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DISPOSITION AND DEVELOPMENT AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO,
ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

FC PIER 70, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

28-ACRE SITE PROJECT

CITY AND COUNTY OF SAN FRANCISCO

MARK FARRELL, MAYOR

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ELAINE FORBES, EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

REFERENCE DATE: MAY 2, 2018

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DISPOSITION AND DEVELOPMENT AGREEMENT
(28-ACRE SITE PROJECT)

This **DISPOSITION AND DEVELOPMENT AGREEMENT** (including the Appendix and all Exhibits and Schedules attached hereto, as amended from time to time, this "**DDA**") between the City and County of San Francisco, a municipal corporation and charter city (the "**City**"), acting by and through the San Francisco Port Commission (the "**Port**" or the "**Port Commission**"), and FC Pier 70, LLC, a Delaware limited liability company (together with its permitted successors and assigns, "**Developer**"), is dated for reference purposes only as of the Reference Date specified on the title page to this DDA. Developer and the Port are each a "**Party**" to this DDA.

Initially capitalized and other terms used in this DDA are defined in the *App Part B (Glossary of Defined Terms)* attached hereto or in other Transaction Documents as specified in the Appendix. All definitions and all Transaction Documents are subject to the standard provisions and rules of interpretation in the *App Part A (Standard Provisions and Rules of Interpretation)*.

RECITALS

A. The Port owns about 7 miles of tidelands and submerged lands along San Francisco Bay, including Pier 70, which is generally bounded by Illinois Street on the west, 22nd Street on the south, and the San Francisco Bay on the north and east. The National Park Service approved the Port's application to list approximately 66 acres of Pier 70, representing the historic shipyard at its maximum buildout in 1945, as a historic district named the Union Iron Works Historic District in the National Register of Historic Places as of April 17, 2014. The Port acquired portions of Pier 70 from the State and other portions from private parties. Most of the lands that the Port acquired from the State are subject to the public trust.

B. Portions of Pier 70 are historic uplands and other portions have been in and out of private and federal ownership, creating uncertainty over the extent to which Pier 70 is subject to the public trust and trust use restrictions. The Legislature authorized State Lands to approve a trust exchange that reorients Pier 70 parcels to benefit the public trust by rationalizing public trust land use restrictions and resolving public trust title uncertainties through the enactment of AB 418. Reorienting the public trust on Pier 70 allows the development of cultural, institutional, office, biotech, other commercial, and residential uses in areas that are least suitable for public trust uses and preserves larger areas along the waterfront or providing access to the Bay for public trust uses. The Port's revenues from development of the 28-Acre Site will provide the Port with nontrust revenues to help revitalize Pier 70 as a whole for public trust purposes and meet the State's, the City's, and the Port's overarching goals.

C. A portion of Pier 70, referred to herein as the "**28-Acre Site**" currently contains a mix of heavy commercial and light industrial buildings and uses, including warehousing and contractor and construction storage. The 28-Acre Site is described in the legal description attached as **DDA Exhibit A1** and depicted in the site plan attached as **DDA Exhibit A2**. Given its size, historic uses, and adjacent uses, the 28-Acre Site is one of the Port's most challenging development sites. From 2007 to 2010, the Port staff held community meetings seeking public input to help guide potential development partners at Pier 70 in the context of existing policies for the Eastern Neighborhoods Central Waterfront Plan. Public guidance was incorporated into the vision, goals, objectives, and design criteria of the Pier 70 Master Plan, which the Port Commission endorsed in 2010. The Pier 70 Master Plan creates a strong policy framework and flexible strategies for Port development offerings and implementation initiatives at Pier 70.

D. Using the Pier 70 Master Plan, the Port initiated a public solicitation process by a request for developer qualifications to select a private developer partner for the development of the 28-Acre Site in August 2010. The Port Commission selected Forest City Development

California, Inc., an Affiliate of Developer, for exclusive negotiations for development of the 28-Acre Site by Resolution No. 11-21. The Port entered into negotiations with Developer, resulting in a Term Sheet for redevelopment of the 28-Acre Site as described in more detail below, which was endorsed by the Port Commission by Resolution No. 13-20.

E. The Board of Supervisors found that the Term Sheet presented a plan for development that is fiscally responsible as required by Administrative Code Chapter 29 and endorsed the Term Sheet by Resolution No. 201-13. In its resolution, the Board of Supervisors urged the Port to include the following conditions in the Transaction Documents.

1. Other than the 28-Acre Site, only the Port-owned 20th/Illinois Parcel and the Hoedown Yard will be eligible for inclusion in an expanded 28-Acre Site.

2. Transfer fees will be payable to the Port from the proceeds of the second and each subsequent transfer of condominium parcels in the amount of 1½% of the gross sales price, net of costs of sale only.

3. Developer Return will be calculated only on outstanding Developer Capital.

4. Project-generated Public Financing Sources will be the sole source of public funds to reimburse Developer's historic rehabilitation costs of Building 12 and Building 21, and only to extent necessary for Developer to achieve a 10% profit.

5. Project-generated Public Financing Sources will be the sole source of public funds to reimburse the costs to construct a new building on Parcel E4, contingent on the building containing retail, restaurant, and arts/light-industrial or public uses that are eligible for reimbursement under Governing Law and Policy.

6. If the Board of Supervisors approves a Pier 70 financing plan to provide General Fund financing based on projected revenues from payroll and hotel tax increment to the Port under Charter section B7.310, authorized uses of the General Fund financing will be limited to improvements to Pier 70 areas outside of the 28-Acre Site except to the extent authorized by the approved plan.

The Board of Supervisors also directed the Port to report back on: (a) proposed financing plans for the building on Parcel E4, Building 12, and Building 21 as soon as the Port and Developer have agreed on the approach; and (b) how its recommendations have been included in the Transaction Documents at the Board of Supervisors hearing on Project Approval.

F. The SUD contemplates a variety of building types and uses, which are intended to work interdependently and support each other, including: (1) commercial office; (2) retail, restaurant, and arts/light-industrial; and (3) residential. Residential mixed-use development will create more housing to meet the demand driven by job growth in San Francisco's eastern neighborhoods, reduce commuting times and traffic, support the retail and community spaces at Pier 70, and increase the density of people on the 28-Acre Site, making it an active, vibrant, and safer place. The housing will be located primarily in the mixed-use core of the 28-Acre Site that includes retail, restaurant, and arts/light-industrial uses. Depending on the uses proposed, development within boundaries of the SUD would include between 1,645 to 3,025 residential units, a maximum of 1,102,250 to 1,750,000 gsf of commercial-office use, and a maximum of 494,100 to 518,700 gsf of retail-light industrial-arts use.

G. Among the public benefits within the area covered by the SUD are approximately 9 acres of the following new and expanded parks and shoreline access as identified in the Design for Development that Developer and the Port will provide:

1. Market Square will be a courtyard and plaza at the heart of the area's historic core, bounded by Building 2 and Building 12.

2. The Waterfront Terrace along the northernmost section of the water's edge at the site will connect 20th Street with dramatic views of the Bay and ongoing ship repair activities to the north and include a flexible lawn space for public use and an extension of the Bay Trail and the Blue Greenway.

3. Slipways Commons will be linear open space at the center of the 28-Acre Site that connects the historic buildings and will be flanked on both sides by active uses. Its terminus at the water will support an event plaza and a viewing pavilion adjacent to the existing piers.

4. Waterfront Promenade along the southernmost portion of the waterfront will create a shoreline promenade with outdoor dining, seating terraces, and a pedestrian and bicycle pathway. The Bay Trail and the Blue Greenway will be aligned through this open space.

5. Useable and publicly-accessible open space for active recreation uses will be located on the rooftop of a building in the 28-Acre Site Project, subject to availability of public financing sources.

6. The 20th Street Plaza, which will function as a place of entry to the 28-Acre Site Project, and Irish Hill Playground with a picnic area, a seating terrace, and connections to all surrounding streets, will be developed in coordination with development of the 20th/Illinois Parcel and the adjacent Hoedown Yard (assuming the City exercises its purchase option).

H. On November 4, 2014, San Francisco voters approved the *Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative* (Proposition F), which authorized increased height limits on the 28-Acre Site and established a City policy to encourage development of the 28-Acre Site with the major features listed below:

1. approximately 1,000 to 2,000 new residential units; most of these units would be rental units, and 30% would be below market rate and affordable to middle- and low-income households;

2. restoration and reuse of historic structures;

3. space for arts and cultural activities, nonprofits, small-scale manufacturing, retail, and neighborhood services;

4. preservation of the artist community presently located in Building 11;

5. between 1 million and 2 million gsf of new commercial and office space;

6. parking and transportation improvements; and

7. a significant number of permanent jobs.

I. The City has analyzed potential environmental impacts of the 28-Acre Site Project and identified mitigation measures in the Final EIR and MMRP in accordance with the requirements of CEQA.

J. As of the Reference Date, the Port, Board of Supervisors and various City Agencies have adopted all Project Approvals shown on **DDA Exhibit A3**, including approval of this DDA by the Port and Board of Supervisors.

K. The Parties have negotiated and enter into this DDA with reference to the facts and circumstances above.

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AGREEMENT

1. PROJECT OVERVIEW

1.1. Purpose and Term.

(a) Purpose. This DDA governs the Parties' respective rights and obligations with respect to the 28-Acre Site Project and incorporates all requirements and limitations under the Project Approvals and implementing documents attached as DDA Exhibits.

(b) Term.

(i) The DDA Term will begin on the Reference Date.

(ii) Unless terminated under **Article 12** (Material Breaches and Termination), the DDA Term will end on the earlier of: (a) the date that is 25 years after the Reference Date, as that date may be extended by Excusable Delay for any reason other than Down Market Delay; and (b) the date that the Port issues the final SOP Compliance Determination for Horizontal Improvements in the FC Project Area.

(iii) Termination of this DDA will not affect any provisions of this DDA, the Acquisition Agreement, the Financing Plan, or other Transaction Documents that expressly survive termination.

1.2. Public Trust Exchange. The 28-Acre Site Project is predicated on effecting the Public Trust Exchange between the Port and State Lands. Development of the 28-Acre Site Project cannot proceed until the Public Trust Exchange has closed and the public trust is permanently lifted from all Development Parcels and the 20th/Illinois Parcel by agreement between State Lands and the Port under AB 418. The Port will diligently take all actions to implement the Public Trust Exchange in a timely manner as soon as practicable after the Reference Date.

1.3. Project Description. The 28-Acre Site Project consists of the horizontal and vertical development of the 28-Acre Site consistent with the Waterfront Plan and the SUD. Key elements of the 28-Acre Site Project are summarized in this Section.

(a) Development. This DDA establishes the Parties' respective rights and obligations, including Project Requirements and Regulatory Requirements, that will apply to horizontal development of the FC Project Area and vertical development of the 28-Acre Site.

(i) Developer has the nontransferable right and obligation to complete construction of Horizontal Improvements for Phase 1 and the right to horizontal development of and the obligation to complete construction of Horizontal Improvements for the remaining Phases, subject to **Article 6** (Transfers). As master developer for the 28-Acre Site Project, Developer is responsible for orchestrating horizontal development efficiently in coordination with vertical development.

(ii) Upon satisfaction or waiver of conditions precedent set forth in **Article 8** (Delivery of Master Lease), the Port and Developer will enter into the Master Lease for all of the 28-Acre Site except for the Building 11 Site, the PG&E Remediation Site, the Pump Station Site, the Affordable Self-Storage Site and the Building 21 Site (as those terms are defined in the Master Lease), all in accordance with the procedures of **Article 8** (Delivery of Master Lease). Through Escrow, each Development Parcel that the Port conveys to a Vertical Developer will be released from the Master Lease and this DDA. Vertical Developers will assume obligations relating to the applicable Development Parcel under a Vertical DDA, which will set forth the allowable scope of development and may include requirements for Deferred Infrastructure. Upon acceptance by the City

or the Port, as applicable, of Phase Improvements, the applicable Phase Area underlying the Phase Improvement will be released from the Master Lease.

(b) 28-Acre Site. The 28-Acre Site on the Reference Date is described in the legal description attached as **DDA Exhibit A1**. Any of the Illinois Street Parcels for which Developer is the successful bidder will become part of an expanded 28-Acre Site. The 28-Acre Site and the Illinois Street Parcels are shown on the site plan attached as **DDA Exhibit A2**.

(c) Louisiana Street Parcel. Port will diligently and in good faith pursue a minor boundary adjustment to the Historic Pier 70 Premises that will remove the Orton Louisiana Parcel referenced in **Subsection 15.1(d)** (Louisiana Parcel Improvements) from the Historic Pier 70 Premises. The minor boundary adjustment will be documented through the recordation of a Memorandum of Technical Corrections (or comparable legal instrument) that will remove the Orton Louisiana Parcel from the Historic Pier 70 Premises. Concurrently with the recordation thereof, the Parties will promptly enter into and record a Memorandum of Technical Corrections that will revise **DDA Exhibit A1** and **DDA Exhibit A2** to include the Orton Louisiana Parcel, as generally shown on **DDA Exhibit A8**, as part of the 28-Acre Site.

(d) Phasing and Land Use Generally. The 28-Acre Site Project has been divided into three Phases, as shown in the Phasing Plan attached as **DDA Exhibit B1**, which illustrates the expected size, order, and duration of the 28-Acre Site Project's Phases and the Parties' best estimates of the conditions forecast for the expected development period. Each Phase Area includes Development Parcels and areas that will be developed as public rights-of-way, parks, and public access areas. Features of Phases are discussed in **Article 2** (Project Phasing), and Phase Approval procedures are addressed in **Article 3** (Phase Approval). The SUD, including the Design for Development, establishes the permitted land uses for the 28-Acre Site Project. The Land Use Plan shown in *D4D Fig 2.1.1* is attached for reference as **DDA Exhibit A4-1**. The Land Use Plan includes a number of Flex Parcels that may be developed for either residential or commercial use. A potential development program that achieves a midpoint between residential and commercial uses is shown for illustrative purposes only in the 28-Acre Site Midpoint Program attached hereto as **DDA Exhibit A4-2**.

(e) Parcels under City and Port Control of Land Uses. In all cases subject to the SUD and the Design for Development, the Port and City will determine the land uses and development programs for the following Development Parcels, none of which are Option Parcels, as follows:

(i) The Port, in its sole discretion and in consultation with MOHCD, will determine the development programs for the Affordable Housing Parcels, which are currently identified as Parcel K South, and Parcels C1B and C2A.

(ii) The Port, in its sole discretion and in consultation with the City, will determine the land uses and development program for the Hoedown Yard.

(iii) The Port, in its sole discretion, will determine the land uses and development program for Parcel C1A, provided the Port may only permit residential uses if MOHCD allows such uses in accordance with the Affordable Housing Plan.

(f) Horizontal Improvements.

(i) The Design for Development provides the vision, intent, and requirements for the future design of public realm improvements within the 28-Acre Site, including street and sidewalk landscaping and furnishings, public parks, and other public access areas in conformity with the SUD. This DDA sets forth the Parties' respective roles regarding Developer's horizontal development activities and applicable construction procedures and standards described in **Article 14** (Construction Generally), and **Article 15** (Horizontal Development).

(ii) The Schedule of Performance establishes deadlines by which Developer must achieve key benchmarks within each Phase of the 28-Acre Site Project, subject to Excusable Delay under **Article 4** (Performance Dates). Developer's failure to meet certain key benchmarks in the Schedule of Performance would result in a Material Breach for which the Port could exercise remedies up to termination of this DDA under **Article 12** (Material Breaches and Termination).

(iii) Developer is obligated to construct all of the Horizontal Improvements for the FC Project Area that are described in the Infrastructure Plan attached as **DDA Exhibit B8**, as amended by the Streetscape Master Plan when approved. The Port, SFMTA, Planning Department, San Francisco Fire Department and Public Works will approve the Streetscape Master Plan under this DDA and the ICA, and SFPUC will approve the Master Utilities Plans under the ICA. The City's Subdivision Code regulates the Subdivision Map process.

(iv) Developer may request that the Port require Vertical Developers of specified Development Parcels to build certain elements of Deferred Infrastructure identified in the Improvement Plans, which request may occur at the Phase Submittal, Basis of Design Report and/or Appraisal Notice submittal. To the extent approved, the Port will include the Vertical Developer's obligation to construct the applicable Deferred Infrastructure in the applicable Vertical DDA. The proposed treatment of Deferred Infrastructure is described briefly in this clause and in more detail in **Subsection 15.6** (Deferred Infrastructure) and is subject to **Section 6.5** (Releases).

(1) Developer will retain the obligation to build and complete Deferred Infrastructure in each Phase unless the Director of Public Works and/or Acquiring Agency, as applicable, has agreed to permit some or all of these obligations to be imposed on an applicable Vertical Developer as Deferred Infrastructure pursuant to procedures developed under the ICA.

(2) To avoid damage to Public Spaces during vertical construction of adjacent Development Parcels, the Port will include a requirement in Vertical DDAs for applicable Development Parcels that the applicable Vertical Developer complete Deferred Infrastructure within a zone of up to 40 feet within the Public Spaces and mid-block passages adjacent to the applicable Development Parcel (including Market Square (OS-2) that will be built in the air parcel above Parcel D);

(3) The Other Acquiring Agencies have no obligation to agree to Deferred Infrastructure under this DDA or the ICA. A Phase Approval by the Port based on a Phase Submittal that includes Developer's proposal for Deferred Infrastructure will have no effect on any Other Acquiring Agency. Developer will be responsible for obtaining each affected Other Acquiring Party's consent to releasing Developer from obligations regarding some or all Deferred Infrastructure and will retain all responsibility for Horizontal Improvements to the extent that any Other Acquiring Party does not provide its express consent.

(v) The Port has agreed to undertake and fund the construction of the Michigan Street segment and, under certain conditions, Irish Hill Playground.

(vi) Phase Improvements will be reviewed and approved by applicable City Agencies and the Port through submittal of Subdivision Maps and improvement plans in accordance with the Project Requirements and Regulatory Requirements, including the ICA. Before the City (including the Port) may file a

Phase Final Map for recordation or issue any Construction Permit allowing construction of Phase Improvements, Developer must first obtain Port approval of a Phase Submittal for such Phase, in accordance with the Phase Approval procedures set forth in **Article 3** (Phase Approval).

(g) Vertical Development.

(i) Vertical development will include a mix of office, retail, restaurant, arts/light-industrial, and market rate and affordable residential uses conforming to the Waterfront Plan, and the SUD, which includes the Design for Development. The SUD and the Waterfront Plan regulate vertical development, and the Design for Development provides the vision, intent, and requirements for the design of Vertical Improvements.

(ii) In accordance with the procedures set forth in **Article** 7 (Parcel Conveyances and Delivery of Associated Public Benefits), the Port will ground lease or sell Development Parcels to Vertical Developers in accordance with the terms and conditions of a Vertical DDA and implementing documents that will set forth applicable development obligations, including the Port's and Vertical Developers' respective roles regarding vertical development activities and applicable procedures and standards.

(h) Certain Other Obligations.

(i) Developer must comply with the Affordable Housing Plan attached as **DDA Exhibit B3** that governs the obligations of the Developer and Affordable Housing Developers for the delivery and development of the Affordable Housing Parcels. The Affordable Housing Plan also governs the obligations that will be binding on Vertical Developers for the delivery of affordable housing, including on-site Inclusionary Units and BMR Units, the payment and use of the 28-Acre Site Affordable Housing Fee and the 28-Acre Site Jobs/Housing Equivalency Fee for production of affordable housing within the AHP Housing Area.

(ii) Developer must comply with the obligations that are identified as Developer obligations in the Transportation Program, which includes the Pier 70 TDM Program, attached as **DDA Exhibit B5**.

(iii) The MMRP attached as **DDA Exhibit A6** describes all of the measures required to mitigate environmental impacts of the 28-Acre Site Project and identifies a responsible person for each measure. Developer is required to undertake all Developer Mitigation Measures.

(iv) Developer will rehabilitate or cause to be rehabilitated Historic Building 12 and Historic Building 21, and if it exercises its Option, Historic Building 2, all in accordance with the Secretary's Standards. Financial terms for the Port's subsidy of Developer's rehabilitation, operation, and leasing costs for Historic Building 12 and Historic Building 21 are described in *FP Art 11 (Historic Buildings)*.

(v) Developer must cause to be developed a new Arts Building on Parcel E4 for arts uses as more particularly described in **Section 7.12** (Arts Building).

(vi) Within the Arts Building, or elsewhere as may be determined by Developer for a Phase (subject to the timing set forth in the Schedule of Performance), Developer must cause to be provided as part of the 28-Acre Site Project replacement space for the Noonan Tenants as more particularly described in **Section 7.13** (Noonan Replacement Space).

(vii) Developer will cause to be provided a minimum of 50,000 gross floor feet of PDR-restricted space within the 28-Acre Site Project.

(viii) Developer will comply with the requirements of the Workforce Development Plan attached as **DDA Exhibit B4** that are applicable by their terms to Developer, which includes goals and targets for local hiring and local business enterprise utilization, compliance with the City's First Source Hiring program and providing funding for CityBuild and TechSF job readiness and training programs, all as more particularly set forth therein.

(i) Financing Plan. The Financing Plan for the 28-Acre Site Project, attached as **DDA Exhibit C1**, establishes the Parties' agreement on eligible Horizontal Development Costs, the flow of Project Payment Sources for eligible costs, and revenue-sharing.

(j) Conveyances.

(i) Through the exercise of its Option under **Article 7** (Parcel Conveyances and Delivery of Associated Public Benefits), Developer will have vertical development rights to each Option Parcel. Developer must exercise its Option rights on behalf of itself or a Vertical Developer Affiliate in accordance with the Phase Schedule of Performance for Option Parcels, including Early Lease Parcels, as described in **Subsection 2.2(f)** (Early Lease Parcels) and **Subsection 2.2(g)** (Option Parcels). If Developer fails to exercise its Option on behalf of itself or a Vertical Developer Affiliate by the applicable Outside Date or if Developer elects not to exercise the Option after an appraisal, the Port will offer the Option Parcel to third parties through a Public Offering. Conveyance of each Option Parcel to any Vertical Developer will be governed by a Vertical DDA entered into between Port and the applicable Vertical Developer, substantially in the form attached as **DDA Exhibit D2**, that sets forth procedures and conditions precedent to Close of Escrow for the applicable Option Parcel and certain terms and conditions governing construction of improvements thereon. At Close of Escrow under a Vertical DDA, the Port will convey Option Parcels that are offered for lease by Parcel Leases substantially in the form attached as **DDA Exhibit D3** and will convey parcels that are to be sold in fee by Quitclaim Deed substantially in the form attached to the form of Vertical DDA.

(ii) Procedures in **Article 7** (Parcel Conveyances and Delivery of Associated Public Benefits) will govern Port conveyances of Option Parcels, including procedures for establishing Fair Market Value, Developer's exercise of its Option, and Public Offerings if Developer elects not to exercise its Option.

(iii) The treatment of the Affordable Housing Parcels is addressed in **Section 7.16** (Affordable Housing Parcels) and the Affordable Housing Plan attached as **DDA Exhibit B3**. Procedures for conveyance of specific other parcels are addressed in **Section 7.9** (20th/Illinois Parcel), **Section 7.10** (Hoedown Yard), and **Section 7.12** (Arts Building).

(k) Controlling Laws. Nothing in this DDA affects the Parties' respective obligations under this DDA to comply with the Regulatory Requirements and the Development Agreement, as applicable to Improvements required or permitted to be made to the FC Project Area.

1.4. Special Use District. The SUD prescribes allowed uses and certain development standards at the 28-Acre Site and the Illinois Street Parcels. Planning Code provisions covering matters that are not addressed in the SUD will apply to the 28-Acre Site, subject to the Development Agreement.

2. PROJECT PHASING

2.1. Schedule of Performance. The Outside Dates for major benchmarks related to the 28-Acre Site Project are specified in the Schedule of Performance attached as **DDA Exhibit B2**, subject to **Article 4** (Performance Dates). The Schedule of Performance includes Outside Dates by Phase for the conveyance of all of the Option Parcels by Parcel Lease or in fee, as applicable, and the timing for delivery of Horizontal Improvements, including Public Spaces and Public ROWs, and Associated Public Benefits. Developer may request changes to Outside Dates or other revisions to the Schedule of Performance, subject to the Port's approval under **Section 3.3** (Changes to Phase) and **Section 3.4** (Changes to Project after Phase 1). Following a Transfer, the Port, Developer, and the Transferee may discuss whether to maintain one or more separate schedules of performance related to the Transferee's obligations under this DDA for the remainder of the 28-Acre Site Project or for any relevant Phase, but the Port will make the final decision in its reasonable judgment.

2.2. Development Process for Each Phase. This Section sets forth the process for Port approval of horizontal development for each Phase.

(a) Phase Submittal. Developer must submit a Phase Submittal to the Port for each Phase before the Outside Date in the Schedule of Performance.

(b) Subdivision Maps. The Map Act authorizes local jurisdictions to adopt local procedures to implement Map Act requirements for subdivisions and prohibits local agencies from filing Final Maps unless the consent of all persons holding title to the subdivided land is on file in the local recorder's office. Developer agrees not to submit any Subdivision Map to Public Works for review and approval under the Subdivision Code without the Port's prior consent. Port approval of a Phase Submittal in accordance with the Phase Approval procedures is a prerequisite to the recordation of a Phase Final Map (but not a Final Transfer Map) or issuance of any Construction Permit allowing construction of Phase Improvements.

(c) Phase Improvements and Associated Public Benefits. Developer must obtain required Regulatory Approvals for Phase Improvements, and Commence Construction and construct Phase Improvements (including Public Spaces and Associated Public Benefits) in accordance with applicable Project Requirements and Regulatory Requirements and with the Schedule of Performance.

(d) Fair Market Value Determinations.

(i) Developer may initiate the Fair Market Value determination process for each Option Parcel in the Phase under **Article 7** (Parcel Conveyances and Delivery of Associated Public Benefits) at any time after submitting its Phase Submittal, but must execute a Vertical DDA for the Option Parcel no later than the Outside Date therefor specified in the Schedule of Performance.

(ii) The Port will use a proprietary appraisal to determine the Fair Market Value for Parcel K North.

(iii) The Financing Plan describes procedures for determining the Historic Building Feasibility Gaps for Historic Building 12 and Historic Building 21.

(iv) **Section 7.11** (Historic Building 2) describes procedures for determining the Fair Market Value of Historic Building 2.

(e) Parcel Conveyances. The Port will enter into a Vertical DDA with a Vertical Developer Affiliate if Developer exercises its Option, or with a third-party Vertical Developer if selected through a Public Offering, and Close of Escrow on the

applicable Development Parcel will occur in accordance with the terms and conditions of the Vertical DDA. Each Vertical DDA will include procedures for the Vertical Developer to obtain required Regulatory Approvals for its Vertical Improvements and, subject to **Section 15.6** (Deferred Infrastructure) and **Section 6.5** (Releases), any Deferred Infrastructure.

(f) Early Lease Parcels. This Subsection applies to the first Option Parcel to be conveyed to a Vertical Developer Affiliate by Parcel Lease in each of Phase 1 and Phase 2 (each, an "**Early Lease Parcel**"). Developer must timely exercise its Option and Close Escrow for each Early Lease Parcel no later than two years after Commencement of Construction for the Phase. If Close of Escrow does not occur for an Early Lease Parcel within the time required, then Port may place the Early Lease Parcel for Public Offering in accordance with **Section 7.5** (Public Offering Procedures).

(g) Option Parcels. The Developer or a Vertical Developer Affiliate must Close Escrow on all of the Option Parcels no later than three years after issuance of an SOP Compliance Determination for all Phase Improvements within the applicable Phase other than Public Spaces. Failure to Close Escrow as to any Option Parcel in the Phase by the Outside Date will not be an Event of Default, but will terminate the Option as to the applicable Option Parcels in the applicable Phase that have not Closed Escrow as of the Outside Date.

2.3. Phase Areas.

(a) Boundaries. The preliminary boundaries of the Phase Areas are shown in the Phasing Plan. Developer may request changes to the boundaries of any Phase Area other than Phase 1 through a Phase Submittal in accordance with the Phase Approval procedures, or through an amendment to the applicable Phase Submittal. Final boundaries of parcels within each Phase Area will be established through the recordation of Phase Final Maps.

(b) Phase Improvements and Associated Public Benefits. Because the 28-Acre Site Project will be built out over a number of years, the amount and timing of the Phase Improvements and Associated Public Benefits are allocated by Phase in accordance with the Schedule of Performance. Developer may request changes to the timing of the Phase Improvements and Associated Public Benefits in accordance with **Section 3.3** (Changes to Phase) and subject to Excusable Delay.

(c) Phasing Order. Developer must submit Phase Submittals in the order that the Port has approved under the Phasing Plan. Developer may request changes to the approved order, subject to the Port's approval under **Article 3** (Phase Approval).

2.4. Phasing Goals. The Phasing Plan reflects the following Phasing Goals.

(a) Proportionality. Phase Improvements, including Public Spaces, and Associated Public Benefits should be provided proportionately with the development of market-rate housing and commercial-office uses taking into account the 28-Acre Site Project as a whole. The Parties acknowledge that Phase 1 includes more Horizontal Improvements and Associated Public Benefits for the 28-Acre Site Project as a whole than Later Phases will provide.

(b) Rational Development. Horizontal Improvements should be developed in an orderly manner and consistent with the Infrastructure Plan, Streetscape Master Plan, Affordable Housing Plan, and Transportation Program. Finished portions of the 28-Acre Site Project should be generally contiguous.

(c) Appropriate Development. The scope of Horizontal Improvements should be appropriate for the Vertical Improvements to be built in each Phase Area. Horizontal

development should be timed to coordinate with the needs of vertical development. Completed infrastructure must provide continuous reliable access and utilities to then-existing visitors, residents, and businesses.

(d) Market Timing. The boundaries and mix of uses within the Phase should be designed to minimize unsold inventory of Development Parcels.

(e) Maximize Value and Benefits. Associated Public Benefits and the nontrust revenues that the 28-Acre Site Project can deliver to the Port for trust uses should be maximized. In doing so, Project Payment Sources and their uses should be allocated to maximize revenues to the Port and Developer.

(f) Flexibility. Flexibility to respond to market conditions, cost and availability of financing, and economic feasibility should be provided.

3. PHASE APPROVAL

3.1. Phase Submittal. Developer must submit a Phase Submittal on or before the Outside Dates in the order set forth in the Schedule of Performance (as the same may be updated from time to time in accordance with the Phase Approval procedures in this **Article 3** (Phase Approvals)). Phase Submittals consistent with the Phasing Plan will be submitted for the Port Director's approval. Developer will submit Phase Submittals that include a request for revisions to the Phasing Plan or Schedule of Performance to the Port Director or Port Commission for approval, as required under **Section 3.3** (Changes to Phase) or **Section 3.4** (Changes to Project after Phase 1).

3.2. Phase Approval Procedures.

(a) Generally.

(i) Phase Improvements will be reviewed and approved by the Port and applicable Other City Agencies through submittal of Subdivision Maps and Improvement Plans in accordance with the Project Requirements and Regulatory Requirements, including the ICA and **Article 13** (Improvement Plans). Developer intends to obtain City approval of a Tentative Map for the 28-Acre Site Project, including conditions of approval. The Developer intends for the Tentative Map to provide for Developer's submittal of a series of Phase Final Maps, which must meet the conditions of approval of the Tentative Map in accordance with the Subdivision Code and applicable Project Approvals.

(ii) Before the City (including the Port) may file a Phase Final Map for recordation, Developer must obtain a Phase Approval to verify that the Phase will be developed consistently and in conformity with the DDA and other applicable Project Requirements and Regulatory Requirements. Approval of a Phase Submittal will not be required for the issuance of Construction Permits for Site Preparation in any Phase.

(iii) Developer may submit Phase Final Maps and Improvement Plans for review by City Agencies in advance of the Phase Submittal application. Each City Agency will review and provide comments on these submittals in a timely manner in accordance with the ICA. Developer may submit completed drawings for a Phase Final Map approval or other Construction Permit allowing construction of Phase Improvements within a particular Phase at the same time it submits the Phase Submittal and before the Phase Approval, and the City Agencies will provide review and comment in accordance with the ICA. No City Agency may issue any Construction Permit for the applicable Phase other than Construction Permits for Site Preparation until Developer has obtained a Phase Approval for the property that is the subject of the Phase Submittal application. If

Developer requests changes to the Phasing Plan or Schedule of Performance as part of the Phase Submittal that require Port approval under **Section 3.3** (Changes to Phase) or **Section 3.4** (Changes to Project after Phase 1), City Agencies may defer their review of the Phase Final Maps and Improvement Plans until the Port has approved the Phase Submittal application.

(b) Phase Submittal. No later than the applicable Outside Date in the Schedule of Performance, Developer will submit a Phase Submittal to the Port Director for the Port's approval. Each Phase Submittal will include the information and documents listed below.

(i) Narrative Statement. Developer must provide an overview of the Phase that addresses the matters described below. The narrative statement must include:

(1) a description of the Phase Area and explanations for any proposed changes to the Phase Area from the boundaries of the Phasing Plan;

(2) the Phase Improvements and explanations for any proposed changes to the scope of Phase Improvements;

(3) the proposed land use program for each building, if known, including Product Type and housing tenure of residential uses, office development that would be subject to the provisions for office development attached as **DDA Exhibit A5** (Provisions for Office Development), and off-site parking to be provided, if any;

(4) conformity with and any proposed variances to the streetscape, open space and parking standards (to the extent applicable to the Phase Improvements) from the Design for Development and Streetscape Master Plan;

(5) application of and conformity with the Affordable Housing Plan, Transportation Program and Developer Mitigation Measures;

(6) amount and location of childcare facilities and PDR space in the Phase, if applicable;

(7) a description of the manner in which the Workforce Development Plan will apply to construction and operations within the Phase, including identifying the designated Development Parcels that will be subject to the small retail business marketing requirements described in *Workforce Plan § III.D.3* (Local Diverse Small Business Retail Marketing Program);

(8) the Associated Public Benefits within the Phase and explanations for any proposed changes to Associated Public Benefits;

(9) explanations for proposed changes to the boundaries of any Development Parcels in the Phase from those shown on the Tentative Map;

(10) explanations for any proposed changes to the Phasing Plan, which the Port will consider as described in **Section 3.3** (Changes to Phase) and **Subsection 3.2(e)** (Phase Submittal Approval);

(11) a Phase schedule that shows in reasonable detail Developer's anticipated schedule for Site Preparation, initial street construction, and phasing of Development Parcels and Public Spaces

based on its commercially reasonable assumptions for unknown conditions;

(12) for Phase Submittals other than Phase 1, a report that shows the 28-Acre Site Project's performance with the goals set forth in the Sustainability Plan that was presented to the Port Commission in advance of the Project Approvals;

(13) subject to the procedures in **DDA Exhibit A5** (Provisions for Office Development), a notice of intent to construct commercial office space that would be counted against the maximum annual limit under Planning Code section 321, including anticipated total gsf of office development anticipated for each Option Parcel; and

(14) for the Phase 3 Submittal, potential locations for a minimum of 20,000 gsf of contiguous rooftop open space that could be used for active recreation accessible to the public, subject to availability of sources of public funding, as described in **Section 7.15** (Rooftop Open Space).

(ii) Phase Budget. Developer must submit an updated Summary Proforma based on the proposed land use program for the Phase and the results of the meeting under **Subsection 3.2(c)** (Pre-Submittal Conference and Presentation), which must be consistent with the DDA, the Infrastructure Plan, the Streetscape Master Plan, the Financing Plan, and the other contents of the Phase Submittal and reflect, to the extent applicable:

(1) changes to assumptions underlying the previously-submitted Summary Proforma;

(2) changes, if any, to the land uses designated for Development Parcels in the Phase;

(3) for Phase 1, the projected Historic Building Feasibility Gap for Historic Building 12 using the formula in *FP § 11.2 (Determining Whether Feasibility Gap Exists)*;

(4) for Phase 2, the projected Historic Building Feasibility Gap for Historic Building 21 using the formula in *FP § 11.2(Determining Whether Feasibility Gap Exists)*;

(5) updates to preliminary estimates of Horizontal Development Costs for each Later Phase of the 28-Acre Site Project to the extent reasonably available or applicable;

(6) for each Prior Phase, a reconciliation of the approved Phase Budget against its actual Horizontal Development Costs, accrued Developer Return, and accrued Interest on Port Capital until its Phase Audit Date;

(7) updates to projections of Project Payment Sources that would be available to fund Horizontal Development Costs, including Developer's reasonable estimate in its professional judgment of the aggregate Fair Market Value of all Development Parcels in the Phase Area; and

(8) Developer's proposal for allocating Developer Capital and Project Payment Sources to pay projected Horizontal Development Costs for the Phase.

(iii) Cost Estimates. Developer will provide the Current Phase cost estimates for informational purposes based on the design information available at the time of the Phase Submittal. Cost estimates will not be used to determine the final project cost, which will be the actual cost of the Phase Improvement or Component determined in accordance with the Financing Plan and Acquisition Agreement.

(iv) Data Charts. Developer must provide detail for:

(1) the land use mix, Product Type and housing tenure for residential uses, and building height proposed for each Development Parcel, to the extent known;

(2) the maximum and minimum range of residential density or commercial square footage that can be allocated to each Development Parcel in the Phase, which will be established finally in the Appraisal Instructions for the Development Parcel and enforced through the Vertical DDA;

(3) the housing data table described in *AHP § 2.3(b) (Housing Data Table)*, including a description of how the 28-Acre Site Project will maintain an average affordability level to the extent required if 4% LIHTCs are no longer available, and the Product Type and housing tenure of all residential projects under approved Vertical DDAs then in effect;

(4) compliance of the Phase with the parking standards and aggregate parking ratios permitted under the SUD and Design for Development, which will be in the form of a parking data chart specifying how many spaces Developer proposes for the Phase and, when applicable, spaces previously built or under construction;

(5) compliance of the Phase with the office development limitation of 1.75 million square feet as prescribed in Planning Code section 249.79(g)(17), which will set forth the maximum amount of office space that Developer anticipates for the Phase and, when applicable, the amount of office space previously approved in any Phase;

(6) percentage of the total allowable building program that would be completed at Phase build-out; and

(7) status of build-out in any Prior Phases, including Associated Public Benefits.

(v) Schedules of Performance. Developer must provide evidence of compliance with the Schedule of Performance, subject to Excusable Delay under **Article 4** (Performance Dates), or request that the Port Director (or Port Commission, if applicable) extend Outside Dates in its Phase Approval.

(vi) Financial Capacity. Developer must show evidence reasonably acceptable to the Port of Developer's financial capacity to pay Horizontal Development Costs of Phase Improvements to be funded by Developer Capital. For the purpose of the Phase Submittal, that amount will be assumed to be the cost of Phase Improvements shown in the Summary Proforma, less the amount of any projected Early Mello-Roos Bond Proceeds. Evidence of financial capacity may include a sworn affidavit by an authorized officer of Developer as to sources of equity with copies of certified resolutions demonstrating each equity source's

commitment to fund the 28-Acre Site Project and financing letters of intent or commitments from proposed lenders.

(vii) Option Parcels. Developer must make a nonbinding statement as to each Option Parcel in the Phase Area regarding whether it intends to: (1) exercise its Option; and (2) request that the Vertical Developer be obligated to construct Deferred Infrastructure in its Vertical DDA, subject to **Subsection 15.6** (Deferred Infrastructure) and **Section 6.5** (Releases).

(viii) Insurance. The form, amount, type, terms, and conditions of insurance coverages required of Developer in connection with the applicable Phase to the extent different from the insurance requirements provided under the Master Lease or License.

(ix) Adequate Security. The estimated Secured Amount and type and form of Adequate Security, including, with respect to a Guaranty, evidence that Obligors are prepared to issue a Guaranty satisfying the requirements of **Article 17** (Security for Project Activities).

(x) Impact Fees and Exactions. A summary table that shows impact fees and exactions paid by Developer or Vertical Developers in accordance with the Development Agreement in all Prior Phases to date on a per-building basis.

(xi) Associated Public Benefits Report. The Phase Submittal for Phase 3 will include the Associated Public Benefits Report described in **Section 7.21** (Report on Associated Public Benefits) that will track 28-Acre Site Project compliance to-date with the Associated Public Benefits provided under **Section 7.11** (Historic Building 2) through **Section 7.20** (Priority Retail along Slipways Commons).

(c) Pre-Submittal Conference and Presentation.

(i) Pre-Submittal Conference. Not less than 30 days before submitting a Phase Submittal, Developer will submit to the Port Director drafts of the primary documents listed in **Subsection 3.2(b)** (Phase Submittal) and any other information as Developer will so desire concerning the applicable Phase. Developer will meet with the Port at least 20 days before the date on which Developer intends to submit a Phase Submittal, at a mutually acceptable date and time and with appropriate Port staff that elect to attend. Developer may submit information and materials iteratively, and Developer and the Port may agree to hold additional pre-Submittal meetings as they deem useful or appropriate. If Developer fails to schedule a pre-Submittal meeting before submitting a Phase Submittal, such failure will not, by itself, be an Event of Default, and instead the Port's time for review of the Phase Submittal will be extended by 30 days. At the pre-Submittal meeting, the Parties will cover Developer's draft submittals, the following topics, and any other topics that the Parties may deem useful or appropriate.

(1) Market Conditions. The Parties will discuss whether they have observed or anticipate any significant changes in market conditions during the expected term of the Phase, including potential impacts on the costs of labor and materials.

(2) Fair Market Value Estimate. The Parties will review any recent information on updated estimates of the aggregate Fair Market Value of Development Parcels at the 28-Acre Site that the Port has not yet conveyed.

(3) Proforma. Developer will indicate updates to the Proforma and whether it intends to assign responsibility for Deferred Infrastructure to Vertical Developers, to the extent known. The Parties will discuss the expected impact of the changes on the Phase Budget.

(4) Estimate of Public Financing Sources. Based on the estimated Fair Market Value of Development Parcels in the Phase, the Parties will develop estimates of Mello-Roos Taxes, Tax Increment, and bonding capacity for the Phase.

(5) Insurance. Developer must initiate discussion of any proposed changes to the insurance requirements under the Master Lease or License.

(6) Changes to Phasing Plan or Schedule of Performance. Developer will indicate whether it intends to request any changes to the Phasing Plan or Schedule of Performance in connection with the applicable Phase Submittal, for purposes of determining the Port's approval process.

(ii) Public Presentations.

(1) Developer will make an informational presentation of each Phase Submittal to CWAG at least 30 days before the Port Director (or Port Commission, if applicable) may issue a Phase Approval. The Port will cooperate with Developer to schedule and notice this presentation by publication, posting, mailing, or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation. If a CWAG presentation cannot be scheduled 30 days or more before the date the Port Director (or Port Commission, if applicable) is scheduled to act on the Phase Submittal under **Subsection 3.2(d)** (Port Review), Developer will have the option to present at the next scheduled CWAG meeting or to host an informational presentation, providing a minimum of two weeks' notice by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation, so long as the CWAG or informational presentation occurs at least 30 days prior to the date the Port is scheduled to act on approval of the Phase Submittal in accordance with **Subsection 3.2(e)** (Phase Submittal Approval).

(2) For Phase Submittals that are subject to Port Director approval under **Subsection 3.2(e)(i)**, Developer will make an informational presentation to the Port Commission at least 14 days before the Port Director may issue a Phase Approval.

(3) As provided in Planning Code section 249.79(j) (Review and Approval of Development Phases and Horizontal Development), Developer must make an informational presentation of each Phase Submittal to the Planning Commission and the Historic Preservation Commission, and seek comment from these commissions at least 14 days before the Port may grant a Phase Approval. The Port will reasonably cooperate with Developer, including coordinating calendar and noticing requirements, making Port staff available to attend the hearings and preparing or reviewing applicable staff reports with the goal of scheduling the Planning Commission and Historic Preservation Commission hearings in sufficient time so as not to cause a delay in the Port's processing time set forth in **Subsection 3.2(d)** (Port Review).

(d) Port Review.

(i) Initial Port Review. Port staff will review the components of each Phase Submittal for completeness as expeditiously as reasonably possible. Within 30 days following receipt of a Phase Submittal, the Port staff will notify Developer of any deficiencies and make any requests for additional information or materials that are reasonably necessary in order to process the Phase Submittal and are consistent with the type of documents listed in **Subsection 3.2(b)** (Phase Submittal). The Port will notify Developer within 30 days after Developer's delivery of the Phase Submittal whether the Phase Submittal is complete, as such time may be extended in accordance with **Subsection 3.2(c)** (Pre-Submittal Conference and Presentation), or, if applicable, no later than 15 days following receipt of any additional information and materials requested under this clause, and notify Developer of the same. If the Port Director does not so advise Developer within such 30- or 15-day period, as applicable, Developer must deliver electronic notice in accordance with *App ¶ A.2.2(c) (No Deemed Consent Without Notice)* before the Phase Submittal will be deemed complete.

(ii) Port Review – Complete Phase Submittal. Port staff will review each complete (or deemed complete) Phase Submittal for conformity with the DDA and applicable Project Approvals as expeditiously as reasonably possible. Port staff will provide final comments on each Phase Submittal no later than 30 days after the Phase Submittal is found or deemed complete. Port staff may propose changes to the Phase Submittal that do not conflict with the DDA or other applicable Project Approvals. If the Port staff proposes any such changes, then the Port will notify Developer, and the Port and Developer will promptly meet and confer in good faith to reach agreement on any such changes proposed by the Port during the 30-day review period. Any meet-and-confer period under this clause will run concurrently with, and will not extend, the 30-day review period unless extended by the Parties' agreement. Changes proposed by Port staff will be reasonably considered by Developer, but will not be binding on Developer without Developer's consent in its sole discretion. The Parties anticipate that the hearings at the Planning Commission and Historic Preservation Commission will occur during this 30-day review period, so as to provide Developer and the Port with the benefit of comment from these commissions; provided, however, that if such hearings do not occur during the 30-day review period, the Port staff comments will remain subject to further input from the Planning Commission and Historic Preservation Commission.

(e) Phase Submittal Approval.

(i) Port Director Review. On the earlier of Port staff's submittal of final comments to the Phase Submittal or the expiration of the 30-day review period, as extended by agreement, and further subject to the requirements of **Subsection 3.2(c)(ii)** (Public Presentations) and Planning Code section 249.79(j) (Review and Approval of Development Phases and Horizontal Development), the Port Director will approve, conditionally approve, or disapprove the Phase Submittal in accordance with the standards set forth in **Subsection 3.2(e)(iii)** (Standard of Approval). If a Phase Submittal includes a request for changes to the Phasing Plan or Schedule of Performance, the Port Director will: (1) approve such changes if she reasonably finds that the modified Phase meets the criteria set forth in **clause (i)** of **Subsection 3.3(b)** (Developer Request); or (2) submit such changes to the Port Commission for approval under **clause (ii)** of **Subsection 3.3(b)** (Developer Request).

(ii) Port Commission Review. For matters referred to the Port Commission pursuant to **clause (i)** of this Subsection, the Port Commission will consider whether to approve a Phase Submittal, with or without Port staff recommendation as applicable, at a public Port Commission hearing only after the Port Director has notified Developer that the Phase Submittal is complete and submitted the Phase Submittal to the Port Commission in accordance with this **Subsection 3.2(e)** (Phase Submittal Approval).

(iii) Standard of Approval. Each Phase Submittal will be approved if and to the extent that, in the reasonable judgment of the Port Director or Port Commission, as applicable, the Phase Submittal conforms to and is consistent with the applicable Project Requirements and Regulatory Requirements. The Port Director or the Port Commission, as applicable, will not (i) disapprove any Phase Submittal on the basis of any element that conforms to and is consistent with the DDA and the other applicable Project Requirements and Regulatory Requirements, which include the Development Agreement; or (ii) impose conditions that conflict with the DDA and other applicable Project Requirements or Regulatory Requirements.

(iv) Port Capital/Public Financing Matters. The Parties acknowledge that the Port retains the right to invest Port Capital and to select the timing of the issuance of Tax Increment Bonds and Mello-Roos Bonds (including Early Mello-Roos Bonds). From time to time during the DDA Term, the Port may notify Developer of its anticipated timing for contribution of Port Capital and issuance of Tax Increment Bonds and Mello-Roos Bonds (including Early Mello-Roos Bonds). Upon such notice, Developer will reflect such updated information in all Later Phase Submittals and Developer Quarterly Reports as required under the Financing Plan.

(f) Disapproval of Phase Submittal. If the Port Director disapproves a Phase Submittal, the Port Director will immediately notify the Developer of her decision in accordance with this **Subsection 3.2(f)** (Disapproval of Phase Submittal). If the Port Commission disapproves a Phase Submittal, then the Port Commission will, at the public hearing during which the Phase Submittal is being considered, state the basis for the disapproval, which basis will be summarized in writing by the Port Director or her designee after the hearing and delivered to Developer within 10 days of the hearing date. Following any disapproval of a Phase Submittal, Developer will have 90 days following receipt by Developer of such summary (subject to such extensions as may be approved by the Port Director) to make changes to and resubmit the Phase Submittal. Promptly following the Port Director's receipt of a revised complete Phase Submittal, the Port Director will review and consider, or submit to the Port Commission for its review and consideration, such revised complete Phase Submittal in accordance with the procedures set forth in **Subsection 3.2(c)** (Phase Submittal Approval), except that in the case of a resubmittal, the time for the Port's response with final comments will be 15 days instead of 30 days. The Schedule of Performance will be automatically extended, if necessary, to allow for the foregoing procedure so long as Developer is making diligent good faith efforts to make changes to the Phase Submittal that are responsive to the matters that the Port Director cited as the basis for disapproval of the Phase Submittal.

(g) Phase Application Approval. The Port's approval of the Phase Submittal will be its final discretionary approval action in relation to Developer's proposed construction of Phase Improvements, except as otherwise provided in the DDA and without prejudice to its rights following a request for changes to the 28-Acre Site Project under **Section 3.4** (Changes to Project after Phase 1), a request for approval of a Transfer under **Article 6** (Transfers), an Event of Default by Developer under **Article 11**

(Defaults), or a Material Breach by Developer under **Article 12** (Material Breaches and Termination).

(h) Periodic Updates of Phase Budget. From time to time during a Phase, Developer may submit updates to the Phase Budget to reflect its most current cost estimates for Horizontal Improvements, based on approved Schematic Design for Public Spaces in accordance with **Section 13.6** (Schematic Design Review of Park Parcels) and approved Improvement Plans of Phase Improvements in accordance with **Article 13** (Improvement Plans).

(i) Amendments to Phase Approvals. Developer may apply to the Port for an amendment to a Phase Approval in accordance with the standards and procedures for a Phase Submittal. All proposed amendments will be subject to review, consideration, and approval by the Port Director or the Port Commission in the manner and under the approval standards established for Phase Submittals, as set forth in **Section 3.2(e)** (Phase Submittal Approval), provided that the following proposed amendments will, without limitation, require the approval of the Port Commission in its sole discretion: (i) material amendments to the Infrastructure Plan and Streetscape Master Plan; (ii) extensions of the Schedule of Performance for the issuance of an SOP Determination for the applicable Phase Improvements; (iii) amendments to the Design Development; (iv) material amendments to the timing or substance of the Public Benefits within the Phase; or (v) material amendments to the Phasing Plan. purposes hereof, a reduction in the number of Development Parcels in a Phase will deemed a material amendment to the Phasing Plan; provided, however, that if a Approval includes a subdivision of the Development Parcels shown on the Land Use (*e.g.*, Parcels B, F/G, and H in Phase 2 and Phase 3) into one or more sub-parcels, subsequent change to the Phase Approval that merges the sub-parcels into the Development Parcel will not be considered a reduction in the number of Parcels or a material amendment to the Phasing Plan. Extensions of time to Developer is entitled under the DDA will not be considered an amendment subject to provisions of this

(j) Phase Construction. Within 30 days after satisfaction of all conditions to construction set forth in **Section 15.4** (Conditions to Construction) other than issuance of Construction Permits, the Chief Harbor Engineer will issue Construction Permits necessary for Developer to begin to construct approved Phase Improvements and Associated Public Benefits. Developer is required to begin and complete the Phase Improvements and Associated Public Benefits in accordance with the Schedule of Performance (as may be revised in accordance with **Section 3.3** (Changes to Phase) from time to time), subject to events of Force Majeure under **Article 4** (Performance Dates).

(k) Phase Completion. Developer must provide notice to the Port when it has obtained the final SOP Compliance Determination for all Phase Improvements within a given Phase, other than Deferred Infrastructure within that Phase, followed by the Phase Audit as required under *FP § 9.3(a) (Phase Audit).*

3.3. Changes to Phase.

(a) Changed Conditions. The Parties agree that many factors, including general economic conditions, the local housing, office, and retail markets, capital markets, general market acceptability, and local tax burdens will determine the rate at which various residential and commercial uses within the 28-Acre Site Project can be developed and absorbed. In connection with a Phase Submittal, Developer may request changes to the Phasing Plan and related changes to the Schedule of Performance and may request changes to a Phase Approval, all in accordance with the Phase Approval procedures of **Section 3.2** (Phase Approval Procedures).

(b) Developer Request.

(i) In considering whether to approve Developer's requested changes, the Port may consider in its reasonable judgment whether the revised Phasing Plan would be consistent with the Phasing Goals, including the principle of proportionality if the change would delay the production of Phase Improvements and Associated Public Benefits or impair the Parties' ability to meet the Funding Goals. The Port Director will approve such change if she reasonably finds that the modified Phase would:

(1) support a minimum of 400,000 gsf of Vertical Improvements;

(2) deliver Phase Improvements and Associated Public Benefits proportionately with private development within the modified Phase;

(3) allow Phase Improvements to be developed in an orderly manner so that finished portions of the 28-Acre Site Project are generally contiguous and provide consistent access and services to residents and businesses;

(4) remain consistent with the requirements under the Affordable Housing Plan and not reduce the ratio of Inclusionary Units and other BMR Units (which ratio may take into account payment of a fee in-lieu to the extent permitted under the Affordable Housing Plan) to Market-Rate Units or otherwise secures future delivery of Inclusionary Units and other BMR Units in a manner consistent therewith, as reasonably determined by the Port Director; and

(5) make Project Payment Sources available to maximize revenues to the Port and Developer.

(ii) If Developer proposes changes that do not meet the criteria under **clause (i)** of this Subsection, the Port Director will present Developer's request to the Port Commission for consideration.

(c) Port Request. Port staff may request that Developer change the order and composition of any Phase Submittal before it is presented to the Port Director or Port Commission, as applicable, for Phase Approval. In considering whether to approve the Port's requested changes to the Phasing Plan, Developer may consider, among other matters, whether the revised Phasing Plan would be consistent with the Phasing Goals, including the principle of proportionality if the change would delay the production of Associated Public Benefits or impair the Parties' ability to meet the Funding Goals and consider how such changes would affect Horizontal Development Costs and ability to achieve the Developer Return. Any such requested changes will be subject to the approval of Developer in its sole discretion.

3.4. Changes to Project after Phase 1. The Parties acknowledge that 28-Acre Site Project build-out will take place over a number of years and that unforeseen circumstances may affect market conditions. This Section will apply to any request by Developer to change its Developer Construction Obligations under this DDA. Phase 1 is excluded from consideration under this Section except under circumstances described in **Section 9.2** (Damage and Destruction).

(a) Timing and Contents of Notice. If Developer reasonably determines after Phase 1 that further development of the 28-Acre Site Project under this DDA has become

commercially infeasible for reasons other than Developer's financial condition, the following will apply.

(i) Developer may deliver a Requested Change Notice to the Port stating Developer's unwillingness to proceed with any Later Phase unless the Port agrees to specified changes to this DDA to make the 28-Acre Site Project commercially feasible.

(ii) Developer must deliver the Requested Change Notice to the Port before the applicable Outside Date for Developer's Submittal of the Phase Submittal for any Later Phase that would be affected if Developer's request is approved.

(iii) Developer must include in the Requested Change Notice a detailed description of all provisions of this DDA that Developer proposes to change and provide evidence to support Developer's belief that further development is infeasible without the proposed changes.

(iv) The Port will not be required to respond to a Requested Change Notice if: (1) Developer does not deliver it at least 30 days prior to the applicable Outside Date; or (2) when it is delivered, a Material Breach by Developer exists (other than the failure to submit a complete Phase Submittal with reference to the Phase as to which a Requested Change Notice is timely given).

(b) Effect of Requested Change Notice. If Developer delivers a Requested Change Notice complying with **Subsection 3.4(a)** (Timing and Contents of Notice), the performance dates in the Schedule of Performance for all Phases specified in the Requested Change Notice will be tolled for a negotiation period of nine months, subject to any extensions to which Developer and the Port agree, each in its sole discretion.

(c) Amendment of the DDA.

(i) If Port staff and Developer agree within the nine-month negotiation period to changes to the DDA, including the Schedule of Performance and the Financing Plan, the Port will prepare an amendment for Port Commission consideration, following, if required, additional environmental analysis and review.

(ii) The City, through Board Resolution No. 401-17 approving this DDA, has delegated to the Port the authority to make certain modifications to this DDA. If the change would be a Material Modification in the Port Director's reasonable judgment, the Port will also present the amendment to the Board of Supervisors for consideration in accordance with its Charter authority if the Port Commission approves the amendment. Any decision by the Port Commission or the Board of Supervisors to approve or disapprove a proposed amendment will be made in its respective sole discretion.

(iii) The Port Director and the Director of Public Works are authorized to approve amendments to the Infrastructure Plan and Streetscape Master Plan (which may also require approval by the SFMTA Director), unless either, as applicable, reasonably determines that a proposed amendment is a Material Modification that would significantly increase an Acquiring Agency's costs of ownership or impair the operation of the affected Horizontal Improvements.

(d) Changes to Implementation Documents. If Port staff and Developer agree within the nine-month negotiation period to changes to implementing documents, the changes will be presented to the City Agencies that approved them prior to the Reference Date. City Agencies will have the right to reject any requested change that would not

comply with Regulatory Requirements, but will make other determinations in their reasonable discretion in light of the circumstances, including the impact on Project Requirements. Examples of implementing documents are the Infrastructure Plan and the Workforce Development Plan.

(e) Failure to Agree or Approve. If after the expiration of the nine-month tolling period in **Subsection 3.4(d)** (Changes to Implementation Documents) (subject to extension by agreement) and subject to **Article 4** (Performance Dates) any of the following conditions exist, then the Port retains all available remedies hereunder, including, without limitation, remedies under **Section 11.4** (Remedies for Events of Default) and **Section 12.4** (Termination as Port Remedy) for a Material Breach.

(i) Developer's proposed amendments to the Infrastructure Plan are rejected by the applicable Acquiring Agency.

(ii) Port staff and Developer are unable to agree on the changes to be submitted to the Port Commission and, if applicable, Board of Supervisors, for approval within the negotiation period under **Subsection 3.4(b)** (Effect of Requested Change Notice).

(iii) The Port Commission or the Board of Supervisors disapproves a proposed amendment to the DDA.

3.5. Streetscape Master Plan. Developer will submit and the Port will approve the Streetscape Master Plan in accordance with this Section. The Port must approve the Streetscape Master Plan in accordance with this Section before the Chief Harbor Engineer or Director of Public Works may approve any Improvement Plans that include street improvements.

(a) Streetscape Master Plan Application. The Streetscape Master Plan is applicable to the property that is within the boundaries of the SUD and will address street trees, landscaping, lighting, street furnishings, sidewalk treatment, stormwater treatment, and utilities. Prior to the Reference Date, Developer submitted drafts of its proposed Streetscape Master Plan and has revised it based upon comments received from applicable City Agencies. The Port acknowledges that the Streetscape Master Plan application submitted by Developer under this Section will be deemed a complete application to the extent that it is consistent with the previously submitted drafts reviewed and approved by applicable City Agencies.

(b) Submittal for Review. Developer will submit its final Streetscape Master Plan application to the Port within 90 days after the Reference Date (the "**Streetscape Submittal Date**"). Port staff will submit the Streetscape Master Plan application to applicable Other City Agencies. Each City Agency will review the Streetscape Master Plan for consistency with the Project Approvals, including the SUD, Design for Development and Infrastructure Plan. Consistent with the Port's responsibilities under the ICA, the Port will use commercially reasonable efforts to cause each applicable Other City Agency to complete its review of the Streetscape Master Plan application within 30 days.

(c) Port Review. Port staff will complete its review and consideration of the Streetscape Master Plan within 60 days after the Streetscape Submittal Date. Port staff may propose changes to the Streetscape Master Plan that do not conflict with the Project Approvals, including the SUD, Design for Development and Infrastructure Plan. If the Port staff proposes any such changes, then the Port and Developer will promptly meet and confer in good faith for a period of not more than 10 days, as such period may be extended by agreement of Port staff and Developer, to reach an agreement on any such changes proposed by the Port, provided such meet and confer period shall run

concurrently with, and shall not extend, the 60-day period specified above unless agreed to by Developer and Port staff.

