORDS (D464 O.R. 628), CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE SOUTHERLY AND WESTERLY LINES OF SAID PARCEL 2 (D464 O.R. 628), THE FOLLOWING TWO COURSES: SOUTH 85° 38'01" WEST 240.00 FEET TO THE EASTERLY LINE OF MICHIGAN STREET (80 FEET WIDE), AND ALONG SAID LINE OF MICHIGAN STREET NORTH 04° 21'59" WEST 206.17 FEET; THENCE NORTH 85°38'01" EAST 397.04 FEET; THENCE NORTH 04°21'59" WEST 106.90 FEET; THENCE NORTH 85°38'01" EAST 84.15 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00'00", AN ARC LENGTH OF 39.27 FEET; THENCE NORTH 04°21'59" WEST 257.93 FEET TO THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE) AND THE NORTHERLY LINE OF SAID PARCEL 2 (D464 O.R. 628); THENCE ALONG SAID LINES, NORTH 85°38'01" EAST 13.81 FEET TO THE EASTERLY LINE OF SAID STREET AND THE GENERAL WESTERLY LINE OF SAID PARCEL 1 (B192 O.R. 384); THENCE ALONG SAID LINES NORTH 04°21'59" WEST 33.00 FEET TO THE CENTERLINE OF SAID STREET AND SOUTHERLY LINE OF PARCEL 1 OF SAID D464 O.R. 628; THENCE ALONG A PORTION OF SAID PARCEL 1 (D464 O.R. 628), ALONG A PORTION OF THE NORTHERLY LINE OF SAID PARCEL 1 (B192 O.R. 384) AND ALONG THE CENTERLINE OF FORMER 20TH STREET, AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 10787, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 618.80 FEET; THENCE SOUTH 36°29'34" EAST 45.07 FEET; THENCE NORTH 53°30'26" EAST 101 FEET, MORE OR LESS, TO THE MEAN HIGH WATER LINE, AT AN ELEVATION OF 5.8 FEET (NAVD88 DATUM), AS INDICATED IN A TIDAL DATUM STUDY PROVIDED BY SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC), ENTITLED, "SAN FRANCISCO BAY TIDAL DATUMS AND EXTREME TIDES STUDY", DATED FEBRUARY, 2016, PREPARED BY AECOM; THENCE IN A GENERAL SOUTHERLY DIRECTION ALONG SAID MEAN HIGH WATER LINE, APPROXIMATELY 1686 FEET TO THE EASTERLY PROLONGATION OF THE MOST SOUTHERLY LINE OF SAID PARCEL 1 (B192 O.R. 384); THENCE ALONG SAID SOUTHERLY LINE, SOUTH 85°30'01" WEST 1085 FEET, MORE OR LESS, TO THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL; THENCE ALONG THE LINES OF SAID PARCEL, NORTH 25°06'47" WEST 56.46 FEET AND NORTH 42° 41'35" WEST 129.00 FEET TO THE SOUTHEASTERLY CORNER OF SAID 22ND STREET; THENCE ALONG THE EASTERLY LINE OF SAID 22ND STREET AND THE LINE OF SAID PARCEL 1 (B192 O.R. 384), NORTH 04°21'59" WEST 66.00 FEET TO THE POINT OF BEGINNING, CONTAINING 28.096 ACRES, MORE OR LESS.

BEING A PORTION PARCEL "A", AS SAID PARCEL IS SHOWN ON "MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO", FILED IN BOOK "W" OF MAPS, PAGES 66-72, AND FURTHER DESCRIBED IN THAT DOCUMENT RECORDED MAY 14, 1976, AS DOCUMENT NUMBER Y88210, IN BOOK C169, PAGE 573, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO.

ALSO BEING BLOCKS 462, 479, 480, 487, 488, 505 AND PORTIONS OF BLOCKS 445, 446, 461, 463, 478, 489, 504 AND 506, AS SAID BLOCKS ARE SHOWN ON THAT MAP ENTITLED "RANCHO DEL POTRERO NUEVO", RECORDED MARCH 21, 1864 IN BOOK "C" AND "D" OF MAPS, PAGES 78 AND 79, OFFICE OF THE RECORDED, CITY AND COUNTY OF SAN FRANCISCO.

ALSO BEING A PORTION OF BOARD OF TIDE LAND COMMISSIONERS MAP ENTITLED, "MAP OF THE SALT MARSH AND TIDE LANDS AND LANDS LYING UNDER WATER SOUTH OF SECOND STREET AND SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO", ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND A DUPLICATE COPY FILED IN MAP BOOK "W", PAGES 46 AND 47, OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO.

ALSO BEING A PORTION OF THE FOLLOWING CLOSED STREETS PER CITY RESOLUTIONS: GEORGIA STREET, LOUISIANA STREET, MARYLAND STREET, DELAWARE STREET, WATERFRONT STREET, 20TH STREET, 21ST STREET AND 22ND STREET.

EXCEPTING THEREFROM, ALL SUBSURFACE MINERAL DEPOSITS, INCLUDING OIL AND GAS DEPOSITS, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS ON SAID LAND FOR EXPLORATION, DRILLING AND EXTRACTION OF SUCH MINERAL, OIL AND GAS DEPOSITS, AS EXCEPTED AND RESERVED BY THE STATE OF CALIFORNIA IN THAT CERTAIN ACT OF THE LEGISLATURE (THE "BURTON ACT") SET FORTH IN CHAPTER 1333 OF THE STATUTES OF 1968 AND AMENDMENTS THERETO, AND UPON TERMS AND PROVISIONS SET FORTH THEREIN.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS BASED UPON THE BEARING OF N03°41'33"W BETWEEN SURVEY CONTROL POINTS NUMBERED 375 AND 376, OF THE HIGH PRECISION NETWORK DENSIFICATION (HPND), CITY & COUNTY OF SAN FRANCISCO 2013 COORDINATE SYSTEM (SFCS13).