(d) Port Approval. No later than the expiration of the 60-day period specified above (as such 60-day period may be extended by agreement of Port staff and Developer), the Port Director will act on the approval of the Streetscape Master Plan. If the Port Director disapproves the Streetscape Master Plan application, she will provide a reasonably detailed explanation of the reasons for disapproval. Thereafter, Developer will resubmit its Streetscape Master Plan application and the procedures of **Subsection 3.5(b)** (Submittal for Review) and **Subsection 3.5(c)** (Port Review) will apply until approved.

(e) Changes to the Streetscape Master Plan. After it has been approved, changes to the Streetscape Master Plan will be subject to the review and approval processes in this Section.

4. PERFORMANCE DATES

4.1. Performance Generally. All time periods under this DDA are subject to *App ¶ A.2.2 (Performance Generally)* unless unequivocally stated otherwise. In addition to any other specific provisions of this DDA excusing or delaying the date by which an obligation must be performed, a Party will not be in default of any specific DDA provision, and performance dates may be extended under procedures in this Article, for the duration of each event of Excusable Delay that applies to the specific DDA provision. If a Party's performance is excused or the time for its performance is extended under this Article, any performance of the other Party that is conditioned on the excused or extended performance will be excused or extended to the same extent.

4.2. Excusable Delay Generally.

(a) Notice. Except for Environmental Delay and Down Market Delay, the Party claiming Excusable Delay must provide notice to the other Party promptly, and in no case more than 30 days after learning of the event causing delay. The notice must specify: (i) the date on which the event causing the claimed Excusable Delay occurred or the date on which the Party claiming Excusable Delay discovered the event; (ii) the expected period of delay; and (iii) whether the Party claims Excusable Delay for a specific event or Phase or the 28-Acre Site Project as a whole. The Party receiving the notice may challenge the existence or length of Excusable Delay claimed in the notice, and if the Parties are unable to agree on the length of Excusable Delay, the issue will be resolved by procedures in **Article 10** (Resolution of Certain Disputes).

(b) Limits on Excusable Delay. Each extension for Excusable Delay will cause future performance dates for Time-Sensitive Matters specified in the notice to be extended, subject to the following limitations:

(i) If the delay interrupts Developer's ability to start or finish any Developer Construction Obligations, Developer must take appropriate measures to secure and leave the affected property in good and safe condition until construction can start again.

(ii) Once Developer has Commenced Construction of Developer Construction Obligations, Excusable Delay will extend the Outside Dates for obtaining the SOP Compliance Determination for Developer Construction Obligations only if the delay affects related horizontal development, for example, a strike that interrupts work, inability to obtain materials that have been ordered timely, or an injunction is issued to stop work.

(iii) Excusable Delay will not affect Developer's obligations to: (1) pay taxes or assessments, if applicable; (2) maintain in effect Adequate Security; or (3) pay the Developer Reimbursement Obligations except to the extent payment due dates are tied to completion of Developer Construction Obligations delayed by Excusable Delay.

4.3. Excusable Delay Time Periods Generally. All of the following are subject to **Section 4.4** (Limits on Excusable Delay Period).

(a) Environmental Delay for Certain Matters. Environmental Delay will begin on the date when the Party seeking delay receives notice of the event causing the delay and end in accordance with the following.

(i) When the Port or the City is required to conduct additional environmental review or prepare additional environmental documents after the Planning Commission has certified the Final EIR and City staff has filed a notice of determination, the Environmental Delay will end on the date that the City files a subsequent Notice of Exemption or Notice of Determination, or if none is filed, the effective date of the underlying approval by the Port or City that relies on the additional environmental review.

(ii) When 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, the Environmental Delay will end on the date that is 90 days after the final judgment or other resolution of the action or issue.

(b) Down Market Delay. Down Market Delay will begin on the date of the Down Market Notice resulting in a Down Market Test establishing that a Down Market exists and end when a later Down Market Test indicates that a Down Market has ended.

(c) Other Excusable Delays. Other Excusable Delays will begin on the first day of the event causing delay or the date on which the Party claiming delay reasonably discovered the event and, subject to **Section 4.4** (Limits on Excusable Delay Period), end on the date that the event causing Excusable Delay has ended. Developer will provide the Port with written notice of the end date for an event causing Excusable Delay; provided, however, that if the Port reasonably determines that an event of Excusable Delay has ended before Developer submits its notice, the Port will provide written notice to Developer with an explanation supporting the Port's determination. If Developer disputes the Port's determination as to the start or end of the event of Excusable Delay, the matter will be submitted to binding arbitration in accordance with **Section 10.4** (Binding Arbitration).

4.4. Limits on Excusable Delay Period.

(a) Meet and Confer.

(i) The Parties agree to meet and confer in a good faith attempt to reach mutually acceptable measures that will allow the 28-Acre Site Project to proceed if an event of Force Majeure causes an Excusable Delay longer than one year. The obligation to meet and confer will arise when the Parties reasonably foresee or know that the delay will exceed one year.

(ii) Measures agreed to at the staff level during the meet and confer process may be subject to Port Commission and Board of Supervisors approval if the Port Director in her reasonable judgment determines that the changes would require a Material Modification to any of the Transaction Documents. But the

Parties' failure to reach agreement under this Subsection will not result in adverse consequences to either Party, except for those caused by Force Majeure.

(b) Maximum Delay. For each occurrence of Excusable Delay, if: (i) Force Majeure other than Administrative Delay, Environmental Delay or Force Majeure triggered by litigation, earthquake or flood causes an Excusable Delay longer than 48 months; or (ii) a Down Market Delay causes an Excusable Delay longer than 60 months, then no later than 30 days after the expiration of the 48- or 60-month period, as applicable, Developer must provide the Port with a notice in writing of its election to (i) waive the Excusable Delay, (ii) deliver a Requested Change Notice with measures intended to allow the 28-Acre Site Project to proceed despite Force Majeure, or (iii) submit a revised Phase Submittal changing the proposed land use mix, reclassifying Development Parcels within the Phase, or adjusting delivery of Phase Improvements or Associated Public Benefits, subject to limitations imposed by the Project Approvals. Limitations include consistency with the project description for environmental review and consistency with the SUD. If the revised land uses or delivery of Phase Improvements and Associated Public Benefits are consistent with the Project Approvals, the period of Excusable Delay will be extended to include the time for Port approval of the revised Phase Application under **Section 3.3** (Changes to Phase).

4.5. Down Market Delay Procedures.

(a) Timing. Developer may request a Down Market Test in writing to the Port (each, a "**Down Market Notice**") at any time to determine whether a Down Market exists as to the applicable Phase. A Down Market Test will be used to determine whether Developer's Time-Sensitive Matters for the Phase will be tolled or otherwise adjusted under this Section. A Down Market may also be established if the appraisal process conducted in accordance with **Article 7** (Parcel Conveyances and Delivery of Associated Public Benefits) shows that a Down Market condition exists for the applicable parcel. Developer may elect to perform the Down Market Test for any Residential Parcel (each, a "**Residential Test Parcel**"), any Commercial Parcel that is not also a Flex Parcel (each, a "**Commercial Test Parcel**"), or both. If Developer elects to perform the Down Market Test on a Residential Test Parcel, it may designate the proposed use as residential rental product, residential condominium product, or both.

(b) Land Value Indicators.

(i) Base land values that will serve as Land Value Indicators for Option Parcels in each Phase will be derived from the residual land values shown in the Proforma in the Port files on the Reference Date. The Parties will diligently meet and confer to reasonably agree upon the Land Value Indicators based on the Proforma within 90 days after the Reference Date. Upon mutual agreement thereof, as evidenced by a writing signed by both Parties, the Land Value Indicators set forth by Option Parcel number will be appended to this DDA as **DDA Exhibit D6**. Flex Parcels will include Land Value Indicators for both commercial-office and residential use. Final agreement on the Land Value Indicators exhibit will be a pre-requisite to the effectiveness of the first Appraisal Notice.

(ii) Land Value Indicators will be adjusted annually, subject to a floor of no change and a maximum annual increase of 4.5%. Subject to the 4.5% maximum annual increase, the annual adjustment will be the percentage of change between the CPI for commercial Option Parcels and the CPI (Residential) for residential parcels, as the applicable index is first published in any full month after the Reference Date and the CPI published on each subsequent anniversary of the first date.

(iii) *Example*: Assume the Reference Date was December 8, 2014. The first full month after the Reference Date in which CPI is published would be February 2015. The CPI in February 2015 was 254.910, and the CPI in February 2016 was 262.600. The annual adjustment would be 1.030%.

(c) Down Market Test. The Down Market Test will consist of appraisals of the Residential Test Parcels or Commercial Test Parcels, as applicable, conducted by procedures described in **Section 7.3** (Option Parcel Appraisals). The Parties agree that a Down Market Test will establish whether a Down Market exists for one or both of the land uses tested as follows:

(i) A Down Market for residential use will be established if the Fair Market Value of any Residential Test Parcel (whether determined by a Down Market Test under this Section or through the appraisal procedures of **Section 7.3** (Option Parcel Appraisals)) is less than 85% of the Land Value Indicator, as escalated to the Down Market Test Date (the "**Down Market Threshold**"). If the Fair Market Value established through this appraisal process is less than the Down Market Threshold for either rental or condominium use, the Down Market for residential use will be established.

(ii) A Down Market for commercial-office use will be established if both: (i) the Fair Market Value of any Commercial Test Parcel (whether determined by a Down Market Test under this Section or through the appraisal procedures of **Section 7.3** (Option Parcel Appraisals)) is less than the Down Market Threshold; and (ii) commercial-office uses will occupy 30% or more of the total gsf of market-rate residential and commercial use approved under the applicable Phase Approval (excluding commercial-office use on Flex Parcels, and affordable housing, retail, restaurant, and arts/light-industrial uses) (the "**30% Commercial Trigger**").

(iii) If a Down Market Test (or the appraisal procedures of **Section 7.3** (Option Parcel Appraisals)) establishes a Down Market for one or both of the land uses tested, a Down Market will exist as to the entire Phase and the provisions of **Subsection 4.5(e)** (Effect of Down Market Delay) and **Subsection 4.5(f)** (End of Down Market) will take effect.

(iv) If the Down Market Test (or an appraisal conducted in accordance with **Section 7.3** (Option Parcel Appraisals)) meets or exceeds the Down Market Threshold, no Down Market Delay will apply and the applicable Schedule of Performance and any other Time-Sensitive Matters will not be extended to account for the delays caused by the Down Market Test.

(d) Cost of Down Market Test. If the Down Market Test fails to establish a Down Market for any of the land uses tested, then the appraisal costs of the Down Market Test will be at Developer's sole cost and will be excluded from Soft Costs. If the Down Market Test establishes a Down Market for any of the land uses tested, then the appraisal costs will be included in Soft Costs.

(e) Effect of Down Market Delay.

(i) During any period of Down Market Delay:

(1) the times for Developer's performance of Time-Sensitive Matters will be extended for the period beginning on the date of the Down Market Notice until such time as a new Down Market Test indicates that the Down Market no longer exists;

(2) the Port may, in its sole discretion, elect to halt processing any pending Phase Submittal applications from Developer for the applicable Phase; and

(3) upon Port request, the Parties will meet and confer to decide whether any of the Port's Time-Sensitive Matters will be tolled, other than the processing of any pending Phase Submittal which may be tolled as provided in **Subsection 4.5(e)(i)(2)** or the matters which will not be tolled as provided in **Subsection 4.5(e)(ii)**;

(ii) During any period of Down Market Delay, the following matters will not be subject to the meet and confer procedures of **Subsection 4.5(e)(i)(3)** above:

(1) **Financing Plan**: All Port obligations under the Financing Plan.

(2) **Previously Approved Phases**: Any Port Time-Sensitive Matters for any approved Phase where a Down Market Delay has not occurred.

(3) **Option Parcels under an Executed Vertical DDA:** Any Port Time-Sensitive Matters under the DDA or any Vertical DDA applicable to an Option Parcel that is the subject of an executed Vertical DDA or has been conveyed by Parcel Lease or Quitclaim Deed.

(4) **Public Trust Exchange**: Port's obligation to implement the Public Trust Exchange under **Section 1.2** (Public Trust Exchange).

(5) **Streetscape Master Plan**: Port's obligation to review and approve the Streetscape Master Plan under **Section 3.5** (Streetscape Master Plan).

(6) **Parcel K North**: Port's obligations to offer and sell Parcel K North under **Section 7.9** (20th/Illinois Parcel).

(7) **Allocation of Port Community Facilities Funds**: Subject to Developer timely meeting its obligations, the Port's obligations for allocation of Port community facilities funds under **Section 7.12(c)** (Allocation of Port Community Facilities Funds).

(8) **Noonan Replacement Space**: Port's obligations with respect to the Noonan Replacement Space (including approval of the Artist Transition Plan and providing the required transition notices) under **Section 7.13** (Noonan Replacement Space).

(9) **Master Lease**: Port's obligations under **Article 8** (Delivery of Master Lease) with respect to the title and delivery of the Master Lease, conveyance of the Premises thereunder and execution of any Partial Release of Master Lease.

(10) **Resolution of Certain Disputes**: Any of Port's Time-Sensitive Matters related to the resolution of disputes set forth in **Article 10** (Resolution of Certain Disputes).

(11) **Port Events of Default**: The time for the Port to cure any potential breach after notice under **Section 11.3** (Events of Default by the Port) or **Section 12.3** (Material Breaches by the Port).

(12) Schematic Design Review of Public Spaces: The time for Port to review and approve a Schematic Design Application for any Park Parcel submitted by Developer under **Section 13.6** (Schematic Design Review of Park Parcels).

(13) Signage: The time for Port to review and approve any request for approval of a Signage Plan application submitted by Developer under **Section 13.7** (Signage).

(14) Mitigation Measures: Port's obligation to comply with the MMRP, as applicable, under **Section 14.8** (Mitigation Measures).

(15) Review of Improvement Plans under the ICA: Port's obligations under the ICA to review and process Improvement Plans submitted in accordance with the ICA, under **Section 13.3(b)** (Port Review Procedures).

(16) SOP Compliance: Port's obligations with respect to any SOP Compliance Request and SOP Compliance Determination under **Section 15.7** (SOP Compliance).

(17) Acceptance of Park Parcels and Phase Improvements: Port obligations with respect to acceptance of any Park Parcel or other Phase Improvement that the Port will accept under **Section 15.8** (Acceptance of Park Parcels and Phase Improvements).

(18) Adequate Security: Port's obligations with respect to the approval or release of any Adequate Security under **Article 17** (Security for Project Activities).

(19) Lenders' Rights: Any Port obligation with respect to Lenders' Rights or the delivery of Estoppel Certificates, set forth in **Article 18** (Lenders' Rights).

(20) Time for Payment: Port's satisfaction of a payment demand under **Section 19.2(b)** (Time for Payment).

(iii) With respect to an Option that Developer has exercised but where Escrow has not Closed by the start of the Down Market Delay, Developer may rescind its exercise of the Option. Rescission under this Subsection will not prejudice Developer's right to exercise the Option after the Down Market Delay ends.

(f) End of Down Market.

(i) Either Party may request another Down Market Test to determine whether the Down Market has ended at any time after the first anniversary of the Down Market Test Date. Each new Down Market Test will result in a new Down Market Test Date.

(ii) If neither Party has requested a new Down Market Test by the end of the 18th month after the Down Market Test Date, the Port will initiate a new Down Market Test to determine whether the Down Market has ended.

(g) Down Market Delay in Certain Circumstances.

(i) Down Market Without 30% Commercial Trigger. This Subsection applies if all of the following circumstances are present: (i) no Down Market for any Residential Parcel within the Phase exists; (ii) a Down Market Test establishes a value for a Commercial Test Parcel at or below the Down Market

Threshold; (iii) commercial-office uses within the applicable Phase do not meet the 30% Commercial Trigger; and (iv) in Phase 2, Developer has designated both Parcel F and Parcel G for commercial-office use in its Phase Approval, or in Phase 3, Developer has designated one or more of the Flex Parcels for commercial-office use in its Phase Approval. Under those circumstances, Developer will provide Port with written notice, to be provided within 15 days after the applicable Down Market Test for the Commercial Test Parcel, of its election to either proceed with the 28-Acre Site Project in accordance with the Schedule of Performance or to undertake a redesign effort for the Flex Parcels to increase residential use. If Developer elects to redesign the Flex Parcels for residential use in accordance with **clause (ii)** of this Subsection, then Down Market Delay will apply during the six-month period described therein for completion of the joint feasibility and proforma analysis. If Developer fails to provide its notice within such 15-day period, it will be deemed to have elected to proceed with the 28-Acre Site Project without delay.

(ii) Residential Redesign Procedures. If Developer elects to proceed with the residential redesign analysis, Developer and the Port will conduct a six-month joint feasibility and proforma analysis of the potential effects of increasing the residential uses in the Phase using agreed-upon assumptions, formulas, and variables. The factors that the Parties must examine in the analysis are additional Horizontal Development Costs of Phase Improvements that Developer would need to incur, the amount of Public Financing Sources that would be available for the Phase, the estimated Fair Market Values of the Option Parcels in the Phase, the effect on Phase Improvements and Associated Public Benefits (and in particular, the ability to fund delivery of the targeted amounts of affordable housing in Later Phases), possible changes to the Phasing Plan, and the amount by which the Developer Balance would increase if the Down Market Delay continued for the maximum period of Excusable Delay under this Article. The costs of this analysis will be Soft Costs. The Parties will meet and confer in an attempt to reach a joint decision on the feasibility and desirability of increasing residential use within the Phase, provided, however, that Developer may decide to change commercial-office use to residential use on any Flex Parcel in its sole discretion after completing joint feasibility and proforma analysis.

(iii) Change to Residential.

(1) If within the six-month evaluation period, Developer provides the Port with written notice of Developer's election not to change the land use on any Flex Parcel from commercial to residential or fails to make an election, then at the end of such six-month period (or the date of Developer's decision, whichever is earlier), Down Market Delay will cease as to that Phase.

(2) Alternatively, within the six-month evaluation period, if Developer provides the Port with written notice of Developer's election to change the applicable Flex Parcel from commercial-office to residential, then Down Market Delay will cease as applied to the Phase as of the date of such election, except as provided in **paragraph (3)** of this clause.

(3) In Phase 2, if Developer elects to change the land use of either Parcel F or Parcel G (but not both) to residential use and a Down Market Test performed on the remaining Commercial Parcel results in a Fair Market Value that is less than the Down Market Threshold, then Developer may invoke a Down Market Delay for the Phase.

5. PARTY RELATIONSHIPS

5.1. No Agency. The Port is not, and none of the provisions in this DDA will be deemed to make the Port, a partner in Developer's or any Vertical Developer's business, or a joint venturer or member in any joint enterprise with Developer or any Vertical Developer. No Party has the right to act as the agent of any other Party in reference to this DDA.

5.2. ICA. The Port agrees to perform its obligations under the ICA, and to use commercially reasonable efforts to cause Other City Agencies to perform their respective obligations under the ICA.

5.3. Port Approvals. The Parties agree that the approval standards and procedures below will apply to implementation of this DDA except as otherwise specified.

(a) Regulatory Capacity. This DDA does not constrain the Port's exercise of regulatory authority.

(b) Proprietary Capacity. The Port, when acting in its proprietary capacity as landowner and landlord, will make determinations in its reasonable judgment except as otherwise specified, including its review and approval of Schematic Design Applications under **Section 13.6** (Schematic Design Review of Park Parcels). All Improvements will be subject to the Port's review in accordance with applicable procedures and standards in this DDA, the SUD, and the ICA.

(c) Port Commission Meetings. Except as otherwise provided in this DDA, whenever the Port Commission must approve or otherwise consider any matter in reference to the 28-Acre Site Project, the Port Director will submit the matter to the Port Commission at the next regularly-scheduled meeting of the Port Commission for which an agenda has not been finalized and for which Port staff can prepare and submit a staff report in keeping with the Port Commission's customary meeting practices and obligations under public meeting laws. The Port Commission will approve or disapprove discretionary matters in accordance with its powers and duties under the Burton Act and the Charter and as otherwise specified in this DDA.

(d) Authority for Port Approvals.

(i) The Port Director, or her designee, is authorized to sign on behalf of the Port any documents, including any contracts, agreements, memoranda, or similar documents with state, regional, or local authorities or other persons, or enter into any tolling agreement with any person, to the extent of the authority granted under the Port Commission and Board of Supervisors resolutions approving this DDA. The Port Director's authority is limited to matters that are in the best interests of the Port and the City, and otherwise do not materially increase the obligations or liabilities of the Port or the City or materially decrease the public benefits to the Port or the City, and are necessary or advisable to complete the transactions described in this DDA and to effectuate the purpose and intent of the authorizing resolutions if the Port Director determines, after consultation with the City Attorney, that the document is necessary or proper and in the Port's and the City's best interests. The Port Director's signature on any document will be conclusive evidence of her determination.

(ii) The Port Commission, through the Chief Harbor Engineer, administers and enforces the Port Building Code, the Port Harbor Code, and other Port regulations to protect the public health, safety, and general welfare. The Chief Harbor Engineer, or his designee, and in conjunction with Other City Agencies, will oversee project and construction management, engineering design, facility inspection, contracting, code compliance review and permitting services for all of the Port's facilities and for plan review, permitting and inspection

services to ensure safe and compatible construction on Port property. The Chief Harbor Engineer will issue all Construction Permits for construction on Port land and sign certificates regarding their completion except as provided in the ICA, and will issue "red tags" and other regulatory notices that would prohibit or condition use of Port property to protect public safety.

5.4. Developer Approvals.

(a) Regulatory Approval. Each of the persons executing this DDA on behalf of Developer represents to the Port, and the Port is entitled to rely on those representations, that: (i) Developer is a duly authorized and existing entity under Delaware law; (ii) Developer is qualified to do business in California; (iii) Developer has full right and authority to enter into this DDA and other Transaction Documents; and (iv) each of the persons executing the Transaction Documents on its behalf is authorized to do so. Developer agrees to provide the Port with satisfactory evidence confirming these representations promptly after a Port request.

(b) Authorized Developer Representative. Developer must designate from time to time by notice to the Port under *App Art 5 (Notices)* and **Section 20.1** (Notice Addresses) a representative who is authorized to act on Developer's behalf in reference to requests for approvals or other actions. The Port will rely on any notice delivered under this Subsection until superseded by a later notice.

5.5. Standards Otherwise Applicable. Except as expressly provided otherwise, the following standards will apply to the Parties' conduct under this DDA.

(a) Covenant of Good Faith and Fair Dealing. In all situations arising from this DDA, subject to **Article 11** (Defaults), Developer and the Port each must attempt to avoid and minimize the damages resulting from the other's conduct and take all reasonably necessary measures to implement this DDA. This DDA is 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 and assigns, to take all actions and to execute, with acknowledgment or affidavit if required, all documents necessary to achieve the objectives of this DDA to the extent consistent with Applicable Law.

(b) Cooperation and Non-Interference. Developer and the Port acknowledge that the implementation of this DDA and the remedies provided to a Party for the other Party's default or failure to perform an obligation under this DDA are predicated on their cooperation throughout the DDA Term, and agree, subject to **Article 11** (Defaults): (i) to implement this DDA in a manner intended to accomplish its objectives; (ii) to refrain from doing anything that would render performance under this DDA impossible; and (iii) that a Party will be excused from performing under this DDA to the extent prevented by the other Party's actions.

(c) Commercial Reasonableness. Unless specifically provided otherwise in this DDA, whenever a Party is permitted to make a judgment, form an opinion, judge the sufficiency of the other Party's performance, or exercise discretion in taking (or refraining from taking) any action or making any determination, that Party must proceed with due diligence and employ commercially reasonable standards in doing so. In general, the Parties' ministerial acts in implementing this DDA, including construction of Improvements, approvals, disapprovals, demands for performance, requests for additional information, and any exercise of an election or option, must be commercially reasonable. The requirements for approvals under this DDA extend to and bind any Agents of Developer or of the Port that act on behalf of their principals.

(d) Disapproval. A Party that declines to grant approval or grants conditional approval must state its reasons in reasonable detail in writing. This requirement does not apply to the Port Commission, which as a public body will grant or deny approval in open session at a noticed public meeting held under applicable public meeting laws.

(e) Specificity of Approval. A Party's approval to or of any act or request by the other Party will not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. In determining whether to give an approval, no Party is allowed to require changes from or impose conditions inconsistent with applicable Project Requirements and Regulatory Requirements or its prior approvals for the specific matter.

5.6. Limitations on Liability of the Parties.

(a) No Consequential, Punitive, or Special Damages.

(i) Neither Developer nor the Port would have entered into or become a Party to this DDA if it could be liable for indirect or consequential, punitive, or special damages under this DDA. Accordingly, Developer and the Port each waives any Claims against the other Party, and covenants not to sue the other, for indirect or consequential, punitive, or special damages under this DDA, including loss of profit, loss of business opportunity, or damage to goodwill.

(ii) The waivers in this DDA will not affect each Party's right to recover actual damages that arise from a Breaching Party's failure to: (1) pay any sum when due under any Transaction Document between the Parties relating to the 28-Acre Site Project; (2) satisfy any indemnity under this DDA; or (3) pay attorneys' fees when due under an Arbitrator's decision or a court's final judgment.

(b) Project Payment Sources. Except as otherwise provided in this DDA, Developer agrees as follows.

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

(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 to this DDA, in either case to reimburse Developer's Horizontal Development Costs or any other costs associated with the 28-Acre Site Project or to satisfy any Developer Claim of damages for a breach by the Port or the City under any of the Transaction Documents.

(c) No Personal Liability. Unless specifically provided otherwise, the Parties agree that no Agents of the Port or of its 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, for any default or breach of this DDA or for any payment or performance that becomes due under this DDA. 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.

5.7. Defaults and Breaches.

(a) Phase-Specificity. An Event of Default by Developer or any Transferee hereunder in one Phase will not be an Event of Default by Developer or any Transferee in any other Phase. In certain instances as specified in **Article 12** (Material Breaches and Termination), a Material Breach may affect more than one Phase.

(b) Limitations on Cross-Defaults.

(i) Cross-Defaults Between Developer and Vertical Developers. No Event of Default by Developer or a Transferee with respect to the Horizontal Improvements hereunder will be deemed to be an Event of Default by any Vertical Developer (including, without limitation, Vertical Developer Affiliates) under any Vertical DDA, Parcel Lease, or Restrictive Covenant.

(ii) Cross-Defaults Between Vertical Developer Affiliates and Developer. An Event of Default by a Vertical Developer Affiliate with respect to any Development Parcel pursuant to any Vertical DDA, Parcel Lease or Restrictive Covenant will be deemed to be an Event of Default by Developer hereunder but only as to an Event of Default related to the Vertical Developer Affiliate's: (1) failure to pay taxes; (2) failure to complete its Deferred Infrastructure obligations under the Vertical DDA; or (3) any other Transferred obligations that Developer explicitly retains in the pertinent Assignment and Assumption Agreement. Any of the foregoing events of default under a Vertical DDA will only be an Event of Default by Developer if the Port is entitled to terminate the Vertical DDA for such event of default after expiration of relevant notice and cure periods (including cure rights afforded to Permitted Lenders and Developer thereunder) and, in the case of Material Breach under **Subsection 12.2(d)** (Deferred Infrastructure), the Port's exclusive remedies will be governed by **clause (iii)** of **Subsection 12.4(c)** (Termination re: Outside Dates).

(iii) No Cross-Defaults in Other Cases. Except as provided in **clause (ii)** of **Subsection 5.7(b)** (Limitations on Cross-Defaults), no Event of Default by a Vertical Developer (including without limitation, a Vertical Developer Affiliate) with respect to Development Parcels under any Vertical DDA, Parcel Lease, or Restrictive Covenant will be deemed to be an Event of Default by Developer or any Transferee hereunder with respect to its Developer Construction Obligations under this DDA, or by any other Vertical Developer with respect to its obligations under any other Vertical DDA, Parcel Lease, or Restrictive Covenant.

6. TRANSFERS

6.1. Transfer Limitations in Phase 1. Except as to Deferred Infrastructure, subject to **Subsection 15.6** (Deferred Infrastructure) and **Section 6.5** (Releases), Developer is expressly prohibited from Transferring its development rights and obligations for Phase 1 to an Unrelated Transferee under any circumstance without the approval of the Port Commission, in its sole discretion.

6.2. Third-Party Transfers in Other Phases. This Section governs Developer's Transfer of any development rights and obligations for Phase 2 through the Final Phase of the 28-Acre Site Project to Unrelated Transferees. These limitations do not apply to Deferred Infrastructure obligations that the Port has agreed, through a Phase Approval or Vertical DDA, to assign to Vertical Developers.

(a) Before Phase Approval. Before the applicable Phase Approval, Developer may Transfer: (i) all of its rights and obligations as a Party for any Phase other than Phase 1; and (ii) all of its rights and obligations for all Later Phases as master developer under this DDA, to an Unrelated Transferee subject to the Port Commission's approval in either case under **Subsection 6.2(e)** (Port Commission Consideration).

(b) After Phase Approval. After a Phase Approval for any Phase other than Phase 1, Developer may only Transfer the applicable rights and obligations to an Unrelated Transferee as described below if approved by the Port Commission under **Subsection 6.2(e)** (Port Commission Consideration).

(i) If Developer has not begun to build Phase Improvements for the Phase that received the Phase Approval, Developer may Transfer all of its future rights and obligations with respect to the Current Phase. Developer's right of Transfer with a release for the applicable Phase will end when its starts construction.

(ii) If Developer has begun to build Phase Improvements for the Phase that received the Phase Approval, the Assignment and Assumption Agreement required under **Section 6.4** (Assignment and Assumption Agreement) will not release Developer of its obligations hereunder as to the applicable Phase, unless approved by the Port Commission in its sole discretion.

(c) Transferee Qualifications. The Port Commission is not obligated to approve a Transfer if an Unrelated Transferee (by itself or through the person controlling the Unrelated Transferee):

(i) does not satisfy the Experience Requirement;

(ii) does not satisfy the Net Worth Requirement;

(iii) does not commit in the applicable Assignment and Assumption Agreement to submitting any applicable Phase Submittals for the development opportunity being Transferred by the Outside Date specified in the Schedule of Performance or, if the Port Commission will consider the proposed Transfer less than 90 days before the Outside Date for Submittal of the Phase Submittal, within 90 days after the Port Commission's approval of the proposed Transfer; and

(iv) has been suspended, disciplined, debarred, or is otherwise prohibited from contracting with the City or the Port.

(d) Port Conditions. The Port Commission will not unreasonably withhold, delay, or condition its approval to a proposed Transfer to an Unrelated Transferee qualified under **Subsection 6.2(c)** (Transferee Qualifications) if all of the following conditions are satisfied.

(i) Developer is not in Material Breach of this DDA and the Port has not given notice of any potential breach by Developer before the Port Commission considers the requested Transfer.

(ii) Developer is in Material Breach or the Port has given notice of a potential breach, but in either case, the Transferee's cure of the Material Breach or potential breach is a condition of the Transfer in accordance with the timing and conditions reasonably satisfactory to the Port Commission.

(iii) Developer agrees that any consideration of monetary value that it actually receives from the Transferee in connection with the proposed Transfer will be treated as Land Proceeds under the Financing Plan.

(iv) Developer reimburses the Port for its reasonable costs of reviewing the Transferee's qualifications.

(v) The Transferee does not condition the Transfer on changes to the Transaction Documents that would materially increase the costs or other burdens to the Port or the City.

(vi) The proposed Transfer would not result in Developer Construction Obligations for the Phase to be split between more than one person.

(vii) The Transferee provides commitments that satisfy the Adequate Security and Loss Security requirements under **Article 17** (Security for Project Activities) for all obligations that the Transferee assumes, subject to the Port Director's approval, unless Developer confirms, with each applicable Obligor's consent, that the Adequate Security and Loss Security previously provided to the Port for any Transferred Phases will secure the Transferee's assumed obligations.

(viii) The Transferee must agree to satisfy and maintain the Net Worth Requirement at all times until the Transferee has satisfied all of its assumed obligations. Promptly after the Port's request, a person required to maintain a minimum Net Worth under this DDA must provide to the Port reasonable evidence that the person satisfies the Net Worth Requirement, including a copy of the person's most recent audited financial statements, which must not be dated more than 180 days before the date of the Port's request. Audited financial statements must be prepared by an independent CPA and must include the CPA's opinion that the financial statements are fairly stated in all material respects.

(ix) Developer (or any Transferee of all of Developer's obligations as master developer) will be responsible for all Developer Quarterly Reports, Phase Audits, and the Final Audit, including information from the Transferee's horizontal development activities, except to the extent that **clause (ii)** of **Subsection 12.8(b)** (Development Opportunities) applies.

(x) Developer (or any Transferee of all of Developer's obligations as master developer) agrees to be solely responsible for any distribution of Project Payment Sources and the Developer Share of Project Surplus for revenue sharing to its Transferees and to indemnify the Port against any Claims from Transferees regarding reimbursements and revenue-sharing; provided, however, that if Developer Transfers all of its obligations as master developer hereunder, then the applicable Transferee will be responsible for these distributions.

(c) Port Commission Consideration.

(i) Developer and any proposed Unrelated Transferee must provide to the Port reasonably detailed information to demonstrate compliance with **Subsection 6.2(c)** (Transferee Qualifications) and **Subsection 6.2(d)** (Port Conditions), a proposed Assignment and Assumption Agreement in the form attached hereto as **Exhibit D8** (and with such other changes as may be reasonably agreed by Port and Developer), and any additional documents and information that the Port Director reasonably requests. When the Port Director has sufficient information in her reasonable judgment to permit the Port Commission to make its determination, the Port Director will submit the proposed Transfer for Port Commission consideration.

(ii) Developer may request that the Port Commission consider a Transfer to an Unrelated Transferee that does not meet all of the requirements of **Subsection 6.2(c)** (Transferee Qualifications) and conditions of

Subsection 6.2(d) (Port Conditions). The Port Commission may give or withhold its approval to a noncompliant request in its sole discretion.

6.3. Affiliate Transfers. This Section governs Developer's Transfer of horizontal development rights and obligations under this DDA to an Affiliate. This Section does not apply to a Vertical Developer's transfer rights, which will be governed by the applicable Vertical DDA.

(a) Conditions to Transfer. Developer has the right at any time to Transfer any portion of its rights and corresponding obligations under this DDA to an Affiliate of Developer without the Port's approval if all of the following conditions are met.

(i) Developer is not then in Material Breach or, if an event has occurred that with notice and the passage of time would be a Material Breach, Developer has cured the event before the effective date of the Transfer.

(ii) The Transferee or the persons with Control of the Transferee satisfies the Experience Requirement and the Net Worth Requirement.

(b) Reorganization. A Transfer effected by Developer's consolidation or merger into or with any other business organization that meets the requirements of **Subsection 6.3(a)** (Conditions to Transfer) will be considered a permitted Transfer under this Section, even if Developer is not the surviving entity under Applicable Law.

(c) Application. Any Affiliate Transferee under this Section will be a Developer Party under this DDA to which Developer's Loss Security and any Phase Security will apply to the obligations assumed by the Transferee unless it provides replacement Adequate Security approved by the Port Director.

6.4. Assignment and Assumption Agreement.

(a) Form. Each Transfer permitted under this Article that results in a change in the legal entity contracting with the Port in this DDA must be subject to an Assignment and Assumption Agreement in the form attached hereto as **Exhibit D8** (and with such other changes as may be reasonably agreed by Port and Developer). The Port will not approve any Assignment and Assumption Agreement if the Transferee does not satisfy the Adequate Security Requirements under **Article 17** (Security for Project Activities) for all obligations that the Transferee assumes or if Developer is in Material Breach or has not cured a potential breach after notice from the Port.

6.5. Releases.

(a) Unrelated Transferee. Upon the consummation of any Transfer, including receipt of the Assignment and Assumption Agreement executed by the Unrelated Transferee and Developer, the Port will provide to Developer a written release from any obligations arising under this DDA from and after the date of Transfer to the extent that such obligations are permitted to be released under this DDA and are expressly Transferred to and assumed by the Transferee under the approved Assignment and Assumption Agreement (subject to the terms of approval by the Port). The form of release may be in the approved Assignment and Assumption Agreement, or prepared as a separate document. Developer will not be released as to any obligations of Developer that arose before the date of the Transfer except to the extent that the same are expressly assumed by the Transferee in the Assignment and Assumption Agreement (subject to the terms of approval by the Port). The release will be provided within 30 days after the Port receives confirmation of the effective date of the Transfer, in a form prepared by the Port, consistent with this Section.

(b) Unrelated Vertical Developers. The Port will release Developer from any Deferred Infrastructure that is an obligation of an Unrelated Vertical Developer under its

Vertical DDA only after the Unrelated Vertical Developer has provided Adequate Security meeting the requirements of **Section 17.3** (Phase Security) to secure the completion in accordance with all applicable Project Requirements and Regulatory Requirements of the applicable Deferred Infrastructure under the Vertical DDA, or at such earlier time as is requested by Developer so long as the Port determines, in its sole discretion, that the Unrelated Vertical Developer's obligation to construct the Deferred Infrastructure in accordance with the Schedule of Performance is adequately assured.

6.6. Notice of Transfer. Developer must provide notice to the Port when any Transfer is complete, in addition to providing a copy of the fully executed Assignment and Assumption Agreement and any additional information and materials that the Port Director reasonably requests.

(a) With the Port Approval. For any Transfer described in **Section 6.1** (Transfer Limitations) or **Section 6.2** (Third-Party Transfers in Other Phases), Developer must provide notice to the Port within 10 business days after the effective date of an approved Transfer.

(b) Without Port Approval. For any Transfer described in **Section 6.3** (Affiliate Transfers), Developer must provide notice to the Port at least 30 days before the effective date of the Transfer or any shorter period the Port Director approves in her sole discretion. Developer's notice must include the identity, business and notice addresses, contact person, and contact information for the proposed Transferee and include evidence of the type described in **clause (vi)** (Financial Capacity) of **Subsection 3.2(b)** (Phase Submittal). Developer must also provide notice to the Port within 10 business days after the Transfer confirming its effective date. This provision will not create any obligation on or duty of a Permitted Lender other than as set forth in **Article 18** (Lenders' Rights).

(c) Effect of Transfers.

(i) Any attempted Transfer that does not meet all applicable requirements of this Article will be void as to the Port, and the Port will continue to have all rights against Developer under this DDA and at law as if the prohibited Transfer had not occurred.

(ii) As of the effective dates of Transfers conforming to applicable requirements of this Article, all references to Developer in provisions of this DDA relating to the assigned and assumed obligations will include each permitted Transferee.

(iii) After the effective date of a Transfer of which the Port has notice, the Port will deliver to Developer copies of any notice delivered to an Unrelated Transferee of the Port's intent to terminate the Transferee's rights under this DDA due to a Material Breach by the Transferee.

(d) Post-Transfer Defaults. The effects of a Transferee's defaults are described in **Section 5.7** (Defaults and Breaches).

6.7. Related Matters.

(a) Certain Recordkeeping. Developer and its Transferees will be treated as one person for purposes of Developer Quarterly Reports, Phase Audits and the Final Audit required under *FP Art 9 (Reporting)*. Developer agrees to require each Transferee to create and maintain reports, records, and information in a fashion that will allow Developer to meet its reporting obligations under this DDA. Developer will be responsible for gathering and compiling all Transferee information for inclusion in integrated Developer Quarterly Reports, Phase Audits, and the Final Audit in compliance

with this DDA. The Port's audit and inspection rights as to Developer will apply to all Transferees that assume horizontal development obligations.

(b) Exclusions. Nothing in this Article prohibits or otherwise restricts Developer from any of the following:

(i) granting easements, leases, subleases, licenses, or permits to facilitate the development, operation, and use of any part of the 28-Acre Site that Developer holds in fee or by leasehold;

(ii) granting or creating a Permitted Lien permitted under **Article 18** (Lenders' Rights);

(iii) conveying its interest in any portion of the 28-Acre Site in connection with a Lender Acquisition; or

(iv) making a Transfer to the Port, the City, or any other Regulatory Agency as authorized by this DDA or other Transaction Document.

7. PARCEL CONVEYANCES AND DELIVERY OF ASSOCIATED PUBLIC BENEFITS

This Article addresses the procedures for conveyances of Option Parcels to Vertical Developer Affiliates or third-party Vertical Developers, conveyances by the Port or the City of Parcel C1A, the 20th/Illinois Parcel, and the Hoedown Yard, and the Developer's obligations to ensure delivery of Associated Public Benefits.

7.1. Developer Option.

(a) Option Parcels. By procedures in this Article, the Port will ground lease or sell each Option Parcel to a Vertical Developer pursuant to a Vertical DDA. Developer, on behalf of itself or its Vertical Developer Affiliates, will have the right to exercise the Option for Option Parcels by delivering notice to the Port in the manner set forth in **Section 7.4(a)** (Option Exercise Deadline).

(b) Exclusions. Developer's Option applies to all Development Parcels except the following parcels:

(i) the Affordable Housing Parcels (anticipated to be Parcel C1B, Parcel C2A, and Parcel K South);

(ii) the parcel previously designated for potential parking facilities (Parcel C1A);

(iii) Parcel E4, on which the Arts Building will be developed;

(iv) Historic Building 12 and Historic Building 21; and

(v) the Illinois Street Parcels (except Parcel K South) except under conditions described in **Section 7.9** (20th/Illinois Parcel) and **Section 7.10** (Hoedown Yard).

(c) Early Lease Parcels.

(i) Developer must Close Escrow for each Early Lease Parcel no later than two years after Commencement of Construction for the applicable Phase, as provided in the Schedule of Performance.

(ii) If Developer fails to meet the Outside Date for Close of Escrow for an Early Lease Parcel, the Port will provide written notice to Developer terminating Developer's right to exercise its Option as to a single Option Parcel within the applicable Phase. Within 30days of the Port's notice, Developer will

respond in writing to the Port, identifying the Option Parcel within the Phase for which the Option will terminate. If Developer fails to respond within such 30-day period, then Port will select the applicable Option Parcel, in its sole discretion. After the expiration of the Developer's 30-day response period, the Port will have the right to offer the selected Early Lease Parcel through a Public Offering under **Section 7.5** (Public Offering Procedures).

(iii) All Land Proceeds from the Port's conveyance of the Early Lease Parcels will be subject to *FP Art 3 (Land Proceeds)*.

(d) Option Termination. Developer must Close Escrow for all Option Parcels within an applicable Phase for which it has exercised its Option no later than three years after the Port has issued an SOP Compliance Determination for all Phase Improvements other than the Public Spaces within the applicable Phase, as provided in the Schedule of Performance. Developer's failure to meet the Outside Date for an Option Parcel within a Phase will terminate its Option as to that specific Option Parcel without any further action by the Port, and the Port will have the right to offer the Option Parcel through a Public Offering under **Section 7.5** (Public Offering Procedures). Any Port conveyance of an Option Parcel by a Public Offering to a third-party Vertical Developer will be through a Vertical DDA substantially in the form attached as **Exhibit D2**.

7.2. Fair Market Value.

(a) Established by Appraisal. The Port will determine the Fair Market Value for each Option Parcel by the appraisal process described in **Section 7.3** (Option Parcel Appraisals).

(b) Public Offering Prices as Comparables. The Parties agree that a selected Qualified Appraiser may appropriately consider the price at which the Port conveys any Option Parcel through a Public Offering under **Section 7.5** (Public Offering Procedures) as an appropriate comparable in the appraisal process triggered by a later Appraisal Notice for a different Option Parcel that is designated for the same land use, and for Residential Parcels, Product Type and housing tenure.

7.3. Option Parcel Appraisals.

(a) Appraisal Notice.

(i) Developer may trigger the appraisal process for an Option Parcel in a Phase at any time after it submits the applicable Phase Submittal by delivering an Appraisal Notice to the Port. In the Appraisal Notice, Developer must identify the Option Parcel, provide a detailed program of uses planned for the parcel, including the area programmed for each type of use, the location and amount of office development on the Option Parcel that would be subject to the provisions for office development attached as **DDA Exhibit A5** (Provisions for Office Development), the scope of Deferred Infrastructure that will be attached to the parcel (subject to City consent under the ICA), and any Affordable Housing Fees or Inclusionary Units required under the Affordable Housing Plan if residential use is proposed.

(ii) With respect to any Flex Parcel, Developer may identify alternative use programs that are primarily residential or primarily commercial and consistent with the Project Approvals, and the appraisal will provide a value for both use programs.

(iii) The Parties will initiate an appraisal process to determine the Fair Market Value of the applicable Option Parcel based on the program of uses and scope of development described in the Appraisal Notice. Within 30 days after

Developer delivers an Appraisal Notice to the Port, the Parties will jointly select a Qualified Appraiser from the Qualified Appraiser Pool listed on **DDA Schedule 2** and issue joint Appraisal Instructions in accordance with **Subsection 7.3(d)** (Appraisal Instructions) to the selected Qualified Appraiser. The Port, or Developer with Port's consent in its sole discretion, will enter into the contract with the selected Qualified Appraiser; provided, however, that the Appraisal will be addressed jointly to Developer and Port. If the Parties are unable to agree on the selection of a Qualified Appraiser within such 30-day period, the first Qualified Appraiser on the Qualified Appraiser Pool list with availability will be the designated Qualified Appraiser. If the Port fails to enter into the contract with the selected Qualified Appraiser within 30-days of the selection, then Developer, with Port's reasonable consent, may enter into the contract. Neither Party may object to the designated Qualified Appraiser so long as the Qualified Appraiser is the next available Qualified Appraiser listed on the Qualified Appraiser Pool and continues to meet the qualifications as a Qualified Appraiser (as specified in **Subsection 7.3(b)** (Appraiser Qualifications)) as of the date of designation. Upon the joint selection or designation of a Qualified Appraiser, such Qualified Appraiser will be moved to the bottom of the Qualified Appraiser Pool list.

(b) Appraiser Qualifications. Each Qualified Appraiser must meet the following qualifications:

(i) be licensed in the State of California as a Certified General Appraiser;

(ii) be a member of the Appraisal Institute;

(iii) have at least 10 years' experience in the San Francisco Bay Area valuing commercial-office or multiple occupancy residential properties or both, depending on the allowed uses of the Option Parcel;

(iv) be a principal in either a national or regional firm based in California that: (1) is not a Vertical Developer Affiliate; (2) does not have an equity investment in Developer, any Vertical Developer Affiliate, any Vertical Developer that has entered into a Vertical DDA with the Port, or any of their Affiliates; (3) does not have a conflict of interest by virtue of a contractual relationship with Developer either existing or in the 24 months immediately preceding the engagement, unless the Port in its sole discretion waives the conflict; and (4) must agree to avoid future conflicts of interest as a condition to being in the pool; and

(v) otherwise be acceptable to both Parties.

(c) Qualified Appraiser Pool. The Qualified Appraiser Pool from which the Parties may select as of the Reference Date is attached as **DDA Schedule 2**. From time to time, either Party may propose in writing to amend the Schedule to add or remove appraisers to or from the Qualified Appraiser Pool. If the Parties disagree on a proposed addition or removal, then the Parties will engage in a dispute resolution procedure under **Section 10.4** (Binding Arbitration).

(d) Appraisal Instructions. The Parties will issue their joint Appraisal Instructions to Qualified Appraisers substantially in the form of **DDA Exhibit D4**, providing instructions for either residential or commercial-office use, as appropriate, and directing the Qualified Appraiser to prepare and deliver simultaneously to both Parties a Joint Appraisal. Either Party may propose to make nonmaterial changes to the form of Appraisal Instructions from time to time, and the other Party will not unreasonably withhold, condition, or delay its approval. If a Party proposes material changes to

Appraisal Instructions, such as assumptions, special assumptions, limiting conditions, hypothetical conditions, and special instructions, the Party proposing the changes must provide its proposal in writing together with evidence supporting its proposed changes, and the other Party may approve or disapprove the proposed change in its sole discretion.

(e) Joint Appraisal. If the Parties agree on the value conclusions in the Joint Appraisal for an Option Parcel, it will become the Final Appraisal. In either case, the costs of the Joint Appraisal will be Soft Costs. If the Parties do not agree on the value conclusions in a Joint Appraisal, the dispute will be resolved by procedures in **Subsection 7.3(f)** (Appraisal Disputes). A Final Appraisal for any Option Parcel must be completed and delivered to the Parties within six months after the date that Developer delivered the related Appraisal Notice.

(f) Appraisal Disputes. If either Party objects to the Joint Appraisal within two weeks after its delivery, the objecting Party may submit the valuation to a binding arbitration process under **Subsection 7.3(g)** (Appraisal Dispute Resolution Procedures). Under this expedited process, each Party will have the right to engage another Qualified Appraiser to prepare a Party Appraisal using the same instructions used for the disputed Joint Appraisal. Subject to reimbursement as provided in this Subsection, the Parties will share equally in the fees and costs of any additional Qualified Appraiser engaged under **Subsection 7.3(g)** (Appraisal Dispute Resolution Procedures). Fees and costs incurred by Developer under this Subsection will be reimbursable as Soft Costs under the Financing Plan. Fees and costs incurred by the Port under this Subsection will be reimbursable as Port Capital under the Financing Plan.

(g) Appraisal Dispute Resolution Procedures. If both Parties engage another Qualified Appraiser to prepare Party Appraisals, the Joint Appraisal will be disregarded. If only one Party engages another Qualified Appraiser, the Joint Appraisal will be considered as if it were a Party Appraisal. In either case, the Fair Market Value will be determined by the following appraisal dispute resolution process.

(i) If the difference between the value conclusions in the Party Appraisals is 10% or less of the higher value, then the Fair Market Value will be the average of the values.

(ii) If the difference between the value conclusions in the Party Appraisals is more than 10% of the higher value, the Parties will jointly select another Qualified Appraiser to perform an appraisal using the same instructions, and the Fair Market Value will be established as follows.

(1) If the difference between the value conclusion in either Party Appraisal and the third value is 10% or less of the higher value, then the third value will be disregarded, and the Fair Market Value will be the average of the values in the Party Appraisals.

(2) If neither Party Appraisal's value conclusion is within 10% of the third value, or if both Party Appraisals' value conclusions are within 10% of the third value, then both Party Appraisals will be disregarded, and the third value will be the Fair Market Value for Option purposes.

7.4. Option Parcel Closings.

(a) Option Exercise Deadline. Developer will have 30 days after delivery of any Final Appraisal (the "**Option Exercise Deadline**") to exercise its Option on the Option Parcel by notice to the Port. The price of the Option Parcel (by deed or Parcel Lease) will be (i) the Fee Value (as defined in the Appraisal Instructions) for fee transfers, (ii) the Fee Value or Prepaid Lease Value (as those terms are defined in the Appraisal Instructions) for fully Prepaid Leases, or (iii) the annual ground rent

determined with regard to the Fee Value or Prepaid Lease Value, as any of those values are determined by the Final Appraisal in accordance with the Appraisal Instructions; however, if the Final Appraisal is equal to or less than the applicable Down Market Threshold, then the procedures of **Subsection 7.4(d)** (Effect of Down Market Delay) will apply. Developer or its Vertical Developer Affiliate will execute and deliver the final form of Vertical DDA within 45 days after Developer's delivery of the Option notice (subject to extension by mutual agreement of the Parties to the extent necessary to finalize the form of Vertical DDA). Upon execution of the Vertical DDA, the procedures for Close of Escrow under the Vertical DDA will apply.

(b) Right to Credit Bid. As described in more detail in the Financing Plan, a Vertical Developer Affiliate will have the right to submit a Credit Bid for an Option Parcel, subject to the conditions and limitations of *FP § 3.3 (Right to Credit Bid)* and *FP § 3.4 (Amount of Credit Bid)*.

(c) Disposition of Land Proceeds. Under the Vertical DDA, the Port will instruct the Escrow Agent to disburse Land Proceeds from Escrow at Closing in accordance with the requirements of the Financing Plan.

(d) Effect of Down Market Delay.

(i) Final Appraisal Less than Down Market Threshold. If the Final Appraisal is equal to or less than the applicable Down Market Threshold, then the Final Appraisal will trigger an event of Down Market Delay. However, if the Final Appraisal is equal to or less than the Down Market Threshold, then Developer or its designated Vertical Developer Affiliate may still elect to exercise the Option at a price equal to (but not less than) the Down Market Threshold amount; or at any amount that is less than the Down Market Threshold by agreement between the Port and Developer, each in their sole discretion.

(ii) Final Appraisal. If a Down Market occurs after the exercise of the Option, but before the Close of Escrow on an affected Option Parcel, the following will apply.

(1) Developer may elect in its sole discretion to rescind its exercise of the Developer Option and direct the Escrow Agent to close the Escrow Account.

(2) The Option Parcel will remain subject to Developer's Option for the period described in **Section 7.1** (Developer Option).

(3) By agreement of the Parties, some or all appraisals previously prepared for the Option Parcel will be disregarded for future conveyances under this DDA.

(e) Effect of Failure to Close Escrow. Developer's failure to exercise its Option, Vertical Developer Affiliate's failure to Close Escrow by the Outside Date therefor set forth in the Schedule of Performance, as it may be extended under **Article 4** (Performance Dates), or the termination of a Vertical DDA prior to Close of Escrow thereunder will not be an Event of Default hereunder, but will cause Developer's Option for that Option Parcel to terminate automatically. After termination, the Port will have the right to conduct a Public Offering for the Option Parcel using procedures in **Section 7.5** (Public Offering Procedures) so long as the Fair Market Value established by the Final Appraisal is more than the Down Market Threshold, and proceeds received by the Port for conveyance of the applicable Option Parcel will be treated as Land Proceeds in accordance with the Financing Plan.

7.5. Public Offering Procedures

(a) Broker-Managed Offerings. Each Public Offering will be managed by a Qualified Broker selected from a list that the Parties have approved. The Qualified Broker Pool as of the Reference Date is set forth in **DDA Schedule 3**. From time to time, either Party may propose in writing to add or remove Qualified Brokers to or from the list. If the Parties disagree on a proposed addition or removal, then the Parties will engage in the dispute resolution procedure under **Section 10.4** (Binding Arbitration). The Parties will jointly select a Qualified Broker from the Qualified Broker Pool and the Port, or Developer with Port's consent in its sole discretion, will enter into the contract with the selected Qualified Broker. If the Parties are unable to agree on the selection of the Qualified Broker within 30 days after the termination of Developer's Option for an Option Parcel, the first Qualified Broker on the Qualified Broker Pool list with availability will be the designated Qualified Broker. Neither Party may object to the designated Qualified Broker so long as the Qualified Broker is the next available Qualified Broker listed on the Qualified Broker Pool and continues to meet the qualifications as a Qualified Broker as of the date of designation. If the Port fails to enter into the contract with the selected Qualified Broker within 30-days of the selection, then Developer, with Port's reasonable consent, may enter into the contract. Upon the joint selection or designation of a Qualified Broker, such Qualified Broker will be moved to the bottom of the Qualified Broker Pool list.

(b) Offering Document. The Public Offering documents for any Option Parcel will:

(i) identify the parcel being offered, describe any Deferred Infrastructure obligations for the parcel, specify the allowed uses, and indicate whether it is being offered for ground lease or sale;

(ii) specify a minimum bid price equal to the applicable Down Market Threshold for the Option Parcel and disclose that any offer that is between the Down Market Threshold and the Fair Market Value established by Final Appraisal must be subject to a right of first refusal in favor of Developer (the "**Developer ROFR**") as described in in **Subsection 7.5(e)** (Developer Right of First Refusal);

(iii) for a parcel to be leased, indicate whether the Port will require Fair Market Value to be paid as Prepaid Rent, Annual Ground Rent that amortizes Fair Market Value over the Parcel Lease term, or a combination of Prepaid Rent and Annual Ground Rent to the extent permitted in accordance with the Financing Plan;

(iv) identify the Qualified Broker managing the Public Offering;

(v) state a date by which sealed bids must be submitted and specify the deadline by which the bidder must enter into the Vertical DDA;

(vi) attach the proposed form of Vertical DDA in substantially the form attached as **DDA Exhibit D2** and require each bidder in its bid to acknowledge its agreement with its terms or to expressly identify any terms it proposes to modify.

(c) Bidder Prequalification. Each Public Offering document will specify a prequalification period ending no less than 20 days before bids are due during which any person interested in bidding must submit evidence that it meets applicable bidder guidelines. Each Qualified Bidder must:

(i) be an Unrelated Vertical Developer that is reasonably creditworthy given the obligations it is assuming in the Port's reasonable judgment in light of the bidder's other qualifications;

(ii) have one or more principals with at least five years of experience in developing the type of land use to be developed on the Option Parcel; and

(iii) meet all other bidder criteria set forth in **DDA Exhibit D5**, as applicable for residential or commercial-office use.

(d) Offering Period/Bid Award.

(i) The Qualified Broker will determine the deadline by which the bidder must enter into a Vertical DDA in consultation with the Port and Developer. Until such deadline (and subject to the Developer ROFR), the Port will be obligated to enter into the applicable Vertical DDA for the Option Parcel with the Qualified Bidder submitting the highest bid that meets or exceeds the Fair Market Value as determined by Final Appraisal.

(ii) If none of the bids meets or exceeds Fair Market Value, then the Port in its sole discretion may enter into a Vertical DDA for the Option Parcel with the Qualified Bidder submitting the highest bid that meets or exceeds the Down Market Threshold, which may be a third party or Developer in its exercise of the Developer ROFR.

(iii) The Port will not accept any offers below the Down Market Threshold unless agreed between the Port and Developer, each in its sole discretion.

(iv) Close of Escrow on the applicable Option Parcel with the Qualified Bidder will occur in accordance with the procedures set forth in the applicable Vertical DDA. The Developer ROFR will not apply to any offer that is at or above the Fair Market Value established by Final Appraisal.

(e) Developer Right of First Refusal. Subject to the Port's and Developer's agreement to accept a bid price that is lower than the Fair Market Value, but that exceeds the Down Market Threshold, each in its sole discretion, any Public Offering will be expressly subject to the Developer ROFR in any situation where the high bid exceeds the Down Market Threshold but is less than the Fair Market Value. Within five business days after final bids are received, the Port will provide Developer with written notice of the highest qualifying bid, including all material terms and conditions thereof (including price and form of consideration) and the intended date of the proposed Closing. If the highest qualifying bid exceeds the Down Market Threshold but is less than the Fair Market Value, Developer may exercise the Developer ROFR within 15 days after delivery of the Port's notice in the same manner as set forth in **Subsection 7.4(a)** (Option Exercise Deadline), except that the price will be the same as the third-party bid received, and on substantially equivalent terms.

(f) Effect of Failed Offering. If no Qualified Bidder submits a timely bid in accordance with **Subsection 7.5(d)** (Offering Period/Bid Award), then the Port will remove the Option Parcel from the market temporarily. Unless precluded by the Schedule of Performance, Developer will have additional opportunities to exercise an Option for that Option Parcel until such time as it would be impossible for Developer to deliver a new Appraisal Notice and Close the conveyance by the applicable Outside Date.

7.6. Vertical Coordination Agreement. In connection with Close of Escrow for any Development Parcel under a Vertical DDA (and as an express condition to the termination of the Master Lease as to the applicable Development Parcel), Developer will submit into Escrow a

duly executed Vertical Coordination Agreement that will also be executed by the applicable Vertical Developer under the applicable Vertical DDA. The Vertical Coordination Agreement will be delivered to Developer with a copy to the Port at Close of Escrow. The purpose of the Vertical Coordination Agreement will be to ensure the orderly development of the 28-Acre Site Project. Developer will provide the Port with the right to review and comment on the Vertical Coordination Agreement prior to its submittal into Escrow; however, the Port will not be deemed to be a party to or be required to enforce it.

7.7. Post-Closing Boundary Adjustments. The Parties acknowledge that as development of the 28-Acre Site advances, the description of each parcel of real property may require further refinements, which may require minor boundary adjustments. The Parties agree to cooperate in effecting any required boundary adjustments consistent with *App ¶ A.1.5 (Technical Changes)*. The Port and Developer agree that each Vertical DDA with Vertical Developers will include the obligation to cooperate with Developer and the Port in boundary adjustments.

7.8. Parcel C1A. The Port will have the right to offer Parcel C1A by a proprietary offering, implemented and executed in the sole discretion of the Port, for office development or market-rate residential if deemed appropriate by the Port in consultation with MOHCD. The Port will not seek any amendments to the SUD or Design for Development with respect to Parcel C1A without Developer's consent in its sole discretion. Parcel C1A will be a Development Parcel subject to the Master CC&Rs described in **Section 8.6** (Master CC&Rs). The Port's proceeds of its conveyance of Parcel C1A will be Port Capital free of any restrictions under this DDA.

7.9. 20th/Illinois Parcel.

(a) Relationship to Project. The 20th/Illinois Parcel is within the boundaries of the SUD, but is not in the 28-Acre Site and is not an Option Parcel or a Development Parcel; however, the Port has decided to merge a portion of Michigan Street into the 20th/Illinois Parcel, and subdivide the resulting parcel into Parcel K North and Parcel K South as shown generally in **DDA Exhibit A4-1** and in more detail in **DDA Schedule 4**.

(b) Treatment of Parcel K North.

(i) The Port intends to conduct a proprietary public offering process to sell Parcel K North at Fair Market Value established by a proprietary appraisal for a Market-Rate Condo Project. The public offering will be on terms proposed by the Port and approved by the Board of Supervisors by resolution. Terms proposed by the Port will include the following:

(1) compliance with all applicable mitigation measures of the MMRP, including Mitigation Measure M-AQ-1f (the Transportation Demand Management Plan);

(2) compliance with applicable land use restrictions, impact fees, and exactions imposed by the SUD, including a requirement to pay in lieu affordable housing fees equal to 28% of the costs of on-site market-rate condominium units;

(3) a Restrictive Covenant requiring that each individual owner who sells a Condo Unit pay the Port a transfer fee of 1.5% of the net purchase price;

(4) compliance with the recorded "Restrictions on Illinois Parcels," a copy of which is attached as **DDA Schedule 5**, to avoid conflicts with activities in the American Industrial Center located directly west of the Illinois Street Parcels; and

(5) a requirement to enter into an agreement with Developer that will address coordination and liability matters between Developer and the applicable purchaser, and pursuant to which, the applicable purchaser will provide Developer with advance notice of the availability of non-impacted surplus soil and provide Developer with the first right to receive the surplus soil at a location for delivery in the 28-Acre Site identified by Developer.

(ii) If a third party bidder does not Close Escrow and Developer has not received funds from the sale by February 15, 2019, then subject to **Subsection 7.9(b)(iii)**, the Port must either: (1) pay Developer an amount equal to the Fair Market Value of Parcel K North, net of assumed costs of sale (*i.e.*, customary closing costs and transfer taxes), within the following 60 days; or (2) offer Developer the right to enter into a Vertical DDA to purchase Parcel K North at its appraised Fair Market Value.

(iii) In order to facilitate the timely conveyance of Parcel K North, Developer will submit to the Port a Tentative Transfer Map on behalf of the Port prepared in accordance with the City's Subdivision Code that will encompass the 28-Acre Site, the remainder of the FC Project Area and the Historic Pier 70 Premises. The parcels shown on the Tentative Transfer Map that are within the 28-Acre Site will be consistent with the configuration of Development Parcels, Public ROWs and Public Spaces shown in the Phasing Plan. Port will direct Developer as to the parcel configuration for the remainder of the FC Project Area and the Historic Pier 70 Premises. Developer will submit the Tentative Transfer Map draft to the City within 90 days after it has received written direction from the Port that includes the proposed parcel configuration for the remainder of the FC Project Area and Historic Pier 70 Premises. Port will work diligently and cooperatively with Developer to provide such other information reasonably requested by Developer as necessary to prepare the draft Tentative Transfer Map. Failure of Developer to prepare the Tentative Transfer Map within such 90 days will not be an Event of Default hereunder, but will serve to extend the 15-month period in **Subsection 7.9(b)(ii)** on a day-for-day basis from the expiration of the 90-day period until Developer submits the draft Tentative Transfer Map.

(iv) The Port will apply the net sales proceeds or an amount equal to Parcel K North's Fair Market Value to eligible costs of the 28-Acre Site Project in accordance with *FP § 7.4(a) (Parcel K North)*. If Developer is the successful bidder for Parcel K North, the parcel will be treated as an Option Parcel under this DDA, except for the appraisal procedures, and Developer will be entitled to submit a Credit Bid for its purchase, subject to the conditions and limitations of *FP § 3.3 (Right to Credit Bid)* and *FP § 3.4 (Amount of Credit Bid)*.

(v) If Developer does not bid or timely Close Escrow under the Vertical DDA, Developer's rights under this Subsection will terminate automatically without any further action by the Port.

(c) Treatment of Parcel K South. Parcel K South will be an Affordable Housing Parcel subject to the Affordable Housing Plan and the Illinois Street Additional Measures attached as **DDA Schedule 5**.

7.10. Hoedown Yard.

(a) Relationship to Project. The Hoedown Yard is within the boundaries of the SUD, but is not in the 28-Acre Site and is not an Option Parcel or a Development Parcel. The Port will urge the City to use commercially reasonable efforts to: (i) vacate the public right-of-way bisecting the Hoedown Yard; and (ii) obtain PG&E's consent to

subdivide the parcel that would result from merging the former public right-of-way with the Hoedown Yard to create parcels called HDY1, HDY2, and HDY3 as shown generally in **DDA Exhibit A4-1**.

(b) Public Offering.

(i) Assuming that the City exercises its purchase option, the Port will work with the City on a proprietary public offering document to sell the Hoedown Yard at or above its Fair Market Value established by a proprietary appraisal. If the parcel is offered for development as a Market-Rate Condo Project, the offering terms will be parallel to those listed in **clause (i)** of **Subsection 7.9(b)** (Treatment of Parcel K North), except that Condo Unit owners will pay transfer fees to MOHCD.

(ii) At the City's election, the offering document may require the Hoedown Yard developer to build Irish Hill Playground subject to reimbursement from Hoedown Yard CFD Proceeds and Port Tax Increment.

7.11. Historic Building 2.

(a) Option Exercise Procedures.

(i) Building 2 is an Option Parcel in Phase 1. At any time before the Option exercise Outside Date in the Schedule of Performance, Developer may initiate the Option process by notice to the Port. References to Developer in this Section also mean its selected Vertical Developer Affiliate, if required in the context.

(ii) If Developer initiates the Option process for Historic Building 2, Developer will prepare conceptual or schematic design plans for the historic rehabilitation of Historic Building 2 in compliance with the Secretary's Standards at a level of detail reasonably required to submit a Part 1 and Part 2 application for Historic Tax Credits. Within a reasonable time after preparing the plans, Developer will submit Part 1 and Part 2 of the application for Historic Tax Credits to NPS, with a copy to the Port; provided, however, that this requirement will not apply if a change in Law would eliminate the availability of Historic Tax Credits for the Historic Buildings, or if, upon request by Developer, the Port Director waives this requirement in writing if she determines in her sole discretion, based on discussions with the NPS, that Historic Building 2 would not qualify for Historic Tax Credits.

(iii) Within 90 days after receipt of NPS's decision whether or not to certify the Part 2 application (or, if applicable, within 90 days after the Port issues its written waiver of the requirement for submittal of the Part 2 application), Developer will submit to the Port a construction cost estimate based on the plans approved or disapproved under the Part 2 application, and the Parties may meet and confer to discuss adjustments to the application based on the NPS decision. All hard cost estimates must be prepared by a licensed contractor having experience with the rehabilitation of historic buildings, and all soft cost estimates must be prepared by an experienced development manager or consultant working for Developer.

(iv) The decision by NPS on the Part 2 application, if applicable, and delivery of the cost estimate under **clause (iii)** of this Subsection will trigger the appraisal process for Building 2 in accordance with **Section 7.3** (Option Parcel Appraisals) and will commence the conveyance procedures of **Article 7** (Parcel Conveyances and Delivery of Associated Public Benefits). The appraisal will value the Parcel Lease based on a 99-year lease term, with the Qualified

Appraiser taking into account the construction cost estimate provided by Developer and further subject to the Qualified Appraiser's consultation with a third-party cost estimator or experienced construction contractor, but otherwise subject to the same appraisal procedures applicable to other Option Parcels. The Parcel Lease will be valued as if Historic Tax Credits are obtained if the NPS certifies the Part 2 application, and as if Historic Tax Credits are not obtained if the NPS does not certify the Part 2 application, the Historic Tax Credit requirement is eliminated under **Subsection 7.11(a)(ii)** or if the Port waives the submittal requirement.

(v) If Developer elects to enter into a Vertical DDA after the Final Appraisal in accordance with **Article 7** (Parcel Conveyances and Delivery of Associated Public Benefits), then the appraised value will be paid by Credit Bid at Close of Escrow in accordance with the terms of the Vertical DDA.

(vi) If Developer elects not to exercise its Option for Historic Building 2, the Port will offer Historic Building 2 in accordance with the Public Offering procedures of **Section 7.5** (Public Offering Procedures), except that the minimum bid price will be 85% of the Historic Building 2 value as determined by the appraisal.

(vii) If Developer elects not to exercise its Option for Historic Building 2, its soft costs related to preparation of plans, the Historic Tax Credit application, and cost estimates will be included as Soft Costs under this DDA on which Developer will be entitled to a 12% return if Developer has obtained the agreement of its applicable architects, engineers, and other consultants engaged to produce the required studies, applications, reports, permits, plans, drawings, and similar work product for Historic Building 2 (collectively, the "**HB2 Project Materials**") to assign the HB2 Project Materials to the Port automatically if Developer elects not to exercise its Option for Historic Building 2 and, if requested by the Port, has entered into an assignment agreement of the HB2 Project Materials in such form as reasonably agreed upon by the Parties. As part of such assignment, Developer will be permitted to disclaim any representations or warranties with respect to the HB2 Project Materials (other than Developer's payment of fees), and, at Developer's request, the Port will provide Developer with a release from liability for future use of the applicable HB2 Project Materials, in a form acceptable to Developer and the Port. Developer's acceptance of the Port's release will be deemed to waive and release the Port from any claims of proprietary rights or interest in the HB2 Project Materials, and Developer agrees that, following an assignment of the HB2 Project Materials, the Port or its designee may use any of the HB2 Project Materials for any purpose, including pursuit of the historic rehabilitation of Historic Building 2 with a third party.

(viii) Notwithstanding **Subsection 7.11(a)(vii)**, if (i) NPS has denied certification of Developer's Part 2 application for Historic Building 2 based on a finding that the proposed plans for historic rehabilitation do not meet the Secretary's Standards (as opposed to a denial due to reasons associated with the merits of the overall 28-Acre Site Project or impacts of the 28-Acre Site Project on the Union Iron Works Historic District), and (ii) the Port, in consultation with the Port's or City's historic preservation staff or outside consultant independently determines that the historic rehabilitation project proposed in the HB2 Project Materials would not meet the Secretary Standards, then Developer's costs related to the preparation of the HB2 Project Materials, the Historic Tax Credit application and cost estimates will not be included as Soft Costs. However, if,

upon Port request, Developer provides Port with the HB2 Project Materials, then Developer's costs incurred to produce the HB2 Project Materials will be included as Soft Costs.

(b) Terms of Conveyance. Historic Building 2 is an Option Parcel and its conveyance by Vertical DDA and Parcel Lease will be in the same form of Vertical DDA and Parcel Lease attached as **DDA Exhibit D2** and **DDA Exhibit D3** respectively, but subject to the additional or alternative provisions described in the Appendix for Historic Buildings attached to each, addressing, among other matters, the following.

(i) All construction work will comply with the Secretary's Standards and, if certified by NPS, comply with the certified Part 2 application.

(ii) The term of the Parcel Lease will be 99 years.

(iii) Rent will be a Prepaid Lease or Hybrid Lease to the extent permitted under *FP § 3.7(Parcel Lease Options)*.

(iv) Vertical Developer will bear the risk of loss for any event of damage or destruction to Historic Building 2 that occurs prior to Close of Escrow that is estimated to add less than $500,000 (subject to an annual CPI escalation) to the estimated construction cost (except that Port will assign any insurance proceeds to the Vertical Developer to the extent received), and the Vertical Developer may terminate the Vertical DDA in the case of damage or destruction that exceeds $500,000. Damage or destruction that occurs prior to the date of the Vertical DDA will be governed by **Section 9.2(c)** (Effect on Historic Buildings).

7.12. Arts Building.

(a) Parcel E4. Developer has designated Parcel E4 for construction of the Arts Building, which will consist of one or more new buildings that are primarily dedicated to arts/light industrial uses consistent with the SUD and the Arts Program attached as **DDA Exhibit B6**. The Arts Building may also include replacement space for the Noonan Tenants in accordance with **Section 7.13** (Noonan Replacement Space).

(b) Development Options. Developer may develop or cause to be developed Parcel E4 in one or more phases as follows:

(i) as 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 the SUD and the Arts Program discussed below (**"Parcel E4 Option 1"**);

(ii) as a single-phase project that will include a stand-alone building to accommodate the Noonan Replacement Space on approximately 1/3 of Parcel E4 (the "**Stand-Alone Noonan Building**") (**"Parcel E4 Option 2"**); or

(iii) as 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 Option 3"**).

(c) Allocation of Port Community Facilities Funds. Under *FP § 10.2 (Arts Building Funding)*, the Port has agreed to subsidize the Arts Building by providing a no-cost lease and has committed up to $20 million of Arts Building Proceeds, as more particularly described in the Financing Plan: (i) $13.5 million toward the Permanent Noonan Replacement Space if constructed on Parcel E4 under Parcel E4 Option 1, Parcel E4 Option 2 or Parcel E4 Option 3, (ii) $4 million for the hard and soft costs of the Arts Building if constructed by or on behalf of Developer on Parcel E4 under Parcel E4

Option 1 or Parcel E4 Option 3, and (iii) community facilities within the 28-Acre Site and surrounding neighborhood in the amount of $2.5 million.

(d) Development Options and Schedule of Performance.

(i) Parcel E4 Option 1.

(1) Developer may exercise Parcel E4 Option 1 by providing the Port with written notice of its election and causing a Vertical Developer Affiliate or an Arts Master Tenant to enter into a Vertical DDA for Parcel E4 before the Port has issued a Temporary Certificate of Occupancy for (i) an office building on the eastern portion of Parcel B if Parcel B is developed as two separate parcels, or (ii) an office building on the entirety of Parcel B if Parcel B is developed as a single parcel (in either case, the "**Parcel E4 Outside Date**"). The Outside Date for Close of Escrow will be established in accordance with the terms of the Vertical DDA for the Arts Building. If the Vertical DDA for the Arts Building under Parcel E4 Option 1 is with a Vertical Developer Affiliate, the Vertical DDA will require the Vertical Developer Affiliate to diligently proceed to commence construction and diligently prosecute the construction to completion. If the Vertical DDA for the Arts Building under Parcel E4 Option 1 is with an Arts Master Tenant, it will include a schedule of performance that will establish dates for commencement and completion of construction reasonably established by Port, subject to Excusable Delay. The Port's obligation to close escrow under the Vertical DDA for the Arts Building will be subject to the following: (a) delivery to the Port of completion security and evidence of adequate financing, (b) closing of leasehold financing, if any, (c) Port's reasonable approval of evidence of a guaranteed maximum price construction contract, and (d) issuance of the First Construction Document for the Arts Building.

(2) As a condition to entering into the Vertical DDA and Parcel Lease for the Arts Building under Parcel E4 Option 1, Developer, Vertical Developer Affiliate or the Arts Master Tenant must have obtained a minimum of $17.5 million in private or philanthropic capital to fund the Arts Building (sources of which may include cash and pledges for grants, charitable contributions, and other private source). Pledges will be verified by the Controller under procedures established to protect confidential information such as names of donors and amounts of individual donations.

(3) The Parcel Lease for the Arts Building will be consistent with the terms and conditions for the Parcel E4 Parcel Leases described in **Subsection 7.12(f)** (Terms of Parcel E4 Vertical DDA and Lease(s)).

(4) If Developer timely exercises Parcel E4 Option 1 in accordance with this Subsection, the Port will use the Arts Building Proceeds in accordance with *FP* § 10.2.(b)(ii)(2).

(ii) Parcel E4 Option 2.

(1) Developer may exercise Parcel E4 Option 2 by providing the Port with written notice of its election and causing a Vertical Developer Affiliate or an Arts Master Tenant to enter into a Vertical DDA for the Stand-Alone Noonan Building before the Parcel E4 Outside Date Vertical Developer Affiliate.

(2) Developer's notice will identify the approximate location and size of the portion of Parcel E4 to be developed for the Stand-Alone Noonan Building. The Outside Date for Close of Escrow will be established in accordance with the terms of the Vertical DDA for the Stand-Alone Noonan Building. If the Vertical DDA for the Stand-Alone Noonan Building is with a Vertical Developer Affiliate, the Vertical DDA will require the Vertical Developer Affiliate to diligently proceed to commence construction and diligently prosecute the construction to completion. If the Vertical DDA for the Stand-Alone Noonan Building is with an Arts Master Tenant, it will include a schedule of performance that will establish dates for commencement and completion of construction reasonably established by Port, subject to Excusable Delay. The Port's obligation to close escrow under the Vertical DDA for the Stand-Alone Noonan Building will be subject to the following: (a) delivery to the Port of completion security and evidence of adequate financing, (b) closing of leasehold financing, if any, (c) Port's reasonable approval of evidence of a guaranteed maximum price construction contract, and (d) issuance of the First Construction Document for the Stand-Alone Noonan Building.

(3) As a condition to Close of Escrow under the Vertical DDA for the Stand-Alone Noonan Building, the applicable portion of Parcel E4 must be a separate legal parcel on a recorded Final Map or be otherwise in compliance with the Map Act (which compliance may be based upon a governmental agency exemption).

(4) Upon Close of Escrow under the Vertical DDA for the Stand-Alone Noonan Building, Port will dedicate the first $13.5 million of the Arts Building Proceeds to finance the hard and soft costs of the Noonan Replacement Space in the Stand-Alone Noonan Building, as required under *FP §* 10.2(b)(ii)(1)(A).

(iii) Parcel E4 Option 3. Developer may exercise Parcel E4 Option 3 by providing the Port with written notice of its election and causing a Vertical Developer Affiliate or an Arts Master Tenant to enter into a Vertical DDA for the development of the Stand-Alone Noonan Building on approximately 1/3 of Parcel E4 and the Arts Building on the remainder of Parcel E4 before the Parcel E4 Outside Date. Developer may exercise Parcel E4 Option 3 independently as to the Stand-Alone Noonan Building and the Arts Building so long as an executed Vertical DDA for each of the Stand-Alone Noonan Building and the Arts Building is delivered to the Port prior to the Parcel E4 Outside Date. Under Parcel E4 Option 3, the requirements of **Subsection 7.12(d)(ii)** will apply to the development of the Stand-Alone Noonan Building, and the requirements of **Subsection 7.12(d)(i)** will apply to the development of the Arts Building on the remainder of Parcel E4, except that Port will dedicate the first $13.5 million of the Arts Building Proceeds to finance the hard and soft costs of the Noonan Replacement Space in the Stand-Alone Noonan Building, as required under *FP §* 10.2(b)(ii)(1)(A), and the Port will apply the remaining Arts Building Proceeds in accordance with *FP §* 10.2(b)(ii)(1)(B), (C) and (D).

(e) Failures and Remedies.

(i) Parcel E4 Option 1 VDDA Failures and Remedies. If the Vertical Developer Affiliate or the Arts Master Tenant has not entered into the Vertical DDA for the Arts Building by the Parcel E4 Outside Date, or if after entering into the Vertical DDA, the Vertical Developer Affiliate or the Arts Master Tenant fails to Close Escrow and enter into the Parcel Lease for the Arts Building as required

under the applicable Vertical DDA, then Developer must make the Noonan Replacement Space Election as provided under **Subsection 7.13(b)** (Noonan Replacement Space Election), and Port's exclusive remedies with respect to Parcel E4 will be as follows:

(1) Developer's rights to develop Parcel E4 will terminate effective immediately without delivery of notice and without any action by the Port Commission;

(2) Port may elect to use Parcel E4 for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination); and

(3) Port will be entitled to retain (i) $4 million all of the Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination), (ii) if the CF Conditions are not satisfied, $2.5 million of the Arts Building Proceeds to finance community facilities, and (iii) the remaining $13.5 million of Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination).

(ii) Parcel E4 Option 1 Parcel Lease Failures and Remedies. If the Vertical Developer Affiliate or the Arts Master Tenant Closes Escrow under the Vertical DDA for the Arts Building and executes the Parcel Lease, Developer will have satisfied its obligation to provide the Permanent Noonan Replacement Space and the Phase Security provided under **Section 17.3(d)** (Noonan Replacement Space) will be released; however, if thereafter the Vertical Developer Affiliate or Arts Master Tenant defaults in its obligations under the Parcel Lease to commence or complete the Arts Building, then Port retains the following exclusive remedies with respect to Parcel E4:

(1) Port may terminate the Vertical DDA and the Parcel Lease and take back possession of Parcel E4;

(2) Port may elect to use Parcel E4 for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination);

(3) Port will be entitled to retain (i) $4 million of the Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination), (ii) if the CF Conditions are not satisfied, $2.5 million of the Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination), and (iii) the remaining $13.5 million of Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination); and

(4) Port may elect to avail itself of the completion security provided by the Tenant under the Arts Building Vertical DDA; and

(5) Port may elect to complete the Arts Building, subject to availability of sufficient funding sources.

(iii) Parcel E4 Option 2 VDDA Failures and Remedies. If the Vertical Developer Affiliate or the Arts Master Tenant has not entered into the Vertical

DDA for the Stand-Alone Noonan Building by the Parcel E4 Outside Date, or if after entering into the Vertical DDA, the Vertical Developer Affiliate or the Arts Master Tenant fails to Close Escrow and enter into the Parcel Lease for the Stand-Alone Noonan Building as required under the applicable Vertical DDA, then Developer must make the Noonan Replacement Space Election as provided under **Subsection 7.13(b)** below, and Port's exclusive remedies with respect to Parcel E4 will be as follows:

(1) Developer's rights to develop the portion of Parcel E4 that is the subject of the Vertical DDA for the Stand-Alone Noonan Building will terminate effective immediately without delivery of notice and without any action by the Port Commission;

(2) Port may elect to use the portion of Parcel E4 that is the subject of the Vertical DDA for the Stand-Alone Noonan Building for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination);

(3) Port will be entitled to retain $13.5 million of Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination); and

(4) If Developer has not exercised Parcel E4 Option 3 prior to the Parcel E4 Outside Date, Port will be entitled to retain (i) $4 million of the Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination) and (ii) if the CF Conditions are not satisfied, $2.5 million of the Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination).

(iv) Parcel E4 Option 2 Parcel Lease Failures and Remedies. If the Vertical Developer Affiliate or the Arts Master Tenant Closes Escrow under the Vertical DDA for the Stand-Alone Noonan Building and executes the Parcel Lease, Developer will have satisfied its obligation to provide the Permanent Noonan Replacement Space and the Port will release the Phase Security provided under **Section 17.3(d)** (Noonan Replacement Space); however, if thereafter the Vertical Developer Affiliate or Arts Master Tenant defaults in its obligations under the Parcel Lease to commence or complete the Stand-Alone Noonan Building, then Port retains the following exclusive remedies with respect to Parcel E4:

(1) Port may terminate the Vertical DDA and the Parcel Lease for the Stand-Alone Noonan Building and take back possession of the portion of Parcel E4 that is the subject of the Parcel Lease for the Stand-Alone Noonan Building;

(2) Port may elect to use the portion of Parcel E4 that is the subject of the Parcel Lease for the Stand-Alone Noonan Building for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination);

(3) Port will be entitled to retain $13.5 million of Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination); and

(4) If Developer has not exercised Parcel E4 Option 3 prior to the Parcel E4 Outside Date, Port will be entitled to retain

(i) $4 million of the Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination) and (ii) if the CF Conditions are not satisfied, $2.5 million of the Arts Building Proceeds for any publicly-oriented building described in **Subsection 7.12(e)(vi)** (Use of Parcel E4 After Termination).

(5) Port may avail itself the completion security provided by the Tenant under the Vertical DDA for the Stand-Alone Noonan Building; and

(6) Port may elect to complete the Stand-Alone Noonan Building, subject to availability of sufficient funding sources.

(v) Parcel E4 Option 3 VDDA and Lease Failures and Remedies. For Parcel E4 Option 3, the provisions of **Subsection 7.12(e)(iii)** (Parcel E4 Option 2 VDDA Failures and Remedies) will govern failures and remedies applicable to development of the Stand-Alone Noonan Building, and the provisions of **Subsection 7.12(e)(i)** (Parcel E4 Option 1 VDDA Failures and Remedies) will govern failures and remedies applicable to development of the Arts Building on the remainder of Parcel E4.

(vi) Use of Parcel E4 After Termination. If Port terminates the rights of Developer, a Vertical Developer Affiliate or an Arts Master Tenant as to all or a portion of Parcel E4 as provided above in this **Subsection 7.12(e)** (Failures and Remedies), Port, in its sole discretion, may use the terminated portion of Parcel E4 for any publicly-oriented building consistent with the SUD and Design for Development and may sell or lease the terminated portion of Parcel E4 to a third party by Public Offering for development and operation of a publicly-oriented building. The Port will not process any amendment to the SUD or Design for Development to accommodate a proposed use on Parcel E4 without agreement between the Port and Developer, each in its sole discretion. Any proceeds received by the Port from a conveyance of Parcel E4 under a Public Offering will be Port Capital free of any restrictions under this DDA.

(f) Terms of Parcel E4 Vertical DDA and Lease(s). Under either Parcel E4 Option 1, Parcel E4 Option 2 or Parcel E4 Option 3, Developer, through a Vertical Developer Affiliate or an Arts Master Tenant as described below, will enter into a Vertical DDA and Parcel Lease with the Port substantially in the forms attached as **DDA Exhibit D2** and **DDA Exhibit D3**, each as modified by an Appendix with specific Vertical DDA and Parcel Lease terms respectively that are unique to Parcel E4. From and after the Reference Date, the Parties will diligently meet and confer to reasonably agree upon the form of the Parcel E4 Appendices, which will be consistent with the provisions of this Section. Upon agreement (as evidenced by an instrument signed by the Parties), the approved Parcel E4 Appendix for the Vertical DDA will be appended to **DDA Exhibit D2** and the Parcel E4 Appendix for the Parcel Lease will be appended to **DDA Exhibit D3** and made a part hereof. Finalization of the Parcel E4 Appendix will be a pre-requisite to Developer's exercise of any of the Parcel E4 Options.

(g) The Parcel E4 Appendix to the Vertical DDA and Parcel Lease will reflect the following terms:

(i) The Port's obligation to close escrow under the Vertical DDA for the Stand-Alone Noonan Building will be subject to the following: (a) delivery to the Port of completion security and evidence of adequate financing, (b) closing of leasehold financing, if any, (c) Port's reasonable approval of evidence of a

guaranteed maximum price construction contract, and (d) issuance of the First Construction Document for the Stand-Alone Noonan Building.

(ii) The matters set forth in **Sections 7.12(d)(i)** (Parcel E4 Option 1), **7.12(d)(ii)** (Parcel E4 Option 2) and **7.12(d)(iii)** (Parcel E4 Option 3), as applicable with respect to the schedule of performance for Close of Escrow and commencement and completion of construction.

(iii) The initial term of any such Parcel Lease will be 50 years with an option in favor of the tenant to extend by an additional 16 years.

(iv) The scope of development for the Arts Building under Parcel E4 Option 1 or Parcel E4 Option 3 will be subject to the requirements of the Arts Program attached as **DDA Exhibit B6**. The scope of development for the Permanent Noonan Replacement Space under Parcel E4 Option 1, Parcel E4 Option 2 or Parcel E4 Option 3 will be consistent with the requirements of the Artist Transition Plan under **Section 7.13(c)** (Artist Transition Plan).

(v) Base rent for the initial 50-year term under both the Stand-Alone Noonan Building and the Arts Building will be $1 per year, prepaid in advance. Base rent for the 16-year extension term will be set at a commercially reasonable amount as agreed upon by the Port and the Vertical Developer Affiliate or Arts Master Tenant, taking into account the required uses of the Arts Building, including the requirements of the Noonan Space Lease as described in **Subsection 7.13(a)** (Developer's Obligation to Provide Space), if applicable.

(vi) Dispute resolution procedures for determination of base rent during the 16-year extension term.

(h) Arts Master Tenant Qualifications. Developer may assign its lease rights under this Section to an Arts Master Tenant that satisfies all of the following criteria, or is otherwise approved by the Port in its sole discretion.

(i) The proposed Arts Master Tenant must provide the Port with reasonably satisfactory evidence of its ability to fully fund the proposed project, including fundraising and grants, and its ability to service debt in light of the obligations it is assuming in the Port's reasonable judgment in light of the bidder's other qualifications.

(ii) The proposed Arts Master Tenant must have one or more principals with at least five years of experience in developing real estate projects of similar size and scope to the proposed building on Parcel E4 with nonprofit arts organizations in San Francisco and throughout the greater Bay Area.

(iii) The proposed Arts Master Tenant must identify a project team, including real estate development consultants, architects, construction management professionals, and a general contractor that each have at least 10 years' experience in developing real estate projects of similar size and scope to the proposed building on Parcel E4.

7.13. Noonan Replacement Space.

(a) Developer's Obligation to Provide Space. Developer will phase development of the 28-Acre Site Project so that the Noonan Tenants are provided with a notice to vacate that will offer them the right (but not the obligation) to move to a new or rehabilitated building within the 28-Acre Site Project that meets the requirements of this Section. The Parties acknowledge that space for the Noonan Tenants will likely be provided in two phases: one or more temporary spaces within the 28-Acre Site (the "**Temporary Noonan Replacement Space**") that will be provided prior to the

demolition of Building 11, and the development of a permanent artist space within the 28-Acre Site (the "**Permanent Noonan Replacement Space**").

(i) Location of Temporary Noonan Replacement Space. The Temporary Noonan Replacement Space may be located (a) within one or more buildings or temporary structures located on the Master Lease Premises (such as trailers or buildings that have not yet been rehabilitated), (b) within a new building or historic rehabilitation located on a Development Parcel that has been constructed by a Vertical Developer Affiliate under a Vertical DDA; or (c) within an off-site temporary space that has been approved by the Noonan Tenants and mutually agreed by the Parties, each in their sole discretion.

(ii) Location of Permanent Noonan Replacement Space. The Permanent Noonan Replacement Space will be located on Parcel E4 in the Arts Building under Parcel E4 Option 1, or in the Stand-Alone Noonan Building under Parcel E4 Option 2 or Parcel E4 Option 3. However, if Developer fails to timely exercise either Parcel E4 Option 1, Parcel E4 Option 2 or Parcel E4 Option 3 prior to the Parcel E4 Outside Date (or at such earlier time as requested by Developer, subject to the Port Director's approval in her sole discretion), then the Permanent Noonan Replacement Space will be located elsewhere within the 28-Acre Site.

(b) Noonan Replacement Space Election. If Port exercises its remedies to terminate the rights of Developer, a Vertical Developer Affiliate or an Arts Master Tenant to all or a portion of Parcel E4 under Parcel E4 Option 1, Parcel E4 Option 2 or Parcel E4 Option 3, then Developer may satisfy its obligation with respect to the Noonan Replacement Space by providing the Port with a written notice within 60 days after the Parcel E4 Outside Date, electing to proceed with one of the options described in **Subsections 7.13(b)(i)** (Temporary Replacement Space Designated as Permanent Replacement Space) and **7.13(b)(ii)** (Designation of New Permanent Space) (in either case, a "**Noonan Replacement Space Election**"). If Developer fails to make the Noonan Replacement Space Election within such 60-day period, Port may provide Developer with a written notice of such failure, clearly labelled, "*Action Required for Noonan Replacement Space Election.*" If Developer fails to make the Noonan Replacement Space Election within 10 days of Port's notice, then Port may select the location for the Permanent Noonan Replacement Space by written notice to Developer, which selection will be binding on Developer and become the Noonan Replacement Space Election for purposes of this Subsection. Notwithstanding the foregoing, if between the time that Developer makes the Noonan Replacement Space Election and the date that is twenty-four months thereafter, a TCO is issued for the Permanent Noonan Replacement Space within a building constructed on all or a portion of Parcel E4, then as of such date, all of Developer's obligations under **Subsection 7.13 (a)** (Developer's Obligation to Provide Space), **Subsection 7.13(b)** (Noonan Replacement Space Election) and **Subsection 7.13(c)** (Artist Transition Plan)will be relieved and the Port will release the Noonan Phase Security.

(i) Temporary Replacement Space Designated as Permanent Replacement Space. If at the time of the Noonan Replacement Space Election, the Noonan Tenants have been moved to a Temporary Noonan Replacement Space within a new building or historic rehabilitation located on a Development Parcel that has been constructed by a Vertical Developer Affiliate under a Vertical DDA, then Developer may elect in its Noonan Replacement Space Election to formally designate the Temporary Noonan Replacement Space as the Permanent Noonan Replacement Space. However, if the applicable Parcel Lease does not already permit the use of the leased premises for the Permanent Noonan Replacement Space in accordance with the applicable terms and conditions of the

Artist Transition Plan, then Developer's election under this subsection will be conditional upon the Port and the applicable tenant under the Parcel Lease agreeing to an amendment to the applicable Parcel Lease within 90 days after Developer's election that will permit the use of the leased premises for the Permanent Noonan Replacement Space in accordance with the applicable terms and conditions of the Artist Transition Plan. If the Parcel Lease amendment does not occur during such 90-day period (subject to extension by mutual agreement of the Parties in their sole discretion), then within 30 days after the expiration of such 90-day period, Developer must make the Noonan Replacement Space Election under **Subsection 7.13(b)(ii)** in accordance with the procedures of **Subsection 7.13(b)** (Noonan Replacement Space Election).

(ii) Designation of New Permanent Space.

(1) If at the time of the Noonan Replacement Space Election, the Noonan Tenants have been moved to a Temporary Noonan Replacement Space that is located (x) within one or more buildings or temporary structures located on the Master Lease Premises (such as trailers or buildings that have not yet been rehabilitated), or (y) within a new building or historic rehabilitation located on a Development Parcel that has been constructed by a Vertical Developer Affiliate under a Vertical DDA but Developer does not wish to make the election in **Subsection 7.13(b)(i)** (Temporary Replacement Space Designated as Permanent Replacement Space), then Developer, in its Noonan Replacement Space Election, will designate the location of the Permanent Noonan Replacement Space on the 28-Acre Site, consistent with all applicable Regulatory Requirements. Under this election, the location of the Permanent Noonan Replacement Space may be located on (x) the site of the then-existing Temporary Noonan Replacement Space if it is located within one or more buildings or temporary structures located on the Master Lease Premises (such as trailers or buildings that have not yet been rehabilitated), in which case Developer will provide notice and another Temporary Noonan Replacement Space within the 28-Acre Site during the Permanent Noonan Replacement Space construction period consistent within the Artist Transition Plan, or (y) on another future Development Parcel that can accommodate the Permanent Noonan Replacement Space.

(2) Notwithstanding **Subsection 7.13(b)(i)** (Temporary Replacement Space Designated as Permanent Replacement Space) or **Subsection 7.13(b)(ii)** (Designation of New Permanent Space), if the Temporary Noonan Replacement Space is located on the last Option Parcel to be developed in the 28-Acre Site (the **"Final Option Parcel"**), then the Appraisal Notice for the applicable Option Parcel will reflect the use and economic terms for the Permanent Noonan Replacement Space located on the applicable Option Parcel, consistent with the Artist Transition Plan, and the applicable Vertical DDA, Parcel Lease and/or Restrictive Covenants for the Option Parcel will require the Option Parcel to accommodate the Permanent Noonan Replacement Space consistent with the Artist Transition Plan. Developer, at its sole cost and expense, will be required to provide another Temporary Noonan Replacement Space for the applicable Noonan Tenants

during construction of the Permanent Noonan Replacement Space on the applicable Option Parcel.

(3) If Developer makes the Noonan Replacement Space Election under **Subsection 7.13(b)(ii)(1)**or **(2)**, Developer will cause a Vertical Developer Affiliate to enter into a Vertical DDA for the designated parcel no later than 24-months after the date of Developer's notice. The Appraisal Notice and the Parcel Lease for the designated parcel will reflect the use and economic terms for the Permanent Noonan Replacement Space consistent with the Artist Transition Plan. The Outside Date for Close of Escrow will be established in accordance with the terms of the applicable Vertical DDA. The Vertical DDA will require the Vertical Developer Affiliate to diligently proceed to commence and prosecute the construction diligently to completion.

(c) Artist Transition Plan. As a condition to the Port's obligation to issue the Initial Transition Notice (described below), Developer will have obtained Port approval of the "**Artist Transition Plan**" for the Noonan Tenants in accordance with this Subsection. Developer will consult and cooperate with the Port to prepare the Artist Transition Plan in consultation with the Noonan Tenants, which will be submitted for Port approval. The Port will approve or disapprove the Artist Transition Plan within 30 days of its submittal (or 15 days in the case of a resubmittal as provided below). If the Port disapproves the Artist Transition Plan, it will provide Developer with notice, with a reasonably detailed explanation of the reasons for disapproval. The Artist Transition Plan will be an agreement binding on the Port and Developer and will include the material terms described below. The Port will include relevant terms under the Artist Transition Plan in 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 (the "**Noonan Space Lease**") and will reasonably cooperate with Developer in the implementation of the Artist Transition Plan. The Artist Transition Plan will address the following matters, at a minimum.

(i) Notice and Terms for Temporary Noonan Replacement Space. The provisions of this Subsection will govern the notice and terms for the initial termination and relocation of the Noonan Tenants from Building 11.

(1) The Artist Transition Plan will obligate the Port, at Developer's request and with Developer's cooperation and consultation, to provide the Noonan Tenants with a minimum of 6 and up to 24 months' prior written notice ("**Initial Transition Notice**") of the termination of their respective leases at Building 11 (or, if applicable, a Temporary Noonan Replacement Space), with an opportunity to relocate to the Temporary Noonan Replacement Space upon termination. The timing for issuance of the Initial Transition Notice will be set forth in the Artist Transition Plan, but will be initiated at such time as is elected by Developer in order to satisfy its obligations under **Subsection 7.13(a)** (Developer's Obligation to Provide Space).

(2) The Temporary Noonan Replacement Space will be subject to a license or sublease with each Noonan Tenant on the tenant's standard commercial sublease form, subject to the requirements of the Artist Transition Plan. Each license or sublease will include a termination clause with 24 months'

advance notice to allow the Noonan Tenant relocating to the Temporary Noonan Replacement Space to transition to the Permanent Noonan Replacement Space.

(3) The sublease of the Temporary Noonan Replacement Space may be with individual Noonan Tenants or with a single subtenant representing the Noonan Tenants (such as a duly formed nonprofit entity) that licenses or subleases artist space to individual artists; provided, however, that in either case, the applicable licenses or subleases to the single subtenant or the Noonan Tenants must include the termination clause and relocation opportunities described in **Subsection 7.13(c)(ii)** (Notice and Terms for Permanent Noonan Replacement Space).

(4) Each Noonan Tenant must respond to the Initial Transition Notice within 60 days of the Initial Transition Notice with its election to (a) vacate Building 11 (or, if applicable, a Temporary Noonan Replacement Space) and not accept relocation to the Temporary Noonan Replacement Space or (b) move to the Temporary Noonan Replacement Space designated in the notice upon the termination of their lease under the Initial Transition Notice. Any Noonan Tenant that elects not to relocate to the Temporary Noonan Replacement Space within the time required must vacate Building 11 (or, if applicable, the then-current Temporary Noonan Replacement Space) within the time required under the Initial Transition Notice, which obligation will be enforced by the Port with respect to the existing lease for Building 11, and will forego its rights to locate within the Temporary Noonan Replacement Space and will forego its rights to locate within the Permanent Noonan Replacement Space.

(ii) Notice and Terms for Permanent Noonan Replacement Space. The Vertical Developer Affiliate under the applicable Noonan Space Lease for the Temporary Noonan Replacement Space with the Port's cooperation and consultation (or Developer, if the Temporary Noonan Replacement Space is located on the Master Lease Premises as an interim use under the Master Lease) will provide the Noonan Tenants with a minimum of 24 months' prior written notice ("**Second Transition Notice**") of the termination of the applicable subleases at the Temporary Noonan Replacement Space (or to another Temporary Noonan Replacement Space, if needed by Developer to accommodate a phased move before the Permanent Noonan Replacement Space is ready for occupancy), and providing the applicable Noonan Tenant with the opportunity to relocate to the Permanent Noonan Replacement Space upon termination (or to another Temporary Noonan Replacement Space, if needed by Developer to accommodate a phased move before the Permanent Noonan Replacement Space is ready for occupancy). Developer will retain the ability to trigger the issuance of the Second Transition Notice at such time as is elected by Developer in order to satisfy its obligations under **Subsection 7.13(a)** (Developer's Obligation to Provide Space). If the Temporary Noonan Replacement Space is with a single subtenant representing the Noonan Tenants, then the Second Transition Notice will be provided to the single subtenant, and the single subtenant must provide a copy of the Second Transition Notice to each of the Noonan Tenants having a license or sublease. Each Noonan Tenant must respond to the Second Transition Notice within 60 days of the Second Transition Notice to vacate the Temporary Noonan Replacement Space or move to the Permanent Noonan Replacement Space upon

the termination of their lease as set forth in the Second Transition Notice. Any Noonan Tenant that elects not to relocate to the Permanent Noonan Replacement Space within the time required must vacate the Temporary Noonan Replacement Space within the time required under the Second Transition Notice and will forego its rights to locate within the Permanent Noonan Replacement Space.

(iii) Size. Any Noonan Replacement Space will be sized to accommodate those existing Noonan Tenants that elect to relocate to the Noonan Replacement Space, estimated to be between 20,000 and 25,000 gsf. Procedures for determining the size of individual subtenant spaces and priority for selection will be identified in the Artist Transition Plan, and, for the Noonan Replacement Space, will be managed by the Vertical Developer Affiliate or Arts Master Tenant, as applicable, under the Noonan Space Lease in consultation with the Port and the Noonan Tenants.

(iv) Rent. The base rent will be permanently restricted during the term of the sublease for the Temporary Noonan Replacement Space, and for the life of the building of the Permanent Noonan Replacement Space to reflect the following components (collectively, the "**Noonan Tenant Rent**").

(1) Base rent will be $1.30 per square foot (*i.e.*, equal to the Port's parameter rent schedule for the tenant's existing space on the Reference Date), adjusted by the percentage of change between the CPI first published in any full month after the Reference Date and the CPI published for the month most immediately prior to the rent commencement date of the applicable Noonan Tenant sublease, with an annual CPI adjustment thereafter.

(2) To the extent the Noonan Tenant base rent would not be reasonably anticipated to cover customary common area charges for the Noonan Replacement Space (*e.g.*, taxes, insurance, utilities and building maintenance and repair), an additional amount per subtenant based on the size of their subleased premises to the extent required to operate the building in which the Noonan Replacement Space is located without an annual operating loss, as determined by the master tenant under the Parcel Lease for the Noonan Replacement Space in consultation with the Port. However, the amount of common area charges that may be passed on to subtenants under the Noonan Space Lease must not exceed: (A) 10% of the applicable Noonan Tenant Rent payable by the Noonan Tenant that first moves to the Noonan Replacement Space; and (B) 50% of the Noonan Tenant Rent charged to any subsequent subtenant occupying the Noonan Replacement Space.

(d) Costs and Moving Expenses. Developer will be responsible for (i) the costs associated with providing the Temporary Noonan Replacement Space (including unreimbursed out-of-pocket costs incurred by Developer for permitting, design, acquisition of temporary facilities, tenant improvements and ongoing rent subsidies and operational costs), and (ii) actual moving expenses of each eligible Noonan Tenant that moves to any Temporary Noonan Replacement Space, and for each Noonan Tenant that moves to the Permanent Noonan Replacement Space, including costs of transportation, packing, crating, unpacking and uncrating personal property, insurance covering personal property, and connection charges for starting utility service. Such costs will be included as Horizontal Development Costs subject to reimbursement from Project Payment Sources in accordance with the Financing Plan. Notwithstanding the foregoing, if the Temporary Noonan Replacement Space is located on the Final Option Parcel to be

developed within the Project, then any of the costs specified in clauses (i) and (ii) of this Subsection incurred in connection with the relocation of the Noonan Tenants from the applicable Option Parcel to another Temporary Noonan Replacement Space in order to allow for the designation and construction of the Permanent Noonan Replacement Space on that Option Parcel will not be included as Horizontal Development Cost eligible for reimbursement from Project Payment Source.

(e) Remedies for Failure. Developer's failure to comply with its obligations under **Subsection 7.13 (a)** (Developer's Obligation to Provide Space), **Subsection 7.13(b)** (Noonan Replacement Space Election) and **Subsection 7.13(c)** (Artist Transition Plan)will not be a Material Breach; however, the Port may avail itself of the following exclusive remedies:

(i) If Developer makes the Noonan Replacement Space Election under **Subsection 7.13(b)(ii)(1)** or **(2)** but fails to cause a Vertical Developer Affiliate to enter into a Vertical DDA for the designated parcel no later than 24-months after the date of Developer's notice, or if Close of Escrow fails to close under the applicable Vertical DDA due to a Vertical Developer Affiliate event of default or a failure to satisfy the conditions precedent to closing under the applicable Vertical DDA, then Port will have the following remedies:

(1) Developer will lose its Option as to the designated Option Parcel, and Port may convey the designated Option Parcel by Public Offering.

(2) Port may call on the Noonan Phase Security provided under **Subsection 17.3(d)** (Noonan Replacement Space). Upon satisfaction of the payment obligations under the Noonan Phase Security, Developer will be relieved of its performance and payment obligations under **Subsection 7.13 (a)** (Developer's Obligation to Provide Space), **Subsection 7.13(b)** (Noonan Replacement Space Election), **Subsection 7.13(c)** (Artist Transition Plan) and **Subsection 7.13(d)** (Costs and Moving Expenses).

(3) Port, in its discretion, may elect, to (i) locate the Permanent Noonan Replacement Space on the designated Option Parcel by including the requirement in the Appraisal Instructions and Vertical DDA for the designated Option Parcel consistent with the terms of the Artist Transition Plan, and by providing the Vertical Developer Affiliate with the funds obtained under the Noonan Phase Security to subsidize the Permanent Noonan Replacement Space on such Option Parcel, or (ii) use the Noonan Phase Security to subsidize the establishment of the Permanent Noonan Replacement Space at the site of the Temporary Noonan Replacement Space.

(ii) If a Vertical Developer Affiliate defaults in its obligations under the applicable Vertical DDA to commence construction of the Permanent Noonan Replacement Space designated under **Subsection 7.13(b)(ii)(1)** or **(2)** and diligently prosecute the construction to completion, then Port will have the following remedies:

(1) Port may terminate the Vertical DDA and Parcel Lease in accordance with their terms.

(2) Port may call on the Noonan Phase Security provided under **Subsection 17.3(d)** (Noonan Replacement Space). Upon satisfaction of the payment obligations under the Noonan Phase Security, Developer will be relieved of its performance and payment obligations under **Subsection 7.13 (a)** (Developer's Obligation to Provide Space), **Subsection 7.13(b)** (Noonan Replacement Space Election), **Subsection 7.13(c)** (Artist Transition Plan) and **Subsection 7.13(d)** (Costs and Moving Expenses).

(3) Port, in its discretion, may elect, to (i) locate the Permanent Noonan Replacement Space on the designated Option Parcel by including the requirement in the Appraisal Instructions and Vertical DDA for the designated Option Parcel consistent with the terms of the Artist Transition Plan, and by providing the Vertical Developer Affiliate with the funds obtained under the Noonan Phase Security to subsidize the Permanent Noonan Replacement Space on such Option Parcel, or (ii) use the Noonan Phase Security to subsidize the establishment of the Permanent Noonan Replacement Space at the site of the Temporary Noonan Replacement Space.

7.14. Historic Buildings 12 and 21. Except as otherwise provided in **Subsection 9.2(c)** (Effect on Historic Buildings), Developer must rehabilitate Historic Building 12 and Historic Building 21 in accordance with the Secretary's Standards and subject to the Schedule of Performance, all as more particularly described in this Section.

(a) Schedule. As shown on the Schedule of Performance, Developer must comply with the following schedule for Historic Buildings 12 and 21.

(i) The Vertical Developer Affiliate must enter into a Vertical DDA and Close Escrow on a Parcel Lease for Historic Building 12 consistent with **Subsection 7.14(b)** (Forms) within the times provided under the Schedule of Performance.

(ii) The Vertical Developer Affiliate must enter into a Vertical DDA and Close Escrow on a Parcel Lease for Historic Building 21 consistent with **Subsection 7.14(b)** (Forms) within the times provided under the Schedule of Performance.

(b) Forms. The Vertical DDA and Parcel Lease for Historic Building 12 and Historic Building 21 will be substantially in the forms attached as **DDA Exhibit D2** and **DDA Exhibit D3**, but subject to the additional and alternative provisions described in the Appendix for Historic Buildings attached to each, addressing, among other matters, the following terms.

(i) The Vertical Developer Affiliate will be required to rehabilitate or cause to be rehabilitated Historic Building 12 and Historic Building 21 consistent with the Design for Development and the Secretary's Standards and in accordance with the Schedule of Performance.

(ii) The Vertical Developer Affiliate will be required to submit Part 1 and Part 2 of the application for Historic Tax Credits; provided, however, that this requirement will not apply if a change in Law would eliminate the availability of Historic Tax Credits for the applicable Historic Building, or if, upon request by Developer, the Port Director, in her sole discretion, waives this requirement.

(iii) The term of each Parcel Lease will be 66 years.

(iv) Base rent will be $1/year.

(v) Participation rent will equal 3.5% of Modified Gross Income (as defined in the Parcel Lease), which participation rent will be subordinate to the rights of any Permitted Lender thereunder, starting on the 31st anniversary of the issuance of a Temporary Certificate of Occupancy for the applicable Historic Building.

(vi) Completion Guaranty. As a condition to Close of Escrow on the Parcel Lease, the Vertical Developer Affiliate must provide a guaranty from an Obligor having a Net Worth of not less than $10 million that unconditionally and irrevocably obligates the Obligor to cause the lien-free completion of the required improvements. The guaranty will be in a form reasonably satisfactory to the Port based upon then-prevailing terms in the market.

(vii) Damage and Destruction. The Vertical Developer Affiliates will bear the risk of loss for any event of damage or destruction to Historic Building 12 or 21, as applicable, that occurs prior to Close of Escrow on the Parcel Lease that is estimated to add less than $500,000 (subject to an annual CPI escalation) to the estimated construction cost (except that the Port will assign any insurance proceeds to the Vertical Developer to the extent applied to reconstruction costs), and the Vertical Developer may terminate the Vertical DDA in the case of damage or destruction that exceeds $500,000. Damage or destruction that occurs prior to the date of the Vertical DDA will be governed by **Subsection 9.2(c)** (Effect on Historic Buildings).

(viii) Participation in Proceeds from Sales and Refinancing. The provisions in the form of Parcel Lease governing participation in sales and refinancing proceeds will apply equally to the Parcel Leases for Historic Building 12 and 21.

(c) Failure to Proceed a Material Breach. If the Vertical Developer Affiliate fails to enter into a Vertical DDA for Historic Building 12 or 21, as applicable, by the Outside Date shown on the Schedule of Performance for any reason except the Port's failure to execute the Vertical DDA, it will be a Material Breach by Developer and the remedies of **Section 12.4** (Termination as Port Remedy) will apply.

(d) Vertical Developer Default. If Vertical Developer Affiliate fails to Commence Construction and thereafter diligently prosecute to completion the required Improvements under the Schedule of Performance, it will not be a default under this DDA, but Port may exercise all available remedies under the applicable Vertical DDA, including an action on the completion guaranty described in **Subsection 7.14(b)** (Forms), specific performance and termination of the Parcel Lease. After termination of the applicable Vertical DDA and/or Parcel Lease, the Port will have the right to offer Historic Building 12 and Historic Building 21 by Public Offerings for any use permitted under the SUD. The Port's proceeds from a conveyance under this clause will be Port Capital free of any restrictions under this DDA.

7.15. Rooftop Open Space. The 28-Acre Site Project may include 20,000 gsf of contiguous rooftop open space that could be used for active recreation (the "**Rooftop Open Space**"), to be provided in accordance with this Section.

(a) Provided by the Port. If the Port develops Parcel C1A for commercial use, it will provide the Rooftop Open Space on the roof of Parcel C1A, subject to funding availability. The Port may use Public Financing Sources to pay for the Rooftop Open Space as a public benefit of the 28-Acre Site Project. If the Port, in consultation with

MOHCD, is able to develop residential use on Parcel C1A, then the procedures of **Subsection 7.15(b)** (Selected by Developer) will apply.

(b) Selected by Developer. If the Port, in consultation with MOHCD, notifies Developer prior to Developer's Phase Submittal for Phase 3 that the Port will not develop Parcel C1A for commercial use, then the Port may request Developer to include in its Phase Submittal for Phase 3 a location for the Rooftop Open Space on a commercial parcel in Phase 3, subject to the following conditions.

(i) The Vertical DDA for the Option Parcel subject to the Rooftop Open Space will include a condition precedent to the Vertical Developer's obligation to provide the Rooftop Open Space that the Port has demonstrated to the Vertical Developer's reasonable satisfaction at Close of Escrow that Public Financing Sources are available to pay for the construction costs, at time of construction, to be incurred by the Vertical Developer solely associated with the Rooftop Open Space, including items such as Construction Code requirements triggered by the Rooftop Open Space (*e.g.*, structural framing or a change in building type construction), additional elevators, a dedicated entry, additional egress requirements, and noise mitigation measures to shield the commercial uses within the building.

(ii) The Vertical DDA will include a mechanism for timely payment of the Vertical Developer's construction costs as they are incurred, from available Public Financing Sources.

(iii) The Vertical Developer will have no obligation or liability for operation and maintenance of the Rooftop Open Space. Costs of operation and maintenance (including additional costs to building such as security, separate entrance lobby, etc.) will be paid through the Services Special Taxes and the costs of Maintained Facilities included in the budget and tax rates for the Pier 70 Leased Property CFD and Zone 2 of the Pier 70 Condo CFD.

(iv) As a condition to Vertical Developer's construction obligations, the Port and City will take actions necessary to allow development of the Rooftop Open Space.

7.16. Affordable Housing Parcels. Developer has preliminarily selected, and the Port and MOHCD have approved, Parcel C1B and Parcel C2A as the Affordable Housing Parcels in the 28-Acre Site, and Port has also agreed that Parcel K South will also be an Affordable Housing Parcel. Developer will comply with its obligations under the Affordable Housing Plan, including the preparation and timely delivery of the Affordable Housing Parcels and the requirement that no more than 50% of all Market-Rate Units at full build-out of the 28-Acre Site will be sold as Condo Units.

7.17. PDR. No less than 50,000 gsf of space within the 28-Acre Site Project will be restricted for PDR use (the "**PDR Requirement**") through compliance with this Section. Developer will identify in each Phase Submittal each Development Parcel within the Phase, if any, that will accommodate all or a portion of the PDR Requirement. Upon approval of each Phase Submittal that contains all or a portion of the PDR Requirement, the Port will incorporate the applicable PDR use and size restriction into the Parcel Lease for the applicable Development Parcel. If Developer has not identified sufficient space to fulfill the PDR Requirement with the Phase Submittal for Phase 2, the Port may condition its approval of the Phase Submittal for Phase 3 upon a requirement that Developer satisfy the remaining PDR Requirement in Phase 3. A default by a Vertical Developer under the applicable Parcel Lease of its obligation to comply with the PDR Requirement will be a default in accordance with the applicable terms of the Parcel Lease, but will not give rise to an Event of Default under this DDA. The Appraisal Instructions

for any Option Parcel that will be subject to the PDR Requirement will take into account the required gsf of the PDR Requirement.

7.18. Child Care.

(a) Locations. Developer will accommodate two on-site childcare facilities within the 28-Acre Site Project, as provided in this Section. In both its Phase Submittal for Phase 1 and its Phase Submittal for either Phase 2 or Phase 3, Developer will identify the potential location for an on-site childcare facility within the applicable Phase with a capacity of a minimum of 50 children each and meeting all applicable Regulatory Requirements. The locations for the childcare facilities will be limited to the potential childcare locations shown on the map attached as **DDA Exhibit B7**. The Port and Developer may agree to move the location of the childcare facility shown in a Phase Approval to another of the eligible childcare sites at any time prior to Developer's delivery of an Appraisal Notice for the applicable Option Parcel. The requirement for the on-site childcare facility will be included in the Appraisal Instructions for the applicable Option Parcel.

(b) Sublease. When the location of the childcare facility is finally determined within each applicable Phase, the Port will include a provision in the Vertical DDA for the applicable Option Parcels that requires the Vertical Developer to provide a childcare facility meeting the requirements of this Section. Each facility must have a minimum capacity 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.

(c) Potential Reinstatement of Childcare Fees. Developer may request the elimination of one or both of the childcare facilities from the 28-Acre Site Project, subject to the Port's approval in its sole discretion. If the Port approves such request as to a particular Option Parcel, the Vertical Developer under the applicable Vertical DDA will be required to pay an amount equal to the Impact Fees under Planning Code sections 414.1-414.15 and sections 414A.1–414A.8 as a condition to the Port's approval.

7.19. Community Facilities.

(a) Right to Sublease. The City will have the right to sublease from Vertical Developers within the 28-Acre Site (excluding the frontages designated in the Design for Development and SUD as "priority retail") up to 15,000 gsf of community facilities (the "**Community Facility Space**") at fair market rents and on lease terms consistent with the then-current market. The Community Facility Space will be subject to all applicable requirements of the subject Parcel Lease, including those provisions governing prohibited uses.

(b) Prohibited Uses. The City must not use the Community Facility Space for any automobile-related uses, garages, hazardous waste facility, incinerators, junkyards, machine shops, public utilities yards, recycling centers, social services, or health services operated or directed by the City specifically or primarily for purposes of community behavioral health services, community substance abuse services, or similar services, service yards, storage yards, or wireless telecommunications services facilities.

(c) Exercise of Right.

(i) In each Phase Submittal that includes commercial-office uses, Developer will designate one or more eligible Option Parcels that could accommodate the Community Facility Space, or if 15,000 gsf of contiguous ground floor space is not available in the subject Phase, Developer may propose a distribution of the 15,000 gsf among more than one building in the Phase. In its Phase Approval, the Port, in consultation with the City, must notify Developer as

to whether or not the City intends to accept the right to the Community Facility Space within any designated location (each, a "**CF Election**").

(ii) If the Port makes the CF Election, then it will forfeit its right to Community Facility Space in any Later Phase, but the Parcel Lease for the designated Option Parcel will include a requirement for the Vertical Developer to provide the City with a right of first offer to sublease the Community Facility Space at fair market rent and on market terms. If the City fails to exercise its right of first offer within six months after the execution date of the applicable Vertical DDA or if it elects not to exercise a sublease renewal option, it will forfeit all further rights to the Community Facility Space.

(d) Failure to Exercise. If the Port fails to make the CF Election with the Phase Approval, it will forfeit the City's right to the Community Facility Space for that Phase, but Developer must offer an alternate Community Facility Space in each Later Phase. The Port will forfeit the City's right to any Community Facility Space if the Port has failed to make the CF Election by the date of the Phase 3 Phase Approval.

7.20. Priority Retail along Slipways Commons. The open space network within the 28-Acre Site Project includes an inland portion called Slipways Commons, as more particularly described in the Design for Development (Figure 3.6.1). Slipways Commons is bounded by Parcels E1, E2, E3 and E4. The Design for Development (Figure 2.2.2) designates the frontages of these Parcels as Priority Retail Frontage zones. To ensure that these Priority Retail Frontage zones will attract and be activated by visitors as well as local residents, each Parcel Lease or Restrictive Covenant for Parcel E1, E2 and E3 will include a requirement that the Tenant must use commercially reasonable efforts to sublease at least fifty percent (50%) of the rentable ground floor area within the Priority Retail Frontage zone on the Premises to "Priority Retail" uses (as defined in the Design for Development) that are also visitor-serving uses, which may include, without limitation, restaurants, cafes and specialty retail and food purveyors that will attract visitors and enhance their enjoyment of the adjoining open spaces, and that the Tenant may not enter into any sublease that would prevent or prohibit Tenant from achieving the foregoing without the prior written consent of the Port Director, in her sole discretion.

7.21. Report on Associated Public Benefits. With the Phase Submittal application for Phase 3, and within six months after the Port has issued the last Final Certificate of Occupancy for all Vertical Improvements in all Phases, Developer must submit to the Port a report that describes compliance with the Associated Public Benefits described in this DDA. The Associated Public Benefits Report will track compliance with all categories of Associated Public Benefits provided with applicable Development Parcels and Affordable Housing Parcels, and, at the beginning of Phase 3, will describe how all remaining Associated Public Benefits will be achieved and enforced within Phase 3.

7.22. Wastewater Treatment and Recycling System.

(a) WTRS Variant. *Infrastructure Plan § 12.2 (Proposed Non-Potable Water System)* contemplates two possible variants for the treatment of recycled water at the 28-Acre Site Project: a parcel-based graywater reuse system, or a district-wide Wastewater Treatment and Recycling System ("**WTRS**"). *Infrastructure Plan § 12.2 (Proposed Non-Potable Water System)* provides that the decision between parcel-based or district-wide WTRS will be made prior to construction of Phase 1 based on market viability and the SFPUC Non Potable Water application procedures. The decision to proceed with the WTRS variant will be made in accordance with this Subsection.

(b) WTRS Term Sheet and WTRS Agreement. As of the Reference Date, the Port, SFPUC and Developer are negotiating a term sheet (the "**WTRS Term Sheet**") that will be the basis upon which the parties thereto will negotiate a binding three-party agreement relating to the construction and acceptance of the WTRS (the "**WTRS**

Agreement"). The WTRS Agreement will set forth the agreements and understandings of the parties as to the schedule, design, construction, ownership and operation of the WTRS. The Parties anticipate that the Port, SFPUC and Developer, each in their sole discretion, will sign the WTRS Term Sheet by May 1, 2018, and enter into the WTRS Agreement based on the WTRS Term Sheet by July 1, 2018.