Assessor's Parcel Nos. : Portions of 4052-001 and 4111-004

DA EXHIBIT B
List of Project Approvals

Final approval actions by the City and County of San Francisco Board of Supervisors for the Pier 70 Mixed-Use District Project:

1. **Ordinance 224-17 (File No. 170863):** (1) Approving a Development Agreement between the City and County of San Francisco and FC Pier 70, LLC; (2) waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and (3) adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan and Planning Code priority policies.
2. **Ordinance 225-17 (File No. 170864):** Amending the Planning Code and the Zoning Map to add the Pier 70 Special Use District.
3. **Ordinance 227-17 (File No. 170930):** Amending the General Plan to refer to the Pier 70 Mixed Use Project Special Use District.
4. **Resolution 401-17 (File No. 170986):** Approving a Disposition and Development Agreement between the Port and FC Pier 70, LLC.
5. **Resolution 402-17 (File No. 170987):** Approving the Compromise Title Settlement and Land Exchange Agreement for Pier 70 between the City and the California State Lands Commission in furtherance of the Pier 70 Mixed Use Project.
6. **Resolution 403-17 (File No. 170988):** Approving the Memorandum of Understanding regarding Interagency Cooperation between the Port and other City Agencies.

Final and Related Approval Actions of City and County of San Francisco Port Commission (referenced by Resolution number "R No.")

1. **R No. 17-43:** (1) Adopting Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program under the California Environmental Quality Act; and (2) approving a Disposition and Development Agreement with FC Pier 70, LLC, and the attached forms of Master Lease, Vertical Disposition and Development Agreement, and Parcel Lease.
2. **R No. 17-44:** Approving a Compromise Title Settlement and Land Exchange Agreement for Pier 70 with the State Lands Commission.
3. **R No. 17-45:** (1) Consenting to zoning amendments to establish the Pier 70 Special Use District and related amendments to the City's General Plan; and (2) approving the Pier 70 Design for Development.
4. **R No. 17-46:** Approving amendments to the Waterfront Land Use Plan and its Design and Access Element.
5. **R No. 17-47:** Consenting to a Development Agreement between the City and FC Pier 70, LLC.
6. **R No. 17-48:** Approving a Memorandum of Understanding regarding Interagency Cooperation between the City and the Port.

7. **R No. 17-49:** Recommending that the Board of Supervisors establish proposed Sub-Project Areas within Project Area G (Pier 70) of Infrastructure Financing District No. 2 and an Infrastructure and Revitalization Financing District.
8. **R No. 17-50:** (1) Approving a Memorandum of Understanding between the Port and City's Controller, Treasurer and Tax Collector, and Assessor-Recorder to implement the DDA Financing Plan; (2) recommending that the Board of Supervisors appoint the Port Commission as the agent of the Infrastructure Financing District and one or more Special Tax Districts; and (3) approving and recommending to the Board of Supervisors a Form of Special Fund Administration Agreement between the Port, Infrastructure Financing District, Infrastructure and Revitalization Financing District, Special Tax Districts, and a corporate trustee.
9. **R No. 17-51:** Recommending to the Board of Supervisors proposed amendments to the Special Tax Financing Law, Article X of Chapter 43 of the San Francisco Administrative Code.
10. **R No. 17-52:** Approving the terms of the Port's sale of Parcel K North and a form of Vertical Disposition and Development Agreement.

Final and Related Approval Actions of City and County of San Francisco Planning Commission (referenced by Motion Number "M No." or Resolution Number "R No.")

1. **M No. 19976:** Certifying the Final Environmental Impact Report for the Pier 70 Mixed-Use District Project.
2. **M No. 19977:** Adopting Findings and Statement of Overriding Considerations under the California Environmental Quality Act.
3. **R No. 19978:** Recommending to the Board of Supervisors approval of the General Plan Amendments.
4. **R No. 19979:** Recommending to the Board of Supervisors approval of amendments to the Planning Code and a Zoning Map amendment to establish the Pier 70 Special Use District.
5. **M No. 19980:** Approving the Pier 70 Special Use District Design for Development.
6. **R No. 19981:** Recommending to the Board of Supervisors approval of a Development Agreement between the City and FC Pier 70, LLC.

Final and Related Approval Actions of Other City and County of San Francisco Boards, Commissions, and Departments:

1. San Francisco Municipal Transportation Agency **Resolution Number 170905-112** consenting to the Pier 70 Development Agreement, including the Transportation Plan, and consenting to the Interagency Cooperation Agreement.
2. San Francisco Public Utilities Commission **Resolution Number 17-0209** consenting to the Development Agreement; consenting to the Pier 70 Interagency Cooperation Agreement; and authorizing the General Manager to negotiate and execute a Memorandum of Understanding with the Port regarding the relocation of the SFPUC's 20th Street Pump Station.

DA Exhibit B

Print

San Francisco Administrative Code

CHAPTER 56: DEVELOPMENT AGREEMENTS

- Sec. 56.1. Findings.
- Sec. 56.2. Purpose and Applicability.
- Sec. 56.3. Definitions.
- Sec. 56.4. Filing of Application; Forms; Initial Notice and Hearing.
- Sec. 56.5. Form of Agreement.
- Sec. 56.6. Signatories to the Development Agreement.
- Sec. 56.7. Contents of Development Agreement.
- Sec. 56.8. Notice.
- Sec. 56.9. Rules Governing Conduct of Hearing.
- Sec. 56.10. Development Agreement Negotiation Report and Documents.
- Sec. 56.11. Collateral Agreements.
- Sec. 56.12. Irregularity in Proceedings.
- Sec. 56.13. Determination by Commission.
- Sec. 56.14. Decision by Board of Supervisors.
- Sec. 56.15. Amendment and Termination of an Executed Development Agreement by Mutual Consent.
- Sec. 56.16. Recordation of Development Agreements Amendment or Termination.
- Sec. 56.17. Periodic Review.
- Sec. 56.18. Modification or Termination.
- Sec. 56.19. Limitation on Actions.
- Sec. 56.20. Fee.