(c) Developer's Obligation for WTRS. If the parties enter into the WTRS Agreement by July 1, 2018 (as such date may be extended by mutual agreement of the parties thereto in their sole discretion), then the WTRS Agreement will be appended to this DDA, the WTRS will automatically and, without further action by the Parties, become a Phase Improvement for all purposes of this DDA, and Developer's obligations under the WTRS Agreement to design and construct the WTRS will automatically be deemed a Developer Construction Obligation hereunder. Within 30 days after the effective date of the WTRS Agreement, the Parties will revise the Schedule of Performance for Phase Improvements to include a separate line item that will set forth the Outside Dates applicable to the WTRS consistent with the schedule of performance set forth in the WTRS Agreement; provided, however, that the failure to do so will not void or invalidate Developer's schedule of performance obligations under the WTRS Agreement. If the Port, SFPUC and Developer fail to enter into the WTRS Agreement by July 1, 2018 (as such date may be extended by mutual agreement of the parties thereto in their sole discretion), then the recycled water system at the 28-Acre Project Site will be provided by a parcel-based graywater reuse system in accordance with the Infrastructure Plan.

(d) Treatment of WTRS for Purposes of the DDA. Without limiting **Subsection 7.22(c)** (Developer's Obligation for WTRS): (i) Developer's Horizontal Development Costs related to the design, approval and construction of the WTRS will be included as Horizontal Development Costs for which the Port must pay or reimburse Developer from Project Payment Sources under the Financing Plan, and (ii) Developer's obligations to comply with the Outside Dates in the Schedule of Performance for the WTRS will be subject to Excusable Delay. Except to the extent expressly addressed in the WTRS Agreement, Developer's failure to comply with its obligations for the WTRS in accordance with the WTRS Agreement will be treated in the same manner its failure to comply with the Schedule of Performance for any other Phase Improvement under **Subsection 12.2(c)** (Outside Dates for Phase Improvements and Public Spaces).

7.23. Potential Relocation of Building 11.

(a) Building 11 Relocation Plan and Potential Developer or Arts Master Tenant Relocation of Building 11. Subject to **Subsection 7.23(b)** (Potential Port Relocation of Building 11), if prior to the Port's approval of Developer's Phase Submittal for Phase 2, either the Port or Developer receives an approved Part 1 and Part 2 for any resource in the Union Iron Works Historic District ("**UIWH District**") from the National Park Service that conditions Part 2 historic tax credit eligibility upon the relocation and rehabilitation of Building 11, or the National Park Service issues a written communication confirming that the relocation and rehabilitation of Building 11 would support a Part 2 historic tax credit eligibility approval for other resources in the UIWH District (subject to compliance of the applicable contributing resource with Secretary Standards), Developer and Port will use commercially reasonable efforts to develop a plan ("**Building 11 Relocation Plan**") to relocate Building 11, which will include a schedule, detailed costs and funding sources, a relocation site for Building 11 within the UIWH District that is to the north of and outside the 28-Acre Site, and the relevant terms of the Artist Transition Plan described in **Subsection 7.13(c)** (Artist Transition Plan). The Building 11 Relocation Plan may also include the procedures described in **clauses (i)** through **(vi)** hereof to implement the Building 11 Relocation Plan, subject to each Party's

approval in its sole discretion. The Building 11 Relocation Plan and any material amendments to the Transaction Documents that are necessary to implement the Building 11 Relocation Plan are subject to Port Commission and Board of Supervisors' approval, in their sole and absolute discretion, after completion and consideration of environmental review under CEQA in accordance with applicable law.

(i) Relocation of Building 11 under the Building 11 Relocation Plan by Developer or an Arts Master Tenant will be financed by up to $13.5 million in Arts Building Proceeds.

(ii) If the costs to implement the Building 11 Relocation Plan, including seismic upgrades, code compliance and building relocation, exceed the $13.5 million in Arts Building Proceeds, the Port will have the option to utilize Port Tax Increment or other available sources (not including Project Payment Sources) to pay for remaining costs. If the costs to implement the Building 11 Relocation Plan are less than the $13.5 million in Arts Building Proceeds, Port and Developer will utilize the remainder to subsidize the Arts Building, subject to the terms of **Section 7.12** (Arts Building) and *FP § 10.2(b) (Arts Building Funding)*.

(iii) Subject to Port Commission and Board of Supervisors approval in their sole discretion after completion and consideration of environmental review under CEQA in accordance with applicable law, Port will enter a Vertical DDA with a Developer Affiliate, Arts Master Tenant or other third party that would require the contracting entity, through itself or other qualified parties, to lease, relocate, rehabilitate, maintain and operate Building 11.

(iv) Close of Escrow under the Vertical DDA for Building 11, implementation of the Building 11 Relocation Plan and compliance with the Artist Transition Plan will satisfy Developer's obligation to provide Permanent Noonan Replacement Space under **Section 7.13** (Noonan Replacement Space) and the Schedule of Performance.

(v) Notwithstanding the foregoing, the Port Commission and Board of Supervisors retain the absolute discretion to (a) make modifications to the proposed Building 11 Relocation Plan, Vertical DDA and Parcel Lease as are deemed necessary to mitigate significant environmental impacts, (b) select other feasible alternatives to avoid such impacts, (c) balance benefits against unavoidable significant impacts before taking final action if such significant impacts cannot otherwise be avoided, or (d) determine not to proceed with the proposed Building 11 Relocation Plan, Building 11 Vertical DDA and Building 11 Parcel Lease based upon the information generated by the environmental review process.

(vi) After Building 11 is relocated and rehabilitated under the Building 11 Relocation Plan and in compliance with the Artist Transition Plan, the relocated Building 11 is intended to be the Permanent Noonan Replacement Space, unless otherwise agreed by the Parties.

(b) Potential Port Relocation of Building 11. Notwithstanding **Subsection 7.23(a)** (Building 11 Relocation Plan and Potential Developer or Arts Master Tenant Relocation of Building 11), Port will have the right in its sole discretion, and subject to approval by the Port Commission and Board of Supervisors in their sole and absolute discretion, after completion and consideration of environmental review under CEQA in accordance with applicable law, to relocate Building 11 to a relocation site within the UIWH District that is to the north of and outside the 28-Acre Site at its own cost. The Port will exercise such right by delivering notice to Developer prior to the addition of the

Building 11 Site to the Premises as an Annexation Site (as those terms are defined in the Master Lease) in accordance with *ML § 1.1(b)(iii)*. In order to ensure consistency with 28-Acre Site Project phasing, if Port exercises its right under this Subsection to relocate Building 11, the Port and Developer will agree to the timing of such Port relocation of Building 11 prior to or in conjunction with the Port's approval of Developer's Phase Submittal for Phase 2. Relocation of Building 11 by the Port under this Subsection will not relieve Developer of its obligation under **Section 7.13** (Noonan Replacement Space) to provide Permanent Replacement Space for the Noonan Tenants (and the $13.5 million in Arts Building Proceeds intended for the Noonan Replacement Space would continue to be available for such purpose to the extent provided in **Section 7.12** (Arts Building)and *FP § 10.2 (Arts Building Funding)*).

8. DELIVERY OF MASTER LEASE

8.1. Procedures for Delivery.

(a) Escrow. Within 30 days after the Reference Date, Developer will open an Escrow with an Escrow Agent and promptly notify the Port of the Escrow number and contact information for the title officer assigned to the Escrow.

(b) Title Report. Prior to the Reference Date, Developer caused the Escrow Agent to deliver to Port and Developer a preliminary title report (the "**Preliminary Title Report**") for the 28-Acre Site, together with copies of all documents relating to title exceptions shown in the title reports.

(c) Permitted Exceptions. Attached as **DDA Exhibit D1** is a copy of the Preliminary Title Report, marked to show those title exceptions that Developer has approved as "Permitted Exceptions" for delivery of the Master Lease, and those title exceptions that Developer would approve as "Permitted Exceptions" for delivery of each Parcel Lease. The "**Master Lease Permitted Exceptions**" for purposes of delivery of the Master Lease, collectively are: (i) the exceptions that are shown on **DDA Exhibit D1** as Permitted Exceptions for delivery of the Master Lease; (ii) exceptions created by this DDA or with the written consent of Developer; and (iii) exceptions for the Project Approvals. The "**Parcel Lease Permitted Exceptions**" for purposes of the Port Title Covenant (described in **Subsection 8.3** (New Title Matters)) and conveyance of Option Parcels under each Vertical DDA are: (i) the exceptions that are shown on **DDA Exhibit D1** as Permitted Exceptions for delivery of the Parcel Lease; (ii) exceptions created by this DDA, the Exchange Agreement, the applicable Vertical DDA or with the written consent of Developer or Vertical Developer; and (iii) exceptions for the Project Approvals.

(d) Quiet Title Action. The Parties acknowledge that the Preliminary Title Report contains exceptions that could adversely affect planned development of the 28-Acre Site and that may be removed by a McEnerney action. The Port will file the appropriate McEnerney action within 90 days after the Reference Date and diligently prosecute the same to judgment. If the Port obtains a favorable judgment in the action, it will obtain a certified copy of the judgment and instruct the Escrow Agent to record the judgment and issue an amendment or endorsement removing the exception. Developer must cooperate with the Port, and all fees and costs the Port incurs in the McEnerney action will be included as Port Capital under the Financing Plan.

(e) Street and Utility Vacations. The Parties acknowledge that the recordation of Subdivision Maps and construction of Phase Improvements may require the vacation of certain streets and utilities located within the FC Project Area, and the failure to do so in a timely manner could adversely affect or delay the Commencement or the completion of the applicable Phase Improvements. Therefore, in connection with each Phase

Submittal and Subdivision Map application, the Parties will work cooperatively to identify those Street and Utility Easements that should be abandoned, removed, relocated, amended, or otherwise modified to permit the recordation of a Phase Final Map and/or to allow the construction of the Phase Improvements (each, an "**Easement Action**"). To the extent that the Easement Actions will require action by the City, such as a quiet title action or Board of Supervisors action to abandon, vacate, or relocate (temporarily or permanently) the applicable Street and Utility Easement, the City will take all such reasonable measures to implement the required Easement Actions at Port's sole cost, and such costs will be included as Port Capital under the Financing Plan. Port's failure to implement the required Easement Actions will not be a breach of the Port Title Covenant; however, the Port's failure to timely implement the required Easement Action that causes a delay in Developer's performance under the Schedule of Performance will be considered an event of Excusable Delay.

8.2. Disapproved Exceptions.

(a) Removal of Title Exceptions. Except as set forth in this Section, the Port will convey the leasehold interest under the Master Lease subject only to the Master Lease Permitted Exceptions and free of all tenants, leases, and occupants. If any exceptions to title are not Master Lease Permitted Exceptions, the Port will cause the removal of such exceptions prior to execution and delivery of the Master Lease or otherwise cause the Escrow Agent not to show such exceptions in the Developer's Title Policy, and any such delay shall be an event of Excusable Delay applicable to all times for performance by Developer under this DDA. The Port's efforts with respect to the removal of exceptions pursuant to this Section will be included as Port Capital under the Financing Plan.

(b) Relocation. If the Port has tenants other than the Noonan Tenants on any portion of the 28-Acre Site who require relocation, the Port, at its sole cost, will comply to the extent applicable with requirements of the California Relocation Assistance Law (Cal. Gov't Code §§ 7260 *et seq.*) and any other Applicable Laws. Any Port costs incurred with the relocation of any tenants or occupants of the 28-Acre Site other than the Noonan Tenants will not be eligible for reimbursement as Port Capital under the Financing Plan or in any other manner. Subject to the requirements of **Section 7.13** (Noonan Replacement Space), the Port will be obligated to terminate the Building 11 lease and the rights of all tenants or subtenants to the use and occupancy of the Building 21 Site (as described in the Master Lease) when needed by Developer for construction of the Horizontal Improvements upon prior notice by Developer given in accordance with the Master Lease. Notwithstanding the foregoing, (1) the Port will not be required to terminate PG&E's rights to the PG&E Remediation Site until PG&E has received one or more no further action determinations from the Water Board for the remediation work within the 28-Acre Site; and (2) the Port will not be required to terminate SFPUC's rights to the Building 21 Site until the existing facilities are no longer needed, as evidenced by the completion of functioning replacement facilities, or at such earlier time as approved in writing by the SFPUC.

(c) Election of Remedies. If the Port fails to remove any title exception that is not a Master Lease Permitted Exception prior to Close of Escrow for delivery of the Master Lease, then Developer may elect any of the following actions.

(i) Developer may terminate Escrow for delivery of the Master Lease and terminate this DDA by delivering notice to the Port.

(ii) Developer may elect to remove the exception after delivering notice to the Port. Developer may take any actions reasonably necessary to remove the exception, which may include obtaining an endorsement from the

Escrow Agent insuring over the exception. A delay in Closing caused by this election will be an Excusable Delay so long as long as Developer is diligently proceeding with its election.

(iii) Developer may waive its objection and execute and accept delivery of the Master Lease subject to the exception, which will then be deemed to be a Permitted Exception.

(d) Effect of Action or Inaction.

(i) Developer's timely election under **Subsection 8.2(c)** (Election of Remedies) will not affect Developer's remedies under **Section 11.4** (Remedies for Events of Default) if the title exception is caused by the Port's breach of the Port Title Covenant, subject to any notice and cure requirements under **Section 11.3** (Events of Default by the Port).

(ii) Developer's failure to make a timely election under this Subsection will be deemed to waive any objections to applicable title exceptions that are not Master Lease Permitted Exceptions, and each exception that Developer is deemed to have waived will also be deemed to be Master Lease Permitted Exceptions.

(e) Developer's Title Policy. Developer's obligation to Close Escrow on the Port's conveyance of the Master Lease is conditioned on the Escrow Agent's irrevocable commitment to issue to the Developer a CLTA title insurance policy (or at the Developer's option, an ALTA extended coverage title insurance policy) insuring Developer's leasehold interest under the Master Lease. Developer may designate desired endorsements, reinsurance, and direct access agreements for the policy and the amount insured, subject to the Escrow Agent's reasonable agreement. The title policy must insure Developer's interest in the Master Lease Premises under the Master Lease, subject only to the Master Lease Permitted Exceptions. If Developer elects to obtain an ALTA owner's policy, Developer will be responsible for securing at its sole cost, without reimbursement as a Soft Cost, any required surveys, engineering studies, and other documents in time to permit Close of Escrow by the Closing Deadline.

(f) Port's Title Policy. The Port's obligation to Close Escrow on the Master Lease is conditioned on the Escrow Agent's irrevocable commitment to issue to the Port a CLTA owner's title insurance policy in an amount specified by the Port and satisfactory to the Escrow Agent, insuring Port's fee interest in the Master Lease Premises subject to the Master Lease Permitted Exceptions that are applicable to the fee, and with such CLTA endorsements as Port may reasonably request, all at the sole cost of Developer, provided that Port pays any incremental cost for such policy (including endorsements) in excess of the cost of the title insurance policy and endorsements referred to in **Subsection 8.2(e)** (Developer's Title Policy) and further provided that this condition precedent will not apply if any existing Title Policy for the 28-Acre Site (including any endorsements that can be issued by Escrow Agent) does not adequately provide the coverage described in this Subsection, as reasonably determined by the Port. The Port's incremental costs to obtain title insurance will be included as Port Capital under the Financing Plan.

8.3. New Title Matters. The Port agrees that it will not voluntarily permit or cause to be created after the Reference Date any new exceptions to title other than the Master Lease Permitted Exceptions and the Parcel Lease Permitted Exceptions (the "**Port Title Covenant**"). If the Escrow Agent advises Developer of a new title exception that is not a Master Lease Permitted Exception or Parcel Lease Permitted Exception that arises after the Reference Date, this Section will apply. The Port Title Covenant will apply to the Master Lease Premises and each Option Parcel that the Port conveys to a Vertical Developer under each Vertical DDA.

(a) Time and Right to Object.

(i) If the new exception would materially and adversely affect the Developer's intended use of the Master Lease Premises or the delivery and development of any Option Parcel, then Developer must provide notice of its objection to the Port no later than five business days after the Escrow Agent provided the information to Developer.

(ii) Unless the Port created or consented to the new title exception, the Port may elect in its sole discretion to cause the Escrow Agent to remove the new exception from the title policy to be issued to Developer at Close of Escrow. The Port must notify Developer within 30 days after receipt of Developer's objection whether the Port elects to remove the exception. If Developer reasonably determines that the time for the Port to remove the exception would delay Developer's performance of its obligations under the Schedule of Performance, then such delay will be an event of Excusable Delay applicable to all times for performance by Developer under this DDA. The Port's efforts with respect to the removal of exceptions pursuant to this Subsection will be at the Port's sole cost and will not be subject to reimbursement as Port Capital.

(b) Port Failure to Remove or Respond. If the Port elects not to remove the exception or fails to respond within the 30-day period, then Developer may elect one of the following actions.

(i) Developer may terminate Escrow for delivery of the Master Lease and terminate this DDA by delivering notice to the Port of its election.

(ii) Developer may elect to remove the exception after delivering notice to the Port. Developer may take any actions reasonably necessary to remove the exception, which may include obtaining an endorsement from the Escrow Agent insuring over the exception. A delay in Closing caused by this election will be an Excusable Delay so long as Developer is diligently proceeding with its election.

(iii) Developer may waive its objection, execute and accept delivery of the Master Lease subject to the exception, which will then be deemed to be a Permitted Exception.

(iv) Developer's failure to make a timely objection to a new title matter under this Subsection will be deemed to waive its objection. New exceptions that the Developer is deemed to have accepted will also be deemed to be Master Lease Permitted Exceptions and Parcel Lease Permitted Exceptions.

(c) Remedies. Developer's timely election under **Subsection 8.3(a)** (Time and Right to Object) or under **Subsection 8.3(b)** (Port Failure to Remove or Respond) will not affect Developer's remedies under **Section 11.4** (Remedies for Events of Default) if the new exception is caused by the Port's breach of the Port Title Covenant, subject to any notice and cure requirements under **Section 11.3** (Events of Default by the Port).

8.4. Conditions to Closing.

(a) Developer Conditions. The following are conditions precedent to Developer's obligation to Close Escrow for the Port's conveyance of the Master Lease unless expressly waived by Developer's notice to the Port.

(i) The Port has performed all obligations under this DDA that the Port is required to perform by the Closing Deadline.

(ii) The Port is not in Material Breach under this DDA.

(iii) The Escrow Agent is irrevocably committed to issue title insurance to Developer at the Close of Escrow, subject only to Master Lease Permitted Exceptions and, if applicable, the McEnerney action, and otherwise on conditions specified in the Joint Escrow Instructions.

(iv) The Port has issued, or is prepared to issue upon Close of Escrow, all Regulatory Approvals necessary for Developer to Commence Site Preparation for any portion of the 28-Acre Site Project.

(b) Port Conditions. The following are conditions precedent to the Port's obligation to Close Escrow for the Master Lease with Developer unless expressly waived by the Port's notice to Developer.

(i) Developer has provided the Port with certificates of insurance or duplicate originals of insurance policies and binders that will provide the required coverage effective as of the Closing Deadline to the extent required under *Master Lease Art 20.*

(ii) Developer is not in Material Breach of this DDA and no event that, with notice and the opportunity to cure, would be a Material Breach if uncured has occurred and is continuing.

8.5. Close of Escrow.

(a) Closing Costs. Developer will be responsible for all Developer Closing Costs.

(b) Closing Deliveries.

(i) Developer will provide the Port with at least 30 days' prior written notice of its intent to Close Escrow (the "**Closing Date**"), which date will be no later than the date that is 30 days prior to the Outside Date for Commencement of Construction of the Phase 1 Improvements, as set forth in the Schedule of Performance. Within five days prior to the Closing Date, each Party must execute and deliver to the Escrow Agent, and deliver a copy contemporaneously to the other Party, a signed counterpart of the Joint Escrow Instructions as appropriate for the Port's conveyance.

(ii) At least two business days before Closing Date, each Party must deposit into Escrow all documents it is obligated to deposit under this DDA and the Joint Escrow Instructions, some of which are listed below. All documents to be recorded must be executed and acknowledged.

(1) Four originals of the Master Lease, substantially in conformity with the form attached as **DDA Exhibit B10**, duly executed by an authorized representative of the signing Party.

(2) A Memorandum of Master Lease, substantially in conformity with the form attached as *ML Exh O*, duly executed by an authorized representative of the signing Party.

(iii) Developer must deposit into Escrow all funds it is obligated to deposit at least two business days before the Closing Date.

(c) Conveyance and Delivery of Possession. If all conditions to the conveyance of the Master Lease have been satisfied or, to the extent waivable, expressly waived by the applicable Party, the Port will convey to Developer, and Developer will accept, the real property interest conveyed by the Master Lease at the Close of Escrow.

The Joint Escrow Instructions will instruct the Escrow Agent to deliver fully executed counterpart documents to the Parties and record documents to be recorded after the Close of Escrow as instructed.

(d) Obligation to Cooperate. Each Party agrees to use commercially reasonable efforts to satisfy the Closing conditions that are in its control and reasonably cooperate with the other Party's efforts to satisfy conditions that are in the other Party's control.

8.6. Master CC&Rs. Prior to delivery of the first Appraisal Notice for a Development Parcel (or at such later time as is agreed upon by the Parties), the Port and Developer will have agreed upon the form of Master Conditions, Covenants and Restrictions (the "**Master CC&Rs**"). The Master CC&Rs will be recorded against each Development Parcel prior to termination or release of the Master Lease and before conveyance of the applicable Development Parcel to a Vertical Developer. Upon recordation, the Master CC&Rs will constitute covenants running with the land and encumbrances and restrictions on Developer's leasehold interest under the Master Lease, but will not constitute an encumbrance on Port's fee interest in any property within the 28-Acre Site. Port will consent to the survival of the Master CC&Rs upon termination or release of the Master Lease as to each applicable Development Parcel. The Master CC&Rs will contain, at a minimum, the provisions set forth in **DDA Exhibit D7**.

9. SITE CONDITION AND INDEMNITIES

9.1. As-Is.

(a) Generally. Except as provided otherwise in this DDA (and subject to the rights, obligations and liabilities of the Parties under the Master Lease), the Port will convey all Development Parcels in the 28-Acre Site to Vertical Developers under this DDA strictly in their "**as-is**" condition with all faults and defects, and Developer agrees to accept and cause all Vertical Developer Affiliates to accept each Option Parcel or other Development Parcel for which Developer is the successful bidder in its "**as-is**" condition with all faults and defects. Developer's obligations for the condition of the 28-Acre Site prior to delivery to Vertical Developers will be governed by the Master Lease. The Port has no obligation to repair any improvements on the 28-Acre Site or any liability for their damage or destruction, however caused.

(b) Environmental Condition. The Port will not take any actions that materially exacerbate the environmental condition of the 28-Acre Site between the Reference Date and the date the Port conveys the Master Lease to Developer; and as to any parcels excluded from the Master Lease Premises (*i.e.*, the Building 11 Site, a portion of the Building 21 Site, the Affordable Self Storage Site and the PG&E Remediation Site), the Port will not take any actions that materially exacerbate the environmental condition of those parcels between the Reference Date and (i) the date the applicable excluded areas are added to the Master Lease Premises, (ii) the date that Port conveys the applicable Development Parcel to a Vertical Developer, or (iii) the date the Port grants a License to Developer for construction of Horizontal Improvement thereon.

(c) Developer Due Diligence. Developer acknowledges explicitly that it has had the opportunity to investigate the physical and title conditions affecting the 28-Acre Site fully, using experts of its own choosing. Through the term of the Master Lease with the Port, Developer will have a continuing opportunity to conduct due diligence, including physical testing, subject to reasonable conditions in the Master Lease and any License with respect to Port property outside of the Master Lease. The Port, at no cost to the Port, will cooperate reasonably with Developer in its investigations and provide Developer with access to public books and records in the Port's possession or control

relating to the prior use and ownership of the 28-Acre Site during the Port's regular business hours. Developer must provide a reasonably detailed description of the documents that it wishes to review at least five days before the requested review date.

(d) Hazardous Materials Conditions.

(i) Developer expressly acknowledges its knowledge of the industrial history of the 28-Acre Site and nearby property, the contents of a Feasibility Study and Remedial Action Plan and a Risk Management Plan for Pier 70 that the Water Board has approved, and Environmental Covenants attaching to the 28-Acre Site. The Master Lease, each License, and each Parcel Lease or set of Restrictive Covenants entered into by a Vertical Developer will require Developer or the Vertical Developer to comply with all Environmental Laws, including the Environmental Covenants, applicable to the portion of the 28-Acre Site to which it has access, possession, or ownership.

(ii) Developer has no obligation under this DDA for: (1) work within submerged lands or that would disturb any submerged lands or improvements outside of the 28-Acre Site, except for certain rip rap repair work as provided in the Infrastructure Plan, replacement of a bulkhead at one of the craneways as provided in the Infrastructure Plan, repair of the 20th Street and 22nd Street outfalls, and mitigation measures identified as Developer Mitigation Measures; or (2) remediation work in the southeast portion of the 28-Acre Site arising from activities or conditions related to the lands formerly owned by PG&E (now owned by Associated Capital).

(iii) Developer acknowledges that no City Party has made any representation or warranty, express or implied, in reference to the condition of the 28-Acre Site.

(e) FEMA Disclosure. FEMA is performing detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline within the nine San Francisco Bay Area counties that will provide flood and wave data for the City's Flood Insurance Study report and Flood Insurance Rate Maps. This process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront. The City advises Developer as follows:

(i) FEMA prepares the Flood Insurance Rate Maps to support the National Flood Insurance Program, a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The Board of Supervisors adopted the Floodplain Ordinance, which governs new construction and substantial improvements in flood-prone areas of San Francisco and authorizes the City's participation in the National Flood Insurance Program. National Flood Insurance Program regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances without jeopardizing the local jurisdiction's eligibility in the National Flood Insurance Program. But, projects that obtain variances from the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

(ii) Flood Insurance Rate Maps identify areas that have a 1% chance of inundation in a given year, also known as a *base year* or a *100-year flood.* FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area. To prepare the Flood Insurance Rate Map for San Francisco, FEMA has performed detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline. The San Francisco Bay Area Coastal Study includes both regional hydrodynamic and wave modeling of the San Francisco Bay, as

well as detailed onshore coastal analysis used to estimate wave runup and overtopping, as well as overland wave propagation. These onshore analyses form the basis for the Base Flood Elevations and special flood hazard areas shown on the Flood Insurance Rate Map.

(iii) In November 2015, FEMA issued a preliminary Flood Insurance Rate Map of San Francisco tentatively identifying special flood hazard areas along the City's shoreline in and along the San Francisco Bay consisting of "*A zones*" (areas subject to inundation by tidal surge) and "*V zones*" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under Port jurisdiction and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek. FEMA plans to finalize the Flood Insurance Rate Map in mid-2018. Six months after this date, the Flood Insurance Rate Map will become effective and will be used for flood insurance and floodplain management purposes. During this six-month period, the City plans to amend the Floodplain Ordinance to adopt the Flood Insurance Rate Map.

(iv) The Port Building Code provides for variances from these requirements under certain extraordinary circumstances that parallel those in the Floodplain Ordinance. The Port Building Code regulates construction activities on piers and wharves and incorporates, with certain amendments, California Building Code provisions that generally limit new construction in *V zones* to areas that are landward of the reach of mean high tide.

(v) The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following links:

http://sfgsa.org/san-francisco-floodplain-management-program

https://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping

https://www.fema.gov/national-flood-insurance-program

http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20(2).pdf

9.2. Damage and Destruction. Beginning on the Reference Date, Developer will assume all risk of damage to or destruction of existing or future improvements at the FC Project Area, subject to the terms and conditions of this Section.

(a) Effect on Existing Improvements to be Demolished. A casualty causing damage to or destruction of any existing improvements in a Phase Area and other changes in site conditions will not affect the Parties' rights and obligations under this DDA except by application of this Section or **Article 4** (Performance Dates). Developer will have the right to elect to obtain relief under either provision, but not both, following a casualty.

(b) Developer's Remedies. In the event of a casualty outside of Developer's reasonable control that occurs to any portion of the 28-Acre Site that remains subject to this DDA (*i.e.*, prior to its release upon Close of Escrow for Option Parcels), Developer may deliver a Requested Change Notice to the Port under **Section 3.4** (Changes to

Project after Phase 1) seeking to revise the Schedule of Performance to provide Developer a reasonable amount of additional time to make adjustments to the Phase Improvements, the Arts Building, or the Historic Buildings, as applicable, in light of the casualty, or otherwise amend this DDA, whether or not the casualty occurs in Phase 1 or Later Phases. The Parties' obligations under this DDA would not be affected except to the extent changes are approved under **Section 3.4** (Changes to Project after Phase 1).

(c) Effect on Historic Buildings. If the casualty occurs prior to the effective date of the Port entering into a Vertical DDA for the applicable building and would result in damage or destruction that would cause the cost to restore the building to exceed 50% of the value of the Historic Building (as determined by the appraisal process set forth in **Subsection 7.3** (Option Parcel Appraisals) as of the date of casualty, then at Developer's election, **Section 7.14** (Historic Buildings 12 and 21) and **Section 7.11** (Historic Building 2) will no longer apply to the affected Historic Building, Developer will demolish the affected Historic Building (the cost of which will be included as a Horizontal Development Cost under the Financing Plan), and the affected parcel will be deemed an Option Parcel within the applicable Phase, unless the Parties agree otherwise. If the casualty results in damage or destruction that would cause the cost to restore the building to be 50% or less of the value of the Historic Building (as determined per the process described in this Subsection) as of the date of casualty, then Developer may avail itself of relief available under **Article 4** (Performance Dates), and to the extent permitted by Applicable Law, the Port will retain any and all unexpended insurance proceeds and any uncollected claims and rights under insurance policies covering such damage or destruction, if any, and assign such proceeds, claims, and rights to the Vertical Developer under the applicable Vertical DDA. A casualty occurring after the Port has entered into a Vertical DDA will be governed by its terms. All costs incurred by Developer under this Subsection not otherwise reimbursed by insurance proceeds will be reimbursable under the Financing Plan.

(d) No Action. If Developer fails to seek a remedy under **Subsection 9.2(b)** (Developer's Remedies), the Parties' rights and obligations under this DDA will not be affected by the casualty except to the extent of relief available under **Article 4** (Performance Dates).

9.3. General Indemnity.

(a) Scope of Indemnity. The following apply to an Indemnitor's obligations under this Section.

(i) The Indemnitor must defend the Indemnified Parties against any Claims for Losses that reasonably fall or are otherwise determined to fall within this indemnity, even if the Claims may be groundless, fraudulent, or false. If a Claim is made against an Indemnified Party that may be within the scope of this indemnity, that Indemnified Party must provide notice to the Indemnitor of the Claim within a reasonable time after learning of the Claim and cooperate with the Indemnitor in the defense of the Claim. An Indemnified Party's failure to provide the notice, however, will not affect the Indemnitor's obligations except to the extent of prejudice caused by the lack of notice. The Indemnitor's defense obligation will arise when a City Party tenders the Claim to the Indemnitor and will continue until finally resolved.

(ii) After the Port has entered into a Vertical DDA with a Vertical Developer for a Development Parcel, the Vertical DDA will control and govern indemnification obligations of the Vertical Developer. The agreements to indemnify under this DDA are in addition to, and must not be construed to limit or replace any other obligations or liabilities that the Port may have to a Vertical

Developer or that a Vertical Developer may have to the Port under any Vertical DDA or implementing agreement or Applicable Law.

(b) Developer. Except to the extent directly or indirectly caused by the act or omission of a City Party, Developer must indemnify the City Parties against all Losses arising directly or indirectly from:

(i) failure to obtain any Regulatory Approval or to comply with any Regulatory Requirement for the Horizontal Improvements;

(ii) any personal injury or property damage occurring on any portion of the 28-Acre Site while under Developer's ownership or control; and

(iii) any Developer Party's acts or omissions in relation to construction, management, or operations at the 28-Acre Site related to Horizontal Improvements, including patent and latent defects and mechanic's or other liens to secure payment for labor, service, equipment, or material.

In addition, Developer will indemnify the City Parties from and against all Losses (if a City Party has been named in any action or other legal proceeding) incurred by a City Party (if the City Party has not been named in the action or legal proceeding) arising directly or indirectly out of or connected with contracts or agreements (i) to which no City Party is a party and (ii) entered into by Developer in connection with its performance under this DDA, any Assignment and Assumption Agreement and any dispute between parties relating to who is responsible for performing certain obligations under this DDA (including any record keeping or allocation under the Financing Plan), except to the extent such Losses were caused by the act or omission of a City Party.

9.4. Environmental Indemnity. In addition to its obligations under **Section 9.3 (General Indemnity)**, Developer on behalf of itself and the Developer Parties will indemnify the Indemnified Parties and the State Lands City Parties from any and all Losses and Hazardous Materials Claims to the same extent as the Hazardous Materials Indemnification to be provided by the Tenant and Tenant Parties under *ML Art* 19.

9.5. Defense of Claims.

(a) Notice.

(i) The Port, on behalf of itself and the City Parties, and Developer, on behalf of itself and the Developer Parties, agree to give notice to any Indemnitor by the earlier of:

(1) 10 days after valid service of process of a summons or other notice that an action has been filed against the Indemnified Party; or

(2) 15 business days after receiving notice that: (A) an action has been filed or a Claim has been made against an Indemnified Party; or (B) any other event that the Indemnified Party believes in good faith will be covered by this indemnity.

(ii) But the Indemnified Party's failure to give timely notice will not affect the Indemnified Party's rights or the Indemnitor's obligations under this DDA except to the extent that the delay prejudices the Indemnitor.

(iii) Control. Subject to the Indemnified Party's approval, the Indemnitor will be entitled to control the defense, compromise, or other resolution of any Claim through counsel of the Indemnitor's choice. But in all cases the Indemnified Party will be entitled to participate in the defense, compromise, or other resolution of the Claim at its own expense.

(b) Failure to Defend. If the Indemnitor fails to take reasonable and appropriate steps to defend the Claim within a reasonable time after notice from the Indemnified Party describing in reasonable detail the nature of the Indemnitor's alleged failure, the Indemnified Party will have the right to hire defense counsel to carry out the defense at the Indemnitor's cost, which may be any combination of the City Attorney's Office (for a City Party), in-house counsel (for a Developer Party), and outside counsel. The Indemnified Party's defense costs will be due and payable within 30 days after the Indemnified Party delivers to the Indemnitor an invoice meeting the requirements of *App ¶ A.4.1 (Attorneys' Fees)*.

9.6. Mutual Release and Waiver.

(a) Scope. The releases under this Section do not affect either Party's rights to enforce the other Party's obligations, assert an Event of Default or Material Breach by the other Party, or seek its remedies under any Transaction Document at law or in equity.

(i) In consideration of the Port's covenants and obligations under this DDA, and as part of its agreement to accept the 28-Acre Site in its "as-is" condition, Developer, on behalf of itself and all other Developer Parties, agrees to waive any right to recover from, and forever releases the City Parties and their Agents of and from any Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that any Developer Party may now have or that may arise later on account of or in any way be connected with:

(1) the negotiations for this DDA and other Transaction Documents;

(2) the Existing Geotechnical Condition of the 28-Acre Site;

(3) compliance of the 28-Acre Site with Applicable Laws; and

(4) Developer's Losses with respect to third-party Claims arising from the Existing Geotechnical Condition of any portion of the 28-Acre Site or any Applicable Laws before the Reference Date.

(ii) In consideration of Developer's covenants and obligations under this DDA and as part of its agreement to master develop the 28-Acre Site, the Port releases Developer Parties from all Losses that may arise on account of or in any way be connected with the Existing Hazardous Material Condition of the 28-Acre Site, nuisance, or other physical condition that occurred or existed before Developer takes possession or ownership of the 28-Acre Site, except to the extent caused, contributed to, or exacerbated by a Developer Party or a Developer Party's breach of any agreement under which the Developer Party assumes responsibility for compliance with Environmental Laws.

(b) Waiver of Statute. In connection with this release, Developer and the Port each acknowledges familiarity with California Civil Code section 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Party agrees that the release given in this Subsection covers unknown Claims and that, by entering into this DDA, each Party waives the benefits of Civil Code section 1542, or under any other statute or common law principle of similar effect.

(c) Informed Consent. Each Party represents that it has been fully informed in reference to, and represented by counsel of its choice in connection with the rights, remedies, limitations on damages, and waivers contained in this DDA and after consultation with its attorneys, with full knowledge of its rights and remedies otherwise available at law or in equity, presently and actually intends to waive and relinquish those rights and remedies to the extent specified in this DDA, and to rely solely on the prescribed remedies for any breach of this DDA, or any other right that the Party seeks to exercise.

9.7. Parties to Contract. For purposes of this Article, no City Party will be deemed to be a party to a contract solely because the City Party approved or consented to the contract, and no Developer Party will be deemed to be a party to a contract solely because the Developer Party approved or consented to the contract.

9.8. Survival. The agreements to indemnify, releases, and waivers under this Article will survive termination of this DDA. The agreements to indemnify under **Section 9.3** (General Indemnity) and **Section 9.4** (Environmental Indemnity) are in addition to, and do not limit or replace, any other obligations or liabilities under this DDA or other Transaction Documents.

10. RESOLUTION OF CERTAIN DISPUTES.

10.1. Arbitrators.

(a) Arbitrators Pool. The Parties may agree to submit certain disputes to Arbitrators on the approved Arbitrators Pool attached as **DDA Schedule 1** and have agreed that Arbitrators on the list meet the qualifications under this Subsection. To be qualified, an Arbitrator must have at least 10 years' experience in the Bay Area in a professional capacity handling issues arising from complex real estate and master planned development transactions with expertise in areas such as property valuation, commercial and multifamily residential real estate sales and leasing, engineering and cost-estimating, real estate economics, and complex financial accounting.

(b) Changes.

(i) The Parties will review the approved Arbitrators Pool periodically to determine each Arbitrator's continued availability and willingness to serve. Either Party may propose to change the approved Arbitrators Pool by notice to the other Party, together with documentation supporting the proposed change, such as a proposed new Arbitrator's qualifications or reasons to remove an Arbitrator from the approved Arbitrators Pool.

(ii) The other Party will have 15 business days to respond. Failure to respond will be deemed consent if the notice prominently stated that the other Party's failure to respond within 15 business days will be deemed consent.

(iii) If the other Party objects, the Parties will meet and confer under **Subsection 10.2(a)** (Good Faith Efforts) and, if necessary, discuss whether to resolve the dispute by nonbinding arbitration under **Subsection 10.5(b)** (Nonbinding Arbitration Process).

10.2. Meet and Confer Requirement.

(a) Good Faith Efforts. Before resorting to any dispute resolution procedure under **Subsection 10.4(b)** (Binding Arbitration Procedures) or **Subsection 10.5(b)**

(Nonbinding Arbitration Process), or initiating a judicial action, each Party agrees to make good faith efforts to resolve the dispute as follows.

(i) Any Party may initiate a meet-and-confer effort by giving notice under procedures for progress meetings under **Section 14.6** (Progress Meetings). Within five business days after a Disputing Party's request to confer regarding an identified matter, decision-making representatives of each Disputing Party will meet in a good faith effort to resolve the dispute.

(ii) If the Disputing Parties are unable to resolve the dispute at the meeting (or any longer time to which each Disputing Party agrees in its sole discretion), the following options will apply.

(1) The Parties may agree to submit the matters listed in **Subsection 10.4(a)** (Scope) to binding arbitration under **Subsection 10.4(b)** (Binding Arbitration Procedures).

(2) The Parties may agree to submit the matters listed in **Subsection 10.5(a)** (Scope) to nonbinding arbitration under **Subsection 10.5(b)** (Nonbinding Arbitration Process).

(3) Disputes over matters listed in **Section 10.6** (Nonarbitrable Matters) will not be subject to arbitration under any circumstances.

(4) The Parties, each in its sole discretion, may agree to submit any other matters to arbitration under this Article.

(iii) If the Disputing Parties do not agree to arbitration, or the dispute is not resolved by nonbinding arbitration, any Disputing Party may seek to enforce its rights and remedies at law or in equity.

(b) No Prejudice. The dispute resolution procedures in this Article will not delay or otherwise prejudice a Party's right to give notice of an alleged default under **Article 11** (Defaults).

10.3. General Arbitration Procedures.

(a) Notice. A Party may initiate arbitration by providing a notice to the other Party, specifying with particularity both the nature of the dispute between the Parties and the initiating Party's demand to resolve the dispute. Neither Party may initiate or continue to prosecute a judicial action, except to comply with court rules, during the pending of an arbitration proceeding.

(b) Selection of Arbitrator. The Parties will meet to designate the Arbitrator from the approved Arbitrators Pool within 10 business days after the effective date of the arbitration notice. If the designated Arbitrator is not available to meet the time requirements for the proceeding, the Disputing Parties will designate another Arbitrator on the approved Arbitrators Pool. If the Parties are unable to reach a mutual agreement regarding which Arbitrator to designate, the first Arbitrator's name on the list with availability will be the designated Arbitrator. If none of the Arbitrators listed in the Arbitrator's Pool is able or willing to hear a dispute, the Disputing Parties will agree on the selection of another Arbitrator meeting the qualifications in **Subsection 10.1(a)** (Arbitrators Pool) to serve for the purposes of that dispute. If the Parties are unable to agree upon an Arbitrator not in the Arbitrator's Pool, the Parties shall request that the Arbitrator first designated by the Parties select an Arbitrator. If the first designated Arbitrator is not able or willing to select an Arbitrator, the Parties shall ask the next name on the Arbitrator's Pool list to select the Arbitrator (and so on until an Arbitrator is selected). If none of the Arbitrators listed in the Arbitrator's Pool are able or willing to select an Arbitrator, then either party may initiate an action in the Superior Court of the

State of California for the County of San Francisco for the limited purpose of seeking the appointment of an Arbitrator. Each Party initially will advance 50% of the required arbitration fee.

(c) Arbitrator's Authority. The Arbitrator will be authorized to:

(i) decide the matter on the written submittals;

(ii) hold an evidentiary hearing on reasonable prior notice to the Parties;

(iii) enter a default decision against a Party that does not deliver a brief or appear at the hearing and require the non-participating Party to pay the other Party's attorneys' fees and arbitration fees; and

(iv) award attorneys' fees and arbitration fees to the prevailing Party if the Arbitrator finds that the arbitration request was frivolous or was brought in bad faith.

(d) Limits on Arbitrator's Authority. The Arbitrator will have no authority to:

(i) decide any matter that is listed in **Section 10.6** (Nonarbitrable Matters) unless the Parties have agreed to submit the matter to the Arbitrator;

(ii) decide any matter that was not specified in the initiating Party's notice;

(iii) add to, remove from, disregard, modify, or otherwise alter this DDA or any other agreement between the Parties regarding the 28-Acre Site Project;

(iv) negotiate new agreements or provisions between the Parties;

(v) award damages of any kind or award attorneys' fees or arbitration fees except as specified in **Subsection 10.3(c)** (Arbitrator's Authority); or

(vi) order any form of equitable relief.

(e) Service of Documents. In all dispute resolution proceedings under this Article, all agreements, submittals, and decisions must be in writing, and each Disputing Party must serve copies of any documents submitted to any Arbitrator simultaneously to all other Disputing Parties.

(f) Ex Parte Communications. No Disputing Party or any of its Agents may engage in ex parte communications with the Arbitrator with regard to any pending arbitration proceeding. A Disputing Party may write to the Arbitrator concerning procedural matters such as scheduling if it delivers a copy simultaneously to the other Disputing Parties.

10.4. Binding Arbitration

(a) Scope. The Parties have agreed to submit disputes specified in this Subsection to binding arbitration. The Parties, each in its sole discretion, also may agree to submit any other dispute to binding arbitration under this Section.

(i) Interim Satisfaction. One Party disputes the other Party's Interim Satisfaction determination under *FP § 3.6(b) (Interim Satisfaction Event at Closing)*.

(ii) Qualified Appraiser Pool. The Parties disagree on proposed changes to the Qualified Appraiser Pool under **Subsection 7.3(c)** (Qualified Appraiser Pool).

(iii) Qualified Broker Pool. The Parties disagree on proposed changes to the Qualified Broker Pool under **Subsection 7.5(a)** (Broker-Managed Offerings).

(iv) Approved Arbitrators Pool. The Parties disagree on proposed changes to the approved Arbitrators Pool under **Subsection 10.1(b)** (Changes).

(v) Beginning and End of Excusable Delay. The Parties disagree on the beginning or end date for an event of Excusable Delay under **Subsection 4.3(c)** (Other Excusable Delays).

(vi) Qualified Contractor. The Port objects to the qualifications of Developer's general contractor under **Subsection 14.5(a)** (Qualified Contractors).

(b) Binding Arbitration Procedures. The following procedures will apply to binding arbitration of disputes under this Section.

(i) Each Disputing Party may submit an initial brief, not to exceed 10 double-spaced pages, and supporting documentary evidence to the Arbitrator within 15 business days after the Arbitration Start Date. Evidence may include expert or consultant opinions, any form of graphic evidence such as photos, maps, and charts, and other evidence that could assist the Arbitrator in resolving the dispute in the Disputing Party's discretion.

(ii) Each Disputing Party may submit a reply brief, not to exceed five double-spaced pages, within 20 business days after the Arbitration Start Date, even if it did not submit an initial brief. The Arbitrator may request further briefing on specified issues, with documents submitted within 10 business days after the Arbitrator's request.

(iii) Unless each Disputing Party agrees otherwise, the Arbitrator will hold a telephonic hearing. The Arbitrator must issue a decision within 25 business days after the Arbitration Start Date, unless the Arbitrator requested further briefing, in which case the Arbitrator must issue a decision within 45 business days after the Arbitration Start Date. The Arbitrator's decision will be final, binding on all Parties, and nonappealable. Each Party explicitly waives any right to de novo judicial review of an Arbitrator's decision under this Section.

10.5. Nonbinding Arbitration.

(a) Scope. The Parties have agreed to submit disputes specified in this Subsection to nonbinding arbitration. The Parties, each in its sole discretion, also may agree to submit any other dispute to nonbinding arbitration under this Section.

(i) Phase Submittal. Developer contends that Port wrongfully withheld its approval of a Phase Submittal.

(ii) Reasonableness of Decision. One Party contends that the other Party disapproved a request unreasonably in violation of the standards in **Article 6** (Transfers).

(iii) Transfers. The Parties are unable to resolve disputes under **Section 6.2** (Third-Party Transfers in Other Phases).

(iv) Proportionality. The Parties fail to reach agreement on the manner in which proportionality will be addressed after termination of a Phase under **Subsection 2.4(a)** (Proportionality).

(v) Historic Building 2 Costs. Disputes over the cost estimates for Historic Building 2.

(vi) Developer's Costs. Disputes over whether any of Developer's Horizontal Development Costs for any category are overstated by 5% or more under *FP § 9.4(a) (Port Audit)*.

(vii) Port Costs. Disputes over whether any of the Port's Horizontal Development Costs for any category are overstated by 5% or more under *FP § 9.4(b) (Developer Audit)*.

(viii) Improvement Plans. Disputes relating to the Port's review, approval or disapproval of Improvement Plans in accordance with **Article 13** (Improvement Plans).

(ix) Historic Building Value. The value of a Historic Building determined by an appraisal pursuant to **Subsection 9.2(c)** (Effect on Historic Buildings).

(x) Other Arbitrable Disputes. The Parties disagree on a matter under any Transaction Document that calls for or permits arbitration of disputes but does not specify an arbitration process.

(b) Nonbinding Arbitration Process.

(i) The Disputing Parties may agree to submit disputes to nonbinding arbitration within 10 business days after the meet-and-confer period under **Section 10.2** (Meet and Confer Requirement) expires. The Disputing Parties may submit a joint statement of the dispute and a proposed discovery, briefing, and hearing schedule to the Arbitrator. Otherwise, each Disputing Party may submit to the Arbitrator a short statement of the dispute and a proposed discovery, briefing, and hearing schedule, and the Arbitrator will specify the schedule for the proceeding. The Disputing Parties may agree to supplement, but not override, the nonbinding arbitration process under this Subsection by procedures applicable to commercial nonbinding arbitration or alternative dispute resolution providers in the Bay Area.

(ii) The Arbitrator will decide any dispute subject to nonbinding arbitration under this Section. The Disputing Parties must provide the Arbitrator with briefs, not to exceed 10 double-spaced pages, on their respective positions. The Arbitrator must issue a decision within five days after the last Submittal.

(iii) Within 20 business days after the Arbitration Start Date, the Arbitrator will conduct a preliminary hearing, either by telephone or personal appearance at the Arbitrator's option. At the preliminary hearing, the Arbitrator will establish discovery and briefing schedules and relevant dates, including a hearing date. In resolving discovery issues, the Arbitrator must consider expediency, cost effectiveness, fairness, and the needs of the Disputing Parties for adequate information in reference to the dispute. The Disputing Parties will make good faith efforts to prepare a joint record of evidentiary documents for the proceeding.

(iv) The Disputing Parties may agree to retain one or more consultants to assist the Arbitrator at the Arbitrator's request. In the request, the Arbitrator must provide to all Disputing Parties an explanation of the need for each proposed consultant, the consultant's identity and relevant qualifications, hourly rate, the estimated costs of the service, and a proposed cap on the consultant's cost. All Disputing Parties must approve each consultant's retention, the cost cap, and each Parties' allocated share of the consultant's cost.

(v) The evidentiary hearing must be scheduled to begin within 60 days and be completed within 80 days after the preliminary hearing, unless the Arbitrator extends the date with the Disputing Parties' consent. The Arbitrator must issue an advisory decision, specifying the reasons for the decision, within 20 days after the hearing. Each Disputing Party will give due consideration to the Arbitrator's decision before deciding to pursue further legal action.

(vi) No advisory decision will have any res judicata or collateral estoppel effect in any other arbitration conducted under this Article or in any other action.

10.6. Nonarbitrable Matters. The following are not subject to arbitration under this DDA unless both Parties agree, each in its sole discretion.

(a) Consent. Developer cannot compel any City Agency to arbitrate a decision not to grant a Regulatory Approval for the 28-Acre Site Project.

(b) Adequate Security. Developer cannot compel the Port to arbitrate a dispute about whether a Port draw on Adequate Security was wrongful or whether an Obligor failed to perform the Obligor's obligations under the Adequate Security.

(c) Sole Discretion. One Party cannot compel the other to arbitrate any decision that a Party is entitled to make in its sole discretion.

11. DEFAULTS

11.1. Generally.

(a) Notice. Except as otherwise specified, an Aggrieved Party must provide notice of an alleged potential breach to the Breaching Party as specified in *App ¶ A.5 (Notices)* and **Section 20.1** (Notice Addresses). The notice must state with reasonable specificity the nature of the alleged default, the provisions under which the Aggrieved Party claims the default arose, and, if specified in this DDA, the cure period for the default.

(b) Cure Period.

(i) A default that is cured before the specified cure period ends will not become an Event of Default.

(ii) The Breaching Party will have 10 business days after the effective delivery date of the default notice to request a meeting with the Aggrieved Party to discuss measures to cure any performance (not payment) default and the Aggrieved Party will promptly meet with the Breaching Party within three business days of such request; provided, however, that the Aggrieved Party will not be required to meet if the Breaching Party delivers the request less than five business days before the cure period ends for the potential breach. The Aggrieved Party's agreement to meet will not cause the cure period to be extended.

(iii) If the Breaching Party cures the default to the Aggrieved Party's reasonable satisfaction within the cure period, the Aggrieved Party will issue a notice acknowledging the cure.

(iv) If the Breaching Party does not timely cure the default, the Aggrieved Party in its sole discretion may:

(1) agree to extend the cure period;

(2) waive the default; or

(3) take any other measure permitted under this DDA following an Event of Default, including an action at law or in equity.

11.2. Events of Default by Developer. The Parties agree that the occurrence of any of the following will be an Event of Default, but not a Material Breach, by Developer under this DDA and, as applicable, Events of Default by Vertical Developer Affiliates under **Section 5.7** (Defaults and Breaches).

(a) Nonpayment to Port. Developer fails to pay any sum due under this DDA and does not cure the default within 30 days after the Port delivers notice to Developer. This default does not apply to the Developer Reimbursement Obligation or a final judgment requiring Developer to make any payments to the Port, which are addressed in **Section 12.2** (Material Breaches by Developer).

(b) Taxes. Developer or any Vertical Developer Affiliate fails to pay any property taxes or Mello-Roos Taxes levied on any Taxable Parcel it then owns or leases by the delinquency date specified in its tax bill.

(c) Other Obligations. Developer fails to perform any other obligation to be performed by Developer under this DDA, excluding obligations described in **Section 12.2** (Material Breaches by Developer), and does not cure the default within any cure period specified in this DDA (or within 60 days after the Port delivers notice to Developer if no cure period is specified), or if the default cannot be cured within 60 days, Developer fails to take steps to cure the default within the cure period and diligently complete the cure within a reasonable time.

(d) Financial Condition. A Significant Adverse Change to Developer occurs, and Developer fails within 45 days after the Port delivers notice to Developer to either (i) provide the Port with evidence acceptable to the Port Director in her reasonable discretion that Developer has the financial capacity sufficient to satisfy the judgment and complete the remaining Developer Construction Obligations for the applicable Phase in which the Significant Adverse Change occurs; or (ii) provide the Port with a Letter of Credit or other security instrument reasonably satisfactory to Port, securing the cost of the remaining Developer Construction Obligations for the applicable Phase in which the Significant Adverse Change occurs.

(e) Insolvency. Developer initiates or is the subject of an Insolvency proceeding, if not released, dismissed, or stayed within 120 days.

11.3. Events of Default by the Port. The Parties agree that the occurrence of any of the following will be an Event of Default, but not a Material Breach, by the Port under this DDA.

(a) Financing Plan. The Port fails to perform its obligations under the Financing Plan and does not cure the default within 30 days after Developer delivers notice to the Port or if the default cannot be cured within 30 days, the Port fails to take steps to cure the default within the cure period and diligently complete the cure within a reasonable time.

(b) Acquisition Agreement. The Port fails to perform its obligations under the Acquisition Agreement and does not cure the default within 30 days after Developer delivers notice to the Port or if the default cannot be cured within 30 days, the Port fails to take steps to cure the default within the cure period and diligently complete the cure within a reasonable time.

(c) Other Obligations. The Port fails to perform any other agreement or obligation under this DDA, excluding obligations described in **Section 12.3** (Material Breaches by the Port), and does not cure the default within any cure period specified in this DDA (or within 60 days after Developer delivers notice to the Port if no cure period

is specified), or if the default cannot be cured within 60 days, the Port fails to take steps to cure the default within the cure period and diligently complete the cure within a reasonable time.

11.4. Remedies for Events of Default.

(a) Equitable Remedies.

(i) Following an Event of Default, the Aggrieved Party may file an action in equity to compel the Breaching Party to perform its obligations under this DDA or to prevent the Breaching Party from further violating this DDA. The Aggrieved Party is not required to postpone filing an equitable action if it believes in good faith that postponement would cause it to suffer irreparable harm.

(ii) The Parties agree that, except when a dispute involves a sum that is fixed or calculable or an indemnified Loss:

(1) monetary damages are generally inappropriate remedies for an Event of Default under this DDA;

(2) determining the actual damages suffered by any Party as a result of an Event of Default would be extremely difficult and impractical; and

(3) equitable remedies are particularly appropriate to enforce this DDA.

(b) Specific Remedies. This DDA prescribes the following specific remedies for certain Events of Default.

(i) Nonpayment of Taxes. If Developer or any Vertical Developer Affiliate fails to pay any property taxes or Mello-Roos Taxes levied on any Taxable Parcel it then owns or leases, which failure continues for 60 days after written notice from the Port with opportunity to cure:

(1) accrual of Developer Return will be suspended for the period during which the taxes are unpaid; and

(2) the City will not be obligated to issue any Debt for the 28-Acre Site Project, levy and allocate Mello-Roos Taxes to the CFD, or allocate Tax Increment to the IFD for Sub-Project Area G-2 except to service previously issued debt.

(ii) Violation of Covenants. If Developer defaults in its performance of the Other City Requirements described in **DDA Exhibit A7**, the Port and the City will have only the remedies prescribed in the applicable ordinance, policy, or implementation document, as amended by the DA Ordinance.

(iii) Other Payment Obligations. If either Party fails to make any payment when due (other than Developer Reimbursement Obligations for Developer or a final judgment in favor of either Party), the Aggrieved Party's exclusive remedy, at its sole election, is to initiate a request for nonbinding arbitration under **Article 10** (Resolution of Certain Disputes) or a judicial action for actual damages.

(iv) Arts Building. The Port's exclusive remedies for Developer's failure to comply with its obligations with respect to the Arts Building are specified in **Section 7.12** (Arts Building).

(c) Rights and Remedies Cumulative. Except as expressly limited by this DDA, the Parties' respective rights and remedies with respect to an Event of Default are

cumulative. An Aggrieved Party's exercise of any one or more of its remedies for an Event of Default by the Breaching Party will not preclude its exercise, at the same or different times, of any of its other remedies. Each Party acknowledges its intent to limit its remedies for an Event of Default by the other Party to those specified in this DDA.

12. MATERIAL BREACHES AND TERMINATION

12.1. Generally.

(a) Nature of Material Breaches. Because certain defaults could seriously impair the benefits that the Parties expect the 28-Acre Site Project to generate, they are categorized as Material Breaches and could result in more serious consequences affecting some or all of the 28-Acre Site Project, as described in this Article.

(b) Notice. An Aggrieved Party must provide notice to the Breaching Party as specified in *App ¶ A.5 (Notices)* and **Section 20.1** (Notice Addresses) of any potential breach. The notice must state with specificity the nature of the alleged Material Breach, the provisions of this DDA under which the alleged Material Breach would arise, and the specified cure period.

(c) Cure Period.

(i) Except as otherwise specified, the Breaching Party will not be in Material Breach unless it fails to cure the event within the specified cure period.

(ii) The Breaching Party may request a meeting to discuss measures to cure a potential performance-based Material Breach, and the Aggrieved Party will promptly meet with the Breaching Party within three business days of such request. But the Aggrieved Party will not be required to meet if the Breaching Party delivers the request less than five business days before the cure period ends for the potential Material Breach.

(iii) If the Breaching Party cures the potential Material Breach to the Aggrieved Party's reasonable satisfaction within the cure period, the Aggrieved Party will issue a notice acknowledging the cure.

(iv) If the Breaching Party does not cure the potential Material Breach within the cure period, the Aggrieved Party in its sole discretion may:

(1) agree to extend the cure period;

(2) waive the potential Material Breach; or

(3) take any other measure permitted under this DDA, including an action at law or in equity.

12.2. Material Breaches by Developer. The occurrence of any of the following will be a Material Breach by Developer under this DDA.

(a) Transfer in Phase 1. Developer causes or allows a Transfer in Phase 1 without Port Commission consent that is not reversed or voided within 30 days after the Port delivers notice to Developer.

(b) Other Prohibited Transfer. Developer causes or allows a Transfer that violates **Section 6.2** (Third-Party Transfers in Other Phases) or **Section 6.3** (Affiliate Transfers), or a prohibited Transfer imposed on Developer is not reversed or voided within 30 days after the Port delivers notice to Developer.

(c) Outside Dates for Phase Improvements and Public Spaces. Developer fails to meet any Outside Date under the Schedule of Performance with respect to the

Phase Improvements or Public Spaces other than permitted Deferred Infrastructure and does not cure its failure within 90 days after the Port delivers notice to Developer.

(d) Deferred Infrastructure. A Vertical Developer Affiliate commits a Vertical Developer Default with respect to its Deferred Infrastructure obligations under its Vertical DDA.

(e) Historic Buildings 12 and 21. Close of Escrow under the applicable Vertical DDA for Historic Building 12 or 21 has not occurred by the Outside Date shown on the Schedule of Performance due to an uncured default by a Vertical Developer Affiliate under its Vertical DDA that prevents Close of Escrow from occurring.

(f) Abandonment. Developer Commences Phase Improvements within a Phase, but ceases all work or abandons the premises under the Master Lease (within the meaning of Cal. Civ. Code § 1951.2 or a successor statute) for more than 120 consecutive days or a total of 180 days (which need not be consecutive), unless approved by the Port Director, and does not cure the default within 45 days after the Port delivers notice to Developer.

(g) Adequate Security. Developer fails to provide Adequate Security, including the Loss Security, as required under this DDA, or once it has provided Adequate Security fails to maintain the same as required under this DDA (including, but not limited to, the failure of a Obligor to meet the Obligor Net Worth Requirement or the occurrence of a Significant Change to Obligor under any Guaranty), and such failure continues for 45 days following receipt of notice from the Port to Developer (provided, that Developer will immediately, upon receiving notice from the Port Director to such effect, suspend all activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the 28-Acre Site during any period during which Adequate Security is not maintained as required by this DDA).