SEC. 56.1. FINDINGS.

The Board of Supervisors ("Board") concurs with the State Legislature in finding that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning and development of infrastructure and public facilities which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant/developer for a development project that upon approval of the project, the applicant/developer may proceed with the project in accordance with specified policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process.

DA EXHIBIT C

encourage private participation in comprehensive planning, and reduce the economic costs of development.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.2. PURPOSE AND APPLICABILITY.

(a) The purpose of this Chapter is to strengthen the public planning process by encouraging private participation in the achievement of comprehensive planning goals and reducing the economic costs of development. A development agreement reduces the risks associated with development, thereby enhancing the City's ability to obtain public benefits beyond those achievable through existing ordinances and regulations. To accomplish this purpose the procedures, requirements and other provisions of this Chapter are necessary to promote orderly growth and development (such as, where applicable and appropriate, provision of housing, employment and small business opportunities to all segments of the community including low income persons, minorities and women), to ensure provision for adequate public services and facilities at the least economic cost to the public, and to ensure community participation in determining an equitable distribution of the benefits and costs associated with development.

(b) Such agreements shall only be used for (1) affordable housing developments or (2) large multi-phase and/or mixed-use developments involving public improvements, services, or facilities installations, requiring several years to complete, as defined below in Section 56.3, or a housing development with a minimum of 1,000 units, as defined below in Section 56.3; or (3) rental housing developments with on-site affordable units, as defined below in Section 56.3.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 67-05, File No. 041748, App. 4/15/2005; Ord. 312, File No. 100046, App. 12/23/2010)

SEC. 56.3. DEFINITIONS.

The following definitions shall apply for purposes of this Chapter:

(a) "Affordable housing development" shall mean for purposes of Section 56.2(b)(1), any housing development which has a minimum of 30 percent of its units affordable to low income households, and a total of 60 percent of its units affordable to households, as defined by the U.S. Census, whose immediate household income does not exceed 120 percent of the median household income for the San Francisco Primary Metropolitan Statistical Area, with the remaining 40 percent of its units unrestricted as to affordability. For purposes of this definition of "affordable housing development," "low income" shall mean the income of households, as defined by the U.S. Census whose immediate household income does not exceed 80 percent of the median household income for the San Francisco Primary Metropolitan Statistical Area. "Median household income" for the San Francisco Primary Metropolitan Statistical Area shall be as determined by the U.S. Department of Housing and Urban Development and adjusted according to the determination of that Department and published from time to time. In the event that such income determinations are no longer published by the Department of Housing and Urban Development, median household income shall mean the median gross yearly income of a household in the City and County of San Francisco, adjusted for household size, as published periodically by the California Department of Housing and Community Development. Such affordable housing development may include neighborhood commercial facilities which are physically and financially an integral part of the affordable housing project and which will provide services to local residents.

(b) "Applicant/Developer" shall mean a person or entity who has legal or equitable interest in the real property which is the subject of the proposed or executed development agreement for an "affordable housing development" or a "large multi-phase and/or mixed-use development," as those terms are defined herein, or such person's or entity's authorized agent or successor in interest; provided, however, that an entity which is subject to the requirements of City Planning Code Section 304.5 relating to institutional master plans does not qualify as an applicant for a development agreement.

(c) "Collateral agreement" shall mean a written contract entered into by the applicant/developer and/or governmental agencies with other entities (including, but not limited to, community coalitions) for the purpose of having said entities provide for and implement social, economic, or environmental benefits or programs; provided, however, that such term does not include agreements between the applicant/developer or governmental agencies and (1) construction contractors and subcontractors, (2) construction managers, (3) material suppliers, and (4) architects, engineers, and lawyers for customary architectural, engineering or legal services.

(d) "Commission" shall mean the Planning Commission.

(e) "Director" shall mean the Director of the Planning Department.

(f) "Housing development with a minimum of 1,000 units" shall mean a proposed residential development project which: (1) is on a site which exceeds two and one-half acres in area, (2) includes two or more buildings to be constructed on the site, and (3) includes a proposal for constructing or participating in providing, either off-site or on-site, public improvements, facilities, or services beyond those achievable through existing ordinances and regulations.

(g) "Large multi-phase and/or mixed-use development" shall mean a proposed development project which: (1) is on a site which exceeds five acres in area, (2) includes two or more buildings to be constructed sequentially on the site, and (3) includes a proposal for constructing or participating in providing, either off-site or on-site, public improvements, facilities, or services beyond those achievable through existing ordinances and regulations.

(h) "Material modification" shall mean any proposed amendment or modification to either a proposed development agreement approved by the Commission, or a previously executed development agreement, which amendment or modification is otherwise required by the terms of the development agreement, which changes any provision thereof regarding the following: (1) duration of the agreement; (2) permitted uses of the subject property; (3) density or intensity of the permitted uses; (4) location, height or size of any structures, buildings, or major features; (5) reservation or dedication of land; (6) any conditions, terms, restrictions and requirements relating to subsequent discretionary actions as to design, improvements; construction standards and specifications; (7) any other condition or covenant relating to the financing or phasing of the development which substantially modifies the use of the property, the phasing of the development, or the consideration exchanged between the parties as recited in the proposed development agreement; (8) the type, number, affordability level, and/or tenure of any proposed affordable housing as well as any change as to performance of such public benefits, including but not limited to timing, phasing, method of performance or parties involved; or (9) any other terms or conditions of the development agreement if the development agreement provides that amendment of said specified term or condition would be a material modification.

(i) "Minor modification" shall mean any amendment or modification to the development agreement which relates to any provision not deemed to be a "material modification."

(j) "Rental housing developments with on-site affordable units" shall mean a proposed residential

development project the project sponsor of which covenants to provide on-site units to satisfy the Inclusionary Affordable Housing Program, as set forth in Planning Code Sections 415—417, as an alternative to payment of the Affordable Housing Fee.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 67-05, File No. 041748, App. 4/15/2005; Ord. 312, File No. 100046, App. 12/23/2010)

SEC. 56.4. FILING OF APPLICATION; FORMS; INITIAL NOTICE AND HEARING.

(a) The Director may prescribe the form of the application for the preparation and implementation of development agreements.

(b) The applicant must list on the application the anticipated public benefits which would exceed those required by existing ordinances and regulations. The public benefits ultimately provided by an approved development agreement may differ from those initially identified by the applicant/developer. The Director may require an applicant/developer to submit such additional information and supporting data as the Director considers necessary to process the application; provided, however, that the Director shall not require the applicant/developer to submit, as part of the application, special studies or analyses which the Director would customarily obtain through the environmental review process.

(c) The Director shall endorse the application the date it is received. If the Director finds that the application is complete, the Director shall (1) accept the application for filing, (2) publish notice in the official newspaper of acceptance of said application, (3) make the application publicly available, and (4) schedule a public hearing before the Commission within 30 days following receipt of a completed application. At said public hearing, the Director shall make a recommendation with respect to the fee to be paid by the applicant/developer as set forth in Section 56.20(b).

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.5. FORM OF AGREEMENT.

A proposed development agreement, and any modifications or amendments thereto, must be approved as to form by the City Attorney prior to any action by the Director, Commission or Board of Supervisors.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.6. SIGNATORIES TO THE DEVELOPMENT AGREEMENT.

(a) **Applicant.** Only an applicant/developer, as that term is defined in Section 56.3, may file an application to enter into a development agreement.

(b) **Governmental Agencies.** In addition to the City and County of San Francisco and the applicant/developer, any federal, State or local governmental agency or body may be included as a party or signatory to any development agreement.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.7. CONTENTS OF DEVELOPMENT AGREEMENT.

DA EXHIBIT C

(a) **Mandatory Contents.** A development agreement, by its express terms or by reference to other documents, shall specify (1) the duration of the agreement, (2) the permitted uses of the property, (3) the density or intensity of use, (4) the maximum height and size of proposed buildings, (5) the provisions for reservation or dedication of land for public purposes, (6) for any project proposing housing, the number, type, affordability and tenure of such housing, (7) the public benefits which would exceed those required by existing ordinances and regulations, and (8) nondiscrimination and affirmative action provisions as provided in subsection (c) below.

(b) **Permitted Contents.** The development agreement may (1) include conditions, terms, restrictions, and requirements for subsequent discretionary actions, (2) provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time, (3) include terms and conditions relating to applicant/developer and/or City financing or necessary public facilities and subsequent reimbursement by other private party beneficiaries, (4) require compliance with specified terms or conditions of any collateral agreements pursuant to Section 56.11, and (5) include any other terms or conditions deemed appropriate in light of the facts and circumstances.

(c) **Nondiscrimination/Affirmative Action Requirements.**

(1) **Nondiscrimination Provisions of the Development Agreement.** The development agreement shall include provisions obligating the applicant/developer not to discriminate on the grounds, or because of, race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or Acquired Immune Deficiency Syndrome or AIDS Related Condition (AIDS/ARC), against any employee of, or applicant for employment with the applicant/developer or against any bidder or contractor for public works or improvements, or for a franchise, concession or lease of property, or for goods or services or supplies to be purchased by applicant/developer. The development agreement shall require that a similar provision be included in all subordinate agreements let, awarded, negotiated or entered into by the applicant/developer for the purpose of implementing the development agreement.

(2) **Affirmative Action Program.** The development agreement shall include a detailed affirmative action and employment and training program (including without limitation, programs relating to women, minority and locally-owned business enterprises), containing goals and timetables and a program for implementation of the affirmative action program. For example, programs such as the following may be included:

(i) Apprenticeship where approved programs are functioning, and other on-the-job training for a nonapprenticeable occupation;

(ii) Classroom preparation for the job when not apprenticeable;

(iii) Preapprenticeship education and preparation;

(iv) Upgrading training and opportunities;

(v) The entry of qualified women and minority journeymen into the industry; and

(vi) Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, and encouraging the full and equitable participation of minority and women business enterprises and local businesses (as defined in Section 12D of this Code and implementing regulations) in the provision of goods and services on a contractual basis.

(3) **Reporting and Monitoring.** The development agreement shall specify a reporting and monitoring process to ensure compliance with the non-discrimination and affirmative action

requirements. The reporting and monitoring process shall include, but not be limited to, requirements that:

(i) A compliance monitor who is not an agent or employee of the applicant/developer be designated to report to the Director regarding the applicant/developer's compliance with the nondiscrimination and affirmative action requirements;

(ii) The applicant/developer permit the compliance monitor or the Director or his designee reasonable access to pertinent employment and contracting records, and other pertinent data and records, as specified in the Development Agreement for the purpose of ascertaining compliance with the nondiscrimination and affirmative action provisions of the development agreement;

(iii) The applicant/developer annually file a compliance report with the compliance monitor and the Director detailing performance pursuant to its affirmative action program, and the compliance monitor annually reports its findings to the Director; such reports shall be included in and subject to the periodic review procedure set forth in Sec. 56.17.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.8. NOTICE.