(h) Obligor Default. The Obligor of any Adequate Security, including the Loss Security, commits a default under the applicable security instrument or revokes or refuses to perform as required under the Adequate Security, and Developer does not replace the Adequate Security within 45 days following Developer's receipt of notice from the Port; provided, that (i) Developer will immediately, upon receiving notice from the Port Director to such effect, suspend all activities other than those needed to preserve the condition of Improvements or as necessary for health or safety reasons on affected portions of the FC Project Area during any period during which the Adequate Security is not maintained as required by this DDA, (ii) any cure period for a default under the Adequate Security will run concurrently with the 45-day period under this Subsection, (iii) such default may be cured by the Obligor to the extent provided under the terms of the Adequate Security; and (iv) upon receipt by the Port of any replacement Adequate Security, the Port will return the original Adequate Security.

(i) Special Taxes. Developer fails to pay before its delinquency date any Mello-Roos Taxes that the CFD levies on any Development Parcel before the Port conveys the parcel to a Vertical Developer and does not cure the default within 15 days after the Port delivers notice to Developer.

(j) Developer Reimbursement Obligations. Developer fails to pay Developer Reimbursement Obligations when due, the Port is unable to recover all or any portion of the Reimbursement Obligations in accordance with **Subsection 19.1(c)** (Unreimbursed Costs) and Developer thereafter fails to cure the failure within 30 days after the Port delivers notice to Developer.

(k) Indemnities. Developer fails to meet its indemnification obligations under **Section 9.3** (General Indemnity) or **Section 9.4** (Environmental Indemnity) and does not cure the failure within 45 days after the Port delivers notice to Developer; provided, however, that to the extent that such failure results from Developer's failure to pay Developer Reimbursement Obligations, the requirements of **Subsection 12.2(j)** (Developer Reimbursement Obligations) will apply.

(l) Final Judgment. Developer fails to satisfy a final judgment in the Port's favor in an action for payment or performance within 60 days after the judgment becomes final or any longer period specified in the judgment.

(m) Release under Master Lease. Developer fails to release a Development Parcel from the Master Lease when required under the Vertical DDA, which failure is not cured within 15 days after notice from the Port.

12.3. Material Breaches by the Port. The occurrence of any of the following will be a Material Breach by the Port under this DDA.

(a) Project Finance. A noticed Event of Default by the Port occurs under **Section 11.3** (Events of Default by the Port) that also:

(i) materially and adversely affects Developer's ability to proceed timely with the 28-Acre Site Project or any significant portion thereof without substantially increased costs caused solely by the Event of Default, which Developer must demonstrate by new bids, estimates of an approved cost estimator, or other documentary evidence reasonably satisfactory to the Port, and evidence supported by relevant cost indices or by a third-party analysis prepared by a consultant reasonably acceptable to Port that the claimed cost increases result directly from the Port's Event of Default and not to general market-wide inflationary causes; or

(ii) prevents or substantially delays or impairs the availability of Project Payment Sources.

(b) Failure to Close. The Port fails to enter into a Vertical DDA with a Vertical Developer in accordance with **Article 7** (Parcel Conveyances and Delivery of Associated Public Benefits) or fails to Close Escrow on its conveyance of the applicable Option Parcel to a Vertical Developer after all of the Port's conditions and mutual conditions to Closing under the Vertical DDA have been satisfied or waived, and the Port does not Close Escrow within 30 days after Developer delivers notice to the Port.

(c) Port Title Defect. The Port defaults on the Port's Title Covenant by creating or allowing a title exception other than the Master Lease Permitted Exceptions or Parcel Lease Permitted Exceptions allowed hereunder, and the Port does not remove the exception within 60 days after Developer delivers notice to the Port.

(d) Final Judgment. The Port fails to satisfy a final judgment in Developer's favor in an action for payment or performance within 60 days after the judgment becomes final or any longer period specified in the judgment.

12.4. Termination as Port Remedy. The Port's termination rights are described in this Section.

(a) Automatic Termination of Development Rights to Certain Parcels. Developer's development rights and obligations for specified Development Parcels will terminate automatically under the circumstances described below. Termination under this Subsection will not affect Developer's rights and obligations for any Phase Approval obtained before termination or prevent Developer from submitting Later Phase

Submittals to the Port. Termination of Developer's development rights as to an Option Parcel will not affect its rights to Land Proceeds under the Financing Plan.

(i) Option Parcels. Developer fails to enter into a Vertical DDA for an Option Parcel by the date required in **Subsection 7.4(a)** (Option Exercise Deadline) or to Close Escrow on an Option Parcel by the Outside Date therefor in the Schedule of Performance, subject to Down Market Delay.

(ii) Closing on Parcel K North. If Developer is the successful bidder, it fails to Close Escrow on the Port's proprietary conveyance of Parcel K North by the Closing Date specified in the applicable Vertical DDA.

(b) Port Election to Terminate. The Port may elect to terminate Developer's future development rights and obligations under this DDA all or in part if Developer is in Material Breach of this DDA, subject to **Subsection 12.4(c)** (Termination re: Outside Dates). Such termination will not affect any Phase for which Developer has obtained SOP Compliance Determinations for all Phase Improvements or a Phase for which Developer has submitted a Phase Submittal application and that is not the subject of the Material Breach. By way of illustration of the foregoing sentence, if on the date of termination, Developer is constructing Phase Improvements in Phase 1 and the Material Breach is not related to Phase 1, then Developer will have the right to complete the Phase Improvements for Phase 1 and exercise its Option as to all Option Parcels within that Phase in accordance with the terms of this DDA.

(c) Termination re: Outside Dates.

(i) With respect to a Material Breach for failure to submit any Phase Submittal in accordance with the Schedule of Performance, the Port will have the right to terminate the DDA in accordance with the procedures set forth in **Section 12.7** (Termination Procedures).

(ii) With respect to a Material Breach that relates to Developer's failure to Commence Construction of Phase Improvements or a Vertical Developer Default due to a Vertical Developer Affiliate's failure to Commence Construction of Deferred Infrastructure under its Vertical DDA, each under the applicable Schedule of Performance, or to provide Adequate Security upon such Commencement of Construction, the Port will have the right to terminate this DDA in accordance with **Section 12.7** (Termination Procedures).

(iii) With respect to a Material Breach for failure to obtain an SOP Compliance Determination for Phase Improvements by the required Outside Date, including Phase Improvements on the Public Spaces, or a Vertical Developer Default due to a Vertical Developer Affiliate's failure to perform its obligations to complete Deferred Infrastructure under its Vertical DDA, each under the applicable Schedule of Performance, the Port's exclusive remedies will be:

(1) an action on the Adequate Security for the applicable Phase Improvements or Deferred Infrastructure to the extent still available;

(2) if the Port is unable to recover upon such Adequate Security within 18 months after the Port files its claim, termination of this DDA;

(3) the automatic suspension of Developer's right to exercise its Option or submit a bid in a Public Offering for any Option Parcels in the Current and Later Phases;

(4) during the suspension of Developer's Option rights, the Port, in its sole discretion, may initiate Public Offerings of any Option

Parcel that is not under contract in the Current and Later Phases in accordance with **Section 7.5** (Public Offering Procedures), with the right to Close Escrow with an Unrelated Vertical Developer even if the Material Breach is cured before the Closing Date; and

(5) the exercise of its rights under **Subsection 12.4(d)** (Special Rights).

(d) Special Rights. At any time after a Material Breach described in **Subsection 12.2(d)** (Deferred Infrastructure), either Party may give notice to the other that it intends to exercise its rights under this Subsection. After delivery of notice, the Parties will meet to discuss a schedule for the completion of the Deferred Infrastructure.

(i) As long as Developer is diligently proceeding with and cures the Material Breach within the agreed schedule, the Port will forbear from exercising its remedies under **Subsection 12.4(c)** (Termination re: Outside Dates). Developer's Horizontal Development Costs to effect the cure will be reimbursable Capital Costs under the Financing Plan.

(ii) The Port may undertake the construction of any Public Spaces in the Deferred Infrastructure Zone. The Port's Horizontal Development Costs to complete the Public Spaces will be reimbursable Capital Costs under the Financing Plan that, at the Port's option, will have priority for payment from any available Project Payment Sources. The Port's exercise of rights under this Subsection will not require the Port to forbear from exercising its remedies under **Subsection 12.4(c)** (Termination re: Outside Dates).

(e) Termination re: Historic Buildings 12 and 21. With respect to a Material Breach with respect to Historic Building 12 or Historic Building 21, the Port may terminate the DDA in accordance with **Section 12.7** (Termination Procedures).

12.5. Termination as Developer Remedy. Developer's termination rights are described in this Section.

(a) Material Breach. If the Port causes a Material Breach under **Section 12.3** (Material Breach by the Port) that would significantly and adversely affect Developer's ability to proceed with the 28-Acre Site Project in accordance with the Schedule of Performance, Developer may terminate all future development obligations and rights under this DDA upon submittal to the Port of a written notice of its election to terminate.

(b) Title Exception. Developer may terminate an Option on an Option Parcel by choosing not to Close Escrow if the Port does not remove or fails to respond timely to Developer's objection to a new title exception under *VDDA § 6.3 (Title Review Following Contingency Period Expiration)*.

12.6. Mutual Termination Right.

(a) Costs to Defend Third-Party Challenge. If a Third-Party Challenge to the 28-Acre Site Project is filed, Developer may elect not to reimburse all Port Costs and City Costs arising from the action by providing notice to the Port within 10 days after Developer receives notice of the action. If Developer makes this election, either Party may terminate this DDA on 10 days' notice to the other Party.

(b) Surviving Developer Obligations. Developer, if it chooses to terminate this DDA, may deliver its Notice of Termination with its notice of election on costs. Termination under this Section will not relieve Developer of its obligation to pay all Port Costs and City Costs incurred before the Termination Date or any award of attorneys' fees to the plaintiffs in the action.

12.7. Termination Procedures. The following procedures will apply to all terminations except those under **Subsection 12.4(a)** (Automatic Termination of Development Rights to Certain Parcels).

(a) Notice of Termination.

(i) The Party electing to terminate must provide a Notice of Termination to the other Party that prominently includes the phrase "*Notice of Termination.*" The notice must describe the alleged Material Breach or other circumstance giving rise to the right to terminate, list portions of the DDA or the 28-Acre Site Project to be terminated, and specify a Termination Date at least 15 days after the notice is delivered.

(ii) A Party may agree in its sole discretion to extend the Termination Date in a writing confirming the later Termination Date, but doing so will not require the Party to deliver a new Notice of Termination.

(iii) The Port may deliver a Notice of Termination before the date of the public meeting at which the Port Commission is expected to consider termination. None of the following will affect the validity of the Port's Notice of Termination, except as to the specified Termination Date: (1) the Port Director, in her sole discretion agrees to extend the anticipated Termination Date; (2) the matter is not placed on the Port Commission's agenda for the anticipated Termination Date; or (3) the Port Commission continues its action to a later date.

(b) Port Commission Action. Except for the situation described in **Section 12.6** (Mutual Termination Right), a Port Commission resolution is required for the Port to terminate any part of this DDA.

(c) Recorded Notice. After termination, the Party electing termination may record a Notice of Termination specifying the Termination Date in the Official Records. The Party must deliver, or cause delivery of, conformed copies of any recorded Notice of Termination to the other Party and any Interested Person.

(d) Preservation of Special Tax Lien. The Parties acknowledge that retaining the lien of the CFD on all Taxable Parcels benefits Developer, the Port, the City, and the public trust. Developer agrees not to object to any agreement between the Port on its own behalf, or as the CFD Agent, and the City, any Indenture Trustee, or other person that would preserve the lien even if any portion of Developer's rights under this DDA is terminated.

12.8. Effects of Termination on Development Rights. On the Termination Date, the following changes will take effect automatically.

(a) Mutual Obligations. On the Termination Date, each Party's obligations to the other Party for the terminated portions of this DDA will terminate, except for indemnities and any other obligations that expressly survive termination.

(b) Development Opportunities.

(i) Port. The Port will have the right to offer the Development Opportunities associated with the terminated portions of the DDA to third parties through proprietary public offerings and to specify any terms that it determines in its sole discretion are appropriate for the offered Development Opportunities. The Port may require that the Development Opportunity conform to the material requirements of this DDA with respect to the applicable real property or may make such changes to the Development Opportunity as the Port determines are appropriate under the circumstances; provided, that in formulating the Development Opportunity, the Port will not permit uses that are incompatible

with Developer's development rights under any portion of this DDA that has not been terminated. So long as the Port offers the Development Opportunity consistent with the foregoing sentence, Developer will have no right to challenge, limit or contest the Port's process or the offering of the Development Opportunity to others as set forth in this Section.

(ii) Developer.. Developer will have no rights to the Development Opportunities associated with the terminated portions of the DDA or to reimbursement of Developer Capital it uses for the terminated Development Opportunities after the Termination Date, subject to **Section 12.9** (Effects of Termination on Project Payment Sources).

(iii) Waiver. Developer acknowledges the Port's rights under this Subsection and expressly waives any right that Developer might have to challenge or limit the Port's right to publicly offer any Development Opportunity under this Subsection, or to bid in a public offering.

12.9. Effects of Termination on Project Payment Sources

(a) Before Phase 1 Completion. If the Port terminates the DDA as to Phase 1 following a Material Breach by Developer before the Port has issued an SOP Compliance Determination for all Phase 1 Improvements, Developer's rights will be as follows.

(i) Developer will be entitled to receive the entire Entitlement Sum, but only to the extent generated by Project Payment Sources from Parcel K North and Phase 1 Option Parcels on which Developer has Closed Escrow before the Termination Date.

(ii) Developer will be entitled to reimbursement of Horizontal Development Costs for Phase Improvements paid by Developer Capital before the Termination Date without any Developer Return, but only to the extent of Project Payment Sources generated by Phase 1 Option Parcels on which Developer has Closed Escrow before the Termination Date.

(iii) Developer will retain development rights only to Option Parcels in the Phase on which it has Closed Escrow before the Termination Date.

(b) Before Completion of Other Phases. The following will apply if the Port terminates the DDA as to any other Phase following a Material Breach by Developer whether or not the Port has issued an SOP Compliance Determination for the applicable Phase Improvements.

(i) Developer will be entitled to a Cumulative IRR of 12% on Developer Capital spent on the Entitlement Sum and all Phase Improvements before the Termination Date, calculated up to the Termination Date, but only to the extent of Project Payment Sources generated by the Option Parcels in the Phase on which Developer has Closed Escrow before the Termination Date.

(ii) Developer will retain development rights only to Option Parcels in the Phase on which it has Closed Escrow before the Termination Date.

(c) Developer's Cure Rights.

(i) This clause applies to any Transferee to the extent that Developer has not been explicitly released from the obligation in default when the Port approved the Transfer. If the Port gives notice of a default or of the Port's intent to terminate a Transferee's rights under this DDA due to a Material Breach by the Transferee, at least 60 days before the effective Termination Date, Developer will have the right to cure the default within the specified cure period.

(ii) This clause applies only to Transferees to the extent the Port explicitly released Developer from the obligation in default when it approved the Transfer. Developer may request that the Port meet and confer regarding the Transferee's default or Material Breach. Developer must specify in its request that it is willing to assume responsibility for all of the Transferee's unperformed obligations for each affected Phase and any conditions to Developer's assumption of these obligations. The Port may accept or reject Developer's conditions in its sole discretion. The Port will respond to Developer within 15 days after Developer's request is delivered. Even if the Port agrees to meet and confer with Developer, the Port will not be required to negotiate exclusively with Developer, agree to Developer's proposed terms for assumption, or approve another Transfer proposed by Developer.

(d) After Phase Completion. The following will apply if the Port terminates the DDA as to any Phase for any reason after the Port has issued an SOP Compliance Determination for all Phase Improvements.

(i) Developer will be entitled to receive the Developer Balance for the Phase, but only to the extent of Project Payment Sources generated by the Option Parcels in the Phase on which Developer has Closed Escrow before the Termination Date.

(ii) The Port's obligation for further revenue-sharing for the Phase will end on the Termination Date.

(e) Termination Due to Port Default. If the Port willfully causes a Material Breach that prevents Developer from proceeding with the 28-Acre Site Project in accordance with the Schedule of Performance, then Port will pay to Developer a priority payment from Project Payment Sources associated with the Phase in the amount of the Developer Balance plus Developer's costs of collection, plus interest at the annual rate of 10%, calculated from the date the payment from Developer was due until paid in full, compounded annually.

12.10. Assignment of Documents after Termination.

(a) Consulting Contracts. Developer agrees to use good faith efforts to obtain provisions in services contracts with its consultants that will permit Developer's assignment of Project Materials to the Port under this Section.

(b) Required Assignment. If this DDA is terminated in whole or in part, Developer must:

(i) provide to the Port at no cost within 60 days after the Port's notice a Project Assignment of all Project Materials, including all Structural Materials, to the associated portions of the 28-Acre Site Project, to the extent permitted under Developer's consulting contracts;

(ii) satisfy all outstanding fees relating to the 28-Acre Site Project Materials for services rendered by any of the 28-Acre Site Project Consultants up to the Termination Date and provide proof of payment to the Port; and

(iii) subject to limitations in this Section, deliver copies of all Project Materials in Developer's possession or confirm for materials not in its possession, on request from Project Consultants or the Port, that Project Consultants are authorized to deliver all Project Materials to the Port.

(c) Allowed Disclaimer. Developer will be permitted to disclaim any representations or warranties with respect to the 28-Acre Site Project Materials (other than Developer's payment of fees), and, at Developer's request, the Port will provide

Developer with a release from liability for future use of the applicable Project Materials, in a mutually acceptable form. Developer's acceptance of the Port's release will be deemed to waive and release the Port from any claims of proprietary rights or interest in the 28-Acre Site Project Materials, and Developer agrees that the Port or its designee may use any of the 28-Acre Site Project Materials for any purpose after a Project Assignment.

13. IMPROVEMENT PLANS

13.1. Improvement Plans for Phase Improvements. This Section applies to the submittal of Improvement Plans by Developer for Phase Improvements and any new or revised Improvement Plans for Deferred Infrastructure submitted by Vertical Developers. For purposes hereof, reference to "Developer" in this Article means both the Developer and any Vertical Developer submitting Improvement Plans for Deferred Infrastructure.

13.2. Preparation of Improvement Plans. In its Consent to ICA, Developer agreed to comply with the Improvement Plan Submittal requirements set forth in *ICA § 4.3 (Improvement Plans for Horizontal Improvements-Generally))* and *ICA § 4.4 (Processing of Improvement Plans and Issuance of Construction Permits).*

13.3. Review of Improvement Plans.

(a) Review by City Agencies. The ICA sets forth procedures and standards for review and approval of Improvement Plans and Master Utilities Plans and issuance of Construction Permits for Horizontal Improvements.

(b) Port Review Procedures. The Port staff will review and approve Improvement Plans for consistency with the Project Requirements and Regulatory Requirements in accordance with the procedures for review and approval set forth in the ICA.

(c) Standard of Review. Except as otherwise provided in this DDA, the Port's review and approval or disapproval of Improvement Plans subject to its review will be final and conclusive and will comply with the ICA.

(d) Disputes. Either Party may initiate a proceeding under **Section 10.5** (Non-Binding Arbitration) if the Port and Developer disagree as to whether:

(i) a matter contained in a particular submittal has been approved previously or requires the Port's approval under this DDA;

(ii) the Port is acting in a manner that is inconsistent with matters that it approved previously; or

(iii) a Port disapproval is inconsistent with the applicable standards of approval.

13.4. Conflicts with Other Governmental Requirements.

(a) Other Regulatory Approvals. The Port will not unreasonably withhold its approval, where otherwise required under this DDA, of elements of the Improvement Plans or changes in Improvement Plans required by any other Regulatory Agency if all of the following have occurred.

(i) The Port receives notice of the required change.

(ii) The Port has at least 10 days to discuss the element or change with the other Regulatory Agency requiring the element or change and with Developer's registered design professional in responsible charge.

(iii) Developer will cooperate fully with the Port and with the other Regulatory Agency within the 10-day discussion period in seeking reasonable

modifications of the requirement, or reasonable design modifications of the Improvements, or some combination of modifications, to reach a design solution satisfactory to the Port.

(iv) As modified, the Improvements will comply with all Applicable Laws, including the Regulatory Requirements.

(b) Disputes. Developer and the Port recognize that regulatory conflicts may arise at any stage in the preparation of the Improvement Plans, but that it is more likely to arise at or after the Permit Set has been prepared and may arise in connection with permit applications. Accordingly, time is of the essence when a conflict arises. Both Parties agree to use their good faith efforts to reach a solution expeditiously that satisfies both Developer and the Port. At any time, either Party may submit the conflict to the dispute resolution procedures of **Section 10.5** (Non-Binding Arbitration).

13.5. As-Built Drawings.

(a) Delivery. Within 120 days after the Port issues an SOP Compliance Determination for each Phase, Developer must deliver to the Port As-Built Drawings for the applicable Phase Improvement that meets the requirements of **Subsection 13.5(b)** (Technical Requirements) and **Subsection 13.5(c)** (Format).

(b) Technical Requirements. As-Built Drawings must reflect all requests for information responses, field orders, change orders, and other corrections to the documents made during the course of construction. As-Built Drawings must be both in the form of full-size (24" x 36"), hard paper copies and converted into electronic format as full-size scanned tagged image files (TIFF) and AutoCAD files. As-Built Drawings must be full-sized documents, with "mark-ups" neatly drafted to indicate modifications from the original design documents, scanned at 400 dots per inch (dpi). Each drawing must have a unique number stamped onto the title block. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of 10 drawings must be scanned as a test before execution of this requirement in full.

(c) Format. The AutoCAD files must be contained in Release 14 or a later version, and drawings must be transcribed onto electronic storage media. All "X-REF," "block" and other referenced files must be coherently addressed within the environment of the compact disc. Media containing files that do not open automatically without searching or reassigning "X-REF" addresses will be returned for reformatting. A minimum of 10 complete drawing files, including all referenced files, must be transmitted to the Port as a test before execution of this requirement in full.

(d) Production Costs. Developer's costs to produce required files will be reimbursable Soft Costs unless Developer fails to comply timely with this Section. If Developer does not comply, the Port, after giving notice to Developer, will have the right, but not the obligation, to cause an engineer of the Port's choice to prepare final surveys and As-Built Drawings, plans and specifications, at Developer's sole, unreimbursable cost.

13.6. Schematic Design Review of Park Parcels. The Port will not issue a Construction Permit for any Park Parcel until the Port Commission has approved the schematic design of the applicable Park Parcel in accordance with this Section.

(a) Applications. Developer will submit to the Port an application for the schematic design of each Park Parcel (each, a **"Schematic Design Application"**) at such time as Developer reasonably determines necessary to meet the Schedule of Performance for construction of the applicable Park Parcel. Each Schematic Design Application will include the following information:

(i) A written narrative describing the overall conceptual design, including the park program, design elements, and facilities provided for each Park Parcel;

(ii) An illustrative site plan to scale showing;

(1) Conceptual circulation systems (vehicular, bicycle and pedestrian) including parking;

(2) Conceptual grading and drainage;

(3) Generalized locations of active and passive recreational areas; park elements and facilities;

(4) Generalized locations and conceptual layout for landscaping and hardscape areas, including tree planting and any stormwater treatment areas; and

(5) Generalized locations for furnishings, lighting, public art, signage, comfort facilities, stairs, ramps, and railing;

(iii) Illustrative sections and perspectives representative of the overall conceptual design, including key relationships between programmatic areas, design elements, and defining park features and facilities;

(iv) Image "boards" showing proposed concepts, detailed studies and/or precedents for site furnishings, paving materials, site architectural elements, lighting, public art, signage, comfort facilities, stairs, ramps and railings, tree species (and alternate species), and species palette concepts for major landscaping areas; and

(v) A proposed signage program consistent with **Subsection 13.7(a)** (Public Spaces Signage Plan), if not previously approved.

(b) Pre-Submittal Meetings. Not less than 30 days before submitting a Schematic Design Application for a Park Parcel, Developer will submit to the Port Director a draft of the concept plans and documents of the type listed in **Subsection 13.6(a)** (Applications). Not less than 20 days before submitting a Schematic Design Application, Developer and Port staff will hold at least one pre-Submittal meeting at an agreeable time. Developer may submit information and materials iteratively, and Developer and the Port may agree to hold such additional meetings as they may deem useful or appropriate. If Developer fails to submit such preliminary documents or to schedule such pre-Submittal meeting before submitting a Schematic Design Application as specified above, then such failure will not, by itself, be an Event of Default but the Port's time for review of the Schematic Design Application will be extended by 30 days.

(c) Port Review – Initial. The Port staff will review each Schematic Design Application for completeness, which means the Schematic Design Application includes all documents and materials in such detail as is required hereunder. The Port will make its determination of completeness within 15 days after submittal and will advise Developer in writing of any deficiencies. Subject to *App ¶ A.2.2(c) (No Deemed Consent Without Notice)*, if the staff does not so advise Developer, the Schematic Design Application will be deemed complete and all time periods for Port review will run from the date of such deemed completeness. Notwithstanding the foregoing, a determination that a Schematic Design Application is deemed complete will not prevent the Port staff from requesting such additional materials as deemed reasonably necessary to complete its review.

(d) Review of Complete Applications. Prior to submittal of the first Schematic Design Application, the Port Director, in consultation with the Planning Director, will designate the Design Advisory Committee to make design recommendations to the Port Commission on Schematic Design Applications. When the Schematic Design Application is complete or deemed complete under *App ¶ A.2.2(c) (No Deemed Consent Without Notice)*, the Port staff will transmit the Schematic Design Application to the Design Advisory Committee for consideration at a noticed public hearing at its next meeting.

(e) Developer Outreach. Prior to Port Commission consideration of a Schematic Design Application for a Park Parcel in Phase I pursuant to **Subsection 13.6(g)** (Port Commission Approval) or prior to a public hearing of the Design Advisory Committee for a Schematic Design Application in later Phases pursuant to **Subsection 13.6(d)** (Review of Complete Applications), Developer will host a public presentation of its Schematic Design Application and will provide a minimum of two weeks' notice to members of CWAG and other stakeholders by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation.

(f) Recommendation of Design Advisory Committee. The Design Advisory Committee will hold a public hearing on the Schematic Design Application and make design recommendations to ensure that the design of the park is consistent with applicable provisions of the Design for Development and other applicable Development Requirements.

(g) Port Commission Approval. The Port Director will submit the applicable complete Schematic Design Application to the Port Commission for review and consideration, with the Design Advisory Committee recommendation for Port Commission consideration in accordance with **Subsection 5.3(c)** (Port Commission Meetings). The Port Commission will calendar the Schematic Design Application for review and consideration at the next available regular Port Commission meeting after the public hearing held by the Design Advisory Committee under **Subsection 13.6(f)** (Recommendation of Design Advisory Committee), but in no case more than 45 days after the Design Advisory Committee public hearing at which the Design Advisory Committee makes its recommendation on the Schematic Design Application. In the event of a disapproval, the Port Commission will issue findings to support its decision. Thereafter, Developer may re-submit a revised Schematic Design Applications to the Port Commission that will address the Port Commission's reasons for disapproval. The Port Director will resubmit the applicable revised Schematic Design Application to the Port Commission for review and consideration at the next available regular Port Commission meeting, but in no case more than 45 days after the submittal of the revised Schematic Design Application.

(h) Approval of Park Parcel Improvement Plans: Amendments to Approved Schematic Design. After the Port Commission's approval of the Schematic Design Application, Park Parcel Improvement Plans will be processed in accordance with the ICA. The Port Director may approve Park Parcel Improvement Plans that amend or modify the approved Schematic Design Application, provided she finds that the amendment or modification would not be a material change. would not be detrimental to the public welfare or injurious to the property or improvements in the vicinity of the 28-Acre Site Project, and would be consistent with the Project Requirements and Regulatory Requirements. If the Port Director determines that the Schematic Design Application amendments would not meet the foregoing criteria, the amended Schematic Design Application will be subject to the same procedures as a new Schematic Design Application.

(i) Approval of Park Rules and Regulations. Port staff will consult with Developer to develop reasonable rules and regulations for the conduct of activities and operations in the Public Spaces, including limits on restricted access events, in conjunction with its conditional acceptance of Public Spaces under **Section 15.7** (SOP Compliance). Rules and regulations approved by the Port Commission will apply to each Public Space when finally accepted by the Port under this DDA.

13.7. Signage. The Design for Development sets forth general standards and guidelines for signage within the boundaries of the SUD, including public realm signage, wayfinding elements, and building signage. Because the Design for Development standards and guidelines are general in nature, this Section sets forth a process for Port approval of four categories of comprehensive signage plans (each, a "**Signage Plan**") for (i) the Public Spaces, (ii) Public ROWs, (iii) buildings in the 28-Acre Site, and (iv) an interpretive signage program that will help educate visitors on the history and significance of particular features or points of interest. The four types of Signage Plans will be in addition to the requirements for Schematic Design Review of Park Parcels described in **Section 13.6** (Schematic Design Review of Park Parcels). The procedures for approval of each type of Signage Plan are as follows:

(a) Public Spaces Signage Plan. Developer will submit to Port staff a concept level Public Spaces Signage Plan that will address signage controls for all Public Spaces at the same time it submits its first Schematic Design Application in accordance with **Section 13.6** (Schematic Design Review of Park Parcels). The Public Spaces Signage Plan will be a master plan for all of the Public Spaces. The Public Spaces Signage Plan will be consistent with the Design for Development and will include concept level plans that include, at a minimum: signage controls governing program area; text size and design; volume dimensions or limitations; signage on kiosks or furnishings; and a description of any uniform signage features. The Port Director will review and take action to approve or disapprove the Public Space Signage Plan (including amendments to previously approved plans) no later than 45 days after Port Commission approval of the Schematic Design Application for Park Parcels under **Section 13.6** (Schematic Design Review of Park Parcels).

(b) Public ROWs. Developer will submit a concept level Public ROWs Signage Plan with or prior to its first submittal of Improvement Plans under the ICA. The Public ROWs Signage Plan will be a master plan for the Public ROWs within the 28-Acre Site. The Public ROWs Signage Plan will be consistent with the Design for Development and include concept level plans that include, at a minimum, signage controls governing non-City standard street signs; temporary signs; parking and other wayfinding signs; kiosks, streetscape commercial signage, and street furniture-related commercial signage. Port consideration and approval of the Public ROWs Signage Plan, will occur at the same time, and in accordance with, the same process for Port approval of Improvement Plans under the ICA. The Public ROWs Signage Plan may also address construction signage during construction of the Phase Improvements hereunder.

(c) Buildings. As provided under the Design for Development, Developer will submit a building Signage Plan to the Port and Planning Department that will serve as further guidance to Port and Planning Department staff in reviewing building signage for consistency with the Design for Development. Developer will submit the Building Signage Plan to the Port Director, with a copy to the Planning Director, on or before a Vertical Developer submits a design review application for the first building under the SUD. The building Signage Plan will include concept level plans that include, at a minimum: temporary signs; commercial signs; text size and design, or volume dimensions or limitations; permitted types of signage; and a description of any uniform signage features. The Port Director will review and approve the building Signage Plan within 30 days after submittal and use commercially reasonable efforts to coordinate a

review by the Planning Director within the same timeframe. Such approval must be consistent with the Design for Development and other Project Requirements and Regulatory Requirements, unless otherwise agreed by Developer.

(d) HABS Survey/Interpretive Signage.

(i) As a condition to the Port's issuance of the first demolition permit for the 28-Acre Site Project, Developer will have submitted Historic American Buildings Survey (HABS) documentation for all structures being demolished, as required by Improvement Measure I-CR-4a of the MMRP.

(ii) As a condition to the Port's approval of the first Schematic Design Application for the Park Parcels, the Port will have approved a sitewide interpretive plan for the 28-Acre Site, intended to educate visitors to the 28-Acre Site to key historic, cultural and natural features of significance. The sitewide interpretive plan will include, at a minimum, the proposed location and general content of the interpretive signs and features. The Port Director will approve the sitewide interpretive plan within 30 days after submittal. Such approval must be consistent with the Design for Development and other Project Requirements and Regulatory Requirements, unless otherwise agreed upon by Developer.

14. CONSTRUCTION GENERALLY

14.1. Substantial Compliance with Plans. The allowed scope of work for Horizontal Improvements will be determined by the Port's approval of Permit Sets in accordance with the ICA. Developer agrees to construct Horizontal Improvements in substantial compliance with approved Permit Sets and in strict compliance with applicable Project Requirements and Regulatory Requirements.

14.2. Standards of Construction.

(a) Generally. Developer must construct or cause all Horizontal Improvements to be completed using standards of quality and quantities in accordance with the approved Permit Sets and in compliance with Applicable Laws. Developer must undertake commercially reasonable measures using good construction practices to:

(i) minimize damage, disruption, or inconvenience caused by the work;

(ii) make adequate provision for the safety and convenience of all persons affected by the work;

(iii) minimize the risk of injury or damage to adjoining portions of the 28-Acre Site, Horizontal Improvements and Vertical Improvements under way or completed, and the surrounding property; and

(iv) minimize the risk of injury to members of the public.

(b) Historic Resources. The Developer Construction Obligations require Developer to rehabilitate the Historic Buildings for reuse in compliance with the Secretary's Standards. This requirement will be incorporated into the applicable Vertical DDA for each of the Historic Buildings. The Port will review all building permit applications for rehabilitation of Historic Buildings and inspect the completed rehabilitation work for compliance with all applicable Regulatory Requirements and Project Requirements. The Port's review will be consistent with SHPO and NPS requirements for Historic Tax Credit eligibility, if applicable, and Port will not disapprove of the building permit for a Historic Building or require changes to the proposed building permit plans for reasons that would conflict with plans approved by

SHPO and NPS for the applicable Vertical Developer to obtain Historic Tax Credits, if applicable.

14.3. Site Security. During all construction activities at the 28-Acre Site and other areas of the FC Project Area on which Developer is performing construction activities, Developer will be responsible for taking commercially reasonable measures to secure the physical site and protect the public, as well as the City, the Port, and their Agents, from reasonably foreseeable harm. Examples of security measures include fencing, security patrols, video surveillance, and general liability insurance.

14.4. Costs.

(a) Commercially Reasonable Costs. The Parties acknowledge that any Horizontal Development Cost that Developer incurs will be deemed commercially reasonable and represent the fair market value price of the Horizontal Improvements if it provides the Port with documentation showing satisfaction of the requirements of *FP § 8.1 (Commercially Reasonable Costs)* or *FP § 8.2 (Guaranteed Maximum Price Contract)*. To the extent that relevant documents are available, Developer will provide such documentation to Port in each Phase Budget and Developer Quarterly Report regarding costs already incurred in the Phase or Prior Phases, and costs anticipated to be incurred in the applicable Phase. If Developer anticipates that any of its Horizontal Development Costs will be incurred without satisfying the requirements of *FP § 8.1 (Commercially Reasonable Costs)* or *FP § 8.2 (Guaranteed Maximum Price Contract)*, it will include an estimate of such costs in each Developer Quarterly Report submitted under *FP § 9.1(b) (Developer Quarterly Reports)*, based on approved Improvement Plans, construction contracts (including contingencies) and any change orders.

(b) Change Orders. From time to time, Developer and its general contractor may agree on change orders to the underlying GMP contract or other construction contract, which will occur during the course of construction of the applicable Phase Improvements. At the earliest feasible opportunity, but in any event no later than the next regular meeting described in **Section 14.6** (Progress Meetings), Developer must share with the Port any agreed-upon change order that would exceed a $250,000 threshold per occurrence (each, a "**Material Change Order**"). In the event that multiple occurrences are packaged in a single change order, this threshold applies only to individual occurrences. All change orders will also be reflected in Developer's reporting of estimated or actual Horizontal Development Costs required under *FP § 9.1(b) (Developer Quarterly Reports)*. With each reimbursement request under the Acquisition Agreement, Developer will also submit documentation supporting the Material Change Order request and associated amendment to the applicable GMP contract or other construction contract.

(c) Disputes. The Port will notify Developer within 14 days after Developer's submittal of documents described in **Subsection 14.4(a)** (Commercially Reasonable Costs) or **Subsection 14.4(b)** (Change Orders) if the Port considers any of the estimated or actual Horizontal Development Costs to be commercially unreasonable based on the documentation provided and would not qualify as a Project Cost under the Financing Plan. If not resolved by consultation at a progress meeting under **Subsection 14.6(a)**(Purpose), the Parties may agree to submit the following disputes for resolution under **Section 10.5** (Nonbinding Arbitration):

(i) whether the challenged costs are commercially unreasonable;

(ii) whether the challenged costs are outside the scope of approved Permit Sets;

(iii) proposed changes to address regulatory conflicts under **Section 13.4** (Conflicts with Other Governmental Requirements); and

(iv) whether the review process meets the applicable standard of conduct.

14.5. Contracting Procedures. Developer agrees to follow the contracting procedures described in this Section to negotiate one or more contracts for Horizontal Improvements consistent with the terms of the applicable Phase Approval.

(a) Qualified Contractors. Developer will provide the Port with a list of the general contractors from which Developer intends to solicit bids for construction of Horizontal Improvements prior to issuing bid packages. If the Port reasonably objects to any of the proposed general contractors, the Port must respond in writing within five business days with a reasonably detailed explanation for its objection. Reasons for disapproval will be limited to the general contractor's relevant experience and financial capacity (including ability to meet bonding requirements); ability to comply with all applicable City contracting requirements; and legal grounds for disqualification, such as debarment or failure to be licensed by the State Contractors License Board. If the Port objects to a general contractor, then Developer may provide Port with notice of a replacement general contractor subject to the same five business day objection period, or submit the matter to the dispute resolution procedures of **Section 10.4** (Binding Arbitration).

(b) Bid Package Requirements and Security. The bid package must include relevant Improvement Plans clearly defining the scope of work. The bid package will require the general contractor to guarantee performance and payment of the work, which may be provided through a subcontractor default insurance policy provided by the general contractor covering all enrolled subcontractors, or by requiring each subcontractor under subcontracts having a value of more than $100,000 to provide payment and performance bonds guaranteeing their work. Payment and performance bonds must be issued by a surety meeting the required standards under the Subdivision Code.

14.6. Progress Meetings.

(a) Purpose. Developer must schedule and notify the Port of the place and time for meetings between the Port and Developer's senior construction management team to discuss construction progress in which the Port and the other City Agencies will be entitled to participate. Such notice and meetings must occur at least once per month, and may occur more frequently upon mutual agreement by the Parties. The purpose of the City Agencies' participation in these meetings will be to:

(i) coordinate Developer's preparation and submittal of Improvement Plans to the Port for City Agency review;

(ii) review progress in constructing the Improvements;

(iii) coordinate the Acquiring Agency's inspections;

(iv) review Developer's expected change orders; and

(v) review any expected changes in the scope of work.

(b) Minutes. Developer agrees to prepare and distribute meeting minutes promptly after each progress meeting. The Port staff and Developer (and their respective consultants subject to Port and Developer presence or consent) agree to communicate and consult informally as frequently as reasonably necessary to assure that the formal

submittal of any Improvement Plans to the Port can receive prompt and speedy consideration.

(c) Representatives. For the purposes of this Section, until otherwise directed, the Port's representative is the Chief Harbor Engineer. Developer will provide Port with notice of the identity of its representative promptly after the Reference Date. The Parties do not have to comply with *App ¶ A.5 (Notices)* and **Section 20.1** (Notice Addresses) for notices and requests made to facilitate the Parties' progress meetings and consultations covered by this Article.

(d) Reports. During periods of construction, the Port will have the right to require Developer to submit monthly progress reports on construction to the Port, in form and detail as reasonably required by the Port.

14.7. Other Construction Matters.

(a) Port and Other Governmental Permits. Developer has the sole responsibility for obtaining all necessary permits for the Horizontal Improvements and must submit applications for the permits directly to the applicable Regulatory Agency, unless otherwise provided in **Article 13** (Improvement Plans). Developer will bear all risk of delay due to its submittal of an incomplete or insufficient permit application.

(b) Developer License. For all Horizontal Improvements to be constructed by Developer on land owned by the Port that has not been conveyed to Developer under the Master Lease, the Port will enter into a License with Developer, substantially in the form attached hereto as **DDA Exhibit B11**.

(c) Port Right of Entry. Developer acknowledges that under the Master Lease, the Port and its Agents have the right of entry onto the 28-Acre Site to the extent reasonably necessary to carry out the purposes of this DDA and as the landowner.

(i) The Port will have the access required to install, repair, replace, monitor, and service any security installations.

(ii) The Parties may agree to submit disputes over whether Port actions arising from entry under this Section or through the Port's exercise of its right of entry under the Master Lease unreasonably impeded Developer's construction activities for resolution under **Section 10.5** (Nonbinding Arbitration).

(d) Workforce Development Plan. Developer, its Agents and Vertical Developer must comply with all applicable provisions of the Workforce Development Plan attached as **DDA Exhibit B4**.

(e) Construction Signs and Barriers. Developer must provide appropriate construction barriers, construction signs, and a project sign or banner describing the 28-Acre Site Project and must post the signs at the 28-Acre Site during construction. Unless and until the Port Commission adopts a Signage Plan for the Public ROWs that addresses construction signage, the Port's Guidelines for Review and Approval of Signs and Murals on Port Property, adopted by Resolution No. 97-12, will apply. Developer must submit the proposed size, design, text, and location of any construction signs and the composition and appearance of any construction barriers to the Port for approval before installation.

(f) Coordination. The Parties acknowledge that a number of construction projects on public land near the 28-Acre Site are being or are expected to be constructed at the same time as the construction of early Project Phases. Expected projects include the rehabilitation of the 20th Street historic buildings, construction of Crane Cove Park, construction of SFMTA line extensions, development of the Illinois Street Parcels, and SFPUC utility infrastructure work. Developer and the Port each agree to use reasonable

efforts to coordinate construction efforts, to the extent within each Party's respective control, with those at other project sites in a manner intended to reduce construction conflicts without material delay to Developer Construction Obligations under this DDA.

(g) Construction Staging. During the DDA Term, Developer will use portions of the 28-Acre Site as staging areas for construction lay down and parking, construction equipment, and related materials under the Master Lease. Developer may request additional areas outside of the 28-Acre Site (including Parcel K South) for construction staging, which the Port may grant or deny in its sole discretion. If the Port agrees to license additional land to Developer for this purpose, the Port will charge license fees at market rates.

(h) Mechanics' Liens. Developer must keep the FC Project Area and Horizontal Improvements free from any liens arising out of any work performed, materials furnished, or obligations incurred by Developer or its Agents. Developer's failure to cause any construction-related lien to be released of record or bonded or take other action acceptable to the Port within 30 days after Developer's receipt of final notice of the imposition of the lien will be a default under this DDA and the Master Lease, and the Port will have the right at its option to effect a release of the lien by any commercially reasonable means. Developer at its sole cost must reimburse the Port for all costs the Port incurs to do so within 30 days after the Port's demand. Developer will be permitted to contest the validity or amount of any tax, assessment, encumbrance, or other lien and to pursue any remedies associated with the contest, but the contest will be subject to all conditions in the Master Lease.

14.8. Mitigation Measures. Developer and the Port agree that construction and operation of all Improvements within the boundaries of the SUD must comply with applicable Mitigation Measures in the MMRP.

(a) Horizontal Improvements. Developer agrees to implement the Developer Mitigation Measures related to the Horizontal Improvements within the FC Project Area and Parcel K South as required by the MMRP and other Project Requirements and Regulatory Requirements. Developer also agrees to cause its contractors, subcontractors, and Transferees to comply with this obligation through its contracts.

(b) Vertical Improvements. Developer and the Port agree to incorporate into the applicable Vertical DDA each Vertical Developer's responsibility to implement the Mitigation Measures related to construction and operation of Vertical Improvements and any Deferred Infrastructure obligations undertaken by the Vertical Developer in accordance with the MMRP.

(c) Other Horizontal Improvements. The Port agrees to implement the Mitigation Measures that are Port obligations as required by the MMRP and use good faith efforts consistent with the ICA to cause the necessary public agencies or applicable private parties to implement the Mitigation Measures assigned to them.

15. HORIZONTAL DEVELOPMENT

15.1. Horizontal Improvements.

(a) Developer Construction Obligation. Developer will proceed with the Developer Construction Obligations in accordance with the Schedule of Performance and this DDA after obtaining a Phase Approval for each Phase.

(b) Phase Transfers. Developer may Transfer Developer Construction Obligations for Phases other than Phase 1 to Transferees under **Article 6** (Transfers).

(c) Deferred Infrastructure. Subject to **clause (iv)** of **Section 1.3(f)** (Horizontal Improvements), Developer may assign the obligations for Deferred Infrastructure in all Phases to Vertical Developers in accordance with the terms of the applicable Vertical DDA and Vertical Coordination Agreement, subject to Other City Agency review, inspection, and acceptance of the Deferred Infrastructure under the ICA and the Subdivision Code. Developer will continue to be responsible for seeking and obtaining: (i) reimbursement for Deferred Infrastructure costs under the Acquisition Agreement; and (ii) acceptance of Deferred Infrastructure by the Board of Supervisors or the Port, as applicable.

(d) Louisiana Parcel Improvements. The Infrastructure Plan includes certain Horizontal Improvements within a portion of Louisiana Street, generally located between 20th and 21st Streets, a portion of which is located within the 28-Acre Site (the "**28-Acre Site Louisiana Parcel**"), and a portion of which is located within property leased to Historic Pier 70, LLC and generally shown on **DDA Exhibit A8** (the "**Orton Louisiana Parcel**"). Notwithstanding the Infrastructure Plan, or anything in the Project Approvals to the contrary, until the Orton Louisiana Parcel is added to the 28-Acre Site in accordance with **Section 1.3(c)** (Louisiana Street Parcel), Developer's Construction Obligations within the 28-Acre Site Louisiana Parcel will be limited to streetscape improvements identified in the Infrastructure Plan and Streetscape Master Plan that lie within the 28-Acre Site Louisiana Parcel that are required by the Port to issue a Temporary Certificate of Occupancy for a building on Parcel A. Upon the addition of the Orton Louisiana Parcel to the 28-Acre Site in accordance with **Section 1.3(c)** (Louisiana Street Parcel), then Developer's Construction Obligations will be expanded to include roadway and other Horizontal Improvements identified in the Infrastructure Plan and Streetscape Plan that lie within the Orton Louisiana Parcel; provided, however, that upon approval by the Port and the applicable City Agencies of Improvement Plans that allow the relocation of subsurface utilities shown on the Infrastructure Plan from the Orton Louisiana Parcel or the 28-Acre Site Louisiana Parcel to elsewhere within the FC Project Area, the approved Improvement Plans will describe Developer's responsibility for any subsurface improvements within the 28-Acre Site Louisiana Parcel and the Orton Louisiana Parcel.

15.2. Site Preparation Work. Before beginning any Site Preparation, Developer must: (a) submit an update to the prices in the Acquisition Agreement to reflect construction estimates and obtain a Construction Permit from the Port; and (b) obtain all other required Regulatory Approvals, including Construction Permits, necessary to perform the applicable Site Preparation. Phase Approval will not be required for the issuance of Construction Permits or other Regulatory Approvals for Site Preparation.

15.3. Preparation of Development Parcels. Developer must complete the following work necessary to prepare Development Parcels for the Port's conveyance to Vertical Developers.

(a) Final Map. A Final Map (which may be a Final Transfer Map) creating a separate legal parcel for each Development Parcel must be recorded in the Official Records.

(b) Site Conditions.

(i) Development Parcels may be left in an as-is condition until conveyed.

(ii) For Development Parcels assumed to include a basement level, Developer may elect at its sole option to excavate the basement to generate fill for use elsewhere on-site, subject to any required Water Board approval.

(iii) For other Development Parcels, Developer may elect at its sole option to grade the building pad to target subgrade elevation with soil compacted under the applicable grading permit and the geotechnical recommendations for the site as certified by Developer's geotechnical engineer.

(c) Phase Improvements. Developer will have performed all necessary Site Preparation and will be contractually obligated to construct all necessary Phase Improvements to serve the Development Parcel in accordance with the Schedule of Performance, except for any Deferred Infrastructure that a Vertical Developer is obligated to construct under a Vertical DDA.

15.4. Conditions to Construction. Developer must satisfy the following additional conditions before Commencing Construction of Phase Improvements other than Site Preparation.

(a) Approvals. Developer has obtained: (i) approval of the Streetscape Master Plan in accordance with **Section 3.5** (Streetscape Master Plan); (ii) the applicable Phase Approval; (iii) for any Park Parcel, approval of its Schematic Design Application in accordance with **Section 13.6** (Schematic Design Review of Park Parcels); and (iv) all other required Regulatory Approvals, including Construction Permits, necessary to Commence Construction.

(b) Tentative Map. Developer has obtained Public Works' conditional approval of the Tentative Map for the Phase Area, entered into a Public Improvement Agreement with the City, provided all bonds required under the Subdivision Code, and Public Works' authorization to begin construction.

(c) Good Standing. Developer must not be in Material Breach or have received notice of a potential breach of this DDA.

(d) Security. Developer has provided Phase Security to the Port under **Section 17.3** (Phase Security).

(e) Conditions for Benefit of the Port. The conditions in this Section are solely for the benefit of the Port. Only the Chief Harbor Engineer, in his sole discretion, may waive any of those conditions, and only to the extent waivable under law.

(f) Effect of Failure of Condition. Developer's failure to satisfy any condition described in this Section for one Phase will not alone: (i) be a failure of conditions for any other Phase unless the failure directly impedes the other Phase; (ii) relieve either Party of any obligations that previously arose under this DDA; or (iii) be a Material Breach except in conjunction with Developer's failure to meet an Outside Date for the Phase or Developer's abandonment of construction after notice and the opportunity to cure.

15.5. Regulatory Approvals.

(a) Requirement to Obtain. Developer understands that: (i) Site Preparation and construction of Horizontal Improvements will require Regulatory Approvals from other Regulatory Agencies to Commence Construction under this DDA; and (ii) none of the Port's Phase Approval, Schematic Design Application approval, or approval of any other aspect of Developer Construction Obligations in the Port's regulatory capacity is a guarantee that other Regulatory Agencies will grant required Regulatory Approvals.

(b) Cooperation. The Port will cooperate reasonably with Developer to obtain required Regulatory Approvals and will sign any application that the Port is required to sign as a co-applicant or co-permittee. Developer is not authorized to agree to any conditions or restrictions to a Regulatory Approval that would create any Port obligation not expressly stated under this DDA without the Port's approval in its sole discretion. The Port will not unreasonably withhold its approval for any condition or restriction for

which Developer has assumed all liability in such form as is reasonably satisfactory to the Port. The Port's obligation under this Subsection does not apply to any application for a Regulatory Approval that would require the Port to incur costs unless Developer agrees to reimburse the Port.

(c) City Regulatory Approvals. Developer and the City have entered into the Development Agreement, which will govern certain land use matters under the Planning Code, including Impact Fees and Exactions. The Port and Other City Agencies, with Developer's consent, have entered into the ICA specifying certain procedures and standards that will apply when Developer seeks certain Regulatory Approvals from the Port and Other City Agencies.

(d) Compliance. Developer is solely responsible for ensuring that the design and construction of the Horizontal Improvements comply with all applicable Project Requirements and Regulatory Requirements.

(e) Noncompliance. Developer and its consultants and contractors must pay any fines and penalties at their sole cost and perform any corrective actions imposed for noncompliance with any applicable Regulatory Requirement and indemnify the Port against any liability arising from such noncompliance, even if the Port is a co-permittee. Fines, penalties, and costs of corrective actions will not be reimbursable to Developer under the Financing Plan.

15.6. Deferred Infrastructure.

(a) Identification of Deferred Infrastructure Zones. The timely and efficient construction of Phase Improvements may require the construction of certain Deferred Infrastructure to be delayed until the adjacent Vertical Improvements are built. When Developer submits its Basis of Design Report under the ICA, it will identify Deferred Infrastructure as "not-in-permit"; provided, however, that final approval of the scope of Deferred Infrastructure remains subject to the approval of the applicable Permitting Agency under the ICA.

(b) Deferred Infrastructure Zones. To the extent known, Developer will identify "**Deferred Infrastructure Zones**" associated with the applicable Phase Improvements in each Phase Submittal and with each Basis of Design Report. The Deferred Infrastructure Zones consist of the following:

(i) the area between back-of-curb and the adjacent Development Parcel boundary or the adjacent Public Space, as applicable;

(ii) bands up to 40 feet along the outer boundaries of Public Spaces and Mid-Block Passages adjacent to Development Parcels and the entire portion of Market Square (OS-2) that will be built in the air parcel above Parcel D; and

(iii) the area adjacent to Development Parcels for the installation of service infrastructure, including laterals, traps, air vents, clean-outs, meter boxes, irrigation facilities and associated pedestals, pull boxes, and secondary conduits.

(c) Construction of Deferred Infrastructure. Developer (or the applicable Vertical Developer under a Vertical DDA) will be obligated to construct the Deferred Infrastructure in accordance with the Project Requirements and Regulatory Requirements and the Schedule of Performance as it applies to Deferred Infrastructure.

15.7. SOP Compliance.

(a) Schedule of Performance Obligations. The Schedule of Performance sets forth different Outside Dates for Completion of (i) all Phase Improvements within a Phase other than Deferred Infrastructure, Public Spaces within Park Parcels for that Phase

and 20th Street; (ii) 20th Street; (iii) each work of Deferred Infrastructure (including Public Spaces within Deferred Infrastructure Zones), which may include Deferred Infrastructure that has been assigned to a Vertical Developer under a Vertical DDA or retained by Developer under a Vertical Coordination Agreement; (iv) all Public Spaces within Park Parcels within a Phase (not including Deferred Infrastructure); and (v) Substantial Completion of all Phase Improvements serving an Affordable Housing Parcel, whether located within or outside of its boundaries (as provided in *AHP § 3.3(a) (Required Improvements)*). Each of the foregoing categories are referenced in this Section as a "**Schedule of Performance Obligation**"). This Section sets forth the procedures for determining when Developer has met its Schedule of Performance Obligations for a Phase.

(b) Acceptance of Park Parcels and Components of Phase Infrastructure. The Port will be the City agency that will accept for liability and maintenance purposes the following (collectively, the "**Port Acceptance Items**'): (i) each Park Parcel when completed in accordance with all applicable Project Requirements and Regulatory Requirements (including Deferred Infrastructure associated with the Park Parcel), and (ii) full, complete, and functional Components of streets or other Phase Improvements to the extent that the Port has agreed to accept the same pursuant to the Acceptance and Maintenance Memorandum of Agreement entered into between the Port and Other City Agencies under *ICA § 4.6* (Standards and Procedures for Acceptance) (the "**Acceptance MOA**") (including Deferred Infrastructure associated with the Phase Improvement). The ICA addresses procedures and standards that will apply when Developer seeks certain Regulatory Approvals from the Port and Other City Agencies, including future acceptance of Phase Improvements other than the Port Acceptance Items. This Section also sets forth the procedures for determining when Developer has completed a Port Acceptance Item in accordance with all applicable Project Requirements and Regulatory Requirements, which in turn will trigger the Port Commission acceptance procedures in **Section 15.8** (Acceptance of Park Parcels and Phase Improvements).

(c) Request to Port.

(i) When Developer believes that it has constructed and completed a Schedule of Performance Obligation or a Port Acceptance Item in accordance with all applicable Project Requirements and Regulatory Requirements, it may submit to the Chief Harbor Engineer a request for a Determination of SOP Compliance. Developer's request must include all of the documents listed in **DDA Exhibit B9** (the request, with all submitted materials, the "**SOP Compliance Request**").

(ii) Unless the SOP Compliance Request relates to Deferred Infrastructure, the Chief Harbor Engineer will make an SOP Compliance Determination for the applicable Schedule of Performance Obligation or Port Acceptance Item without regard to Deferred Infrastructure.

(d) SOP Compliance Determination.

(i) The Chief Harbor Engineer will review the SOP Compliance Request and will consult with Other City Agencies as provided under the ICA to determine whether Developer has completed the Schedule of Performance Obligation or Port Acceptance Item in accordance with applicable Project Requirements and Regulatory Requirements for purposes of establishing Developer's compliance with the Schedule of Performance. Under the ICA, each Other City Agency must respond within 30 days to the Chief Harbor Engineer with any comments, subject to a 14-day cure period for failure to respond within the 30-day period. In any event, the Chief Harbor Engineer will approve or

disapprove each SOP Compliance Request within 45 days after receiving Developer's complete SOP Compliance Request.

(ii) The Chief Harbor Engineer will grant an SOP Compliance Request by issuing a signed, acknowledged document in recordable form identifying the applicable Schedule of Performance Obligation that Developer has constructed and completed in accordance with all applicable Project Requirements and Regulatory Requirements (**"SOP Compliance Determination"**). The form of the SOP Compliance Determination is attached hereto as **Exhibit B9-1**.

(iii) If the Chief Harbor Engineer disapproves the SOP Compliance Request, he will respond in writing with a reasonably detailed description of the reasons for disapproval and measures necessary to address the deficiencies. Developer's resubmittal of an SOP Compliance Request will be subject to the same review and response periods.

(iv) If the Chief Harbor Engineer fails to issue the SOP Compliance Determination within 45 days after receiving Developer's complete SOP Compliance Request, Developer may deliver a notice to the Chief Harbor Engineer, clearly labelled, "*Action Required for Determination of SOP Compliance or Deemed Approval*," in accordance with *App ¶ A.5 (Notices)* and **Section 20.1** (Notice Addresses) requesting issuance of the SOP Compliance Determination, accompanied by a proposed Memorandum of Deemed Approval in the form attached hereto as **DDA Exhibit B9-2** that will specify the applicable Schedule of Performance Obligation and Developer's satisfaction of all conditions for deemed approval. If the Chief Harbor Engineer or his nominee fails to respond within 15 days after the date such notice was delivered, the applicable SOP Compliance Request will be deemed approved for purposes of establishing Developer's compliance with the Schedule of Performance, and Developer may thereafter record the Memorandum of Deemed Approval.

(e) Effect of SOP Compliance Determination. An SOP Compliance Determination or deemed approval under **clause (iv)** of **Subsection 15.7(d)** (SOP Compliance Determination):

(i) will conclusively establish Developer's compliance with the Outside Date under the Schedule of Performance for the completion of each Schedule of Performance Obligation listed in the SOP Compliance Request; but

(ii) will not have any precedential effect for the purpose of the City's acceptance of Horizontal Improvements.

(f) Effect of Recordation. Developer may record in the Official Records each SOP Compliance Determination or, if applicable, a Memorandum of Deemed Approval under **clause (iv)** of **Subsection 15.7(d)** (SOP Compliance Determination). After a recordation, any person then owning or later purchasing, leasing, or otherwise acquiring any interest in the applicable Phase Area will not, solely by virtue of its interest or actual or constructive knowledge of the contents of this DDA, incur any obligation or liability under this DDA for failure to comply with the Schedule of Performance Obligations to which the recorded document applies.

(g) Timing of SOP Compliance Requests and Schedule of Performance. The Schedule of Performance includes Outside Dates by which Developer must obtain an SOP Compliance Determination for each applicable Schedule of Performance Obligation. Developer will not be in Material Breach for failure to meet the Outside Date for an SOP Compliance Determination if it has submitted a complete SOP Compliance Request for the applicable Schedule of Performance Obligation at least 45 days prior to the applicable

Outside Date, and, if subsequently disapproved, Developer is diligently curing any deficiencies identified by the Chief Harbor Engineer.

15.8. Acceptance of Park Parcels and Phase Improvements. All Port Acceptance Items are subject to Port Commission acceptance as described in this Section. Within 30 days after the Chief Harbor Engineer's issuance of an SOP Compliance Determination for any Port Acceptance Item, Port staff will place an item on the Port Commission's calendar in accordance with **Subsection 5.3(c)** (Port Commission Meetings). Port staff will prepare a staff memorandum to the Port Commission that will include the following: (i) a description of the Port Acceptance Item to be accepted; (ii) a finding that the applicable Port Acceptance Item is functional and is constructed in conformity with the Project Requirements and Regulatory Requirements; (iii) a list of any permitted encroachments, easements or title exceptions that the Port is willing to accept on terms agreed upon by the Parties prior to the Chief Harbor Engineer's issuance of an SOP Compliance Determination; (iv) a description of any Deferred Infrastructure associated with the Port Acceptance Item that will be constructed and accepted at a later time to avoid damage to the Port Acceptance Item, as previously approved by Port in accordance with the ICA; (v) any conditions of acceptance, including conditions related to existing sub-surface improvements as described in **Subsection 15.8(d)** (Sub-Surface Improvements Below Port Acceptance Items); and (vi) the Chief Harbor Engineer's recommendation that the Port Commission accept the applicable Port Acceptance Item on the following terms.

(a) Conformity Findings. The Port Commission must find that the applicable Port Acceptance Item described in the staff memorandum is functional and is constructed in conformity with the Project Requirements and Regulatory Requirements.

(b) Delegation for Deferred Infrastructure. Completion of the approved Deferred Infrastructure identified in the staff memorandum will not be a pre-requisite to Port Commission acceptance of a Port Acceptance Item, but the Port Commission will delegate to the Port Director or her designee the authority to accept at a later date, the approved Deferred Infrastructure associated with the applicable Port Acceptance Item once it is complete. The Port Commission resolution will specify any conditions to the actions delegated to the Port Director.

(c) Release and Acceptance. The Port Commission will authorize and direct the Port Director, or her designee, to promptly, but in no event later than 10 business days after satisfaction of all conditions required by the Port Commission for acceptance, if any, record a signed, acknowledged Partial Release of Master Lease under *ML § 1.1(b) (Adjustment of Premises for Development)* release from the Master Lease, the real property occupied by the accepted Port Acceptance Item. With respect to the approved Deferred Infrastructure associated with the applicable Port Acceptance Item accepted by the Port Director under **Section 15.8(b)** (Delegation for Deferred Infrastructure), the Port Director will sign and record a Partial Release of Master Lease under *ML § 1.1(b) (Adjustment of Premises for Development)* promptly, but in no event later than 10 business days after the later of (1) the Chief Harbor Engineer's issuance of an SOP Compliance Determination for the applicable approved Deferred Infrastructure, or (2) satisfaction of all conditions required by the Port Commission for acceptance of the Approved Deferred Infrastructure, if any. The Port Director will deliver a conformed copy of the recorded document to Developer promptly after recordation.

(d) Sub-Surface Improvements Below Port Acceptance Items. If a Port Acceptance Item or associated approved Deferred Infrastructure includes sub-surface improvements for which the City has not yet accepted ownership (*e.g.*, completed but unaccepted combined sewer storage facilities that lie beneath a completed Park Parcel), a condition to Port's acceptance of the Port Acceptance Item or the associated approved Deferred Infrastructure will be the Developer entering into an agreement reasonably satisfactory to the Parties and the City prior to Port acceptance under which the Port

grants to Developer a right-of-entry for maintenance, repair and inspection purposes and Developer retains ownership and liability for the sub-surface improvements until such time as the sub-surface improvements are formally accepted by the City. The terms of the agreement will require Developer, among other things, to extend the applicable insurance coverages, indemnity and release provisions under the Master Lease to the subject property.

(e) Effect of Recordation. Recordation of the Partial Release of Master Lease under *ML § 1.1(b) (Adjustment of Premises for Development)* will:

(i) transfer ownership of the accepted Port Acceptance Item or Deferred Infrastructure, as applicable, to the Port; and

(ii) release Developer from future obligations for liability or repair of the accepted Port Acceptance Item or Deferred Infrastructure, as applicable, except to the extent provided under **Subsection 15.8(d)** (Sub-Surface Improvements Below Port Acceptance Items), **Section 9.3** (General Indemnity), **Section 9.4** (Environmental Indemnity), and applicable warranties.

15.9. Acceptance of Other Horizontal Improvements. The ICA provides for the City Agencies to meet and confer to consider other standards and procedures for acceptance of Horizontal Improvements, including Utility Infrastructure and, if desired, adopt procedures for acceptance of Horizontal Improvements. For any Horizontal Improvement that any City Agency accepts in accordance with applicable Regulatory Requirements, upon a City Agency's acceptance of a Horizontal Improvement, the Parties will record a Partial Release of Master Lease under *ML § 1.1(b) (Adjustment of Premises for Development)* unless the acceptance relates only to sub-surface improvements where the surface improvements have not been accepted, or vice versa, in which case, as a condition to the acceptance, Developer will be required to provide the accepting agency with access rights in accordance with the Master Lease, and warranties covering the accepted improvements for a period of time as specified in the conditions to acceptance and thereafter, under the applicable Public Improvement Agreement.

15.10. Maintenance of Horizontal Improvements.

(a) Port Facilities. Developer will be required to maintain Phase Improvements that will be under Port jurisdiction until the Port accepts the applicable Phase Improvement.

(b) Non-Port Facilities. Developer will be required to maintain all other Phase Improvements until the effective date of the Board of Supervisors acceptance action.

(c) Ongoing Maintenance Costs. Ongoing Maintenance Costs of accepted Phase Improvements will be paid by Services Special Taxes from the Pier 70 Leased Property CFD and the Pier 70 Condo Property CFD in accordance with *FP § 4.6 (Services Special Taxes)*.

15.11. Waterfront Park. The Port will not use the waterfront park for staging or other activities related to the demolition of Pier 64 to the extent that it would interfere with Developer's construction obligations.

16. INSURANCE

Developer will be required to obtain insurance in accordance with the Master Lease and any applicable License. As a part of each Phase Submittal, Developer may propose the form, amount, type, terms, and conditions of insurance coverages required of Developer in connection with the applicable Phase to the extent different from the insurance requirements provided under the Master Lease or License; provided, however, that the binding insurance requirements for the

Phase will be approved by the Port in consultation with the City's Risk Manager, consistent with the Master Lease or License.

17. SECURITY FOR PROJECT ACTIVITIES

17.1. Adequate Security Generally. Developer will provide to the Port Adequate Security as provided in this Article. As further described below, Adequate Security consists of (i) Loss Security for Developer Reimbursement Obligations, in accordance with the Loss Security requirements of **Section 17.2** (Loss Security); and (ii) Phase Security to secure Developer's obligation to construct the Public Spaces within the Park Parcels when required under the Schedule of Performance, deliver the Noonan Replacement Space and deliver the Affordable Housing Parcels, all in accordance with the Phase Security requirements of **Section 17.3** (Phase Security). Except as otherwise provided below for the Affordable Housing Parcels, this Adequate Security is separate from bonds that Developer will provide to the City under the Subdivision Code, but must meet the same requirements.

(a) Multiple Adequate Security Instruments. If Developer provides more than one instrument of Adequate Security, the instruments will not be cross-defaulted, and liability under each will be several and not joint, unless Developer requests otherwise with each Obligor's consent. The Port will have the right to proceed against all forms of Adequate Security securing the same obligation simultaneously or in any order that the Port elects in its sole discretion.

(b) Substitution of Adequate Security. Developer has the right to substitute at any time any portion of the Adequate Security that it has provided to the Port with another form of Adequate Security that meets the requirements under this Article.

(c) Material Breach. Except as specified in **Subsection 17.3** (Phase Security), Developer's failure to provide timely, or to cure its failure to provide and maintain or replenish, Adequate Security as required under this Article will be a Material Breach of this DDA under **Section 12.2** (Material Breaches by Developer). Immediately after such a Material Breach, Developer must: (i) take steps to preserve the existing condition of Improvements and other actions necessary to protect public health and safety; and (ii) suspend all other activities that were, or were to be, secured by the Adequate Security.

(d) Costs of Adequate Security.

(i) Developer's actual cost to provide any Adequate Security that is in the form of bonds or a cash equivalent provided by a third party will be a Soft Cost for which Developer will be entitled to the Developer Return under the Financing Plan.

(ii) Developer may not recover any imputed or actual cost to provide Adequate Security in the form of a Guaranty under which the Obligor is an Affiliate of Developer.

17.2. Loss Security. As a condition to each Phase Approval, Developer must provide to the Port and maintain Loss Security in the aggregate amount of $5.5 million to secure the Developer Reimbursement Obligations for the applicable Phase, subject to the following conditions.

(a) Delivery. Developer must provide the Loss Security within 30 days after receiving Phase Approval. The Parties have agreed that Developer may provide the Loss Security in the form of Guaranty attached as **DDA Exhibit B12**. Each Loss Security instrument, including a Guaranty, must be issued by an Obligor that meets the Obligor Net Worth Requirement and be in a form approved by the Port Director.

(b) Delivery by Transferees. Before the effective date of a Transfer by Developer under **Article 6** (Transfers), either: (i) Developer and all Obligors for Developer's Loss Security must confirm in a manner acceptable to the Port Director that Developer's Loss Security will continue to secure the Developer Reimbursement Obligations, whether retained by Developer or assumed by the Transferee; or (ii) the Transferee must provide to the Port new Loss Security that secures the Developer Reimbursement Obligations that the Transferee assumed and obtain the Port Director's approval of the new Loss Security.

(c) Condition to Transfer. As specified in **Article 6** (Transfers), the Port Commission's approval of any Transfer to an Unrelated Transferee is conditioned on the continued availability of Loss Security meeting the requirements of this Section. Failure to satisfy this condition will be a Material Default by Developer under **Article 12** (Material Breaches and Termination).

(d) Replenishment. If provided in the form of a bonds or a cash equivalent, Developer must maintain and replace or replenish the Loss Security until the applicable Loss Security End Date, and payment or performance by the Obligor under any Loss Security will not reduce or eliminate the requirement for Loss Security meeting the requirements of this Section until the applicable Loss Security End Date. Accordingly, within 30 days after any payment or performance by an Obligor under its Loss Security, Developer or its Transferee, as applicable, must replenish the Loss Security to its previous level. Developer or its Transferee may satisfy this requirement by replacing the Loss Security or providing an amendment to the Loss Security from the Obligor that honored the claim meeting all of the requirements for the Loss Security under this DDA.

(e) Release. The Port will release the unused portion of any Loss Security and, on request, destroy or return the original instrument to Developer or Transferee on the first anniversary of the Loss Security End Date.

(f) Relationship to Phase Security. Developer Reimbursement Obligations are secured by Loss Security and not any other Adequate Security. The Port may demand payment and performance of Developer Reimbursement Obligations only under Loss Security.

17.3. Phase Security.

(a) Delivery. As a condition to Phase Approval, Developer must provide to the Port with each Phase Application an Obligor's irrevocable commitment certified by the Obligor's Chief Financial Officer to issue Phase Security in the Secured Amount required under **Subsection 17.3(c)** (Park Parcels) and **Subsection 17.3(d)** (Noonan Replacement Space) within the time frames specified.

(b) Affordable Housing Parcels. The Affordable Housing Plan requires the Developer to deliver the Affordable Housing Parcels meeting the requirements of *AHP § 3.3 (Developer's Obligations to Complete Infrastructure)*, which includes the Substantial Completion of all Phase Improvements serving the applicable Affordable Housing Parcel. Developer will provide Phase Security to secure the cost of such Phase Improvements in an amount determined in connection with the applicable Public Improvement Agreement for the relevant Phase Improvements. Improvement Bonds covering the Phase Improvements necessary to meet Developer's Affordable Housing Parcel obligations will be deemed to satisfy Developer's obligation under this Subsection, so long as Port is afforded available remedies as a signatory or beneficiary under the applicable Public Improvement Agreement to ensure that the Affordable Housing Parcel obligations are satisfied.

(c) Park Parcels. In connection with any Phase Submittal that includes a Park Parcel, Developer will provide an estimate of the Secured Amount to meet its performance and payment obligations to complete the Developer's Construction Obligations for the applicable Park Parcels within the Phase, which will be subject to the approval of the Port Director as part of the Phase Approval. The Port's issuance of the Construction Permit for a Park Parcel within the applicable Phase will be conditioned upon Developer's delivery of the Phase Security for the applicable Park Parcel.

(d) Noonan Replacement Space. To secure Developer's obligations to provide the Permanent Noonan Replacement Space, the Port's issuance of the first Construction Permit for (i) an office building on the eastern portion of Parcel B if Parcel B is developed as two separate parcels, or (ii) an office building on the entirety of Parcel B if Parcel B is developed as a single parcel, will be conditioned upon the Port's receipt of Phase Security for the Permanent Noonan Replacement Space, in the amount of $13.5 million (the "**Noonan Phase Security**"). Notwithstanding the foregoing, if Parcel B is the Final Option Parcel within the 28-Acre Project Site that can accommodate the Noonan Permanent Replacement Space, then the Port's obligation to enter into a Vertical DDA for the eastern portion of Parcel B if Parcel B is developed as two separate parcels, or the entirety of Parcel B if Parcel B is developed as a single parcel, will be conditional upon the Port's receipt of the Noonan Phase Security.

(e) Form and Secured Amount.

(i) The Port will approve any Phase Security for the Park Parcels that conforms to the requirements of the Subdivision Code. Developer may propose other forms of Phase Security for the Park Parcels, which will be subject to the Port's approval as follows.

(1) The Port will decide whether to accept Phase Security in the form of a guaranty substantially similar to that of **DDA Exhibit B12** in its sole discretion.

(2) The Port will not unreasonably withhold its approval of other forms of Phase Security if the Port determines, in consultation with the Risk Manager, that the proposed form meets the Obligor Net Worth Requirement and otherwise is adequate to secure the applicable Developer Construction Obligations.

(ii) The Port will approve any Noonan Phase Security that is in the form of a Guaranty substantially similar to that of **DDA Exhibit B12**, a letter of credit, payment bond, certificate of deposit, or other form of security for the payment of cash reasonably acceptable to the Port.

(iii) Subject to **clause (iv)** of this Subsection, the secured amount of any Phase Security provided to the Port (the "**Secured Amount**") must have an aggregate liability no less than 100% of the costs determined in accordance with **Subsection 17.3(b)** (Affordable Housing Parcels), **Subsection 17.3(c)** (Park Parcels), or **Subsection 17.3(d)** (Noonan Replacement Space) as applicable.

(1) The secured amount for the Noonan Replacement Space will be $13.5 million.

(2) With respect to the Park Parcels, Developer must provide security sufficient to pay for 100% of the costs to complete the applicable Public Space Improvements within the applicable Park Parcel, plus 50% of the costs of labor, materials, and goods needed to complete the Public Space Improvements within the applicable Park Parcel. Developer may satisfy the security requirement for costs of labor, materials, and goods

through a payment bond or other security instrument provided by its general contractor.

(iv) To the extent that the Phase Security for the Park Parcels secures the same obligations for which Developer has provided Improvement Bonds in accordance with the Subdivision Code, the Port will approve an appropriate reduction in the Secured Amount of the Phase Security under this DDA. In all cases, the sum of the payment and performance obligations that Developer provides under the Subdivision Code and the Phase Security combined must be no less than 100% of the Secured Amount as determined in accordance with **clause (i)** of this Subsection.

(f) Reduction, Return and Release

(i) Phase Security for the Noonan Replacement Space will be released upon the earliest to occur of the following:

(1) Upon the effective date of a Parcel Lease between the Port and a Vertical Developer Affiliate or a Master Arts Tenant that requires and accommodates the Permanent Noonan Replacement Space under Parcel E4 Option 1, Parcel E4 Option 2 or Parcel E4 Option 3; or

(2) The date that a TCO is issued for the Permanent Noonan Replacement Space designated or constructed in accordance with the applicable Noonan Replacement Space Election under **Subsection 7.13(b)** (Noonan Replacement Space Election).

(ii) Phase Security for the Park Parcels will be proportionately reduced when Developer has satisfied portions of its obligations for the Park Parcels to the extent approved by the Port or by the express terms of the Phase Security.

(iii) Phase Security for each Park Parcel will be fully released upon the Port's issuance of an SOP Compliance Determination under **Subsection 15.7(d)** (SOP Compliance Determination) for the applicable Port Acceptance Item or Phase, or by the express terms of the Phase Security.

(iv) After a release, upon request of Developer, the Port will promptly (and in any event within 30 days following such request) return to Developer the original Phase Security documents and, if requested by Developer or the applicable Obligor, provide a written confirmation of such release and return.

(v) If the Port terminates this DDA as to a Phase before the applicable release date specified above, the Port will release the Phase Security when the applicable Developer Construction Obligations that relate to the period before such termination are complete or, if applicable, as ordered by a final judgment.

17.4. Verification of Obligor Net Worth.

(a) Port Request.

(i) Documentation for each form of Adequate Security must require the Obligor to provide reasonably satisfactory evidence to the Port on request that the Obligor satisfies the Obligor Net Worth Requirement. The Port may direct its request to the Obligor or Developer from time to time, but not more than once in any year unless the Port reasonably believes that a Significant Adverse Change to Obligor has occurred.

(ii) In response to the Port's request, Developer or the Obligor must provide to the Port within 20 days after the Port's request a copy of a financial statement on the Obligor's financial condition prepared by a CPA. The report

must not be dated more than six months before the date of the Port's request and must include the CPA's unqualified opinion that the data in the financial statement are fairly stated in all material respects. In the alternative, an Obligor may satisfy the Obligor Net Worth Requirement by providing a Guaranty guaranteeing the Secured Amount from a different person that meets the Obligor Net Worth Requirement.

(iii) If the Obligor or Developer does not or is unable to provide the financial statement, Developer must deliver to the Port a new form of Adequate Security that satisfies the requirements of **Section 17.1** (Adequate Security Generally) within the following 20 days.

(b) Effect of Significant Adverse Change. If a Significant Adverse Change to any Obligor occurs, Developer will notify the Port as soon as reasonably practicable. Within 20 days after the occurrence of the Significant Change to Obligor, Developer must deliver to the Port either: (i) evidence acceptable to the Port Director in her reasonable discretion that the Obligor has the financial capacity sufficient to satisfy both the judgment and the obligations secured by its Adequate Security; or (ii) a new form of Adequate Security that satisfies the Adequate Security Requirements from a replacement Obligor that satisfies the Obligor Net Worth Requirement.

18. LENDERS' RIGHTS

The provisions of this Article, together with similar provisions in the forms of the Master Lease and Parcel Lease, make up the Applicable Lender Protections.

18.1. Right to Encumber.

(a) Permitted Loans. Developer is expressly permitted to obtain one or more Permitted Loans from Permitted Lenders. As security for any Permitted Loan, Developer will have the right, at any time during the DDA Term and without Port consent, to grant one or more Permitted Liens to secure the Permitted Loans.

(b) Prohibited Loans. Developer is expressly prohibited from: (i) granting any liens on any real or personal property interest in or related to the 28-Acre Site to secure obligations other than the Developer Construction Obligations for the 28-Acre Site Project; or (ii) providing compensation or rights to any lender as consideration for matters unrelated to the 28-Acre Site Project.

(c) Loan Transfers. A Permitted Lender may transfer any part of its interest in a Permitted Loan and Permitted Lien without the prior consent of or notice to either Party.

18.2. Certain Assurances.

(a) Port Cooperation.

(i) The Port agrees to cooperate reasonably to confirm rights and obligations under the Applicable Lender Protections.

(ii) If requested by a Permitted Lender, the Port will enter into a separate agreement to implement this Article. But the Port will have no obligation to agree to any additional provisions that could, in the Port's sole judgment, adversely affect any of the Port's rights and remedies under this DDA. The Port Director's execution and delivery of an agreement under this Subsection will be conditioned on its prior receipt of payment for all costs incurred to review and negotiate the agreement. If paid by Developer, these costs will not be Soft Costs.

(b) Construction Loans. Developer must provide the Port with a conformed copy of any Permitted Lien that is recorded in the Official Records or filed with the California Secretary of State.

(c) Mezzanine Loans. Developer must provide the Port with the name of each Mezzanine Lender and the priority of its Permitted Lien, together with a copy of the Permitted Lien and other agreements describing the security for the Permitted Loan or granting foreclosure rights to the Mezzanine Lender. To protect confidential proprietary information, Developer may comply with this requirement by making the relevant documentation available for review by a Port representative during regular business hours at Developer's offices in San Francisco.

(d) Requests for Notice. The Port will not be required to recognize any Permitted Lender's rights unless Developer or the Permitted Lender has provided notice under *App ¶ A.5 (Notices)* and **Section 20.1** (Notice Addresses) of each Permitted Lender's addresses for notice. The Port will be entitled to rely on any notice delivered in this manner until superseded by a later notice given in the same manner.

18.3. Lenders' Notice Rights.

(a) Delivery of Notices. The Port will deliver a copy of any notice given to Developer under **Article 11** (Defaults) or **Article 12** (Material Breaches and Termination) to each Permitted Lender at the notice address in a previously delivered request made under **Subsection 18.2(d)** (Requests for Notice). The Port will also deliver a notice of Developer's failure to cure any default or breach under **Article 11** (Defaults) or **Article 12** (Material Breaches and Termination) to each Permitted Lender at its notice address.

(b) Effect of Delayed Delivery of Notice. The Port's delay or failure to provide notice to a Permitted Lender under this Section will extend the Permitted Lender's cure period by the number of days the Port delayed before delivering notice.

(c) No Extension for Unknown Lenders. If the Port receives a request for notice from a Permitted Lender under **Subsection 18.2(d)** (Requests for Notice) after the Port has already delivered a notice to Developer under **Article 11** (Defaults) or **Article 12** (Material Breaches and Termination) or to any other Permitted Lender under **Subsection 18.3(a)** (Delivery of Notices), the request will not extend any of the time periods in this Article.

18.4. Lender Not Obligated to Construct. No Permitted Lender or Successor by Foreclosure will be obligated to perform the Developer Construction Obligations or provide any form of Adequate Security under this DDA. Nothing in this DDA may be construed to permit or authorize any Permitted Lender or any other person to devote any portion of the FC Project Area to any uses or to construct any Improvements inconsistent with the Project Requirements or Regulatory Requirements.

18.5. Right to Cure.

(a) Lender Election. Each Permitted Lender will have the right at its sole election to cure any Event of Default or Material Breach. The cure period for the Permitted Lender will be the same period as Developer's cure period, plus an additional: (i) 30 days to cure a monetary Event of Default or Material Breach; or (ii) 60 days to cure any other Event of Default or Material Breach that the Permitted Lender could cure without foreclosing on its Permitted Lien.

(b) Port Forbearance for Foreclosure. If an Event of Default or Material Breach is not cured within the cure period under **Subsection 18.5(a)** (Lender Election) or cannot be cured by the Permitted Lender without foreclosing on its Permitted Lien, the

Port will forbear from exercising its remedies and provide the Permitted Lender an extended cure period if, within the cure period under **Subsection 18.5(a)** (Lender Election):

(i) the Permitted Lender has a recorded or filed its Permitted Lien and given notice to the Port under *App ¶ A.5 (Notices)* and **Section** 20.1 (Notice Addresses) that the Permitted Lender intends to proceed with due diligence to complete a Lender Acquisition;

(ii) the Permitted Lender begins foreclosure proceedings within 60 days after delivering notice under **clause (i)** and diligently completes the Lender Acquisition; and

(iii) after becoming the Successor by Foreclosure, the Permitted Lender or its nominee diligently proceeds to cure any Event of Default or Material Breach for which the Port delivered notice to the Permitted Lender under **Subsection 18.3(a)** (Delivery of Notices) and the Permitted Lender gave to the Port under **clause (i)** of this Subsection.

(c) Deemed Cure by Foreclosure. No Permitted Lender will be required to cure any Event of Default or Material Breach that is personal to the Borrower, such as Borrower's Insolvency or failure to submit required information in the Borrower's possession. The Permitted Lender's completion of a Lender Acquisition to become a Successor by Foreclosure will be deemed to be a cure of any Event of Default or Material Breach that resulted in the Lender Acquisition.

(d) Horizontal Improvements. Although not obligated to do so, any Permitted Lender that becomes a Successor by Foreclosure may elect to perform the Developer Construction Obligations that were its Borrower's. If a Successor by Foreclosure affirms its intent to perform the Developer Construction Obligations, the Schedule of Performance will be extended to the extent required, in the Port's reasonable judgment, for the Successor by Foreclosure to perform the Developer Construction Obligations. If the Developer Construction Obligations for the applicable Phase have been constructed and completed in accordance with all applicable Project Requirements and Regulatory Requirements, the Successor by Foreclosure will be entitled to request and receive from Port an SOP Compliance Determination.

18.6. Obligations with Respect to the Property.

(a) Relationship to DDA. Except as set forth in this Article, no Permitted Lender will have any obligations or other liabilities under this DDA until it becomes a Successor by Foreclosure to the Foreclosed Property and expressly assumes its Borrower's rights and obligations under this DDA in writing. A Permitted Lender (or its designee) that becomes a Successor by Foreclosure to any Foreclosed Property will take title subject to all of the terms and conditions of this DDA to the extent applicable to the Foreclosed Property, including any Claims for payment or performance of obligations that are due as a condition to enjoying the benefits under this DDA after the Lender Acquisition is complete.

(b) Relationship with the Port. As of the date of the Permitted Lender's completion of a Lender Acquisition and assumption of Developer's rights and obligations under this DDA, the Port will recognize the Permitted Lender as Developer under this DDA.

(c) Limitations on Liability. **Subsection 5.6(c)** (No Personal Liability) will apply to any Successor by Foreclosure.

(d) Port Right to Terminate. The Port will have the right to terminate this DDA with respect to the Foreclosed Property if the Successor by Foreclosure does not agree to assume Developer's obligations relating to the Foreclosed Property in writing within 90 days after the date of the Lender Acquisition.

18.7. No Impairment of Permitted Lien. No default under this DDA by a Borrower will invalidate or defeat the Permitted Lien of any Permitted Lender. A breach of any obligation secured by any Permitted Lien will not defeat, diminish, render invalid or unenforceable, or otherwise impair Developer's rights or obligations or be, by itself, a default under this DDA.

18.8. Multiple Permitted Liens.

(a) Lien Priority Generally. If at any time there is more than one Permitted Lien against any real property interest securing a Permitted Loan to Developer, the Permitted Lien of the Permitted Lender prior in time to all others on that portion of the encumbered real property interest will be vested with the rights under this Article to the exclusion of the holder of any other Permitted Lien except to the extent that the Permitted Lender holding the junior Permitted Lien has obtained the consent of the Permitted Lender holding the senior Permitted Lien.

(b) Succeeding Rights. If the Permitted Lender holding the senior Permitted Lien fails to exercise the rights set forth in this Article, a Permitted Lender holding the junior Permitted Lien will succeed to the rights set forth in this Article only if:

(i) all Permitted Lenders holding the senior Permitted Liens have failed to exercise the rights set forth in this Article; and

(ii) the Permitted Lender holding the junior Permitted Lien seeking to exercise its rights has provided prior written notice to the Port under **Subsection 18.5(b)** (Port Forbearance for Foreclosure).

(c) No Extension after Failure to Act. No failure by the Permitted Lender holding the senior Permitted Lien to exercise its rights under this Article or delay in the response of any Permitted Lender to any notice by the Port will extend any cure period or Developer's or any Permitted Lender's rights under this Article.

(d) Port's Reliance on Title Report. For purposes of this Section, in the absence of a final order to the contrary that is served on the Port, a title report prepared by a reputable title company licensed to do business in California and having an office in San Francisco setting forth the order of priorities of Permitted Liens on real property interests in the 28-Acre Site may be relied upon by the Port as conclusive evidence of priority.

18.9. Cured Defaults. Upon a Permitted Lender's timely cure of any Event of Default or Material Breach under **Subsection 18.5** (Right to Cure), the Port's right to pursue any remedies for the cured Event of Default or Material Breach will terminate.

18.10. Estoppel Certificates. Each Party agrees to execute and deliver to the requesting Party and, if requested, any Permitted Lender or prospective Permitted Lender, within 20 days after a request is made, an estoppel certificate with regard to the following matters.

(a) Modification. The responding Party will state that this DDA: (i) is unmodified and in full force and effect; (ii) is in full force and effect with modifications specified in the estoppel certificate; or (iii) is not in full force and effect for reasons specified in the estoppel certificate.

(b) Defaults. The responding Party will state whether it is aware of any Event of Default or Material Breach or the occurrence of a potential breach by the other Party under this DDA and, if so, describe the event, Event of Default, or Material Breach.

19. PORT AND CITY COSTS

19.1. Generally.

(a) Reimbursement. Developer must pay the Port the sum of unreimbursed Port Costs and Other City Costs within 60 days after receipt of each Port Quarterly Report delivered accordance with *FP § 9.2(e) (Reporting)*. The Parties will meet and confer in good faith to resolve any disputes regarding a Port Quarterly Report. In addition to the other remedies provided in this DDA, the Port has the right to terminate or suspend any work under this DDA if Developer fails to pay the amount due, until the Port is paid in full.

(b) Interim Lease Revenues. Interim Lease Revenues generated after the Reference Date will be applied as Land Proceeds in accordance with *FP § 1.6(d)* (Interim Lease Revenues).

(c) Unreimbursed Costs. To the extent that Developer does not pay or reimburse the Port for any Port Costs and Other City Costs when due under **Subsection 19.1(a)** (Reimbursement), the Port will first attempt to recover the unpaid amounts from any available Land Proceeds or Public Financing Sources (to the extent permitted), plus the Port's costs of collection, plus interest at the annual rate of 10%, calculated from the date the payment from Developer was due until paid in full, compounded annually. If Project Payment Sources are not available, the Port will next make a claim on the Loss Security provided under **Article 17** (Security for Project Activities). If there remains any unreimbursed Port Costs after the foregoing, the Port may issue a notice to Developer under **Subsection 12.1(b)** (Notice) that its failure to cure will be a Material Breach under **Subsection 12.2(j)** (Developer Reimbursement Obligations).

19.2. Payment of Costs. The following procedures will apply to any demand from one Party to the other Party for payment required under this DDA, including the defense, compromise, and resolution of an action, except as otherwise provided under this DDA.

(a) 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.

(b) Time for Payment. Except when other procedures are specified in this DDA, or during any period of review, the Party obligated to make payment must satisfy the payment demand within 30 days after receipt of the demand for payment.

20. MISCELLANEOUS PROVISIONS

20.1. Notice Addresses. Addresses for notice are listed below.

Port:	Port of San Francisco Pier 1 San Francisco, CA 94111 Att'n: Michael Martin, Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0495 Email: michael.martin @sfport.com
With a copy to:	City Attorney's Office Port of San Francisco Pier 1 San Francisco, CA 94111 Att'n: Eileen Malley, General Counsel Telephone: (415) 274-0486 Facsimile: (415) 274-0494 Email: Eileen.Malley@sfcityatty.org
Developer:	FC Pier 70, LLC 949 Hope Street, Suite 200 Los Angeles, California 90015 Attention: Mr. Kevin Ratner Facsimile: (213) 488-0039 Email: kevinratner@forestcity.net
With copies to:	Forest City Realty Trust 127 Public Square, Suite 3200 Cleveland, Ohio 44114 Attention: General Counsel Gibson Dunn & Crutcher 555 Mission Street, Suite 3000 San Francisco, CA 94105-0921 Attention: Neil Sekhri, Esq. Telephone: (415) 393-8334 Email: nsekhri@gibsondunn.com

20.2. Transaction Documents.

(a) Relationship to ENA and Master Lease. The ENA will terminate on the Reference Date. This DDA will control over any inconsistent terms in the Master Lease.

(b) Documents on Record with the Port. All exhibits and attachments to this DDA need not be recorded, but will be kept on file with the Port as amended or supplemented from time to time. In addition, the Proforma as of the Reference Date is on

file with the Port, and the Port will keep on file each updated Proforma as approved by Developer and the Port. The Port Director and Developer will update or supplement the Schedule of Performance from time to time to reflect changes to the same as permitted in this DDA. All public records on file with the Port will be made available to members of the public in keeping with the Port's standard practices and public records laws.

(c) Brokers. Developer and the Port each represents to the other that it has not employed a broker or a finder in connection with the execution and delivery of this DDA, and agrees to indemnify the other from the claims of any broker or finder in relation to the 28-Acre Site Project.

20.3. Lien of Agreement.

(a) Recordation. The Parties agree that this DDA and certain exhibits, when fully executed, will be recorded in the Official Records because the obligations under this DDA and other documents to be recorded are covenants that attach to and run with Developer's interest in the 28-Acre Site under the Master Lease and this DDA.

(b) Partial Releases. Through the Escrow for each conveyance of a Development Parcel, the Port will cause the lien of this DDA to be released as to the Development Parcel being conveyed concurrently with the Close of Escrow for the Vertical DDA between the Port and the applicable Vertical Developer. But no partial release of the lien of this DDA will release the Developer Construction Obligations as to any other portion of the 28-Acre Site or of the Developer Reimbursement Obligations.

(c) Termination of Agreement. If this DDA is terminated, Developer or the Port may record a Notice of Termination as provided in **Subsection 12.7(c)** (Recorded Notice). Recordation of a Notice of Termination will terminate the lien of this DDA as to all portions of the FC Project Area affected by the notice except for provisions that expressly survive the expiration or termination.

20.4. Survival.

(a) Generally. Except as provided otherwise, termination or expiration of this DDA will not affect:

(i) rights and obligations in reference to Adequate Security for an obligation arising before termination or expiration;

(ii) any provision of this DDA or any other Transaction Document that expressly survives the expiration or termination of this DDA; or

(iii) rights and obligations under the Financing Plan or the Acquisition Agreement to the extent related to an obligation arising before termination or expiration or that expressly survives the expiration or termination.

[Remainder of page intentionally left blank.]

Developer and the Port have executed this DDA as of the last date written below.

MASTER DEVELOPER:

FC Pier 70, LLC, a Delaware limited liability company

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

Date: MARCH 28, 2018

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Port Commission

By: _____
Elaine Forbes
Port Director

Date: _____

Authorized by the Port Resolution No. 17-43 and Board Resolution No. 401-17

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

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 _____

NOTARIAL SEAL
STATE OF OHIO

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

Developer and the Port have executed this DDA as of the last date written below.

MASTER DEVELOPER:

FC Pier 70, LLC, a Delaware limited liability company

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

Date: _____

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Port Commission

By: _____
Elaine Forbes
Port Director

Date: May 2, 2018

Authorized by Port Resolution No. 17-43 and Board Resolution No. 401-17

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

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 May 2, 2018 before me, S. M. Sabol, a Notary Public, personally appeared Elaine Forbes, 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 S. M. Sabol

CSS1 S. M. SABOL COMM. # 2146384 NOTARY PUBLIC - CALIFORNIA SAN MATEO COUNTY My Comm. Expires April 12, 2020 CSS1

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

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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 XIIIA 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

"**CPA**" is an acronym for an independent certified public accounting firm approved by the Port 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 (i)** 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) PNLP 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 PNLP 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, 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 ¶ I.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.

DDA EXHIBIT A1

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.

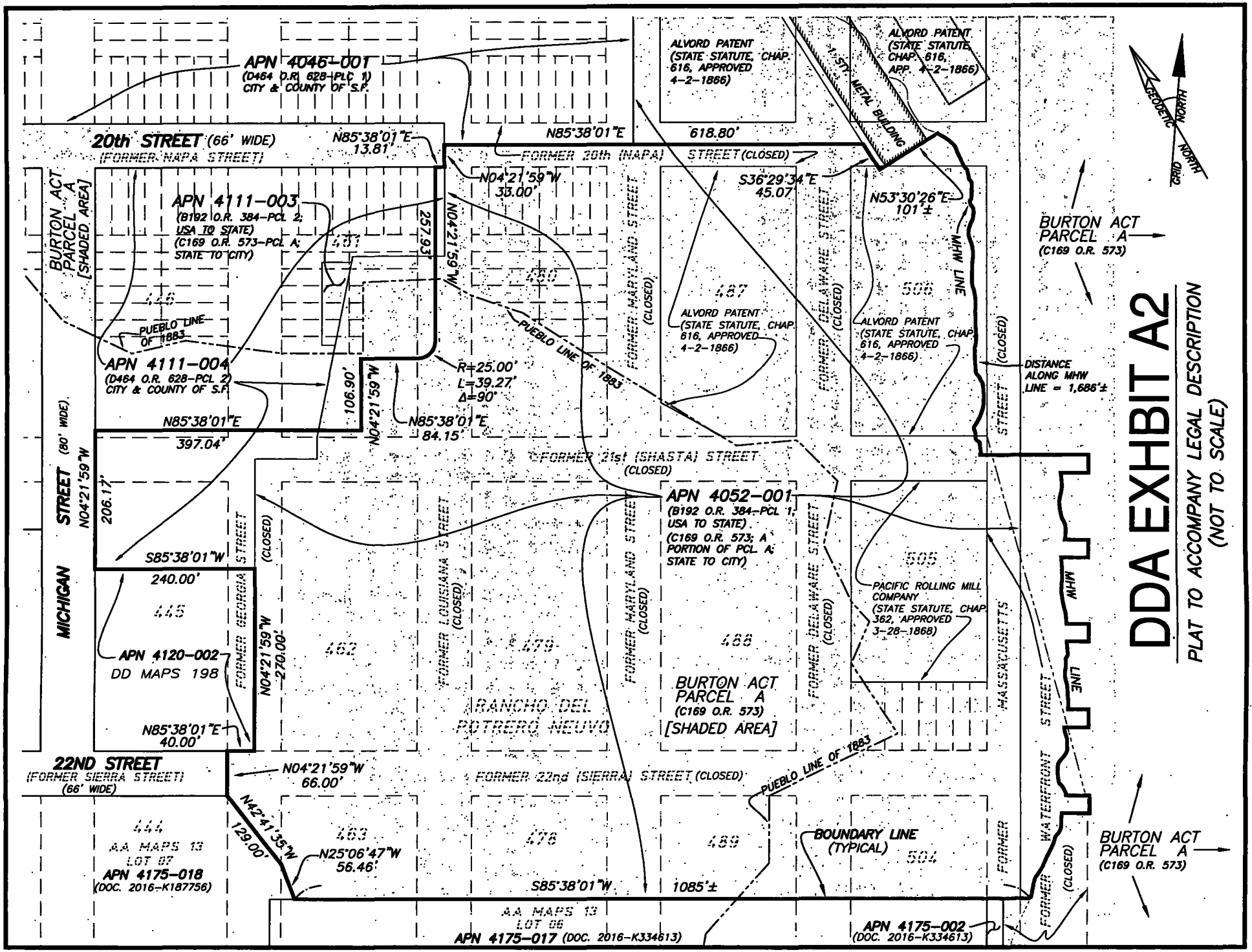
ALSO BEING A PORTION OF BOARD OF TIDE LAND COMMISSIONERS MAP ENTITLED, "MAP OF THE SALT MARSH AND TIDE LANDS AND LANDS LYING UNDER WATER SOUTH OF SECOND STREET AND SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO", ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND A DUPLICATE COPY FILED IN MAP BOOK "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


DDA EXHIBIT A2
PLAT TO ACCOMPANY LEGAL DESCRIPTION
(NOT TO SCALE)
APN 4046-001
(D464 O.R. 628-PLC 1)
CITY & COUNTY OF S.F.
20th STREET (66' WIDE)
(FORMER NAPA STREET)
N85°38'01"E
13.81'
N85°38'01"E
618.80'
FORMER 20th (NAPA) STREET (CLOSED)
ALVORD PATENT
(STATE STATUTE, CHAP. 616, APPROVED 4-2-1866)
ALVORD PATENT
(STATE STATUTE, CHAP. 616, APP. 4-2-1866)
1ST METAL BUILDING
GEODETIC NORTH
GRID NORTH
BURTON ACT PARCEL A
[SHADED AREA]
APN 4111-003
(B192 O.R. 384-PCL 2; USA TO STATE)
(C169 O.R. 573-PCL A; STATE TO CITY)
N04°21'59"W
33.00'
S36°29'34"E
45.07
N53°30'26"E
101'±
MHW LINE
BURTON ACT PARCEL A
(C169 O.R. 573)
257.93'
N04°21'59"W
401
450
446
PUEBLO LINE OF 1883
FORMER MARYLAND STREET (CLOSED)
FORMER DELAWARE STREET (CLOSED)
487
506
ALVORD PATENT
(STATE STATUTE, CHAP. 616, APPROVED 4-2-1866)
ALVORD PATENT
(STATE STATUTE, CHAP. 616, APPROVED 4-2-1866)
APN 4111-004
(D464 O.R. 628-PCL 2)
CITY & COUNTY OF S.F.
106.90'
N04°21'59"W
R=25.00'
L=39.27'
Δ=90°
N85°38'01"E
84.15'
PUEBLO LINE OF 1883
DISTANCE ALONG MHW LINE = 1,686'±
N85°38'01"E
397.04'
FORMER 21st (SHASTA) STREET (CLOSED)
MICHIGAN STREET (80' WIDE)
N04°21'59"W
206.17'
APN 4052-001
(B192 O.R. 384-PCL 1, USA TO STATE)
(C169 O.R. 573; A PORTION OF PCL. A; STATE TO CITY)
505
PACIFIC ROLLING MILL COMPANY
(STATE STATUTE, CHAP. 362, APPROVED 3-28-1868)
S85°38'01"W
240.00'
FORMER GEORGIA STREET (CLOSED)
FORMER LOUISIANA STREET (CLOSED)
FORMER MARYLAND STREET (CLOSED)
FORMER DELAWARE STREET (CLOSED)
MASSACHUSETTS STREET
445
462
479
488
APN 4120-002
DD MAPS 198
N04°21'59"W
270.00'
BURTON ACT PARCEL A
(C169 O.R. 573)
[SHADED AREA]
RANCHO DEL POTRERO NUEVO
MHW LINE
N85°38'01"E
40.00'
22ND STREET
(FORMER SIERRA STREET)
(66' WIDE)
N04°21'59"W
66.00'
FORMER 22nd (SIERRA) STREET (CLOSED)
PUEBLO LINE OF 1883
N42°41'35"W
129.00'
444
AA MAPS 13
LOT 87
APN 4175-018
(DOC. 2016-K187756)
463
478
489
BOUNDARY LINE (TYPICAL)
504
N25°06'47"W
56.46'
S85°38'01"W
1085'±
FORMER WATERFRONT STREET (CLOSED)
BURTON ACT PARCEL A
(C169 O.R. 573)
AA MAPS 13
LOT 86
APN 4175-017 (DOC. 2016-K334613)
APN 4175-002
(DOC. 2016-K334613)

DDA EXHIBIT A-3

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.

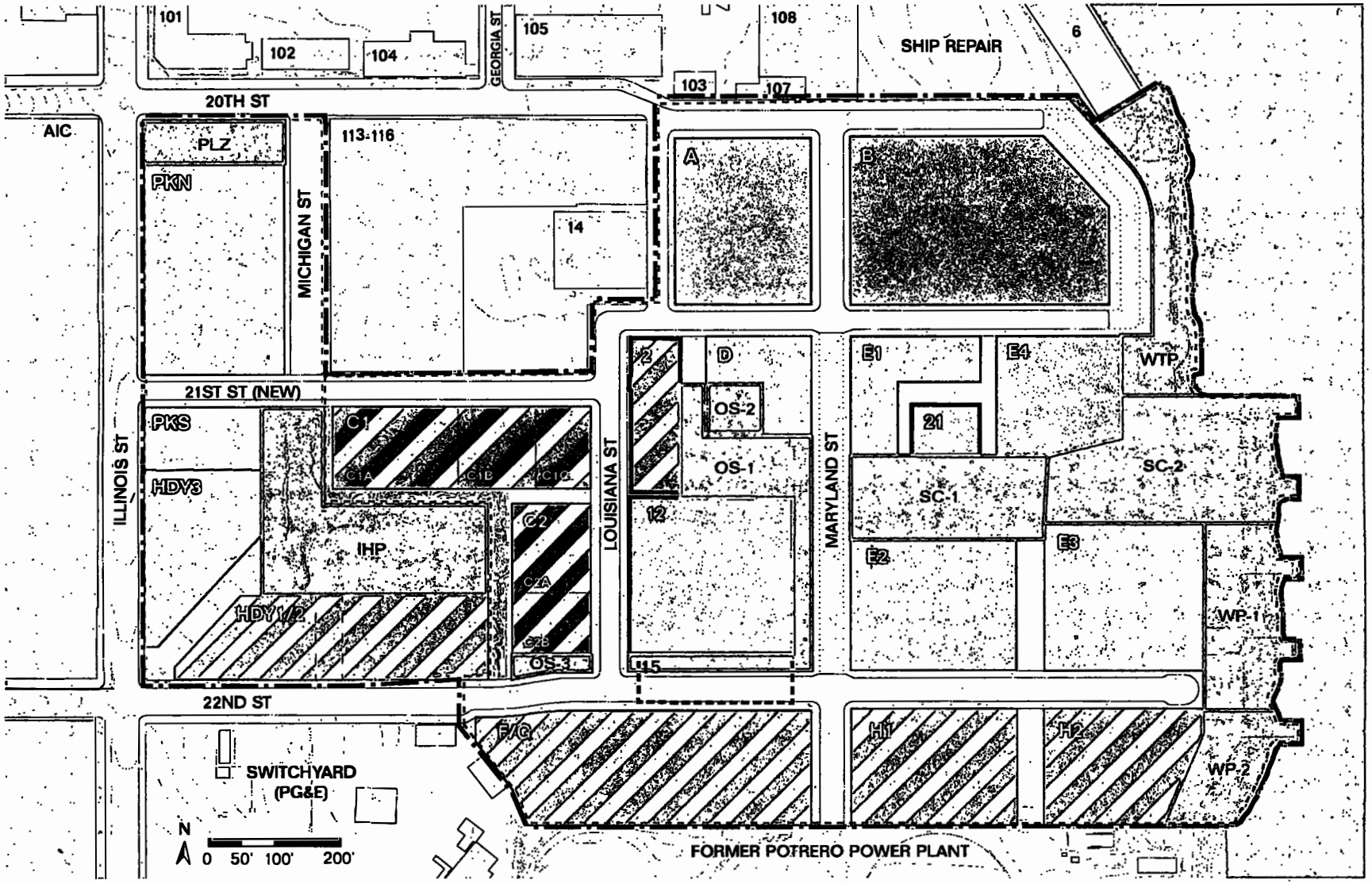
7. **R No. 17-49:** Recommending that the Board of Supervisors establish proposed Sub-Project Areas within Project Area G (Pier 70) of Infrastructure Financing District No. 2 and an Infrastructure and Revitalization Financing District.
8. **R No. 17-50:** (1) Approving a Memorandum of Understanding between 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.



PIER 70 SUD

EXHIBIT A4-1: LAND USE PLAN

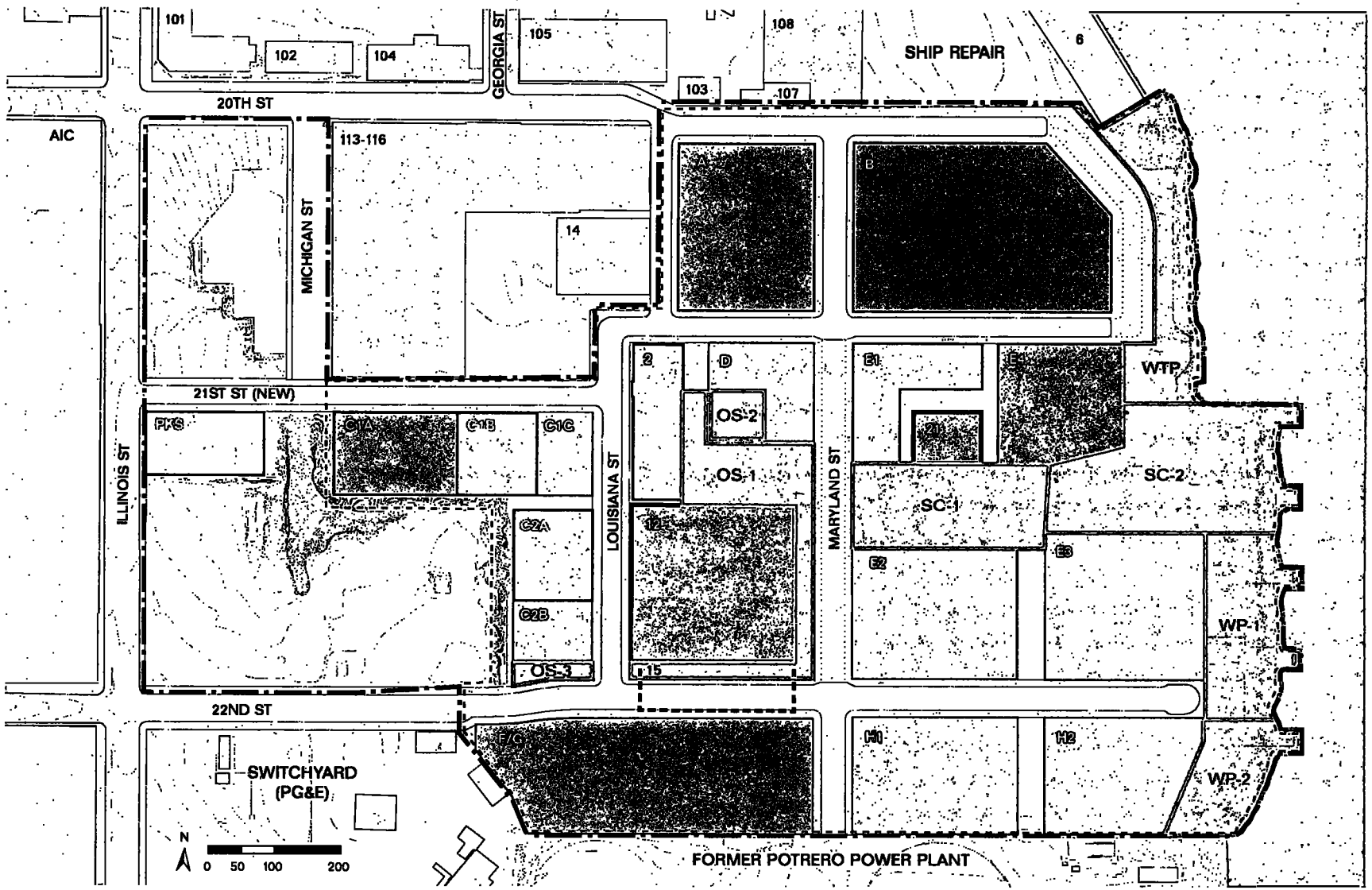
SITELAB urban studio 03/13/2018

SITE BOUNDARIES

- Pier 70 SUD
- 28-Acre Site
- Illinois Parcels

PREDOMINANT LAND USE

- Commercial Office
- Residential
- Retail, Arts, and Light Industrial
- Open Space Segments



FC PROJECT AREA

EXHIBIT A4-2: ILLUSTRATIVE MID-POINT PLAN *

SITELAB urban studio 03/14/2018

** For Illustrative Purposes Only*

SITE BOUNDARIES

- Pier 70 SUD
- 28-Acre Site
- Illinois Parcels

PREDOMINANT LAND USE

- Commercial Office
- Residential
- Residential (Affordable)
- Retail, Arts, and Light Industrial
- Open Space Segments

DDA EXHIBIT A5

Provisions for Office Development on Port Land

I. Legal Framework. Per Planning Code section 321(a)(2)(A), office space under the jurisdiction of the San Francisco Port Commission shall count against the annual maximum limit. Per Planning Code section 324, the City of San Francisco has "limited legal authority to direct or control physical development, whether for office use or not, on land covered by approved redevelopment plans or under the jurisdiction of the Port Commission." Therefore, an Office Development Authorization from the Planning Commission, as outlined in procedures specified in Planning Code sections 321 and 322, and approval from the Planning Department is not required for new office development under the jurisdiction of the San Francisco Port Commission. Upon issuance of a site or building permit for new office development, the Port of San Francisco shall notify the Planning Department and the new office development will count against the annual maximum limit. (Zoning Administrator's Letter of Determination, dated June 13, 2017, to Charles Olson, Re: Pier 70 Historic Buildings.)

Section 5.4(c)(iv) of the Development Agreement for the Project provides that office development located on the 28-Acre Site will be counted against the annual maximum in Planning Code section 321(a)(1) on the issuance of the building permit for the office development (in each case, a "**Prop M Draw Down**"), based on the approved building drawings for the described project.

The City, the Port, and Developer have agreed to implement the process in this exhibit to meet Developer's reasonably anticipated schedule for office development in the Project while allowing the City to balance its planning objectives for large office projects elsewhere in the City during the early years of the Project. Developer and Port will proceed in accordance with the requirements of **Section II** (Process for Office Development at the 28-Acre Site).

II. Process for Office Development at the 28-Acre Site.

A. Definitions.

"**Allocation Period**" means the period ending on October 17 each year.

"**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 **Section II.D.2** (City-Initiated Delay).

"**Office Development Authorization**" means a Planning Commission approval of an application for a large office application.

"**Pending Projects**" 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 of California, the federal government or any state, federal, or regional government agency, which are exempt from Prop M that 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, but not on the Pier 70 28-acre site for 50,000 gsf or more for which the Port and the applicable project sponsors of a vertical project have entered into conveyance agreements that would allow construction (*e.g.,* vertical disposition and development agreement, lease, or purchase and sale agreement), that have not received Port building permits by the end of the Allocation Period.

"**Prop M**" means Planning Code sections 320-325, approved by voters as the *Planning Initiative* in November 1986.

"**Prop M Constraint**" means 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. The examples below are for illustrative purposes only.

Example #1

- On November 1, 2018, there were 1,500,000 gsf of current availability of large office allocation and Pending Projects of 750,000 gsf.
- Availability = 750,000 gsf; therefore, **no Prop M Constraint exists**.

Example #2

- On November 1, 2019, there was 1,300,000 gsf of current availability of large office allocation and Pending Projects of 3,800,000 gsf.
- Availability = (2,500,000); a **Prop M Constraint exists. [Parens are used to denote negatives]**

"**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 building permit for an office project in the 28-Acre Site.

"**VDDA Notice**" 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.

B. Notices. Developer and the Port will provide the Planning Department with notices at certain points during the development process that will allow the Planning Department to assess anticipated large office allocation for the Project, as follows:

1. At Phase Submittal. In each Phase Submittal application, Developer will notify the Port if Developer intends to construct commercial office space that would result in a Prop M Draw Down and the anticipated total gsf of office development anticipated for each Option Parcel. The Port will communicate this information to the Planning Department.

2. At Appraisal. When Developer triggers the appraisal process for an Option Parcel, it must provide the Port with a notice of the location and amount of any office development that would be developed on the parcel that would result in a Prop M Draw Down. The Port will communicate this information to the Planning Department.

3. At Selection of Vertical Developer. The Port will deliver a VDDA Notice to the Planning Department promptly after all Port conditions to entering into a Vertical DDA with the Vertical Developer for each Option Parcel on which large allocation office development is approved have been satisfied. If the City determines that a Prop M Constraint exists, then execution of the Vertical DDA will be subject to the "earliest date" for execution of the Vertical DDA set forth in **Prop M Schedule** below, and the City may exercise a City-initiated delay in accordance with **Section II.D.2** (City-Initiated Delay).

C. If No Constraint Exists. If no Prop M Constraint exists when the Planning Department receives the VDDA Notice, then the **Prop M Schedule** will not apply.

D. If a Prop M Constraint Exists. If a Prop M Constraint exists when Planning receives the VDDA Notice, then the **Prop M Schedule** will apply.

1. **Prop M Schedule**. At any time that a Prop M Constraint exists, the Port and Developer must comply with the following schedule:

PROP M SCHEDULE OF OFFICE DEVELOPMENT*			
Phase	**Max Office GSF Allowed in Phase**	**Earliest Date to Enter into Vertical DDA**	**Earliest Date to Draw Down Prop M Allocation**
Bldg 12	60,000 GSF	No date restriction	No date restriction
Phase 1	465,000 GSF	December 31, 2017	December 21, 2018
Phase 2	750,000 GSF	July 31, 2019	December 21, 2021
Phase 3	750,000 GSF	July 31, 2021	December 21, 2023
Total	**2,025,000 GSF**		

*applicable only in years when there is a Prop M Constraint

2. **City-Initiated Delay**. As soon as reasonably practicable, but no later than the 45 days after receiving the VDDA Notice, the Planning Department may provide a City Delay Notice advising the Port that a Prop M Constraint exists and specifying the amount of delay requested, not to exceed 90 days. Promptly after receiving the notice, the Port will incorporate into the applicable Vertical DDA the alternate provision included as an appendix to the approved form of Vertical DDA that requires the Vertical Developer to delay the Prop M Draw Down date in accordance with the Prop M Schedule and the City Delay Notice. The inclusion of such provision will cause all timeframes in the Schedule of Performance and the outside date for close of escrow under the applicable Vertical DDA to be extended automatically by the amount of time requested in the City Delay Notice. If the City fails to provide the City Delay Notice within the 45-day period under this Subsection, the Vertical Developer and the Port may execute the Vertical DDA, subject to the **Prop M Schedule** if a Prop M Constraint exists.

3. **Prop M Advance**. If a Prop M Constraint exists, but 1) Planning determines in its sole discretion that the office project on Port land would not be likely to conflict with other office projects on a similar timeframe, or 2) the Developer provides documentation satisfactory to the Port in its reasonable discretion that it has identified a commercial office tenant interested in leasing more than 250,000 gsf, and Planning determines such a tenant is beneficial to the City's economic goals; the Planning Department may advise that the Port may proceed under the provisions of Section I.D above (If No Constraint Exists). For example, if Planning determines that Pending Projects on non-Port land will not receive an Office Development Authorization for a year or more, Planning may recommend that the Port proceed with execution of the Vertical DDA and the related Prop M Draw Down.

4. **Effect of Unused Allocation.** After the dates in the **Prop M Schedule** applicable to a particular Phase, any unused office allocation for the Phase will be available for future office development in the Project. For example, if the Port has not entered into a Vertical DDA for office development in Phase 1 by July 31, 2019, all 465,000 gsf of office allocated to Phase 1 would be available in addition to the 750,000 gsf allocated to Phase 2.

In addition, if any Flex Parcel is developed for residential instead of office, the office gsf approved for the Flex Parcel may be used elsewhere within the 28-Acre Site, subject to restrictions in the SUD requiring additional approval for office development, and subject to the DDA procedures for revisions to Phase Submittals. For example, if in Phase 2, Parcels F and G were to be developed as residential, the Prop M allocation of 750,000 gsf would be available between July 31, 2019, and December 21, 2021 for office development in any phase elsewhere on the site.

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[1]
MITIGATION MEASURES FOR THE PIER 70 MIXED-USE DISTRICT PROJECT					
Cultural Resources (Archaeological Resources) Mitigation Measures					
M-CR-1a: Archeological Testing, Monitoring, Data Recovery and Reporting Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources. The project sponsors shall retain the services of an archeological consultant from rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsors shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the	Project sponsors[2] to retain qualified professional archaeologist from the pool of archaeological consultants maintained by the Planning Department. The archaeological consultant shall undertake an archaeological testing program as specified herein. Project sponsors,	Prior to the issuance of site permits, submittal of all plans and reports for approval by the ERO.	Archaeological consultant's work shall be conducted in accordance with this measure at the direction of the ERO.	Considered complete when project sponsor retains a qualified professional archaeological consultant and archeological consultant has approved scope by the ERO for the archeological testing program	Planning Department

[1] Both the City and the Port have jurisdiction over portions of the Project Site. This column identifies the agency or agencies with monitoring responsibility for each mitigation and improvement measure. The 28-Acre Site and 20th/Illinois Parcels are located within the Port's building permit jurisdiction. The Hoedown Yard parcel is located within the San Francisco Department of Building Inspection (DBI).

[2] Note: For purposes of this MMRP, unless otherwise indicated, the term "project sponsor" shall mean the party (*i.e.*, the Developer under the DDA, a Vertical Developer (as defined in the DDA) or Port, as applicable, and their respective contractors and agents) that is responsible under the Project documents for construction of the improvements to which the Mitigation Measure applies, or otherwise assuming responsibility for implementation of the mitigation measure.

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
suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in State CEQA Guidelines Section 15064.5 (a) and (c). Consultation with Descendant Communities On discovery of an archeological site associated with descendant Native Americans the Overseas Chinese, or other potentially interested descendant group, an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to consult with the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.	archaeological consultant shall contact the ERO and descendant group representative upon discovery of an archaeological site associated with descendant Native Americans or the Overseas Chinese. The representative of the descendant group shall be given the opportunity to monitor archaeological field investigations on the site and consult with the ERO regarding appropriate archaeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archaeological site.	For the duration of soil-disturbing activities.	Archaeological Consultant shall prepare a Final Archaeological Resources Report in consultation with the ERO (per below). A copy of this report shall be provided to the ERO and the representative of the descendant group.	Considered complete upon submittal of Final Archaeological Resources Report.	
Archeological Testing Program	Development of	Prior to any	Archaeological	Considered	Planning

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
The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the Proposed Project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA. At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.	ATP: Project sponsors and archaeological consultant in consultation with the ERO. Archeological Testing Report: Project sponsors and archaeological consultant in consultation with the ERO.	excavation, site preparation or construction, and prior to testing, an ATP for a defined geographic area and/or specified construction activities is to be submitted to and approved by the ERO. A single ATP or multiple ATPs may be produced to address project phasing. At the completion of each archaeological testing program.	consultant to undertake ATP in consultation with ERO. Archaeological consultant to submit results of testing, and in consultation with ERO, determine whether additional measures are warranted. If significant archaeological	complete with approval of the ATP by the ERO and on finding by the ERO that the ATP is implemented. Considered complete on submittal to ERO of report(s) on ATP findings.	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[1]
			resources are present and may be adversely affected, project sponsors, at its discretion, may elect to redesign a project, or implement data recovery program, unless ERO determines the archaeological resource is of greater interpretive than research significance and that interpretive use is feasible.		
Archeological Monitoring Program If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented, the AMP would minimally include the following provisions: • The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the AMP prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. A single AMP or multiple AMPs may be produced to address project phasing. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring	Project sponsors and archaeological consultant at the direction of the ERO.	The archaeological consultant, project sponsors, and ERO shall meet prior to the commencement of soil-disturbing activities for a defined geographic area and/or specified construction	If required, archaeological consultant to prepare the AMP in consultation with the ERO.	Considered complete on approval of AMP(s) by ERO; submittal of report regarding findings of AMP(s); and finding by ERO that AMP(s) is implemented.	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
because of the risk these activities pose to potential archeological resources and to their depositional context. The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource; • The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; • The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis; If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, pile driving activity that may affect the archeological resource shall be suspended until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the		activities. The ERO in consultation with the archaeological consultant shall determine what archaeological monitoring is necessary. A single AMP or multiple AMPs may be produced to address project phasing.			