The Director shall give notice of intention to consider adoption, amendment, modification, or termination of a development agreement for each public hearing required to be held by the Commission under this Chapter. The Clerk of the Board of Supervisors shall give such notice for each public hearing required to be held by the Board of Supervisors. Such notices shall be in addition to any other notice as may be required by law for other actions to be considered concurrently with the development agreement.

(a) Form of Notice.

(1) The time and place of the hearing;

(2) A general summary of the terms of the proposed development agreement or amendment to be considered, including a general description of the area affected, and the public benefits to be provided; and

(3) Other information which the Director, or Clerk of the Board of Supervisors, considers necessary or desirable.

(b) Time and Manner of Notice.

(1) **Publication and Mailing.** Notice of hearing shall be provided in the same manner as that required in City Planning Code Section 306.3 for amendments to that Code which would reclassify land; where mailed notice is otherwise required by law for other actions to be considered concurrently with the development agreement, notice of a public hearing before the Commission on the development agreement shall be included on the next Commission calendar to be mailed following the date of publication of notice in the official newspaper.

(2) **Notice to Local Agencies.** Notice of the hearing shall also be mailed at least 10 days prior to the hearing to any local public agency expected to provide water, transit, sewage, streets, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected by the development agreement.

(c) **Failure to Receive Notice.** The failure of any person to receive notice required by law does not

DA EXHIBIT C

affect the authority of the City and County of San Francisco to enter into a development agreement.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91)

SEC. 56.9. RULES GOVERNING CONDUCT OF HEARING.

The Commission's public hearing on the proposed development agreement shall be conducted in accordance with the procedure for the conduct of reclassification hearings as provided in Subsections (b) and (c) of Section 306.4 of the City Planning Code. Such public hearing on the proposed development agreement shall be held prior to or concurrently with the public hearing for consideration of any other Commission action deemed necessary to the approval or implementation of the proposed development agreement, unless the Commission determines, after a duly noticed public hearing pursuant to Section 56.8, that proceeding in a different manner would further the public interest; provided, however, that any required action under the California Environmental Quality Act shall not be affected by this Section.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.10. DEVELOPMENT AGREEMENT NEGOTIATION REPORT AND DOCUMENTS.

(a) **Report.** The Director shall prepare a report on development agreement negotiations between the applicant and the City and County of San Francisco (City), which report shall be distributed to the Commission and Board of Supervisors, and shall be available for public review 20 days prior to the first public hearing on the proposed development agreement. Said report shall include, for each negotiation session between the applicant and the City: (1) an attendance list; (2) a summary of the topics discussed; and (3) a notation as to any terms and conditions of the development agreement agreed upon between the applicant and the City.

(b) **Documents.** The Director shall (1) maintain a file containing documents exchanged between the applicant/developer and the City's executive offices and departments; and (2) endeavor to obtain copies and maintain a list of all correspondence which executive offices and departments received from and sent to the public relating to the development agreement. The Director shall make said documents and the correspondence list available for public review 20 days prior to the first public hearing on the proposed development agreement.

(c) **Update of Report, Documents, and Correspondence List.** The Director shall update the negotiation session report and the correspondence list, and continue to maintain a file of documents exchanged between the applicant/developer and the City until a development agreement is finally approved. The Director shall make the updated report, correspondence list, and documents available to the public at least five working days before each public hearing on the proposed development agreement.

(d) **Remedies.** No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission ("error") which may occur with respect to City compliance with this Section 56.10. This section is not intended to affect rights and remedies with respect to public records otherwise provided by law.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.11. COLLATERAL AGREEMENTS.

(a) **Filing.** In order to qualify for consideration under the provisions of this section, the party to the collateral agreement seeking such consideration must: (1) submit a copy of the executed collateral agreement to the Director, (2) identify the specific terms and conditions of said collateral agreement which said party believes are necessary to achieve the public purposes sought to be achieved by the City and County through the development agreement process, and (3) provide contemporaneous notice to any other party or parties to the collateral agreement or the development agreement that a request for consideration pursuant to this section was filed. The Director shall forward copies of all collateral agreements received to the City Attorney's Office for review.

(b) Recommendation of the Director Prior to the First Public Hearing on the Proposed Development Agreement.

(1) The Director is obligated to consider and make a recommendation only as to those collateral agreements which satisfy the provisions of Section 56.11(a) above, and which are received by the Director within seven days after the date of publication of notice of the first hearing on the proposed development agreement. The Director shall consider those collateral agreements which are on the list provided pursuant to Section 56.11(d) below.

(2) With respect to collateral agreements received pursuant to the provisions set forth above, the Director shall prepare a report to the Commission on said collateral agreements. If the Director finds that applicant compliance with certain specified terms or conditions of said collateral agreements is necessary to achieve the public purposes sought by the City through the development agreement process, then the Director shall recommend that such terms or conditions be incorporated into the proposed development agreement. If the Director recommends incorporation into the development agreement of any terms or conditions of any collateral agreements, then the Director's report shall also note whether the other party or parties to the collateral agreement or proposed development agreement objects, and the basis for that objection.

(3) The provisions of this section are not intended to limit the power of the Commission or the Board to amend the proposed development agreement to incorporate terms or conditions of collateral agreements.

(c) Annual Recommendation of the Director. After execution of a development agreement,

(1) The Director shall consider and make a recommendation as to those collateral agreements which satisfy the provisions of Section 56.11(a) above, and which are received 30 days prior to the date scheduled for periodic review, as determined pursuant to Section 56.17(a). The Director shall consider those collateral agreements which are on the list provided pursuant to Section 56.11 (d) below.

(2) With respect to collateral agreements received pursuant to the provisions set forth above, the Director shall prepare a report to the Commission on said collateral agreements. The Director shall also consult with the applicant/developer concerning said collateral agreements. If the Director finds that applicant/developer compliance with certain specified terms or conditions of said collateral agreements would substantially further attainment of the public purposes which were recited as inducement for entering into the development agreement, then the Director shall recommend that the Commission propose an amendment to the development agreement to incorporate said terms and conditions. If the Director recommends proposal of an amendment to incorporate into the development agreement specified terms or conditions of any collateral agreements, then the Director's report shall also note

whether the other party or parties to the collateral agreement or development agreement objects, and the basis for that objection.

(d) Applicant/Developer Disclosure of Collateral Agreements.

(1) At least 21 days prior to the first hearing on the proposed development agreement, the applicant/developer shall provide the Director, for the Director's consideration, a list of all collateral agreements as defined in Section 56.3(c) that have been entered into by the applicant/developer.

(2) At least 30 days prior to the date scheduled for periodic review pursuant to Section 56.17(a), the applicant/developer shall provide the Director, for the Director's consideration, an update to the list prepared pursuant to Subsection (d)(1) above, or any previous list prepared pursuant to this Subsection (d)(2), as applicable, identifying all such collateral agreements entered into subsequent to the date of the first list, or subsequent updates, as appropriate.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.12. IRREGULARITY IN PROCEEDINGS.

No action, inaction or recommendation regarding the proposed development agreement or any proposed amendment shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission ("error") as to any matter pertaining to the application, notice, finding, record, hearing, report, summary, recommendation, or any matters of procedure whatever unless after an examination of the entire record, the court is of the opinion that the error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is no presumption that error is prejudicial or that injury resulted if error is shown.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.13. DETERMINATION BY COMMISSION.

(a) **Public Hearing.** The Commission shall hold a public hearing to consider and act on a proposed development agreement after providing notice as required under Section 56.8.

(b) **Recommendations to Board of Supervisors.** Following the public hearing, the Commission may approve or disapprove the proposed development agreement, or may modify the proposed development agreement as it determines appropriate. The Commission shall make its final recommendation to the Board of Supervisors which shall include the Commission's determination of whether the development agreement proposed is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable area or specific plan, and the priority policies enumerated in City Planning Code Section 101.1. The decision of the Commission shall be rendered within 90 days from the date of conclusion of the hearing; failure of the Commission to act within the prescribed time shall be deemed to constitute disapproval.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.14. DECISION BY BOARD OF SUPERVISORS.

(a) **Action by Board of Supervisors.** The Board of Supervisors shall hold a public hearing on the

proposed development agreement approved by the Commission. After the Board of Supervisors completes its public hearing, it may approve or disapprove the proposed development agreement recommended by the Commission. If the Commission disapproves the proposed development agreement, that decision shall be final unless the applicant/developer appeals the Commission's determination to the Board of Supervisors. The applicant/developer may appeal by filing a letter with the Clerk of the Board of Supervisors within 10 days following the Commission's disapproval of the proposed development agreement. The procedures for the Board's hearing and decision shall be the same as those set forth in City Planning Code Sections 308.1(c) and 308.1(d) with respect to an appeal of a Commission disapproval of a City Planning Code amendment initiated by application of one or more interested property owners.

(b) Material Modification of the Commission's Recommended Development Agreement: The Board of Supervisors may adopt a motion proposing a material modification to a development agreement recommended by the Commission, as defined in Section 56.3 herein. In such event, the material modification must be referred back to the Commission for report and recommendation pursuant to the provisions of Subdivision (c) below. However, if the Commission previously considered and specifically rejected the proposed material modification, then such modification need not be referred back to the Commission. The Board of Supervisors may adopt any minor modification to the proposed development agreement recommended by the Commission which it determines appropriate without referring the proposal back to the Commission.

(c) Consideration of Material Modification By the Commission. The Commission shall hold a public hearing and render a decision on any proposed material modification forwarded to the Commission by motion of the Board within 90 days from the date of referral of the proposed modification by the Board to the Commission; provided, however, if the Commission has not acted upon and returned the proposed material modification within such 90 day period, the proposal shall be deemed disapproved by the Commission unless the Board, by resolution, extends the prescribed time within which the Commission is to render its decision.

(d) Effect of Commission Action on Proposed Material Modification. The Board of Supervisors shall hold public hearing to consider the Commission's action on the proposed material modification. If the Commission approves the Board's proposed material modification, the Board may adopt the modification to the agreement by majority vote. If the Commission disapproves the Board's proposed material modification, or has previously specifically rejected the proposed material modification, then the Board may adopt the material modification to the development agreement by a majority vote, unless said modification would reclassify property or would establish, abolish, or modify a setback line, in which case the modification may be adopted by the Board only by a vote of not less than of all of the members of said Board.

(e) Consistency With General and Specific Plans. The Board of Supervisors may not approve the development agreement unless it receives the Commission's determination that the agreement is consistent with the Master Plan, any applicable area or specific plan and the Priority Policies enumerated in City Planning Section 101.1.

(f) Approval of Development Agreement. If the Board of Supervisors approves the development agreement, it shall do so by the adoption of an ordinance. The Board of Supervisors may not vote on the development agreement ordinance on second reading unless the final version of the development agreement ordinance is available for public review at least two working days prior to the second reading. The development agreement shall take effect upon its execution by all parties following the effective date of the ordinance.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91)

SEC. 56.15. AMENDMENT AND TERMINATION OF AN EXECUTED DEVELOPMENT AGREEMENT BY MUTUAL CONSENT.