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
discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible. Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.					
Archeological Data Recovery Program If the ERO, in consultation with the archeological consultant, determines that an archeological data recovery programs shall be implemented based on the presence of a significant resource, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, shall be limited to the portions of the historical property that could be adversely affected by the Proposed Project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.	Project sponsors and archaeological consultant at the direction of the ERO.	Upon determination by the ERO that an ADRP is required. A single ADRP or multiple ADRPs may be produced to address project phasing.	If required, archaeological consultant to prepare an ADRP(s) in consultation with the ERO.	Considered complete on submittal of ADRP(s) to ERO.	

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
The scope of the ADRP shall include the following elements: • *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations. • *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures. • *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies. • *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. • *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. • *Final Report.* Description of proposed report format and distribution of results. • *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.					
Human Remains and Associated or Unassociated Funerary Objects The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the coroner of the City and County of San Francisco and in the event of the coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project	Project sponsors and archaeological consultant, in consultation with the San Francisco Coroner, NAHC, ERO, and MLD.	In the event human remains and/or funerary objects are encountered.	Archaeological consultant/ archaeological monitor/project sponsors or contractor to contact San Francisco County Coroner and ERO.	Ongoing during soils disturbing activity. Considered complete on notification of the San Francisco County Coroner	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[1]
sponsors, ERO, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (State CEQA Guidelines Section 15064.5(d)). The agreement shall take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such an agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.			Implement regulatory requirements, if applicable, regarding discovery of Native American human remains and associated/unassociated funerary objects. Contact archaeological consultant and ERO.	and NAHC, if necessary.	
<u>Final Archeological Resources Report</u> The archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report. The FARR may be submitted at the conclusion of all construction activities associated with the Proposed Project or on a parcel-by-parcel basis. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high	Project sponsors and archaeological consultant at the direction of the ERO. The ERO shall provide to the archaeological consultant(s) preparing the FARR reports and relevant data obtained through implementation of this Mitigation Measure M-CR-1a.	For Horizontal Developer-prior to determination of substantial completion of infrastructure at each sub-phase For Vertical Developer-prior to issuance of Certificate of Temporary or Final Occupancy, whichever occurs first	If applicable, archaeological consultant to submit a Draft and final FARR to ERO based on reports and relevant data provided by the ERO Archaeological consultant to distribute FARR.	Considered complete on submittal of FARR and approval by ERO. Considered complete when archaeological consultant provides written certification to the ERO that the required FARR	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[1]
public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.		If applicable, upon approval of the FARR by the ERO.		distribution has been completed.	
M-CR-1b: Interpretation Based on a reasonable presumption that archeological resources may be present within the project site, and to the extent that the potential significance of some such resources is premised on CRHR Criteria 1 (Events), 2 (Persons), and/or 3 (Design/Construction), the following measure shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources if significant archeological resources are discovered. The project sponsors shall implement an approved program for interpretation of significant archeological resources. The interpretive program may be combined with the program required under Mitigation Measure M-CR-4b: Public Interpretation. The project sponsors shall retain the services of a qualified archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist having expertise in California urban historical and marine archeology. The archeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. The particular program for interpretation of artifacts that are encountered within the project site will depend upon the results of the data recovery program and will be the subject of continued discussion between the ERO, consulting archeologist, and the project sponsors. Such a program may include, but is not limited to, any of the following (as outlined in the ARDTP): surface commemoration of the original location of resources; display of resources and associated artifacts (which may offer an underground view to the public); display of interpretive materials such as graphics, photographs, video, models, and public art; and academic and popular publication of the results of the data recovery. The interpretive program shall include an on-site	Project sponsors and archaeological consultant at the direction of the ERO.	Prior to issuance of final certificate of occupancy	Archaeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. All plans and recommendations for interpretation by the archaeological consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until deemed final by the ERO. The ERO to approve final interpretation program. Project sponsors to implement an approved	Considered complete upon installation of approved interpretation program, if required.	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[1]
component. The archeological consultant's work shall be conducted at the direction of the ERO, and in consultation with the project sponsors. All plans and recommendations for interpretation by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.			interpretation program.		
Mitigation Measure M-CR-5: Preparation of Historic Resource Evaluation Reports, Review, and Performance Criteria. Prior to Port issuance of building permits associated with Buildings 2, 12 and 21, Port of San Francisco Preservation staff shall review and approve future rehabilitation design proposals for Buildings 2, 12, and 21. Submitted rehabilitation design proposals for Buildings 2 and 12 shall include, in addition to proposed building design, detail on the proposed landscaping treatment within a 20-foot-wide perimeter of each building. The Port's review and analysis would be informed by Historic Resource Evaluation(s) provided by the project sponsors. The Historic Resource Evaluation(s) shall be prepared by a qualified consultant who meets or exceeds the Secretary of the Interior's Professional Qualification Standards in historic architecture or architectural history. The scope of the Historic Resource Evaluation(s) shall be reviewed and approved by Port Preservation staff prior to the start of work. Following review of the completed Historic Resource Evaluation(s), Port preservation staff would prepare one or more Historic Resource Evaluation Response(s) that would contain a determination as to the effects, if any, on historical resources of the proposed renovation. The Port shall not issue buildings permits associated with Buildings 2, 12, and 21 until Port preservation staff conclude that the design (1) conforms with the Secretary of the Interior's Standards for Rehabilitation; (2) is compatible with the UIW Historic District; and (3) preserves the building's historic materials and character-defining features, and repairs instead of replaces deteriorated features, where feasible. Should alternative materials be proposed for replacement of historic materials, they shall be in keeping with the size, scale, color, texture, and general appearance. The performance criteria shall ensure	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Prior to the issuance of building permits associated with Buildings 2, 12 and 21.	Qualified historian to prepare historic resource evaluation documentation and present to Port staff to determine conformance to the Secretary's Standards.	Considered complete upon approval by the Port staff.	Port

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[1]
retention of the following character-defining features of each historic building: • **Building 2**: (1) board-formed concrete construction; (2) six-story height; (3) flat roof; (4) rectangular plan and north-south orientation; (5) regular pattern of window openings on east and west elevations; (6) steel, multi-pane, fixed sash windows (floors 1-5); (7) wood sash windows (floor 6); (8) elevator/stair tower that rises above roofline and projects slightly from west façade. • **Building 12**: (1) steel and wood construction; (2) corrugated steel cladding (except the as-built south elevation which was always open to Building 15); (3) 60-foot height; (4) Aiken roof configuration with five raised, glazed monitors; (5) clerestory multi-lite steel sash awning windows along the north and south sides of the monitors; (6) multi-lite, steel sash awning widows, arranged in three bands (with a double-height bottom band) on the north and west elevations, and in four bands on the east elevation; (7) 12-bay configuration of east and west elevations; (8) north-south roof ridge from which roof slopes gently (1/4 inch per foot) to the east and west • **Building 21:** (1) steel frame construction; (2) corrugated metal cladding; (3) double-gable roof clad in corrugated metal, with wide roof monitor at each gable; (4) multi-lite, double hung wood or horizontal steel sash windows; and (5) two pairs of steel freight loading doors on the north elevation, glazed with 12 lites per door. Port staff shall not approve any proposal for rehabilitation of Buildings 2, 12, and 21 unless they find that such a scheme conforms to the Secretary's Standards as specified for each building.					
Mitigation Measure M-CR-11: Performance Criteria and Review Process for New Construction In addition to the standards and guidelines established as part of the Pier 70	Project sponsors	Prior to issuance of a building permit for new	San Francisco Preservation Planning staff, in consultation with	Considered complete when Planning and Port Preservation	Planning Department

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SUD and *Design for Development*, new construction and site development within the Pier 70 SUD shall be compatible with the character of the UIW Historic District and shall maintain and support the District's character-defining features through the following performance criteria (terminology used has definition as provided in the *Design for Development*): 1. New construction shall comply with the Secretary of the Interior's Rehabilitation Standard No. 9: "New Addition, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the integrity of the property and its environment." 2. New construction shall comply with the Infill Development Design Criteria in the Port of San Francisco's *Pier 70 Preferred Master Plan* (2010) as found in Chapter 8, pp 57-69 (a policy document endorsed by the Port Commission to guide staff planning at Pier 70). 3. New construction shall be purpose-built structures of varying heights and massing located within close proximity to one another. 4. New construction shall not mimic historic features or architectural details of contributing buildings within the District. New construction may reference, but shall not replicate, historic architectural features or details. 5. New construction shall be contextually appropriate in terms of massing, size, scale, and architectural features, not only with the remaining historic buildings, but with one another. 6. New construction shall reinforce variety through the use of materials, architectural styles, rooflines, building heights, and window types and through a contemporary palette of materials as well as those found within the District.		construction.	the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning and Port staff that confirms compliance of all proposed new construction with these guiding plans and policies. San Francisco	staff note compliance with the Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, outlined in the written memorandum.	

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7. Parcel development shall be limited to the new construction zones identified in *Design for Development* Figure 6.3.1: Allowable New Construction Zones. 8. The maximum height of new construction shall be consistent with the parcel heights identified in *Design for Development* Figure 6.4.2: Building Height Maximum. 9. The use of street trees and landscape materials shall be limited and used judiciously within the Pier 70 SUD. Greater use of trees and landscape materials shall be allowed in designated areas consistent with *Design for Development* Figure 4.8.1: Street Trees and Plantings Plan. 10. New construction shall be permitted adjacent to contributing buildings as identified in *Design for Development* Figure 6.3.2: New Construction Buffers. 11. No substantive exterior additions shall be permitted to contributing Buildings 2, 12, or 21: Building 12 did not historically have a south-facing façade; therefore, rehabilitation will by necessity construct a new south elevation wall. Building 21 shall be relocated approximately 75 feet east of its present placement, to maintain the general historic context of the resource in spatial relationship to other resources. Building 21's orientation shall be maintained. <u>Building Specific Standards</u> Each development parcel within the Pier 70 SUD has a different physical proximity and visual relationship to the contributing buildings within the UIW Historic District. For those façades immediately adjacent to or facing contributing buildings, building design shall be responsive to identified character-defining features in the manner described in the *Design for Development* Buildings chapter. All other façades shall have greater freedom in the expression of scale, color, use of material, and overall appearance, and shall be permitted if consistent with Secretary Standard No. 9 and the *Design*			Preservation Planning staff must make determination in compliance with the timelines outlined in the Pier 70 Special Use District section of the Planning Code for review of vertical design.		

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for Development.

Table M.CR.1: Building-Specific Responsiveness, indicates resources that are located adjacent to, and have the greatest influence on the design of, the noted development parcel façade.

Table M.CR.1: Building-Specific Responsiveness

Façade/Parcel Name-Number	Contributing Building (Building No.)
North and West; A	113
North and Northeast; B	113, 6
North; C1	116
East and South; C2	12
South and West; D	2, 12
East and South; E1	21
West; E2	12
West; E4	21
North; F/G	12
East; PKN	113-116

Source: ESA 2015.

Palette of Materials

In addition to the standards and guidelines pertaining to application of

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materials in the *Design for Development*, the following material performance standards would apply to the building design on the development parcels (terminology used has definition as provided in the *Design for Development*): • Masonry panels that replicate traditional nineteenth or twentieth century brick masonry patterns shall not be allowed on the east façade of Parcel PKN, north and west façades of Parcel A or on the north façade of Parcel C1. • Smooth, flat, minimally detailed glass curtain walls shall not be allowed on the façades listed above. Glass with expressed articulation and visual depth or that expresses underlying structure is an allowable material throughout the entirety of the Pier 70 SUD. • Coarse-sand finished stucco shall not be allowed as a primary material within the entirety of the UIW Historic District. • Bamboo wood siding shall not be allowed on façades listed above or as a primary façade material. • Laminated timber panels shall not be allowed on façades listed above. • When considering material selection immediately adjacent to contributing buildings (e.g., 20th Street Historic Core; Buildings 2, 12, and 21; and Buildings 103, 106, 107, and 108 located within or immediately adjacent to the BAE Systems site), characteristics of compatibility and differentiation shall both be taken into account. Material selection shall not duplicate adjacent building primary materials and treatments, nor shall they establish a false sense of historic development. • Avoid conflict of new materials that appear similar or attempt to replicate historic materials. For example, Building 12 has character-defining corrugated steel cladding. As such, the eastern					

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façade of Parcel C2, the northern façade of Parcels F and G, and the southern façade of Parcel D1 shall not use corrugated steel cladding as a primary material. As another example, Building 113 has character-defining brick-masonry construction. As such, the northern and western façades of Parcel A and the eastern façade of Parcel K North shall not use brick masonry as a primary material. • Use of contemporary materials shall reflect the scale and proportions of historic materials used within the UIW Historic District. • Modern materials shall be designed and detailed in a manner to reflect but not replicate the scale, pattern, and rhythm of adjacent contributing buildings' exterior materials. <u>Review Process</u> Prior to Port issuance of building permits associated with new construction, San Francisco Preservation Planning staff, in consultation with the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning staff that confirms compliance of all proposed new construction with these guiding plans and policies.					
Transportation and Circulation Mitigation Measures					
Mitigation Measure M-TR-5: Monitor and increase capacity on the 48 Quintara/24th Street bus routes as needed. Prior to approval of the Proposed Project's phase applications, project sponsors shall demonstrate that the capacity of the 48 Quintara/24th Street bus route has not exceeded 85 percent capacity utilization, and that future demand associated with build-out and occupancy of the phase will not cause	Developer, TMA, and SFMTA. Documentation of capacity of the 48 Quintara/24th Street	<u>Demonstration of capacity:</u> Prior to approval of the project's phase applications.	Project sponsors to demonstrate to the SFMTA that each building for which temporary certificates of occupancy are	Considered complete upon approval of the project's phase application.	Planning Department, SFMTA

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the route to exceed its utilization. Forecasts of travel behavior of future phases could be based on trip generation rates forecast in the EIR or based on subsequent surveys of occupants of the project, possibly including surveys conducted as part of ongoing TDM monitoring efforts required as part of Air Quality Mitigation Measure M-AQ-1f: Transportation Demand Management. If trip generation calculations or monitoring surveys demonstrate that a specific phase of the Proposed Project will cause capacity on the 48 Quintara/24th Street route to exceed 85 percent, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA through the following means: • At SFMTA's request, the project sponsors shall pay the capital costs for additional buses (up to a maximum of four in the Maximum Residential Scenario and six in the Maximum Commercial Scenario). If the SFMTA requests the project sponsor to pay the capital costs of the buses, the SFMTA would need to find funding to pay for the added operating cost associated with operating increased service made possible by the increased vehicle fleet. The source of that funding has not been established. Alternatively, if SFMTA determines that other measures to increase capacity along the route would be more desirable than adding buses, the project sponsors shall pay an amount equivalent to the cost of the required number of buses toward completion of one or more of the following, as determined by SFMTA: • Convert to using higher-capacity vehicles on the 48 Quintara/24th Street route. In this case, the project sponsors shall pay a portion of the capital costs to convert the route to articulated buses. Some bus stops along the route may not currently be configured to accommodate the longer articulated buses. Some bus zones could likely be extended by removing one or more parking spaces; in some locations, appropriate space may not be available. The	bus route shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using a methodology approved by SFMTA and Planning. If documentation of capacity is based on monitoring surveys, the transportation consultant shall submit raw data from such surveys concurrently to SFMTA, the Planning Department, and project sponsors.	If project sponsors demonstrate to the SFMTA that the phase would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR, further monitoring is not required during that phase. <u>Capital Costs:</u> Payment required after SFMTA affirms via letter to the project sponsors that mitigation funds will be	requested would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR. If the project demonstrates (using trip generation rates forecasted in the EIR or through surveys of existing travel behavior at the site) that a specific building would cause capacity to exceed 85 percent based on the Baseline scenario in the EIR or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline		

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project sponsors' contribution may not be adequate to facilitate the full conversion of the route to articulated buses; therefore, a source of funding would need to be established to complete the remainder, including improvements to bus stop capacity at all of the bus stops along the route that do not currently accommodate articulated buses. • SFMTA may determine that instead of adding more buses to a congested route, it would be more desirable to increase travel speeds along the route. In this case, the project sponsors' contribution would be used to fund a study to identify appropriate and feasible improvements and/or implement a portion of the improvements that would increase travel speeds sufficiently to increase capacity along the bus route such that the project's impacts along the route would be determined to be less than significant. Increased speeds could be accomplished by funding a portion of the planned bus rapid transit system along 16th Street for the 22 Fillmore between Church and Third streets. Adding signals on Pennsylvania Street and 22nd Street may serve to provide increased travel speeds on this relatively short segment of the bus routes. The project sponsors' contribution may not be adequate to fully achieve the capacity increases needed to reduce the project's impacts and SFMTA may need to secure additional sources of funding. Another option to increase capacity along the corridor is to add new a Muni service route in this area. If this option is selected, project sponsors shall fund purchase of the same number of new vehicles outlined in the first option (four for the Maximum Residential Alternative and six for the Maximum Commercial Alternative) to be operated along the new route. By providing an additional service route, a percentage of the current transit riders on the 48 Quintara/24th Street would likely shift to the new route, lowering the capacity utilization below the 85 percent utilization threshold. As for the first option, funding would need to be secured to pay for operating the new route.		spent on implementation of M-TR-5 through purchase of additional buses or alternative measure in accordance with M-TR-5. Capital costs for more than four buses, up to a maximum of six buses, shall only be required if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR, and if project sponsors demonstrate that the	scenario without the Proposed Project, and the SFMTA has committed to implement M-TR-5, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA.		

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		building would cause capacity to exceed 85 percent or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline scenario without the Proposed Project.			
Mitigation Measure M-TR-10: Improve pedestrian facilities on Illinois Street adjacent to and leading to the project site. As part of construction of the Proposed Project roadway network, the project sponsors shall implement the following improvements: • Install ADA curb ramps on all corners at the intersection of 22nd Street and Illinois Street • Signalize the intersections of Illinois Street with 20th and 22nd Street. • Modify the sidewalk on the east side of Illinois Street between 22nd and 20th streets to a minimum of 10 feet. Relocate	Project sponsors shall implement the improvements.	During construction of street improvements adjacent to pedestrian facilities on Illinois Street identified in Mitigation Measure M-TR-10.	SFMTA reviews signal and site plans and maps for improvements identified in Mitigation Measure M-TR-10.	Considered complete when street improvements have been built.	SFMTA, Port

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obstructions, such as fire hydrants and power poles, as feasible, to ensure an accessible path of travel is provided to and from the Proposed Project.					
Mitigation Measure M-TR-12A: Coordinate Deliveries The Project's Transportation Coordinator shall coordinate with building tenants and delivery services to minimize deliveries during a.m. and p.m. peak periods. Although many deliveries cannot be limited to specific hours, the Transportation Coordinator shall work with tenants to find opportunities to consolidate deliveries and reduce the need for peak period deliveries, where possible.	Transportation Management Agency Transportation Coordinator.	On-going.	Transportation Management Agency Transportation Coordinator to coordinate with building tenants and delivery services to consolidate deliveries and reduce the need for peak period deliveries, where possible.	On-going during project operations.	Port
Mitigation Measure M-TR-12B: Monitor loading activity and convert general purpose on-street parking spaces to commercial loading spaces, as needed. After completion of the first phase of the Proposed Project, and prior to approval of each subsequent phase, the project sponsors shall conduct a study of utilization of on- and off-street commercial loading spaces. Prior to completion, the methodology for the study shall be reviewed and approved by either: (a) Port Staff in consultation with SFMTA Staff for areas within Port jurisdiction; or (b) SFMTA Staff in consultation with Port Staff for areas within SFMTA jurisdiction. If the result of the study indicates that fewer than 15 percent of the commercial loading spaces are available during the peak loading period, the project sponsors shall incorporate measures to convert existing or proposed general purpose on-street parking spaces to commercial parking spaces in addition to the required off-street spaces.	Developer, TMA or Port.	Prior to approval of the project's phase applications after completion of the first phase.	Project sponsors or TMA to conduct a commercial loading study for the Port.	Considered complete after the Port Staff reviews and approves the study and the project sponsors, Port or TMA incorporates any additional measures necessary for commercial loading.	Port

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Mitigation Measure M-C-TR-4A: Increase capacity on the 48 Quintara/24th bus route under the Maximum Residential Scenario. The project sponsors shall contribute funds for one additional vehicle (in addition to and separate from the four prescribed under Mitigation Measure M-TR-5 for the Maximum Residential Scenario) to reduce the Proposed Project's contribution to the significant cumulative impact to not cumulatively considerable. This shall be considered the Proposed Project's fair share toward mitigating this significant cumulative impact. If SFMTA adopts a strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA and SFMTA Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	Demonstration of Capacity: If necessary, prior to approval of the project's phase applications. Capital Costs: Payment confirmed prior to issuance of building permit for building that would result in exceedance of 85 percent capacity utilization. Capital costs for more than four buses, up to a maximum of six buses, shall be paid if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial	If the Maximum Residential Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors	SFMTA

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		use, identified in Table 2.3 of the EIR.			
Mitigation Measure M-C-TR-4B: Increase capacity on the 22 Fillmore bus route under the Maximum Commercial Scenario. The project sponsors shall contribute funds for two additional vehicles to reduce the Proposed Project's contribution to the significant cumulative impact to not considerable. This shall be considered the Proposed Project's fair share toward mitigating this cumulative impact. If SFMTA adopts an alternate strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA, and SFMTA. Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	If necessary, prior to approval of the project's final phase application. <u>Funds shall be contributed</u> if the total gsf of commercial use for the Project in the final phase application exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR.	If the Maximum Commercial Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors.	SFMTA
Noise and Vibration Mitigation Measures					
Mitigation Measure M-NO-1: Construction Noise Control Plan. Over the project's approximately 11-year construction duration, project	Project sponsors.	Prior to the start of construction activities;	Project sponsors to submit the Construction Noise	Considered complete upon submittal of the	Port or DBI

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contractors for all construction projects on the Illinois Parcels and 28-Acre Site will be subject to construction-related time-of-day and noise limits specified in Section 2907(a) of the Police Code, as outlined above. Therefore, prior to construction, a Construction Noise Control Plan shall be prepared by the project sponsors and submitted to the Port. The construction noise control plan shall demonstrate compliance with the Noise Ordinance limits. Noise reduction strategies that could be incorporated into this plan to ensure compliance with ordinance limits may include, but are not limited to, the following: • Require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds). • Require the general contractor to locate stationary noise sources (such as the rock/concrete crusher or compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise by as much as 5 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, to the maximum extent practicable. • Require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which would reduce noise levels by as much as 10 dBA.		implementation ongoing during construction.	Control Plan to the Port. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Construction Noise Control Plan to the Port.	

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• Include noise control requirements for construction equipment and tools, including concrete saws, in specifications provided to construction contractors to the maximum extent practicable. Such requirements could include, but are not limited to, erecting temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses; utilizing noise control blankets on a building structure as the building is erected to reduce noise levels emanating from the construction site; the use of blasting mats during controlled blasting periods to reduce noise and dust; performing all work in a manner that minimizes noise; using equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants; and selecting haul routes that avoid residential uses. • Prior to the issuance of each building permit, along with the submission of construction documents, submit to the Port , as appropriate, a plan to track and respond to complaints pertaining to construction noise. The plan shall include the following measures: (1) a procedure and phone numbers for notifying the Port, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing permitted construction days and hours, noise complaint procedures, and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area and the American Industrial Center (AIC) at least 30 days in advance of extreme noise-generating activities (such as pile driving) about the estimated duration of the activity.	Project sponsors	Prior to the issuance of each building permit for duration of the project.	Project sponsors to submit a plan to track and respond to complaints pertaining to construction noise. A single plan or multiple plans may be produced to address project phasing.	Considered complete upon review and approval of the plan by the Port.	
Mitigation Measure M-NO-2: Noise Control Measures During Pile	Project sponsors and construction	Prior to receiving a	Project sponsors to submit to the Port	Considered complete upon	Port or DBI

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Driving. The Construction Noise Control Plan (required under Mitigation Measure M-NO-1) shall also outline a set of site-specific noise and vibration attenuation measures for each construction phase when pile driving is proposed to occur. These attenuation measures shall be included wherever impact equipment is proposed to be used on the Illinois Parcels and/or 28-Acre Site. As many of the following control strategies shall be included in the Noise Control Plan, as feasible: • Implement "quiet" pile-driving technology such as pre-drilling piles where feasible to reduce construction-related noise and vibration. • Use pile-driving equipment with state-of-the-art noise shielding and muffling devices. • Use pre-drilled or sonic or vibratory drivers, rather than impact drivers, wherever feasible (including slipways) and where vibration-induced liquefaction would not occur. • Schedule pile-driving activity for times of the day that minimize disturbance to residents as well as commercial uses located on-site and nearby. • Erect temporary plywood or similar solid noise barriers along the boundaries of each Proposed Project parcel as necessary to shield affected sensitive re ceptors. • Other equivalent technologies that emerge over time. • If CRF (including rock drills) were to occur at the same time as pile driving activities in the same area and in proximity to noise-sensitive receptors, pile drivers shall be set back at least 100 feet while rock drills shall be set back at least 50 feet (or vice versa)	contractor(s).	building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	submittal of documentation incorporating identified practices.	

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from any given sensitive receptor.					
Mitigation Measure M-NO-3: Vibration Control Measures During Construction. As part of the Construction Noise Control Plan required under Mitigation Measure M-NO-1, appropriate vibration controls (including pre-drilling pile holes and using smaller vibratory equipment) shall be specified to ensure that the vibration limit of 0.5 in/sec PPV can be met at adjacent or nearby existing structures and Proposed Project buildings located on the Illinois Parcels and/or 28-Acre Site, except as noted below: • Where pile driving, CRF, and other construction activities involving the use of heavy equipment would occur in proximity to any contributing building to the Union Iron Works Historic District, the project sponsors shall undertake a monitoring program to minimize damage to such adjacent historic buildings and to ensure that any such damage is documented and repaired. The monitoring program, which shall apply within 160 feet where pile driving would be used, 50 feet of where CRF would be required, and within 25 feet of other heavy equipment operation, shall include the following components: o Prior to the start of any ground-disturbing activity, the project sponsors shall engage a historic architect or qualified historic preservation professional to undertake a pre-construction survey of historical resource(s) identified by the Port within 160 feet of planned construction to document and photograph the buildings' existing conditions. o Based on the construction and condition of the resource(s), a structural engineer or other qualified entity shall establish a maximum vibration level that shall not be exceeded at each building, based on existing conditions, character-defining features, soils conditions and anticipated construction practices in use at the time (a common standard is 0.2 inch per	Project sponsors and construction contractor(s).	Prior to receiving a building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	Project sponsors to submit to Port documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Considered complete upon submittal of documentation incorporating identified practices.	Port or Planning Department

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second, peak particle velocity). o To ensure that vibration levels do not exceed the established standard, a qualified acoustical/vibration consultant shall monitor vibration levels at each structure within 160 feet of planned construction and shall prohibit vibratory construction activities that generate vibration levels in excess of the standard. Should vibration levels be observed in excess of the standard, construction shall be halted and alternative construction techniques put in practice. (For example, pre-drilled piles could be substituted for driven piles, if soil conditions allow; smaller, lighter equipment could possibly also be used in some cases.) The consultant shall conduct regular periodic inspections of each building within 160 feet of planned construction during ground-disturbing activity on the project site. Should damage to a building occur as a result of ground-disturbing activity on the site, the building(s) shall be remediated to its pre-construction condition at the conclusion of ground-disturbing activity on the site. o In areas with a "very high" or "high" susceptibility for vibration-induced liquefaction or differential settlement risks, the project's geotechnical engineer shall specify an appropriate vibration limit based on proposed construction activities and proximity to liquefaction susceptibility zones and modify construction practices to ensure that construction-related vibration does not cause liquefaction hazards at these homes.					
Mitigation Measure M-NO-4a: Stationary Equipment Noise Controls. Noise attenuation measures shall be incorporated into all stationary equipment (including HVAC equipment and emergency generators) installed on buildings constructed on the Illinois Parcels and 28-Acre Site as well as into the below-grade or enclosed wastewater pump station as necessary to meet noise limits specified in Section 2909 of the Police Code.* Interior	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for each building located on the Illinois Parcels	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port	Port or Planning Department/DBI

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noise limits shall be met under both existing and future noise conditions, accounting for foreseeable changes in noise conditions in the future (i.e., changes in on-site building configurations). Noise attenuation measures could include provision of sound enclosures/barriers, addition of roof parapets to block noise, increasing setback distances from sensitive receptors, provision of louvered vent openings, location of vent openings away from adjacent commercial uses, and restriction of generator testing to the daytime hours. * Under Section 2909 of the Police Code, stationary sources are not permitted to result in noise levels that exceed the existing ambient (L90) noise level by more than 5 dBA on residential property, 8 dBA on commercial and industrial property, and 10 dBA on public property. Section 2909(d) states that no fixed noise source may cause the noise level measured inside any sleeping or living room in a dwelling unit on residential property to exceed 45 dBA between 10:00 p.m. and 7:00 a.m. or 55 dBA between 7:00 a.m. and 10:00 p.m. with windows open, except where building ventilation is achieved through mechanical systems that allow windows to remain closed.		or the 28-Acre Site, along with the submission of construction documents, the project sponsors shall submit to the Port and the DBI plans for noise attenuation measures on all stationary equipment.			
Mitigation Measure M-NO-4b: Design of Future Noise-Generating Uses near Residential Uses. Future commercial/office and RALI uses shall be designed to minimize the potential for sleep disturbance at any future adjacent residential uses. Design approaches such as the following could be incorporated into future development plans to minimize the potential for noise conflicts of future uses on the project site: • Design of Future Noise-Generating Commercial/Office and RALI Uses. To reduce potential conflicts between sensitive receptors and new noise-generating commercial or RALI uses located adjacent to these receptors, exterior facilities such as loading areas/docks, trash enclosures, and surface parking lots shall be located on the sides of buildings facing away from existing or planned sensitive receptors (residences or passive open space). If	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for commercial, RALI, and parking uses, along with the submission of construction documents, the project sponsors shall submit to the and DBI plans to minimize	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port.	Port or Planning Department/DBI

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this is not feasible, these types of facilities shall be enclosed or equipped with appropriate noise shielding. • Design of Future Above-Ground Parking Structure. If parking structures are constructed on Parcels C1 or C2, the sides of the parking structures facing adjacent or nearby existing or planned residential uses shall be designed to shield residential receptors from noise associated with parking cars.		noise conflicts with sensitive receivers,			
Mitigation Measure M-NO-6: Design of Future Noise-Sensitive Uses Prior to issuance of a building permit for vertical construction of specific residential building design on each parcel, a noise study shall be conducted by a qualified acoustician, who shall determine the need to incorporate noise attenuation measures into the building design in order to meet Title 24's interior noise limit for residential uses as well as the City's (Article 29, Section 2909(d)) 45-dBA (Ldn) interior noise limit for residential uses. This evaluation shall account for noise shielding by buildings existing at the time of the proposal, potential increases in ambient noise levels resulting from the removal of buildings that are planned to be demolished, all planned commercial or open space uses in adjacent areas, any known variations in project build-out that have or will occur (building heights, location, and phasing), any changes in activities adjacent to or near the Illinois Parcels or 28-Acre Site (given the Proposed Project's long build-out period), any new shielding benefits provided by surrounding buildings that exist at the time of development, future cumulative traffic noise increases on adjacent roadways, existing and planned stationary sources (i.e., emergency generators, HVAC, etc.), and future noise increases from all known cumulative projects located with direct line-of-sight to the project building. To minimize the potential for sleep disturbance effects from tonal noise or nighttime noise events associated with nearby industrial uses, predicted noise levels at each project building shall account for 24/7 operation of the BAE Systems Ship Repair facility, 24/7 transformer noise at Potrero Substation (if it remains an open air facility), and industrial activities at the AIC, to the	Project sponsors and qualified acoustician.	Prior to the issuance of the building permit for vertical construction of any residential building on each parcel, a noise study shall be prepared by a qualified acoustician.	Port Staff to review the noise study. A single noise study or multiple noise studies may be produced to address project phasing.	Considered complete after submittal and approval of the noise study by the Port.	Port or Planning Department/DBI

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extent such use(s) are in operation at the time the analysis is conducted. Noise reduction strategies such as the following could be incorporated into the project design as necessary to meet Title 24 interior limit and minimize the potential for sleep disturbance from adjacent industrial uses: • Orient bedrooms away from major noise sources (i.e., major streets, open space/recreation areas where special events would occur, and existing adjacent industrial uses, including but not limited to the AIC, PG&E Hoedown Yard (if it is still operating at that time), Potrero Substation, and the BAE site) and/or provide additional enhanced noise insulation features (higher STC ratings) or mechanical ventilation to minimize the effects of maximum instantaneous noise levels generated by these uses even though there is no code requirement to reduce Lmax noise levels. Such measures shall be implemented on Parcels D and E1 (both scenarios), Building 2 (Maximum Residential Scenario only), Parcels PKN (both scenarios), PKS (both scenarios), and HDY (Maximum Residential Scenario only); • Utilize enhanced exterior wall and roof-ceiling assemblies (with higher STC ratings), including increased insulation; • Utilize windows with higher STC / Outdoor/Indoor Transmission Class (OITC) ratings; • Employ architectural sound barriers as part of courtyards or building open space to maximize building shielding effects, and locate living spaces/bedrooms toward courtyards wherever possible; and Locate interior hallways (accessing residential units) adjacent to noisy streets or existing/planned industrial or commercial development.					
Mitigation Measure M-NO-7: Noise Control Plan for Special Event	Developer, Port, parks management	Prior to operation of a	Developer, Port, parks management	Considered complete upon	Port

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Outdoor Amplified Sound. The project sponsors shall develop and implement a Noise Control Plan for operations at the proposed entertainment venues to reduce the potential for noise impacts from public address and/or amplified music. This Noise Control Plan shall contain the following elements: • The project sponsors shall comply with noise controls and restrictions in applicable entertainment permit requirements for outdoor concerts. • Speaker systems shall be directed away from the nearest sensitive receptors to the degree feasible. • Outdoor speaker systems shall be operated consistent with the restrictions of Section 2909 of the San Francisco Police Code, and conform to a performance standard of 8 dBA and dBC over existing ambient L90 noise levels at the nearest residential use.	entity, and/or parks programming entity.	special outdoor amplified sound, the project sponsors, parks management entity, and/or parks programming entity to develop a Noise Control Plan prior to issuance of event permit.	entity, and/or parks programming entity shall submit the Noise Control Plan to the Port.	submission and approval of the NCP by the Port.	
Air Quality Mitigation Measures					
Mitigation Measure M-AQ-1a: Construction Emissions Minimization The following mitigation measure is required during construction of Phases 3, 4, and 5, or after build-out of 1.3 million gross square feet of development, whichever comes first: A. *Construction Emissions Minimization Plan.* Prior to issuance of a site permit, the project sponsors shall submit a Construction Emissions Minimization Plan (Plan) to the Port or Planning Department. The Plan shall detail project compliance with the following requirements: 1. Where access to alternative sources of power is available, portable diesel generators used during construction shall be prohibited. Where portable diesel engines are required because alternative sources of power are not available, the	Project sponsors and construction contractor(s).	Prior to issuance of a site permit, the project sponsors must submit Construction Emissions Minimization Plan Prior to the commencement of construction activities	Project sponsors or contractor to submit a Construction Emissions Minimization Plan. Quarterly reports shall be submitted to Port Staff or Planning Department indicating the construction phase and off-road equipment	Considered complete upon Port or Planning Staff review and approval of Construction Emissions Minimization Plan or alternative measures that achieve the same emissions reduction.	Port or Planning Department

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diesel engine shall meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available, as defined below. 2. All off-road equipment greater than 25 horsepower that operates for more than 20 total hours over the entire duration of construction activities shall have engines that meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available. If engines that comply with Tier 4 off-road emission standards are not commercially available, then the project sponsors shall provide the next cleanest piece of off-road equipment as provided by the step-down schedules in Table M-AQ-1-1.		during Phase 3, 4, and 5, or prior to construction following build-out of 1.3 million gross square feet of development, the project sponsors must certify (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications. The Plan shall be kept on site and available for review. A sign shall be posted at the perimeter of the construction site indicating the basic	information used during each phase. For off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used. Within six months of the completion of construction activities, the project sponsors shall submit to Port Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.		

Table M-AQ-1-1: Off-Road Equipment Compliance Step-Down Schedule

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 3	CARB PM VDECS (85%)[1]
2	Tier 2	CARB PM VDECS (85%)

How to use the table: If the requirements of (A)(2) cannot be met, then the project sponsors would need to meet Compliance Alternative 1. Should the project sponsors not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met.

[1] CARB, Currently Verified Diesel Emission Control Strategies (VDECS).

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Available online at http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm. Accessed January 14, 2016. i. With respect to Tier 4 equipment, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; and (ii) geographic proximity of equipment to the project site. ii. With respect to renewable diesel, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; (ii) geographic proximity of fuel source to the project site; and (iii) cost of renewable diesel is within 10 percent of Ultra Low Sulfur Diesel #2 market price. iii. The project sponsors shall maintain records concerning its efforts to comply with this requirement. Should the project sponsor determine either that an off-road vehicle that meets Tier 4 emissions standards or that renewable diesel are not commercially available, the project sponsor shall submit documentation to the satisfaction of Port or Planning Staff and, for the former condition, shall identify the next cleanest piece of equipment that would be use, in compliance with Table M-AQ-1-1. 3. The project sponsors shall ensure that future developers or their contractors require the idling time for off-road and on-road equipment be limited to no more than 2 minutes, except as provided in exceptions to the applicable State regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in		requirements of the Plan and where copies of the Plan are available to the public for review.			

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multiple languages (English, Spanish, and Chinese) in designated queuing areas and at the construction site to remind operators of the 2-minute idling limit. 4. The project sponsors shall require that each construction contractor mandate that construction operators properly maintain and tune equipment in accordance with manufacturer specifications. 5. The Plan shall include best available estimates of the construction timeline by phase with a description of each piece of off-road equipment required for every construction phase and shall be updated pursuant to the reporting requirements in Section B below. Reporting requirements for off-road equipment descriptions and information shall include as much detail as is available, but are not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For Verified Diesel Emission Control Strategies (VDECS) installed, descriptions and information shall include technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date and hour meter reading on installation date. The Plan shall also indicate whether renewable diesel will be used to power the equipment. The Plan shall also include anticipated fuel usage and hours of operation so that emissions can be estimated. 6. The project sponsors and their construction contractors shall keep the Plan available for public review on site during working hours. Each construction contractor shall post at the perimeter of the project site a legible and visible sign summarizing the requirements of the Plan. The sign shall also state that the public may ask to inspect the Plan at any time					

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during working hours, and shall explain how to request inspection of the Plan. Signs shall be posted on all sides of the construction site that face a public right-of-way. The project sponsors shall provide copies of the Plan to members of the public as requested. B. *Reporting.* Quarterly reports shall be submitted to Port or Planning Staff indicating the construction activities undertaken and information about the off-road equipment used, including the information required in Section A(5). In addition, reporting shall include the approximate amount of renewable diesel fuel used. Within 6 months of the completion of all project construction activities, the project sponsors shall submit to Port or Planning Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. The final report shall include detailed information required in Section A(5). In addition, reporting shall include the actual amount of renewable diesel fuel used. C. *Certification Statement and On-site Requirements.* Prior to the commencement of construction activities, the project sponsors shall certify through submission of city-standardized forms (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.					
Mitigation Measure M-AQ-1b: Diesel Backup Generator Specifications To reduce NOx associated with operation of the Maximum Commercial or Maximum Residential Scenarios, the project sponsors shall implement the following measures. A. All new diesel backup generators shall: 1. have engines that meet or exceed CARB Tier 4 off-road emission standards which have the lowest NOx emissions of commercially	Project sponsors	Prior to approval of a generator permit by Port Staff.	Anticipated location and engine specifications of a proposed diesel backup generator shall be submitted to the Port Staff for review and approval prior to	Considered complete upon review and approval by Port Staff.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
available generators; and 2. be fueled with renewable diesel, if commercially available, which has been demonstrated to reduce NOx emissions by approximately 10 percent. B. All new diesel backup generators shall have an annual maintenance testing limit of 50 hours, subject to any further restrictions as may be imposed by the BAAQMD in its permitting process. C. For each new diesel backup generator permit submitted to BAAQMD for the project, anticipated location, and engine specifications shall be submitted to the Port Staff for review and approval prior to issuance of a permit for the generator from the San Francisco DBI or the Port. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment and any future replacement of the diesel backup generators shall be required to be consistent with these emissions specifications. The operator of the facility at which the generator is located shall maintain records of the testing schedule for each diesel backup generator for the life of that diesel backup generator and provide this information for review to the Port within 3 months of requesting such information.			issuance of a generator permit.		
Mitigation Measure M-AQ-1c: Use Low and Super-compliant VOC Architectural Coatings in Maintaining Buildings through Covenants Conditions and Restrictions (CC&Rs) and Ground Lease The Project sponsors shall require all developed parcels to include within their CC&R's and/or ground leases requirements for all future interior spaces to be repainted only with "Super-Compliant" Architectural Coatings (http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings). "Low-VOC" refers to paints that meet the more stringent regulatory limits in South Coast AQMD Rule 1113; however, many manufacturers have reformulated to levels well below these limits. These are referred to as "Super-Compliant" Architectural Coatings.	Project sponsors and construction contractor(s).	Project sponsors submit to the Port documentation of CC&R's and/or ground lease requirements prior to building occupancy	Project sponsors to include in CC&R's and/or ground lease requirements with buildings tenants prior to building occupancy.	Considered complete upon project sponsor submittal to the Port of documentation of CC&R's and/or ground lease requirements	Port or Planning Department

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		permit.			
Mitigation Measure M-AQ-1d: Promote use of Green Consumer Products The project sponsors shall provide education for residential and commercial tenants concerning green consumer products. Prior to receipt of any certificate of final occupancy and every five years thereafter, the project sponsors shall work with the San Francisco Department of Environment (SF Environment) to develop electronic correspondence to be distributed by email annually to residential and/or commercial tenants of each building on the project site that encourages the purchase of consumer products that generate lower than typical VOC emissions. The correspondence shall encourage environmentally preferable purchasing and shall include contact information and links to SF Approved. The website may also be used as an informational resource by businesses and residents.	Project sponsors.	Prior to occupancy of the building by tenants and every five years thereafter, project sponsors to distribute educational materials to tenants.	Project sponsors to work with SF Environment to develop educational materials.	Considered complete after distribution of educational materials to residential and commercial tenants.	Port or Planning Department
Mitigation Measure M-AQ-1e: Electrification of Loading Docks The project sponsors shall ensure that loading docks for retail, light industrial or warehouse uses that will receive deliveries from refrigerated transport trucks incorporate electrification hook-ups for transportation refrigeration units to avoid emissions generated by idling refrigerated transport trucks.	Project sponsors	Prior to issuance of a building permit for a building containing loading docks for retail, light industrial or warehouse uses.	Project sponsors to provide construction plans to DBI or the Port to ensure compliance.	Considered complete upon approval of construction plans by DBI or the Port.	Port or Planning Department
Mitigation Measure M-AQ-1f: Transportation Demand Management. 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	Developer to prepare and implement the TDM Plan, which will be implemented by the Transportation Management Association and will	Developer to prepare TDM Plan and submit to Planning Staff prior to approval of the project	Project sponsors to submit the TDM Plan to Planning Staff for review. Transportation Demand Management	The TDM Plan is considered complete upon approval by the Planning Staff. Annual monitoring	Planning Department

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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: • 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 memberships for project occupants; • 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	be binding on all development parcels.		Association to submit monitoring report annually to Planning Staff and implement TDM Plan Adjustments (if required).	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.	

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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. 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. 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. *TDM Plan Monitoring and Reporting*: 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. • 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					

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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: o 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					

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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. o 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. o 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. o 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.) o 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. *TDM Plan Adjustments.* The TDM Plan shall be adjusted based on the					

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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.					
Mitigation Measure M-AQ-1g: Additional Mobile Source Control Measures The following Mobile Source Control Measures from the BAAQMD's 2010 Clean Air Plan shall be implemented: • Promote use of clean fuel-efficient vehicles through preferential (designated and proximate to entry) parking and/or installation of charging stations beyond the level required by the City's Green Building code, from 8 to 20 percent. • Promote zero-emission vehicles by requesting that any car share program operator include electric vehicles within its car share	Project sponsors and TMA.	On-going.	Project sponsors and TMA to implement measures	On-going.	Port or Planning Department/DBI

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program to reduce the need to have a vehicle or second vehicle as a part of the TDM program that would be required of all new developments.					
Mitigation Measure M-AQ-1h: Offset of Operational Emissions Prior to issuance of the final certificate of occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, the project sponsors, with the oversight of Port Staff, shall either: **(1) Directly fund or implement a specific offset project within San Francisco** to achieve reductions of 25 tons per year of ozone precursors and 1 ton of PM10. This offset is intended to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3. To qualify under this mitigation measure, the specific emissions offset project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements. A preferred offset project would be one implemented locally within the City and County of San Francisco. Prior to implementation of the offset project, the project sponsors must obtain Port Staff's approval of the proposed offset project by providing documentation of the estimated amount of emissions of ROG, NOx, and PM10 to be reduced (tons per year) within the SFBAAB from the emissions reduction project(s). The project sponsors shall notify Port Staff within 6 months of completion of the offset project for verification; or **(2) Pay a one-time mitigation offset fee** to the BAAQMD's Strategic Incentives Division in an amount no less than $18,030 per weighted ton of ozone precursors and PM10 per year above the significance threshold, calculated as the difference between total annual emissions at build out under mitigated conditions and the	Project sponsors.	Offsets for Phase 3/build-out of 1.3 million square feet: Upon completion of construction, and prior to issuance of a Certificate of Occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, developer shall demonstrate to the satisfaction of Port Staff that offsets have been funded or implemented,	Port Staff to approve the proposed offset project.	If project sponsor directly funds or implements a specific offset project, considered complete when Port Staff approves the proposed offset project prior to individual Certificates of Occupancy. If project sponsor pays a one-time mitigation offset fee, considered complete when documentation of payment is provided to Port Staff.	Port

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significance threshold in the EIR air quality analysis, which is 25 tons per year of ozone precursors and 1 ton of PM10, plus a 5 percent administrative fee, to fund one or more emissions reduction projects within the SFBAAB. This one-time fee is intended to fund emissions reduction projects to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3 or after completion of 1.3 million sf of development, whichever comes first. Documentation of payment shall be provided to Port Staff. Acceptance of this fee by the BAAQMD shall serve as an acknowledgment and commitment by the BAAQMD to implement one or more emissions reduction project(s) within 1 year of receipt of the mitigation fee to achieve the emission reduction objectives specified above, and provide documentation to Port Staff and to the project sponsors describing the project(s) funded by the mitigation fee, including the amount of emissions of ROG, NOx, and PM10 reduced (tons per year) within the SFBAAB from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation offset fee following implementation of the emission reduction project(s), the project sponsors shall be entitled to a refund in that amount from the BAAQMD. To qualify under this mitigation measure, the specific emissions retrofit project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements.		or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date. <u>Offsets for subsequent phases/build-out</u>: Upon completion of construction of each subsequent phase, and prior to issuance of a Certificate of Occupancy for the final building associated with such phase, developer shall demonstrate to the satisfaction of Port Staff that offsets			

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		have been funded or implemented, or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date and taking into account offsets previously funded, implemented, and/or purchased.			
Wind and Shadow Mitigation Measures					
Mitigation Measure M-WS-1: Identification and Mitigation of Interim Hazardous Wind Impacts When the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted, the requirements described below apply: **Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies**	Project sponsors, qualified wind consultant.	As outlined in Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies, a wind impact analysis shall be	Qualified wind consultant to prepare a scope of work to be approved by Port Staff and following approval of a scope of work submit a wind impact analysis to Port Staff for approval	Considered complete upon approval or issuance of building permit.	Port

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Subject Parcel Proposed for Construction	**Circumstance or Condition**	**Related Upwind Parcels**					
Parcel A	Construction of any new buildings on Parcel A.	NA		prepared for the listed circumstances prior to issuance of a building permit for any proposed building when the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted.	of feasible design changes to minimize interim hazardous wind impacts.		
Parcel B	Construction of any new buildings on Parcel B.	NA					
Parcel E2	Construction of any new buildings on Parcel E2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1 and G					
Parcel E3	Construction of any new buildings on Parcel E3 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building	Parcels E2 and G					

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	Schematic Design submittal.						
Parcel F	Construction of any new buildings on Parcel F.	NA					
Parcel G	Construction of any new buildings on Parcel G.	NA					
Parcel H1	Construction of any new buildings on Parcel H1 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels E2 and G					
Parcel H2	Construction of any new buildings on Parcel H2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1, E2, and E3 that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1, E2, and E3					

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Source: SWCA. **Requirements** A wind impact analysis shall be required prior to building permit issuance for any proposed new building that is located within the project site and meets the conditions described above. All feasible means (e.g., changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, adding architectural canopies or screens, or street furniture) to eliminate hazardous winds, if predicted, shall be implemented. After such design changes and features have been considered, the additional effectiveness of landscaping may also be considered. 1. Screening-level analysis. A qualified wind consultant approved by Port Staff shall review the proposed building design and conduct a "desktop review" in order to provide a qualitative result determining whether there could be a wind hazard. The screening-level analysis shall have the following steps: For each new building proposed that meets the criteria above, a qualified wind consultant shall review and compare the exposure, massing, and orientation of the proposed building(s) on the subject parcel to the building(s) on the same parcel in the representative massing models of the Proposed Project tested in the wind tunnel as part of this EIR and in any subsequent wind analysis testing required by this mitigation measure. The wind consultant shall identify and compare the potential impacts of the proposed building(s) to those identified in this EIR, subsequent wind testing that may have occurred under this mitigation measure, and to the City's wind hazard criterion. The wind consultant's analysis and evaluation shall consider the proposed building(s) in the context of the "Current Project Baseline," which, at any given time during construction of the Proposed Project, shall be defined as any existing buildings at the site, the as-built designs of all previously-completed structures and the then-current designs of					

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approved but yet unbuilt structures that would be completed by the time of occupancy of the subject building. (a) If the qualified wind consultant concludes that the building design(s) could not create a new wind hazard and could not contribute to a wind hazard identified by prior wind tunnel testing for the EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If there could be a new wind hazard, then a quantitative assessment shall be conducted using wind tunnel testing or an equivalent quantitative analysis that produces comparable results to the analysis methodology used in this EIR. (b) If the qualified wind consultant concludes that the building design(s) could create a new wind hazard or could contribute to a wind hazard identified by prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, but in the consultant's professional judgment the building(s) can be modified to reduce such impact to a less-than-significant level, the consultant shall notify Port Staff and the building applicant. The consultant's professional judgment may be informed by the use of "desktop" analytical tools, such as computer tools relying on results of prior wind tunnel testing for the Proposed Project and other projects (i.e., "desktop" analysis does not include new wind tunnel testing). The analysis shall include consideration of wind location, duration, and speed of wind. The building applicant may then propose changes or supplements to the design of the proposed building(s) to achieve this result. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting to include podiums and roof terraces, and/or the addition of architectural canopies or screens, or					

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street furniture. The effectiveness of landscaping may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design and landscaping for the building(s) could not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required.					
(c) If the consultant is unable to demonstrate to the satisfaction of Port Staff that no increase in wind hazards would occur, wind tunnel testing or an equivalent method of quantitative evaluation producing results that can be compared to those used in the EIR and in any subsequent wind analysis testing required by this mitigation measure is required. The building(s) shall be wind tunnel tested in the context of a model that represents the Current Project Baseline, as described in Item 1, above. The testing shall include all the test points in the vicinity of a proposed building or group of buildings that were tested in this EIR, as well as all additional points deemed appropriate by the consultant to determine the wind performance for the building(s). Testing shall occur in places identified as important, e.g., building entrances, sidewalks, etc., and there may need to be additional test point locations considered. At the direction and approval of the Port, the "vicinity" shall be determined by the wind consultant, as appropriate for the circumstances, e.g., a starting concept for "vicinity" could be approximately 350 feet around the perimeter of the subject parcel(s), subject to the wind consultant's reducing or increasing this radial distance. The wind tunnel testing shall test the proposed building design(s), as well as the Current Project Baseline, in					

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order to clearly identify those differences that would be due to the proposed new building(s). In the event the wind tunnel testing determines that design of the building(s) would increase the hours of wind hazard or extent of area subject to hazardous winds beyond those identified in prior wind testing conducted for this EIR and in subsequent wind tunnel analysis required by this mitigation measure, the wind consultant shall notify Port Staff and the building applicant. The building applicant may then propose changes or supplements to the design of the proposed building(s) to eliminate wind hazards. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting building(s) to include podiums and roof terraces, adding architectural canopies or screens, or street furniture. All feasible means (changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, the addition of architectural canopies or screens, or street furniture) to eliminate wind hazards, if predicted, shall be implemented to the extent necessary to mitigate the impact. After such design changes and features have been considered, the additional effectiveness of landscaping at the size it is proposed to be installed may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design would not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If the proposed building(s) would result in a wind hazard exceedance, and the only way to eliminate the hazard is to redesign a proposed building, then the building shall be redesigned.					

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Mitigation Measure M-WS-2: Wind Reduction for Rooftop Winds If the rooftop of building(s) is proposed as public open space and/or a passive or active public recreational area prior to issuance of a building permit for the subject building(s), a qualified wind consultant shall prepare a wind impact and mitigation analysis in the context of the Current Project Baseline regarding the proposed architectural design. All feasible means (such as changing the proposed building mass or design; raising the height of the parapets to at least 8 feet, using a porous material where such material would be effective in reducing wind speeds; using localized wind screens, canopies, trellises, and/or landscaping around seating areas) to eliminate wind hazards shall be implemented as necessary. A significant wind impact would be an increase in the number of hours that the wind hazard criterion is exceeded or an increase in the area subjected to winds exceeding the hazard criterion as compared to existing conditions at the height of the proposed rooftop. The wind consultant shall demonstrate to the satisfaction of Port Staff that the building design would not create a new wind hazard or contribute to a wind hazard identified in prior wind testing conducted for this EIR.	Project Sponsors and qualified wind consultant.	Prior to issuance of a building permit for a building with a rooftop proposed as public open space and/or passive/active recreational area, the qualified wind consultant shall demonstrate that no new wind hazards or a contribution to a wind hazard identified in the EIR would occur in a wind hazard and mitigation analysis.	Port Staff to review wind hazard and mitigation analysis.	Considered complete upon approval or issuance of building permit	Port
Biological Resources Mitigation Measures					
Mitigation Measure M-BI-1a: Worker Environmental Awareness Program Training. Project-specific Worker Environmental Awareness Program (WEAP) training shall be developed and implemented by a qualified biologist* and attended by all project personnel performing demolition or ground-disturbing work prior to beginning demolition or ground-disturbing work on site for	Project sponsors and qualified project biologist.	Prior to demolition or ground-disturbing activities.	Port staff to review and approve WEAP training. Project sponsors and qualified biological consultant to document WEAP	Considered complete after Port staff reviews and approves WEAP training, and confirm	Port or Planning Department

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each construction phase. The WEAP training shall include, but not be limited to, education about the following: a. Applicable State and Federal laws, environmental regulations, project permit conditions, and penalties for non-compliance. b. Special-status plant and animal species with the potential to be encountered on or in the vicinity of the project site during construction. c. Avoidance measures and a protocol for encountering special-status species including a communication chain. d. Preconstruction surveys and biological monitoring requirements associated with each phase of work and at specific locations within the project site (e.g., shoreline work) as biological resources and protection measures will vary depending on where work is occurring within the site, time of year, and construction activity. e. Known sensitive resource areas in the project vicinity that are to be avoided and/or protected as well as approved project work areas, access roads, and staging areas. Best management practices (BMPs) (e.g., straw wattles or spill kits) and their location around the project site for erosion control and species exclusion, in addition to general housekeeping requirements. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.			training and provide documentation during annual mitigation report to the Port.	compliance in annual mitigation report.	
Mitigation Measure M-BI-1b: Nesting Bird Protection Measures The project site's proximity to San Francisco Bay and its current lack of	Project sponsors, qualified biological consultant.	Prior to issuance of demolition or building	If construction will occur during nesting season, qualified biological consultant to	Considered complete upon issuance of demolition or	Port or Planning Department

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activity result in a more attractive environment for birds to nest than other San Francisco locations (e.g., the Financial District) that have higher levels of site activity and human presence. Nesting birds and their nests shall be protected during construction by implementation of the following measures for each construction phase: a. To the extent feasible, conduct initial activities including, but not limited to, vegetation removal, tree trimming or removal, ground disturbance, building demolition, site grading, and other construction activities which may compromise breeding birds or the success of their nests (e.g., CRF, rock drilling, rock crushing, or pile driving), outside of the nesting season (January 15–August 15). b. If construction during the bird-nesting season cannot be fully avoided, a qualified wildlife biologist* shall conduct pre-construction nesting surveys within 14 days prior to the start of construction or demolition at areas that have not been previously disturbed by project activities or after any construction breaks of 14 days or more. Surveys shall be performed for suitable habitat within 250 feet of the project site in order to locate any active passerine (perching bird) nests and within 500 feet of the project site to locate any active raptor (birds of prey) nests, waterbird nesting pairs, or colonies. c. If active nests are located during the preconstruction bird nesting surveys, a qualified biologist shall evaluate if the schedule of construction activities could affect the active nests and if so, the following measures would apply: i. If construction is not likely to affect the active nest, construction may proceed without restriction; however, a qualified biologist shall regularly monitor the nest at a frequency determined appropriate for the surrounding construction activity to confirm there is no adverse effect. Spot-check monitoring frequency		permits for construction during the nesting season (January 15 to August 15) ~~(August 16–January 14)~~	conduct bat surveys and present results to Port Staff	building permits for construction	

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would be determined on a nest-by-nest basis considering the particular construction activity, duration, proximity to the nest, and physical barriers which may screen activity from the nest. The qualified biologist may revise his/her determination at any time during the nesting season in coordination with the Port of San Francisco or Planning Department.					
ii. If it is determined that construction may affect the active nest, the qualified biologist shall establish a no-disturbance buffer around the nest(s) and all project work shall halt within the buffer until a qualified biologist determines the nest is no longer in use. Typically, these buffer distances are 250 feet for passerines and 500 feet for raptors; however, the buffers may be adjusted if an obstruction, such as a building, is within line-of-sight between the nest and construction.					
iii. Modifying nest buffer distances, allowing certain construction activities within the buffer, and/or modifying construction methods in proximity to active nests shall be done at the discretion of the qualified biologist and in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Necessary actions to remove or relocate an active nest(s) shall be coordinated with the Port of San Francisco or Planning Department and approved by CDFW.					
iv. Any work that must occur within established no-disturbance buffers around active nests shall be monitored by a qualified biologist. If adverse effects in response to project work within the buffer are					

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observed and could compromise the nest, work within the no-disturbance buffer(s) shall halt until the nest occupants have fledged. v. Any birds that begin nesting within the project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels, so exclusion zones around nests may be reduced or eliminated in these cases as determined by the qualified biologist in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Work may proceed around these active nests as long as the nests and their occupants are not directly impacted. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-2: Avoidance and Minimization Measures for Bats A qualified biologist (as defined by CDFW*) who is experienced with bat surveying techniques (including auditory sampling methods), behavior, roosting habitat, and identification of local bat species shall be consulted prior to demolition or building relocation activities to conduct a pre-construction habitat assessment of the project site (focusing on buildings to be demolished or relocated) to characterize potential bat habitat and identify potentially active roost sites. No further action is required should the pre-construction habitat assessment not identify bat habitat or signs of potentially active bat roosts within the project site (e.g., guano, urine staining, dead bats, etc.).	Project sponsors, qualified biological consultant, and CDFW.	Prior to issuance of demolition or building permits when trees or shrubs would be removed or buildings demolished as part of an individual project.	Qualified biological consultant to conduct bat surveys and present results to Port Staff.	Considered complete upon issuance of demolition or building permits.	Port or Planning Department

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The following measures shall be implemented should potential roosting habitat or potentially active bat roosts be identified during the habitat assessment in buildings to be demolished or relocated under the Proposed Project or in trees adjacent to construction activities that could be trimmed or removed under the Proposed Project: a) In areas identified as potential roosting habitat during the habitat assessment, initial building demolition, relocation, and any tree work (trimming or removal) shall occur when bats are active, approximately between the periods of March 1 to April 15 and August 15 to October 15, to the extent feasible. These dates avoid the bat maternity roosting season and period of winter torpor. [Torpor refers to a state of decreased physiological activity with reduced body temperature and metabolic rate.] b) Depending on temporal guidance as defined below, the qualified biologist shall conduct pre-construction surveys of potential bat roost sites identified during the initial habitat assessment no more than 14 days prior to building demolition or relocation, or any tree trimming or removal. c) If active bat roosts or evidence of roosting is identified during pre-construction surveys, the qualified biologist shall determine, if possible, the type of roost and species. A no-disturbance buffer shall be established around roost sites until the qualified biologist determines they are no longer active. The size of the no-disturbance buffer would be determined by the qualified biologist and would depend on the species present, roost type, existing screening around the roost site (such as dense vegetation or a building), as well as the type of construction activity that would occur around the roost site. d) If special-status bat species or maternity or hibernation roosts are detected during these surveys, appropriate species- and roost-specific avoidance and protection measures shall be					

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developed by the qualified biologist in coordination with CDFW. Such measures may include postponing the removal of buildings or structures, establishing exclusionary work buffers while the roost is active (e.g., 100-foot no-disturbance buffer), or other compensatory mitigation. e) The qualified biologist shall be present during building demolition, relocation, or tree work if potential bat roosting habitat or active bat roosts are present. Buildings and trees with active roosts shall be disturbed only under clear weather conditions when precipitation is not forecast for three days and when daytime temperatures are at least 50 degrees Fahrenheit. f) The demolition or relocation of buildings containing or suspected to contain bat roosting habitat or active bat roosts shall be done under the supervision of the qualified biologist. When appropriate, buildings shall be partially dismantled to significantly change the roost conditions, causing bats to abandon and not return to the roost, likely in the evening and after bats have emerged from the roost to forage. Under no circumstances shall active maternity roosts be disturbed until the roost disbands at the completion of the maternity roosting season or otherwise becomes inactive, as determined by the qualified biologist. g) Trimming or removal of existing trees with potential bat roosting habitat or active (non-maternity or hibernation) bat roost sites shall follow a two-step removal process (which shall occur during the time of year when bats are active, according to a) above, and depending on the type of roost and species present, according to c) above). i. On the first day and under supervision of the qualified biologist, tree branches and limbs not containing cavities or fissures in which bats could roost shall be cut using chainsaws.					