- (a) The development agreement may further define the extent to which changes in the project will require an amendment to the development agreement.
- (b) Either the applicant/developer or the City and County may propose an amendment to, or cancellation in whole or in part of, any development agreement. Any amendment or cancellation shall be by mutual consent of the parties, except as otherwise provided in the development agreement or in Section 56.16.
- (c) The procedure for proposing and adopting an amendment which constitutes (1) a material modification, (2) the termination in whole or in part of the development agreement, or (3) a minor modification which the Commission or Board has requested to review pursuant to subsection (d) below, shall be the same as the procedure for entering into an agreement in the first instance, including, but not limited to, the procedures described in Section 56.4, above.
- (d) Any proposed amendment or modification to the development agreement which would constitute a minor modification shall not require a noticed public hearing before the parties may execute an amendment to the agreement. The Director may commit to a minor modification on behalf of the City if the following conditions are satisfied:
 - (1) The Director has reached agreement with the other party or parties to the development agreement regarding the modification;
 - (2) The Director has: (i) notified the Commission and the Board; (ii) caused notice of the amendment to be published in the official newspaper and included on the Commission calendar; (iii) caused notice to be mailed to the parties to a collateral agreement if specific terms or conditions of said collateral agreement were incorporated into the development agreement and said terms or conditions would be modified by said minor modification; and (iv) caused notice to be mailed to persons who request to be so notified; and
 - (3) No member of either the Board or Commission has requested an opportunity to review and consider the minor modification within 14 days following receipt of the Director's notice. Upon expiration of the 14-day period, in the event that neither entity requests a hearing, the decision of the Director shall be final.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91)

SEC. 56.16. RECORDATION OF DEVELOPMENT AGREEMENTS AMENDMENT OR TERMINATION.

- (a) Within 10 days after the execution of the development agreement, or any amendments thereto, the Clerk of the Board of Supervisors shall have the agreement recorded with the County Recorder.
- (b) If the parties to the agreement or their successors in interest amend or terminate the agreement as provided herein, or if the Board of Supervisors terminates or modifies the agreement as provided herein

for failure of the applicant/developer to comply in good faith with the terms or conditions of the agreement, the Clerk of the Board of Supervisors shall have notice of such action recorded with the County Recorder.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91)

SEC. 56.17. PERIODIC REVIEW.

(a) **Time for and Initiation of Review.** The Director shall conduct a review in order to ascertain whether the applicant/developer has in good faith complied with the development agreement. The review process shall commence at the beginning of the second week of January following final adoption of a development agreement, and at the same time each year thereafter for as long as the agreement is in effect. The applicant/developer shall provide the Director with such information as is necessary for purposes of the compliance review.

Prior to commencing review, the Director shall provide written notification to any party to a collateral agreement which the Director is aware of pursuant to Sections 56.11(a) and (d), above. Said notice shall summarize the periodic review process, advising recipients of the opportunity to provide information regarding compliance with the development agreement. Upon request, the Director shall make reasonable attempts to consult with any party to a collateral agreement if specified terms and conditions of said agreement have been incorporated into the development agreement. Any report submitted to the Director by any party to a collateral agreement, if the terms or conditions of said collateral agreement have been incorporated into the development agreement, shall be transmitted to the Commission and/or Board of Supervisors.

(b) **Finding of Compliance by Director.** If the Director finds on the basis of substantial evidence, that the applicant/developer has complied in good faith with the terms and conditions of the agreement, the Director shall notify the Commission and the Board of Supervisors of such determination, and shall at the same time cause notice of the determination to be published in the official newspaper and included on the Commission calendar. If no member of the Commission or the Board of Supervisors requests a public hearing to review the Director's determination within 14 days of receipt of the Director's notice, the Director's determination shall be final. In such event, the Director shall issue a certificate of compliance, which shall be in recordable form and may be recorded by the developer in the official records. The issuance of a certificate of compliance by the Director shall conclude the review for the applicable period.

(c) **Public Hearing Required.** If the Director determines on the basis of substantial evidence that the applicant/developer has not complied in good faith with the terms and conditions of the development agreement, or otherwise determines that the public interest would be served by further review, or if a member of the Commission or Board of Supervisors requests further review pursuant to Subsection (b) above, the Director shall make a report to the Commission which shall conduct a public hearing on the matter. Any such public hearing must be held no sooner than 30 days, and no later than 60 days, after the Commission has received the Director's report. The Director shall provide to the applicant/developer (1) written notice of the public hearing scheduled before the Commission at least 30 days prior to the date of the hearing, and (2) a copy of the Director's report to the Commission on the date the report is issued.

(d) **Findings Upon Public Hearing.** At the public hearing, the applicant/developer must demonstrate good faith compliance with the terms of the development agreement. The Commission shall determine upon the basis of substantial evidence whether the applicant/developer has complied in good faith with the terms of the development agreement.

(e) **Finding of Compliance by Commission.** If the Commission, after a hearing, determines on the basis of substantial evidence that the applicant/developer has complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall instruct the Director to issue a certificate of compliance, which shall be in recordable form, may be recorded by the applicant/developer, in the official records, and which shall conclude the review for that period; provided that the certificate shall not be issued until after the time has run for the Board to review the determination. Such determination shall be reported to the Board of Supervisors. Notice of such determination shall be transmitted to the Clerk of the Board of Supervisors within three days following the determination. The Board may adopt a motion by majority vote to review the decision of the Planning Commission within 10 days of the date after the transmittal. A public hearing shall be held within 30 days after the date that the motion was adopted by the Board. The Board shall review all evidence and testimony presented to the Planning Commission, as well as any new evidence and testimony presented at or before the public hearing. If the Board votes to overrule the determination of the Planning Commission, and refuses to approve issuance of a certificate of compliance, the Board shall adopt written findings in support of its determination within 10 days following the date of such determination. If the Board agrees with the determination of the Planning Commission, the Board shall notify the Planning Director to issue the certificate of compliance.

(l) **Finding of Failure of Compliance.** If the Commission after a public hearing determines on the basis of substantial evidence that the applicant/developer has not complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall either (1) extend the time for compliance upon a showing of good cause; or (2) shall initiate proceedings to modify or terminate the agreement pursuant to Section 56.18.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91; Ord. 287-96, App. 7/12/96)

SEC. 56.18. MODIFICATION OR TERMINATION.

(a) If the Commission, upon a finding pursuant to Subdivision (f) of Section 56.17, determines that modification of the agreement is appropriate or that the agreement should be terminated, the Commission shall notify the applicant/developer in writing 30 days prior to any public hearing by the Board of Supervisors on the Commission's recommendations.

(b) **Modification or Termination.** If the Commission, upon a finding pursuant to Subdivision (f) of Section 56.17, approves and recommends a modification or termination of the agreement, the Board of Supervisors shall hold a public hearing to consider and determine whether to adopt the Commission recommendation. The procedures governing Board action shall be the same as those applicable to the initial adoption of a development agreement; provided, however, that consent of the applicant/developer is not required for termination under this section.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.19. LIMITATION ON ACTIONS.

(a) Any decision of the Board pursuant to this Chapter shall be final. Any court action or proceeding to attack, review, set aside, void or annul any final decision or determination by the Board shall be commenced within 90 days after (1) the date such decision or determination is final, or (2) when acting by ordinance, after the ordinance is signed by the Mayor, or is otherwise finally approved.

(b) Any court action or proceeding to attack, review, set aside, void or annul any final decision or

determination by (1) the Director pursuant to Section 56.15(d)(iii), or (2) the Commission pursuant to Section 56.17(e) shall be commenced within 90 days after said decision is final.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.20. FEE.

In order to defray the cost to the City and County of San Francisco of preparing, adopting, and amending a development agreement, a fee shall be charged and collected in accord with the procedures described below:

(a) **Cost Estimate and Application Report.** The reasonable costs to the various departments of the City and County of San Francisco including, but not limited to, the Planning Department, the Department of Public Works, the Mayor's Office of Housing, the Real Estate Department and the City Attorney's Office for staff time, necessary consultant services and associated costs of materials and administration will vary according to the size and complexity of the project. Accordingly, upon receipt of an application for a development agreement, the Planning Department, after consultation with the applicant/developer, any other parties identified in the application as parties to the proposed development agreement, and the affected City and County departments, shall prepare an estimated budget of the reasonable costs to be incurred by the City and County (1) in the preparation and adoption of the proposed development agreement, and (2) in the preparation of related documents where the costs incurred are not fully funded through other City fees or funds; provided, however, that if the projected time schedule exceeds one year, then the estimated budget shall be prepared for the initial 12-month period only, and the estimated budgets for any subsequent 12-month time periods shall be prepared prior to the end of the prior 12-month period.

The Director shall also prepare a report for the Commission and Board describing the application, the anticipated public benefits listed in the application pursuant to Section 56.4(b), and the projected time schedule for development agreement negotiations.

(b) **Commission and Board of Supervisors Consideration.** The Commission shall recommend to the Board of Supervisors that a fee be imposed of a specified amount after reviewing the cost estimate prepared by the Director and conducting a public hearing pursuant to Section 56.4(c). If the Board of Supervisors approves the fee amount by resolution, the fee shall be paid within 30 days after the effective date of the resolution. The fee shall be paid in a single installment or, at the discretion of the Director, in four equal installments, payable periodically over the estimated time frame for which the estimated budget has been prepared, with the first installment due within 30 days after the effective date of the fee resolution.

(c) **Deposit.** The applicant/developer may prepay up to 50 percent of the amount of the fee (as calculated in the Director's estimated budget) into a Development Agreement Fund established for that purpose to enable the affected City Departments and agencies to begin work on the application. Such funds shall be deemed appropriated for the purposes identified in the cost estimate, and shall be credited against the final fee amount specified in the fee resolution if such resolution is ultimately adopted by the Board of Supervisors. If the Board fails to adopt such fee resolution, then the Controller shall return any prepaid funds remaining unexpended or unobligated to the applicant/developer. If the Board approves a fee amount which is less than the amount which the applicant/developer prepaid, then the Controller shall return that portion of the difference between the fee amount and the prepaid funds which remains unexpended or unobligated to the applicant/developer.

(d) **Development Agreement Fund.** There is hereby created a Development Agreement Fund wherein all funds received under the provisions of this section shall be deposited. All expenditures from the Fund shall be for purposes of reviewing the application for, or proposed material modification to, a development agreement and preparing the documents necessary to the approval of the development agreement, or a material modification thereto. Up to 50 percent of the annual cost estimate is hereby deemed appropriated for such purposes if the applicant/developer chooses to prepay such amount pursuant to Subsection (c) above. All other funds are subject to the budget and fiscal powers of the Board of Supervisors. Interest earned on such amounts deposited in said Fund shall accrue to the Fund for the purposes set forth herein. Upon the execution of a development agreement, or withdrawal by an applicant/developer of its application, any unexpended or unobligated portion of the fee paid by the applicant/developer shall be returned to the applicant/developer.

(e) **Waiver for Affordable Housing.** The Board of Supervisors may, by resolution, waive all or a portion of the fee required pursuant to this section for affordable housing developments, as that term is defined in Section 56.3, only if it finds that such waiver is necessary to achieve such affordable housing development.

(f) **Other Fees.** Payment of fees charged under this section does not waive the fee requirements of other ordinances. The fee provisions set forth herein are not intended to address fees or funding for parties to collateral agreements.

(g) **Not Applicable to Rental Housing With On-Site Affordable Housing Units.** The hearings and fee required pursuant to this section shall not apply to development agreements entered into with project sponsors of rental housing developments with on-site affordable housing units as that term is defined in Section 56.3(j) if the provision of on-site affordable housing units is the primary purpose of the Development Agreement.

(Added by Ord. 372-88, App. 8/10/88; Ord. 312, File No. 100046, App. 12/23/2010)