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ii. On the following day and under the supervision of the qualified biologist, the remainder of the tree may be trimmed or removed, either using chainsaws or other equipment (e.g., excavator or backhoe). All felled trees shall remain on the ground for at least 24 hours prior to chipping, off-site removal, or other processing to allow any bats to escape, or be inspected once felled by the qualified biologist to ensure no bats remain within the tree and/or branches. iv. * CDFW defines credentials of a "qualified biologist" within permits or authorizations issued for a project. Typical qualifications include a minimum of five years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-3: Pile Driving Noise Reduction for Protection of Fish and Marine Mammals Prior to the start of reconstruction of the bulkhead in Reach II, the project sponsors shall prepare a detailed Construction Plan that outlines the details of the piling installation approach. This Plan shall be reviewed and approved by Port Staff. The information provided in this plan shall include, but not be limited to, the following: • The type of piling to be used (whether sheet pile or H-pile); • The piling size to be used; • The method of pile installation to be used; • Noise levels for the type of piling to be used and the method of pile driving; • Recalculation of potential underwater noise levels that could be generated during pile driving using methodologies outlined in	Project sponsors.	Prior to construction of the bulkhead in Reach II, project sponsors to prepare a Construction Plan.	Project sponsors to prepare a Construction Plan and submit it to the Port for review and approval. If determined necessary, sound attenuation and monitoring plan would then be developed. Results of the vibration monitoring would be provided to NOAA if required. An alternative to the sound	Considered complete upon review and approval of the Construction Plan. If determined necessary, approval of the sound attenuation and monitoring plan would be required by Port Staff, and monitoring results would be provided to	Port

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CalTrans 2009 [Caltrans, Technical Guidance for Assessment and Mitigation]; and • When pile driving is to occur. If the results of the recalculations provided in the detailed Construction Plan for pile-driving discussed above indicate that underwater noise levels are less than 183 dB (SEL) for fish at a distance of 33 feet (less than or equal to 10 meters) and 160 dB (RMS) sound pressure level or 120 dB (RMS) re 1 µPa impulse noise level for marine mammals for a distance 1,640 feet (500 meters), then no further measures are required to mitigate underwater noise. If recalculated noise levels are greater than those identified above, then the project sponsors shall develop a sound attenuation reduction and monitoring plan. This plan shall be reviewed and approved by Port Staff. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile-driving activities, and all BMPs to be taken to reduce impact hammer pile-driving sound in the marine environment to an intensity level of less than 183 and 160/120 dB (as identified above) at distances of 33 feet (less than or equal to 10 meters) for fish and 1,640 feet (500 meters) for marine mammals. The sound-monitoring results shall be made available to NOAA Fisheries. If, in the case of marine mammals, recalculated noise levels are greater than 160 dB (peak) at less than or equal to 1,640 feet (500 meters), then the project sponsors shall consult with NOAA to determine the need to obtain an Incidental Harassment Authorization (IHA) under the MMPA. If an IHA is required by NOAA, an application for an IHA shall be prepared by the project sponsors. The plan shall incorporate as appropriate, but not be limited to, the following BMPs: • Any impact-hammer-installed soldier wall H-pilings or sheet piling shall be conducted in strict accordance with the Long-Term Management Strategy (LTMS) work windows for Pacific herring,* during which the presence of Pacific herring in the project site is			attenuation and monitoring plan is to consult with NOAA and provide evidence to the satisfaction of Port Staff.	NOAA.	

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expected to be minimal unless, where applicable, NOAA Fisheries in their Section 7 consultation with the Corps determines that the potential effect to special-status fish species is less than significant. • If pile installation using impact hammers must occur at times other than the approved LTMS work window for Pacific herring or result in underwater sound levels greater than those identified above, the project sponsors shall consult with both NOAA Fisheries and CDFW on the need to obtain incidental take authorizations to address potential impacts to longfin smelt and green sturgeon associated with reconstruction of the steel sheet pile bulkhead in Reach II, and to implement all requested actions to avoid impacts. • A 1,640-foot (500-meter) safety zone shall be established and maintained around the sound source to the extent such a safety zone is located within in-water areas, for the protection of marine mammals in the event that sound levels are unknown or cannot be adequately predicted. • In-water work activities associated with reconstruction of the steel sheet pile bulkhead in Reach II shall be halted when a marine mammal enters the 1,640-foot (500-meter) safety zone and shall cease until the mammal has been gone from the area for a minimum of 15 minutes. • A "soft start" technique shall be used in all pile driving, giving marine mammals an opportunity to vacate the area. • A NOAA Fisheries-approved biological monitor shall conduct daily surveys before and during impact hammer pile driving to inspect the safety zone and adjacent San Francisco Bay waters for marine mammals. The monitor shall be present as specified by NOAA Fisheries during the impact pile-driving phases of construction.					

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• Other BMPs shall be implemented as necessary, such as using bubble curtains or an air barrier, to reduce underwater noise levels to acceptable levels. Alternatively, the project sponsors may consult with NOAA directly and submit evidence to their satisfaction of Port Staff of NOAA consultation. In such case, the project sponsors shall comply with NOAA recommendations and/or requirements. * U.S. Army Corps of Engineers, Programmatic Essential Fish Habitat (EFH) Assessment for the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region. July 2009.					
Mitigation Measure M-BI-4: Compensation for Fill of Jurisdictional Waters To offset temporary and/or permanent impacts to jurisdictional waters of San Francisco Bay adjacent to the 28-Acre Site, construction associated with repair or replacement of the Reach II bulkhead shall be conducted as required by regulatory permits (i.e., those issued by the Corps, RWQCB, and BCDC) and in coordination with NMFS as appropriate. If required by regulatory permits, compensatory mitigation shall be provided as necessary, at a minimum ratio of 1:1 for fill beyond that required for normal repair and maintenance of existing structures. Compensation may include on-site or off-site shoreline improvements or intertidal/subtidal habitat enhancements along San Francisco's eastern waterfront through removal of chemically treated wood material (e.g., pilings, decking, etc.) by pulling, cutting, or breaking off piles at least 1 foot below mudline or removal of other unengineered debris (e.g., concrete-filled drums or large pieces of concrete). Improvements would be implemented in accordance with NMFS as appropriate. On-site or off-site restoration/enhancement plans, if required, must be prepared by a qualified biologist prior to construction and approved by the permitting agencies prior to beginning construction, repair, or	Project sponsors. In accordance with regulatory permits and coordination with NMFS, compensatory mitigation, if required, shall be provided at a minimum ratio of 1:1.	Prior to any construction at the Reach II bulkhead or in accordance with regulatory permits.	Project sponsors to comply with regulatory permits	Considered complete after issuance of regulatory permits for the fill of jurisdictional waters.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
replacement of the Reach II bulkhead. Implementation of restoration/enhancement activities by the permittee shall occur prior to project impacts, whenever possible.					
Geology and Soils Mitigation Measures					
Mitigation Measure M-GE-3a: Reduction of Rock Fall Hazards The project sponsors shall prepare a site-specific geotechnical report(s), subject to review and approval by the Port, that evaluates the design and construction methods proposed for Parcels PKS, C-1, and C-2, the Irish Hill playground, and 21st Street. The investigations shall determine the potential for rock fall hazards. If the potential for rock fall hazards is identified, the site-specific geotechnical investigations shall identify measures to minimize such hazards to be implemented by the project sponsors. Possible measures to reduce the impacts of potential rock fall hazards include, but are not limited to, the following: • Limited regrading to adjust slopes to stable gradient; • Rock fall containment measures such as installation of drape nets, rock fall catchment fences, or diversion dams; and • Site design measures such as implementing setbacks to ensure that buildings and public uses are outside areas that could be subject to damage as a result of rock fall.	Project sponsors.	Prior to the start of construction activities at Parcels PKS, C-1, C-2, the Irish Hill playground, and 21st Street.	Project sponsors to submit geotechnical report(s) to the Port for review and approval.	Considered complete upon approval of geotechnical report(s) and any associated measures to minimize rock fall hazards.	Port
Mitigation Measure M-GE-3b: Signage and Restricted Access to Pier 70 Prior to issuance of the first certificate of occupancy under the Proposed Project, the project sponsors shall install a gate or an equivalent measure to prevent access to the existing dilapidated pier at the project site. A sign shall be posted at the potential access point informing the public of potential risks associated with use of the structure and prohibiting public access.	Project sponsors to install signage and gate or equivalent measure to prevent access to the existing dilapidated pier.	Prior to issuance of the first Certificate of Occupancy.	Project sponsors to document installation of signage and gate or equivalent measure	Considered complete upon installation of the signage and gate or equivalent measure. The measure will be documented in the annual	Port

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[1]**
				mitigation and monitoring report.	
Mitigation Measure M-GE-6: Paleontological Resources Monitoring and Mitigation Program Prior to issuance of a building permit for construction activities that would disturb sedimentary rocks of the Franciscan Complex (based on the site-specific geotechnical investigation or other available information), the project sponsors shall retain the services of a qualified paleontological consultant having expertise in California paleontology to design and implement a Paleontological Resources Monitoring and Mitigation Program (PRMMP). The PRMMP shall specify the timing and specific locations where construction monitoring would be required; emergency discovery procedures; sampling and data recovery procedures; procedures for the preparation, identification, analysis, and curation of fossil specimens and data recovered; preconstruction coordination procedures; and procedures for reporting the results of the monitoring program. The PRMMP shall be consistent with the Society for Vertebrate Paleontology (SVP) Standard Guidelines for the mitigation of construction-related adverse impacts to paleontological resources and the requirements of the designated repository for any fossils collected. During construction, earth-moving activities that have the potential to disturb previously undisturbed native sediment or sedimentary rocks shall be monitored by a qualified paleontological consultant having expertise in California paleontology. Monitoring need not be conducted for construction activities in areas where the ground has been previously disturbed or when construction activities would encounter artificial fill, Young Bay Mud, marsh deposits, or non-sedimentary rocks of the Franciscan Complex. If a paleontological resource is discovered, construction activities in an appropriate buffer around the discovery site shall be suspended for a maximum of 4 weeks. At the direction of the Environmental Review Officer	Project sponsors and qualified paleontological consultant.	Prior to issuance of a building permit where construction activities would disturb sedimentary rocks of the Franciscan complex. If earth-moving activities have the potential to disturb previously undisturbed native sediment, a qualified paleontological consultant would monitor the activities.	Qualified paleontological consultant to prepare a PRMMP for review and approval by the ERO A single PRMMP or multiple PRMMPs may be produced to address project phasing. In compliance with the requirements of the PRMMP, a qualified paleontological consultant would monitor construction and provide a monitoring report for inclusion in the annual mitigation and monitoring report.	Considered complete upon documentation to the satisfaction of that building permit construction activities would not disturb sedimentary rocks of the Franciscan Complex, or review and approval of the PRMMP, if required, by the Planning Department. Monitoring activities and compliance would be documented in the annual mitigation and monitoring report.	Port and Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
(ERO), the suspension of construction can be extended beyond 4 weeks if needed to implement appropriate measures in accordance with the PRMMP, but only if such a suspension is the only feasible means to prevent an adverse impact on the paleontological resource. The paleontological consultant's work shall be conducted at the direction of the City's ERO. Plans and reports prepared by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.					
Hydrology and Water Resources Mitigation Measures					
Mitigation Measure M-HY-2a: Design and Construction of Proposed Pump Station for Options 1 and 3 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline, the Proposed Project at full build-out, and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to	Project sponsors.	Prior to construction of the proposed pump station for Options 1 and 3.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
approval by the SFPUC.					
Mitigation Measure M-HY-2b: Design and Construction of Proposed Pump Station for Option 2 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; • During wet weather, wastewater flows from the project site shall bypass the wet-weather facilities and be conveyed to the combined sewer system in such a manner that they do not contribute to combined sewer discharges within the 20th Street sub-basin; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to approval by the SFPUC.	Project sponsors.	Prior to construction of the proposed pump station for Option 2.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC
Hazards and Hazardous Materials Mitigation Measures					
Mitigation Measure M-HZ-2a: Conduct Transformer Survey and Remove PCB Transformers	Project sponsors and qualified contractor.	Prior to the demolition, renovation, or	Qualified contractor to survey and determine the	Considered complete if no PCBs found or	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
The project sponsors shall retain a qualified contractor to survey any building and/or structure planned for demolition, renovation, or relocation to identify all electrical transformers in use and in storage. The contractor shall determine the PCB content using name plate information, or through sampling if name-plate data do not provide adequate information regarding the PCB content of the dielectric equipment. The project sponsors shall retain a qualified contractor to remove and dispose of all transformers in accordance with the requirements of Title 40 of the Code of Federal Regulations, Section 761.60 (described under the Regulatory Framework) and the Title 22 of the California Code of Regulations, Section 66261.24. The removal shall be completed in advance of any building or structural demolition, renovation, or relocation.		relocation of any building and/or structure.	PCB content of transformers in use and storage. If necessary, the contractor shall remove and dispose of transformers in accordance with applicable regulations.	upon appropriate disposal and removal of transformers. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	
Mitigation Measure M-HZ-2b: Conduct Sampling and Cleanup if Stained Building Materials Are Observed In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB (determined in accordance with Mitigation Measure H-HZ-2a), or the leakage has resulted in visible staining of the building materials or surrounding surface areas, the project sponsors shall retain a qualified professional to obtain samples of the building materials for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration of 1 part per million, then the project sponsors shall retain a contractor to clean the surface to a concentration of 1 part per million or less in accordance with Title 40 of the Code of Federal Regulations, Section 761.61(a). The sampling and cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB, or the leakage has resulted in visible staining of the building materials or surrounding surface areas. If determined necessary, sampling and	If leakage or spillage occurs, qualified contractor to obtain samples and clean the surface (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
		cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.			
Mitigation Measure M-HZ-2c: Conduct Soil Sampling if Stained Soil is Observed In the event that leakage is observed in the vicinity of a PCB-containing transformer that has resulted in visible staining of the surrounding soil (determined in accordance with Mitigation Measure M-HZ-2a), the project sponsors shall retain a qualified professional to obtain soil samples for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration less than the residential Environmental Screening Level of 0.22 milligrams per kilogram, then no further action shall be required. If PCBs are identified at a concentration greater than or equal to the residential Environmental Screening Level of 0.22 milligrams per kilogram, then the project sponsors shall require the contractor to implement the requirements of the Pier 70 RMP, as required by Mitigation Measure M-HZ-6. The sampling and implementation of the Pier 70 RMP requirements shall be completed in advance of any building or structural demolition, renovation, relocation, or subsequent development.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer, or the leakage has resulted in visible staining of soils. If determined necessary, sampling and removal shall be completed in advance of any building or structural demolition, renovation, or relocation.	If leakage or spillage occurs, qualified contractor to obtain samples and remove any PCBs (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented hazardous materials manifestos and in the annual mitigation and monitoring report.	Port
Mitigation Measure M-HZ-3a: Implement Construction and Maintenance-Related Measures of the Pier 70 Risk Management Plan The project sponsors shall provide notice to the RWQCB, DPH, and Port in accordance with the Pier 70 RMP, in advance of ground-disturbing activities	Project sponsors and construction contractor(s).	Notice shall be provided to the RWQCB, DPH, and Port in accordance	All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB,	Considered complete upon notice to the RWQCB, DPH, and Port.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover (Pier 70 RMP Sections 4.1, 4.2, and 6.3). The project sponsors shall also (through their contractor) implement the following measures of the Pier 70 RMP during construction to provide for the protection of worker and public health, including nearby schools and other sensitive receptors, and to ensure appropriate disposition of soil and groundwater removed from the site: • A project-specific health and safety plan (Pier 70 RMP Section 6.4); • Access controls (Pier 70 RMP Section 6.1); • Soil management protocols, including those for: o soil movement (Pier 70 RMP Section 6.5.1), o soil stockpile management (Pier 70 RMP Section 6.5.2), and o import of clean soil (including preparation of a project-specific Soil Import Plan) (Pier 70 RMP Section 6.5.3); • A dust control plan in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code and other applicable regulations as well as site-specific measures (Pier 70 RMP Section 6.6); • A project-specific stormwater pollution prevention control plan (Pier 70 RMP Section 6.7); • Off-site soil disposal (Pier 70 RMP Section 6.8);		with the Pier 70 RMP prior to any ground-disturbing activities that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover.	DPH, and Port for review and approval in accordance with the notification requirements of the RMP.		

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
• A project-specific groundwater management plan for temporary dewatering (Pier 70 RMP Section 6.10.1); • Risk management measures to minimize the potential for new utilities to become conduits for the spread of groundwater contamination (Pier 70 RMP Section 6.10.2); • Appropriate design of underground pipelines to prevent the intrusion of groundwater or degradation of pipeline construction materials by chemicals in the soil or groundwater (Pier 70 RMP Section 6.10.3); and • Protocols for unforeseen conditions (Pier 70 RMP Section 6.9). Following completion of construction activities that disturb any durable cover, the integrity of the previously existing durable cover shall be re-established in accordance with Section 6.2 of the Pier 70 RMP and the protocols described in the Operations and Maintenance Plan of the Pier 70 RMP. All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB, DPH, and/or Port for review and approval in accordance with the notification requirements of the RMP (Pier 70 RMP Section 4.0).					
Mitigation Measure M-HZ-3b: Implement Well Protection Requirements of the Pier 70 Risk Management Plan In accordance with Section 6.11 of the Pier 70 RMP, the project sponsors shall review available information prior to any ground-disturbing activities to identify any monitoring wells within the construction area, including any wells installed by PG&E in support of investigation and remediation of the PG&E Responsibility Area within the 28-Acre Site. The wells shall be appropriately protected during construction. If construction necessitates destruction of an existing well, the destruction shall be conducted in accordance with California and DPH well abandonment regulations, and	Project sponsors	Prior to ground-disturbing activities.	Project sponsors to identify any monitoring wells in the area, and appropriately protect them. If destruction of a well is required, it would be conducted in accordance with	Monitoring complete if no wells or activities would be demonstrated in RWQCB and DPH regulatory applications and documented in the annual mitigation and	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
must be approved by the RWQCB. The Port shall also be notified of the destruction. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater inonitoring wells that are part of the ongoing groundwater monitoring network.			applicable regulations and the Port would be notified. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.	monitoring report.	
Mitigation Measure M-HZ-4: Implement Construction-Related Measures of the Hoedown Yard Site Management Plan In accordance with the notification requirements of the Hoedown Yard SMP (Section 4.2), the project sponsors (through their contractor) shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard. During construction, the contractor shall implement the following measures of the Hoedown Yard SMP to provide for the protection of worker and public health, and to ensure appropriate disposition of soil and groundwater. • A project-specific Health and Safety Plan (Hoedown Yard SMP Section 5): o Dust management measures in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations. Section 93105) and Article 22B of the San Francisco Health Code. The specific measures must address	Project sponsors	Prior to ground-disturbing activities at the Hoedown Yard.	The project sponsors shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard.	Considered complete after notification to the RWQCB, DPH. and/or Port.	DPH

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dust control (SMP Section 6.1) and dust monitoring (SMP Section 6.2). • Soil and water management measures, including: o soil handling (Hoedown Yard SMP Section 7.1.1), o stockpile management (Hoedown Yard SMP Section 7.1.2), o on-site reuse of soil (Hoedown Yard SMP Section 7.1.3), o off-site soil disposal (Hoedown Yard SMP Section 7.1.4), o excavation dewatering (Hoedown Yard SMP Section 7.1.5), o stormwater management (Hoedown Yard SMP Section 7.1.6). o site access and security (Hoedown Yard SMP Section 7.1.7), and o unanticipated subsurface conditions (Hoedown Yard SMP Section 7.2).					
Mitigation Measure M-HZ-5: Delay Development on Proposed Parcels H1, H2, and E3 Until Remediation of the PG&E Responsibility Area is Complete The project sponsors shall not start construction of the proposed development or associated infrastructure on proposed Parcel H1, H2, and E3 until PG&E's remedial activities in the PG&E Responsibility Area within and adjacent to these parcels have been completed to the satisfaction of the RWQCB, consistent with the terms of the remedial action plan prepared by PG&E and approved by RWQCB. During subsequent development, the project sponsors shall implement the requirements of the Pier 70 RMP within the PG&E Responsibility Area, as enforced through the recorded deed restriction on the Pier 70 Master Plan Area.	Project sponsors and PG&E.	Prior to the start of construction on proposed Parcels H1, H2, and E3. During subsequent development, for implementation of Pier 70 RMP Requirements.	PG&E to complete remedial activities in the PG&E Responsibility Area within and adjacent to Parcels H1, H2, and E3 to satisfaction of RWQCB. Project sponsor to implement Pier 70 RMP requirements, enforced by recorded deed	Considered complete upon RWQCB confirmation of satisfaction with PG&E remedial action.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
			restriction.		
Mitigation Measure M-HZ-6: Additional Risk Evaluations and Vapor Control Measures for Residential Land Uses The notification submittals required under Mitigation Measure M-HZ-3a shall describe site conditions at the time of development. If residential land uses are proposed at or near locations where soil vapor or groundwater concentrations exceed residential cleanup standards for vapor intrusion (based on information provided in the Pier 70 RMP), this information shall be included in the notification submittal and the RWQCB and DPH determine whether a risk evaluation is required. If required, the project sponsors or future developer(s) shall conduct a risk evaluation in accordance with the Pier 70 RMP. The risk evaluation shall be based on the soil vapor and groundwater quality presented in the Pier 70 RMP and the proposed building design. The project sponsors shall conduct additional soil vapor or groundwater sampling as needed to support the risk evaluation, subject to the approval of the RWQCB and DPH. If the risk evaluation demonstrates that there would be unacceptable health risks to residential users (i.e., greater than 1×10^{-6} incremental cancer risk or a non-cancer hazard index greater than 1), the project sponsors shall incorporate measures into the building design to minimize or eliminate exposure to soil vapor through the vapor intrusion pathway, subject to review and approval by the RWQCB and DPH. Appropriate vapor intrusion measures include, but are not limited to design of a safe building configuration that would preclude vapor intrusion; installation of a vapor barrier; and/or design and installation of an active vapor monitoring and extraction system. If the risk evaluation demonstrates that vapor intrusion risks would be within acceptable levels (less than 1×10^{-6} incremental cancer risk or a non-cancer hazard index less than 1) under a project-specific development scenario, no additional action shall be required. (For instance, the project sponsors could locate all residential uses above the first floor which, in some cases, could eliminate the potential for residential exposure to organic compounds in soil	Project sponsors	Prior to ground-disturbing activities of residential land uses if near locations where soil vapor or groundwater concentrations exceed residential cleanup standard for vapor intrusion.	Site conditions shall be recorded by the project sponsors and included in the notification submittal to the RWQCB and DPH. If required, the project sponsors shall conduct a risk evaluation in accordance with the Pier 70 RMP and incorporate measures to minimize or eliminate exposure to soil vapor.	Considered complete upon a notification submittal to the RWQCB and DPH. If a risk evaluation and further measures are required, they would be reviewed and approved by the RWQCB and DPH.	Port

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vapors.)					
Mitigation Measure M-HZ-7: Modify Hoedown Yard Site Mitigation Plan The project sponsors shall conduct a risk evaluation to evaluate health risks to future site occupants, visitors, and maintenance workers under the proposed land use within the Hoedown Yard. The risk evaluation shall be based on the soil, soil vapor, and groundwater quality data provided in the existing SMP and supporting documents and the project sponsors shall conduct additional sampling as needed to support the risk evaluation. Based on the results of the risk evaluation, the project sponsors shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals (i.e., an excess cancer risk of 1×10^{-6} and a Hazard Index of 1) applicable to each land use proposed for development within the Hoedown Yard. At a minimum, the modified SMP shall include the following components: • Regulatory-approved cleanup levels for the proposed land uses; • A description of existing conditions, including a comparison of site data to regulatory-approved cleanup levels; • Regulatory oversight responsibilities and notification requirements; • Post-development risk management measures, including management measures for the maintenance of engineering controls (e.g., durable covers, vapor mitigation systems) and site maintenance activities that could encounter contaminated soil; • Monitoring and reporting requirements; and • An operations and maintenance plan, including annual inspection requirements.	Project sponsors shall conduct a risk evaluation, and shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals applicable to each land use proposed for development within the Hoedown Yard.	Prior to ground-disturbing activities at the Hoedown Yard.	Project sponsors shall submit the risk evaluation and proposed risk management plan to the RWQCB, DPH, and Port for review and approval.	Considered complete upon review and approval of the risk evaluation and proposed risk management plan by the RWQCB, DPH, and Port.	Port, DPH

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The risk evaluation and proposed risk management plan shall be submitted to the RWQCB, DPH, and Port for review and approval prior to the start of ground disturbance.					
Mitigation Measure M-HZ-8a: Prevent Contact with Serpentinite Bedrock and Fill Materials in Irish Hill Playground The project sponsors shall ensure that a minimum 2-foot thick durable cover of asbestos-free clean imported fill with a vegetated cover is emplaced above serpentinite bedrock and fill materials in the level portions of Irish Hill Playground. The fill shall meet the soil criteria for clean fill specified in Table 4 of the Pier 70 RMP and included in Appendix F, Hazards and Hazardous Materials, of this EIR. Barriers shall be constructed to preclude direct climbing on the bedrock of the Irish Hill remnant. The design of the durable cover and barriers shall be submitted to the DPH and Port for review and approval prior to construction of the Irish Hill Playground.	Project sponsors to design and install a 2-foot-thick durable cover over serpentinite bedrock and fill in the level portions of the Irish Hill Playground and barriers to preclude direct climbing on the bedrock of the Irish Hill remnant.	Submittal of design of durable cover and barriers to DPH and Port prior to construction of the Irish Hill Playground.	Project sponsors shall submit design of durable covers and barriers to DPH, Port	Considered complete upon review and approval of the design and installation of the 2-foot-thick durable cover and barriers by the DPH and Port.	Port, DPH
Mitigation Measure M-HZ-8b: Restrictions on the Use of Irish Hill Playground To the extent feasible, the project sponsors shall ensure that the Irish Hill Playground is not operational until ground disturbing activities for construction of the new 21st Street and on the adjacent parcels (PKN, PKS, HDY-1, HDY2, C1, and C2) is completed. If this is not feasible, and Irish Hill Playground is operational prior to construction of the new 21st Street and construction on all adjacent parcels, the playground shall be closed for use when ground-disturbing activities are occurring for the construction of the new 21st Street and on any of the adjacent parcels.	Project sponsors.	Prior to and during construction of the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2.	Project sponsors shall ensure the playground is not operational until ground-disturbing activities at the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2 are complete; or playground shall be closed for use when ground-disturbing activities are occurring	Considered complete when the aforementioned parcels' ground-disturbing activities are finished. Documentation would occur in the annual mitigation and monitoring report.	Port

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[1]
IMPROVEMENT MEASURES FOR THE PIER 70 MIXED-USED DISTRICT PROJECT					
Improvement Measure I-CR-4a: Documentation Before any demolition, rehabilitation, or relocation activities within the UIW Historic District, the project sponsors should retain a professional who meets the Secretary of the Interior's Professional Qualifications Standards for Architectural History to prepare written and photographic documentation of all contributing buildings proposed for demolition within the UIW Historic District. The documentation for the property should be prepared based on the National Park Service's Historic American Building Survey (HABS)/Historic American Engineering Record (HAER) Historical Report Guidelines. This type of documentation is based on a combination of both HABS/HAER standards and National Park Service's policy for photographic documentation, as outlined in the NRHP and National Historic Landmarks Survey Photo Policy Expansion. The written historical data for this documentation should follow HABS/HAER standards. The written data should be accompanied by a sketch plan of the property. Efforts should also be made to locate original construction drawings or plans of the property during the period of significance. If located, these drawings should be photographed, reproduced, and included in the dataset. If construction drawings or plans cannot be located, as-built drawings should be produced. Either HABS/HAER-standard large format or digital photography should be used. If digital photography is used, the ink and paper combinations for printing photographs must be in compliance with NR-NHL Photo Policy Expansion and have a permanency rating of approximately 115 years. Digital photographs should be taken as uncompressed, TIFF file format. The size of each image should be 1,600 by 1,200 pixels at 330 pixels per inch or larger, color format, and printed in black and white. The file name for each electronic image should correspond with the index of photographs and photograph label. Photograph views for the dataset should include (a)	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Project Sponsor Documentation: Before any demolition, rehabilitation, or relocation activities within the UIW Historic District.	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual to complete historic resources documentation, and transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Considered complete when documentation is reviewed and approved by Port Preservation Staff, and the documentation is provided to the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Port

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[1]
contextual views; (b) views of each side of each building and interior views, where possible; (c) oblique views of buildings; and (d) detail views of character-defining features, including features on the interiors of some buildings. All views should be referenced on a photographic key. This photographic key should be on a map of the property and should show the photograph number with an arrow to indicate the direction of the view. Historic photographs should also be collected, reproduced, and included in the dataset. The project sponsors should transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System. The project sponsors should scope the documentation measures with Port Preservation staff.					
Improvement Measure I-CR-4b: Public Interpretation Following any demolition, rehabilitation, or relocation activities within the project site, the project sponsors should provide within publicly accessible areas of the project site a permanent display(s) of interpretive materials concerning the history and architectural features of the District's three historical eras (Nineteenth Century, Early Twentieth Century, and World War II), including World War II-era Slipways 5 through 8 and associated craneways. The display(s) should also document the history of the Irish Hill Remnant, including, for example, the original 70- to 100-foot tall Irish Hill landform and neighborhood of lodging, houses, restaurants, and saloons that occupied the once much larger hill until the earlier twentieth century. The content of the interpretive display(s) should be coordinated and consistent with the sitewide interpretive plan prepared for the 28-Acre Site in coordination with the Port. The specific location, media, and other characteristics of such interpretive display(s) should be presented to Port preservation staff for approval prior to any demolition or removal activities.	Project sponsors should provide a permanent display(s) of interpretive materials concerning the history and architectural features of the District within publicly accessible areas of the project site.	Project sponsors provide permanent display: Following any demolition, rehabilitation, or relocation activities within the project site.	Project sponsors submit documentation of permanent display(s) of interpretive materials	Considered complete when interpretive materials are presented to Port preservation staff for approval. The materials would then be presented in the publically accessible area of the project site.	Port
Improvement Measure I-TR-A: Construction Management Plan Traffic Control Plan for Construction – To reduce potential conflicts between	Project sponsors, TMA, and	Prior to issuance of a	Construction contractor(s) to	Considered complete upon	Port. 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
construction activities and pedestrians, bicyclists, transit, and autos during construction activities, the project sponsors should require construction contractor(s) to prepare a traffic control plan for major phases of construction (e.g., demolition and grading, construction, or renovation of individual buildings). The project sponsors and their construction contractor(s) will meet with relevant City agencies to coordinate feasible measures to reduce traffic congestion, including temporary transit stop relocations and other measures to reduce potential traffic and transit disruption and pedestrian circulation effects during major phases of construction. For any work within the public right-of-way, the contractor would be required to comply with San Francisco's Regulations for Working in San Francisco Streets (i.e., the "Blue Book"), which establish rules and permit requirements so that construction activities can be done safely and with the least possible interference with pedestrians, bicyclists, transit, and vehicular traffic. Additionally, non-construction-related truck movements and deliveries should be restricted as feasible during peak hours (generally 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., or other times, as determined by SFMTA and the Transportation Advisory Staff Committee [TASC]). In the event that the construction timeframes of the major phases and other development projects adjacent to the project site overlap, the project sponsors should coordinate with City Agencies through the TASC and the adjacent developers to minimize the severity of any disruption to adjacent land uses and transportation facilities from overlapping construction transportation impacts. The project sponsors, in conjunction with the adjacent developer(s), should propose a construction traffic control plan that includes measures to reduce potential construction traffic conflicts, such as coordinated material drop offs, collective worker parking, and transit to job site and other measures. <u>Reduce Single Occupant Vehicle Mode Share for Construction Workers</u> – To minimize parking demand and vehicle trips associated with construction workers, the project sponsors should require the construction contractor to include in the Traffic Control Plan for Construction methods to encourage	construction contractor(s).	building permit. Project construction updates for adjacent residents and businesses within 150 feet would occur throughout the construction phase.	prepare a Traffic Control Plan and meet with relevant City agencies (i.e., SFMTA, Port Staff, and Planning Department) to coordinate feasible measures to reduce traffic congestion. A single traffic control plan or multiple traffic control plans may be produced to address project phasing.	submittal of the Traffic Control Plan to the SFMTA and the Port. Project construction update materials would be provided in the annual mitigation and monitoring plan.	SFMTA as appropriate

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[1]
walking, bicycling, carpooling, and transit access to the project construction sites and to minimize parking in public rights-of-way by construction workers in the coordinated plan. Project Construction Updates for Adjacent Residents and Businesses – To minimize construction impacts on access for nearby residences, institutions, and businesses, the project sponsors should provide nearby residences and adjacent businesses with regularly-updated information regarding construction, including construction activities, peak construction vehicle activities (e.g., concrete pours), travel lane closures, and lane closures via a newsletter and/or website.					
Improvement Measure I-TR-B: Queue Abatement It should be the responsibility of the owner/operator of any off-street parking facility with more than 20 parking spaces (excluding loading and car-share spaces) to ensure that vehicle queues do not occur regularly on the public right-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of any public street, alley, or sidewalk for a consecutive period of 3 minutes or longer on a daily or weekly basis. If a recurring queue occurs, the owner/operator of the parking facility should employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the parking facility, the street(s) to which the facility connects, and the associated land uses (if applicable). Suggested abatement methods include but are not limited to the following: redesign of facility to improve vehicle circulation and/or on-site queue capacity; employment of parking attendants; installation of LOT FULL signs with active management by parking attendants; use of valet parking or other space-efficient parking techniques; use of off-site parking facilities or shared parking with nearby uses; use of parking occupancy sensors and signage	Project sponsors, owner/operator of any off-street parking facility, and transportation consultant.	On-going during operations of any off-street parking facilities.	The owner/operator of the parking facility should monitor vehicle queues in the public right-of-way, and would employ abatement measures as needed. If the Port Director, or his or her designee, suspects that a recurring queue is present, the Port should notify the property owner in writing. The owner/operator should hire a transportation consultant to	Monitoring of the public right-of-way would be on-going by the owner/operator of off-street parking operations.	Port, 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[1]
directing drivers to available spaces; TDM strategies such as bicycle parking, customer shuttles, delivery services; and/or parking management strategies such as parking time limits, paid parking, parking surcharge, or validated If the Port Director, or his or her designee, suspects that a recurring queue present, Port Staff should notify the property owner in writing. Upon the owner/operator should hire a qualified transportation consultant evaluate the conditions at the site for no less than 7 days. The should prepare a monitoring report to be submitted to the Port for review. the Port determines that a recurring queue does exist, the owner/operator should have 90 days from the date of the determination to abate the			prepare a monitoring report and if a recurring queue does exist, the owner/operator would abate the queue.		
Improvement Measure I-TR-C: Strategies to Enhance Transportation Conditions During Events. The project's Transportation Coordinator should participate as a member of the Mission Bay Ballpark Transportation Coordination Committee (MBBTCC) and provide at least 1-month notification to the MBBTCC where feasible prior to the start of any then known event that would overlap with an event at AT&T Park. The City and the project sponsors should meet to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Project sponsors, TMA, parks maintenance entity, parks programming entity, and/or Transportation Coordinator.	Prior to the start of any known event that would overlap with an event at AT&T Park.	Project sponsors and Transportation Coordinator to meet with MBBTCC and City to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Include in MMRP Annual Report; On-going during project lifespan.	Port, Planning Department, SFMTA
Improvement Measure I-WS-3a: Wind Reduction for Public Open Spaces and Pedestrian and Bicycle Areas For each development phase, a qualified wind consultant should prepare a wind impact and mitigation analysis regarding the proposed design of public open spaces and the surrounding proposed buildings. Feasible means should be considered to improve wind comfort conditions for each public open space, particularly for any public seating areas. These feasible means include horizontal and vertical, partially-porous wind screens (including canopies,	Project sponsors and qualified wind consultant.	During the design of public open spaces and pedestrian and bicycle areas for each development phase.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by the Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for public open spaces and pedestrian and	Port or 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[1]
trellises, umbrellas, and walls), street furniture, landscaping, and trees. Specifics for particular public open spaces are set forth in Improvement Measures I-WS-3b to I-WS-3f. Any proposed wind-related improvement measure should be consistent with the design standards and guidelines outlined in the *Pier 70 SUD Design for Development*.				bicycle areas by the Port Staff.	
Improvement Measure I-WS-3b: Wind Reduction for Waterfront Promenade and Waterfront Terrace The Waterfront Promenade and Waterfront Terrace would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing vertical elements, such as wind screens and landscaping. Where necessary and appropriate, wind screens should be strategically placed directly around seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Waterfront Promenade and Waterfront Terrace.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Waterfront Promenade and Waterfront Terrace by Port Staff	Port
Improvement Measure I-WS-3c: Wind Reduction for Slipways Commons The central and western portions of Slipways Commons would be subject to winds exceeding the pedestrian wind comfort criteria. Street trees should be considered along Maryland Street, particularly on the east side of Maryland Street between Buildings E1 and E2. Vertical elements such as wind screens would help for areas where street trees are not feasible. Where necessary and appropriate, wind screens should be strategically placed to the west of any seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of	Project sponsors and qualified wind consultant.	During the design of the Slipway Commons.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Slipway Commons by Port Staff.	Port

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[1]
any wind screen or landscaping shall be compatible with the Historic District.					
Improvement Measure I-WS-3d: Wind Reduction for Building 12 Market Plaza and Market Square Building 12 Market Plaza and Market Square would be subject to winds exceeding the pedestrian wind comfort criteria. For reducing wind speeds in the public courtyard between Buildings 2 and 12, the inner south and west façades of Building D-1 could be stepped by at least 12 feet to direct downwashing winds above pedestrian level. Alternatively, overhead protection should be used, such as a 12-foot-deep canopy along the inside south and west façades of Building D-1, or localized trellises or umbrellas over seating areas. For reducing wind speeds on the eastern and southern sides of Building 12, street trees should be considered, along Maryland and 22nd streets. Smaller underplantings should be combined with street trees to reduce winds at pedestrian level. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Building 12 Market Plaza and Market Square.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Building 12 Market Plaza and Market Square by Port Staff.	Port

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[1]
Improvement Measure I-WS-3e: Wind Reduction for Irish Hill Playground The Irish Hill Playground would be subject to winds exceeding the pedestrian wind comfort criteria. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Irish Hill Playground.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Irish Hill Playground by Port Staff.	Port
Improvement Measure I-WS-3f: Wind Reduction for 20th Street Plaza The 20th Street Plaza would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing hardscape elements, such as wind screens, canopies, and umbrellas. Where necessary and appropriate, wind screens should be strategically placed to the northwest of any seating area. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. If there would be seating areas directly adjacent to the north façade of the PKN Building, localized canopies or umbrellas should be used. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the 20th Street Plaza.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the 20th Street Plaza by Port Staff.	Port

DDA EXHIBIT A7
Other City Requirements

The Municipal Code (available at www.sfgov.org) and City and Port policies described in this Exhibit are incorporated by reference as though fully set forth in the DDA (collectively, the "**Other City Requirements**"). Developer is charged with full knowledge of and compliance with each applicable requirement, whether or not summarized below. All statutory references in this Exhibit are to the Municipal Code as in effect on the Reference Date unless specified otherwise. Initially capitalized or highlighted terms used in this Exhibit and not defined in the Appendix have the meanings ascribed to them in the cited ordinance.

The application to the 28-Acre Site Project of the specified provisions of the Other City Requirements is subject to **DA § 5.3** (Changes to Existing City Laws and Standards) and waivers under Sections 6, 7, 8 and 9 of Ordinance No. 224-17, which is attached to and incorporated into the Other City Requirements (collectively, the "**DA Waivers**").

The descriptions below are not comprehensive but are provided for notice purposes only. Developer understands that its failure to comply with any applicable provision of the Other City Requirements will give rise to the specific remedies under the applicable Other City Requirements and in certain cases give rise to a default under the DDA, which could result in a default under the DA as well. References to Developer in the Other City Requirements will apply to DDA Parties and their successors under the DDA and DA Successors under the DA.

Municipal Codes and Policies Summarized

1. Nondiscrimination in Contracts and Property Contracts
2. Health Care Accountability Ordinance
3. Prevailing Wages and Working Conditions in Construction Contracts
4. Other Prevailing Wage Rate Requirements
5. First Source Hiring Program
6. Criminal History In Hiring And Employment Decisions
7. Employee Signature Authorization Ordinance
8. Tobacco Products and Alcoholic Beverages
9. Integrated Pest Management Program
10. Resource-Efficient Facilities and Green Building Requirements
11. Tropical Hardwood and Virgin Redwood Ban
12. Diesel Fuel Measures
13. Arsenic-Treated Wood
14. Food Service and Packaging Waste Reduction Ordinance
15. Bottled Drinking Water
16. Graffiti Removal and Abatement
17. Drug-Free Workplace
18. Nutritional Standards and Guidelines
19. All-Gender Toilet Facilities
20. Indoor Air Quality
21. Conflicts of Interest
22. Sunshine
23. Contribution Limits-Contractors Doing Business with the City
24. Implementing the MacBride Principles – Northern Ireland

Contracting, Hiring, and Construction

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

(a) Covered Contracts. All provisions in this Section regarding the Nondiscrimination in Contracts and Property Contracts ordinance apply to "subcontracts to contracts" and "property contracts" as defined in Administrative Code sections 12B.2 and 12C.2.

(b) Covenant Not to Discriminate. In its development of the FC Project Area, 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 (Cal. Gov. 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.

(c) Requirement to Include. Developer must: (i) include a nondiscrimination clause in substantially the form of **Subsection (a)** (Covenant Not to Discriminate); and (ii) incorporate by reference Administrative Code sections 12B.2(a), 12B.2(c)-(k), and 12C.3(a) in all applicable contracts, subcontracts, and subleases and require all contractors, subcontractors, and subtenants to comply with those provisions.

(d) Nondiscrimination in Benefits. Developer agrees not to discriminate between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of employees, where the domestic partnership has been registered with any governmental entity under state or local law authorizing registration, subject to the conditions set forth in Administrative Code section 12B.2. Developer's agreement relates to bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits (collectively "**Core Benefits**"), as well as other employee benefits described in section 12B.1(b), during the term of each applicable contract, subcontract, and sublease.

(e) Form. On or before the Reference Date, Developer must complete, execute, deliver to, and obtain approval of its completed *Nondiscrimination in Contracts and Benefits* form CMD-12B-101 from CMD. The form is available on CMD's website.

(f) Penalties. Developer understands that under Administrative Code section 12B.2(h), the City may assess against Developer or deduct from any payments due Developer a penalty of $50 for each person for each calendar day during which Developer or its subcontractor, property contractor, or other contractor discriminated against a protected person in violation of this Section. Violation of this Section, if not cured after notice and opportunity to

cure, also will be an Event of Default under the DDA and the DA and a material breach of any applicable contract, subcontract, or sublease.

2. Health Care Accountability Ordinance.
(Admin. Code ch. 12Q)

(a) Developer agrees to comply fully with and be bound by the Health Care Accountability Ordinance ("**HCAO**"), as set forth in Administrative Code chapter 12Q, unless exempt.

(b) Covered Employees. For each Covered Employee, Developer must provide the appropriate health benefit set forth in HCAO section 12Q.3, unless it is exempt as a small business under HCAO section 12Q.3(e).

(c) Notice and Opportunity to Cure. If Developer fails to cure a violation of the HCAO after receiving notice of a violation and an opportunity to cure the violation, the City will have the remedies set forth in HCAO section 12Q.5(f), subject to the DA Waivers, which the City may exercise individually or in combination with any of its other rights and remedies.

(d) Covered Contracts. Any Contract, Subcontract, or Sublease, as defined in Chapter 12Q, that Developer enters into for public works, public improvements, or for services must require the Contractor, Subtenant, or Subcontractor, as applicable, to comply with the applicable provisions of the HCAO and must contain contractual obligations substantially the same as those set forth in the HCAO. Developer agrees to notify the Contracting Department promptly of any Subcontractors performing services covered by Chapter 12Q and certify to the Contracting Department that Developer has notified the Subcontractors of their HCAO obligations under this Chapter.

(e) Noncompliance. Developer will be responsible for monitoring compliance with the HCAO by each Subcontractor, Subtenant, and Contractor performing services on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its Subcontractors, Subtenants, or Contractors. The City's remedies for Developer's noncompliance with the HCAO are subject to the DA Waivers.

(f) Retaliation Prohibited. Developer must not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City of any issue regarding noncompliance or anticipated noncompliance with the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Representation and Warranty. Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Reporting. Upon request, Developer must provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO.

(i) Records. After receiving a written request from the City to inspect pertinent payroll records and after at least 10 days to respond have elapsed, Developer agrees to provide the City with access to pertinent payroll records relating to the number of employees employed and terms of medical coverage. In addition, the City and its Agents, in consultation with the Department of Public Health, may conduct audits of Contracting Parties, although such audits

shall be conducted through an examination of records at a mutually agreed upon time and location within 10 days after written notice. Developer agrees to cooperate with the City in connection with these audits.

(j) Threshold. If a Subcontractor, Subtenant, or Contractor is exempt from the HCAO because the amount payable to the Subcontractor, Subtenant, or Contractor under all of its contracts with the City or relating to City-owned property is less than $25,000 (or $50,000 for nonprofits) in that City Fiscal Year, but the Subcontractor, Subtenant, or Contractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to the Subcontractor, Subtenant, or Contractor to equal or exceed $75,000 in that City Fiscal Year, then all of the Contractor's, Subtenant's, or Subcontractor's contracts with the City and relating to City-owned property will become subject to the HCAO from the date on which the later agreement is executed.

3. 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 FC Project Area 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 must comply with the prevailing wage requirements in *WDP § II.C.6 (Prevailing Wages)* that apply to construction work on all Prevailing Wage Covered Projects by Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) (as defined in the WDP).

(c) Penalties. The Port has designated OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in accordance with the WDP, subject to the DA Waivers.

4. Other Prevailing Wage Rate Requirements.
(Admin. Code ch. 21C)

(a) Under Administrative Code ch. 21C, individuals employed in certain activities at the FC Project Area are entitled to be paid not less than either the highest general prevailing rate of wages (including fringe benefits or their matching equivalents) paid in private employment for similar work in the area in which the contract is being performed, as determined by the Civil Service Commission or the "**Prevailing Rate of Wages**" (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the activities meet any of the specified exemptions. Covered activities are:

(i) motor bus services provided to the general public (§ 21C.1);

(ii) "**Janitorial Services**" (§ 21C.2);

(iii) operation of a "**Public Off-Street Parking Lot, Garage, or Automobile Storage Facility**" (§ 21C.3);

(iv) theatrical or technical services related to the presentation of a show, including workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services (§ 21C.4);

(v) operation of a "**Special Event**" (§ 21C.8);

(vi) "**Broadcast Services**" (§ 21C.9); and

(vii) driving a "**Commercial Vehicle**" or loading or unloading materials, goods, or products into or from a Commercial Vehicle in connection with the presentation of a "**Show**" or for a Special Event (§ 21C.10).

(b) Agreement. Developer agrees to comply with the obligations in Administrative Code chapter 21C and to require its tenants, contractors, and any subcontractors to comply with the obligations in chapter 21C. In addition, if Developer or its tenant, contractor, or any subcontractor fails to comply with these obligations, the City will have all available remedies against Developer to secure compliance and seek redress for workers who provided the services.

(c) OLSE. For current Prevailing Wage rates, see the OLSE website or call the OLSE at 415-554-6235.

5. First Source Hiring Program.
(Admin. Code ch. 83)

Developer's obligations to comply with the First Source Hiring Program are set forth in *WDP §§ II.C.3 (First Source Hiring Program for Construction Work)* and *II.D2 (First Source Hiring Program for Operations)*.

6. Criminal History In Hiring And Employment Decisions.
(Admin. Code ch. 12T)

(a) Agreement to Comply. Administrative Code Chapter 12T ("**Chapter 12T**") will only apply to a Contractor's, Subcontractor's, or subtenant's operations to the extent those operations are in furtherance of performing a Contract or Property Contract with the City subject to Chapter 12T. If applicable, Developer will comply with and be bound by Chapter 12T, including the remedies and implementing regulations, with respect to applicants to and employees of Developer who would be or are performing work at the FC Project Area under the DDA.

(b) Breach. Developer must incorporate Chapter 12T by reference in all contracts related to be performed in furtherance of a Contract or Property Contract with the City, as defined in Administrative Code section 12T.1. Developer will be responsible for monitoring compliance by its Subcontractors, Contractors, and subtenants, but the City agrees that Developer will not be liable for their noncompliance.

(c) Prohibited Activities. Developer and its Subcontractors, Contractors, and subtenants must not inquire about, require disclosure of, or if the information is received, base an Adverse Action on an applicant's or potential applicant's or employee's: (i) Arrest not leading to a Conviction, except under circumstances identified in Chapter 12T as an Unresolved Arrest; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise

rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system; (v) a Conviction that is more than seven years old, based on the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction, except that a Contractor, Subcontractor, or subtenant may inquire about, require disclosure of, base an Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or employee's driving record if driving is more than a de minimis element of the employment in question.

(d) Employment Applications. Developer and its Subcontractors, Contractors, and subtenants must not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any Conviction History or unresolved arrest until either after the first live interview with the person, or after a conditional offer of employment in accordance with section 12T.4(c).

(e) Disclosure. Developer and its Subcontractors, Contractors, and subtenants must state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Developer or its Subcontractors, Contractors, and subtenants at the FC Project Area that the DDA and all Contracts and Property Contracts will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Posting. Developer and its Subcontractors, Contractors, and subtenants must post the notice prepared by the OLSE, available on OLSE's website, in a conspicuous place at the FC Project Area and at other workplaces, job sites, or other locations under the Subcontractor's, Contractor's, or subtenant's control at which work is being done or will be done in furtherance of performing a Contract or Property Contract under the DDA with the City. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the FC Project Area or other workplace at which it is posted.

(g) Penalties. Developer and its Subcontractors, Contractors, and subtenants understand and agree that upon any failure to comply with Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T, subject to **Subsection (b)** (Breach) and the DA Waivers, including a penalty of $50 for each employee, applicant or other person as to whom the violation occurred or continued, and thereafter, for subsequent violations, the penalty may increase to no more than $100, for each employee or applicant whose rights were, or continue to be, violated.

(h) Inquiries: If Developer has any questions about the applicability of Chapter 12T, it may contact the Port for additional information. The Port will consult with the Director of the City's Office of Contract Administration, who has authority to grant a waiver under the circumstances set forth in section 12T.8 of Chapter 12T.

7. Employee Signature Authorization Ordinance.
(S.F. Admin Code §§ 23.50-23.56)

The City has adopted an Employee Signature Authorization Ordinance, which requires employers of employees in hotel or restaurant projects on public property with 50 or more full-time or part-time employees to enter into a "card check" agreement with a labor union regarding

the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Developer agrees to comply with the requirements of the ordinance, if applicable, including any requirements applicable to its successors, as specified in Administrative Code section 23.54.

Use Of City Property

8. Tobacco Products and Alcoholic Beverages.
(Admin. Code § 4.20; Health Code art. 19K)

(a) Definitions. For purposes of this Section: (i) "**alcoholic beverage**" is defined in California Business and Professions Code section 23004 and excludes cleaning solutions, medical supplies, and other products and substances not intended for drinking; and (ii) "**tobacco product**" is defined in Health Code section 1010(b).

(b) Advertising Ban. New general advertising signs that are visible to the public are prohibited on the exterior of any City-owned building under Administrative Code section 4.20-1.

(c) Tobacco Sales Ban. No person may sell tobacco products on property owned by or under the control of the City under Health Code article 19K.

(d) Alcoholic Beverage Advertising. Port property used for operation of a restaurant, concert or sports venue, or other facility or event where the sale, production, or consumption of alcoholic beverages is permitted, will be exempt from the alcoholic beverage advertising prohibition in Administrative Code section 4.20(a)-(c).

9. Integrated Pest Management Program.
(Env. Code ch. 3)

(a) IPM Plan. Chapter 3 of the Environment Code (the "**IPM Ordinance**") describes an integrated pest management policy ("**IPM Policy**") to be implemented by all City departments. Except for the permitted uses of pesticides provided in IPM Ordinance section Developer must not use or apply during the DDA term, and must not contract with any party provide pest abatement or control services to the FC Project Area, except in compliance with Port's integrated pest management plan ("**IPM**

(b) Application. Although not a City Department, Developer agrees to comply, must require all of Developer's contractors to comply, with the Port's approved IPM Plan IPM Ordinance sections 300(d), 302, 304, 305(f), 305(g), and 306, as if Developer were a department. Among other matters, the IPM Ordinance: (i) provides for the use of pesticides as a last resort; (ii) prohibits the use or application of pesticides on City-owned property for pesticides granted exemptions under IPM Ordinance section 303 (including included on the most current Reduced Risk Pesticide List compiled by the Department of the Environment); (iii) imposes certain notice requirements; and (iv) requires Developer to keep certain records and to report to the City all pesticide use by Developer's staff or contractors.

(c) Prior Review. Before Developer or Developer's contractor applies pesticides to outdoor areas, Developer must obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application must be made only by or under the supervision of

a person holding a valid Qualified Applicator certificate or Qualified Applicator license under California law. The City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the Department of the Environment website, http://sfenvironment.org/ipm.

10. Resource-Efficient Facilities and Green Building Requirements.
(Env. Code ch. 7)

Developer agrees to comply with all applicable provisions of the Environment Code relating to resource-efficiency and green building design requirements.

11. 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 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.

12. Diesel Fuel Measures.
(Env. Code ch. 9)

Consistent with the City's Greenhouse Gas Emissions Reduction Plan (Env. Code § 903) to reduce greenhouse gas emissions in the City, Developer must minimize exhaust emissions from operating equipment and trucks during construction. Developer's compliance with MMRP Mitigation Measure M-AQ-1a will satisfy this requirement.

13. Arsenic-Treated Wood.
(Env. Code ch. 13)

Developer must not purchase preservative-treated wood products containing arsenic on behalf of the City in the performance of the DDA without obtaining an exemption under Environment Code section 1304 from the Department of Environment. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. In this Section: (a) "**preservative-treated wood containing arsenic**" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative; and (b) "**saltwater immersion**" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

14. Food Service and Packaging Waste Reduction Ordinance.
(Env. Code ch. 16)

Developer agrees to comply fully with and be bound by section 1604(d) of the Food Service and Packaging Waste Reduction Ordinance (Env. Code ch. 16), including the remedies provided in section 1607 and implementing guidelines and rules. By entering into the DDA and the Development Agreement, Developer agrees that if it breaches this provision, and fails to cure within the cure periods provided herein, the City will suffer actual damages that will be impractical or extremely difficult to determine and that the following amounts of liquidated damage are reasonable estimates of the damage that the City will incur based on any violation, established in light of the circumstances existing on the Reference Date: (a) $100 for the first breach; (b) $200 for the second breach in the same year; and (c) $500 for subsequent breaches in the same year. These liquidated damages will not be considered penalties, but agreed monetary damages sustained by the City because of Developer's noncompliance.

15. Bottled Drinking Water.
(Env. Code ch. 24; Port Reso. No. 12-11)

Developer is subject to all applicable provisions of Environment Code chapter 24 prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of 21 fluid ounces or less at Events held on City Property with attendance of more than 100 people during the DDA Term. Also, Developer must comply with the Port's *Zero Waste Policy for Events and Activities* (Port Reso. No. 12-11) for applicable Events at the FC Project Area during the DDA Term.

16. Graffiti Removal and Abatement.
(Pub. Works Code Sec. 23)

(a) Requirement. Developer agrees to remove all graffiti from the FC Project Area, including from the exterior of any structures within the FC Project Area, consistent with the notice and cure provisions of Public Works Code section 23. If the Director of Public Works determines that any property contains graffiti in violation of section 2303, the Director may issue a notice of violation to Developer and any Offending Party. At the time the notice of violation is issued, the Director will take one or more photographs of the alleged graffiti and make copies of the photographs available to Developer and any Offending Party upon request. The photographs will be dated and retained as a part of the file for the violation. The notice will give Developer and any Offending Party 30 days after the date of the notice to either remove the graffiti or request a hearing on the notice of violation and set forth the procedure for requesting the hearing. This Section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property.

(b) Application. In this Section, "**graffiti**" means any inscription, word, figure, marking, or design that is affixed, marked, etched, scratched, drawn, or painted on any building, structure, fixture, or other improvement, whether permanent or temporary, including signs, banners, billboards, and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (i) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the DDA or the Port

Building Code; (ii) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*); (iii) any painting or marking that a City department makes in the course of its official duties or as part of a public education campaign; or (iv) any painting or marking required for compliance with any local, state, or federal law.

17. Drug-Free Workplace.
(41 U.S.C. ch. 81; Police Code art. 40)

To the extent applied by a federal grant or contract for the Project, the Drug-Free Workplace Act of 1988 (41 U.S.C. ch. 81) will apply to Developer. Developer agrees to adopt a Drug-Free Workplace Policy and comply with all other applicable requirements of the drug-free workplace laws under Police Code article 40.

18. Nutritional Standards and Guidelines.
(Admin. Code § 4.9-1)

(a) Definitions. For the purpose of this Section: (i) **"meal"** means **"prepared food"** as defined in Environment Code section 1602(l), which means food or beverages prepared within San Francisco for individual customers or consumers in a form commonly understood to be a breakfast, lunch, or dinner; (ii) **"Nutritional Standards Requirements"** means the food and beverage nutritional standards and caloric labeling requirements set forth in Administrative Code section 4.9-1(c); (iii) **"restaurant"** is defined in Health Code section 451(s) and includes any coffee shop, cocktail lounge, sandwich stand, public school cafeteria, in-plant or employee eating establishment, and any other eating establishment that gives or offers for sale food that requires no further preparation to the public, guests, patrons, or employees for consumption on or off the premises; (iv) **"vending machine"** is defined in Administrative Code section 4.2(a) and means an automated machine dispensing products or services, including food, beverages, tobacco products, newspapers, and periodicals.

(b) Vending Machines. Any permitted vending machine must comply with the Nutritional Standards Requirements in section 4.9-1(c). Developer must incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the FC Project Area or for the supply of food and beverages to that vending machine.

(c) Restaurants. Any restaurant on City property is encouraged to ensure that at least 25% of meals offered on the menu meet the Nutritional Standards Requirements set forth in Administrative Code section 4.9-1(e).

(d) Penalties. Developer's failure to comply with the Nutritional Standards Requirements in section 4.9-1(c) will be considered an Event of Default under the DDA and in addition to its other remedies, which will be subject to the DA Waivers, the City may require the removal of any vending machine on the FC Project Area that is not permitted or that violates the Nutritional Standards Requirements. Developer will be responsible for monitoring compliance with the Nutritional Standards Requirements by each subcontractor, subtenant, and contractor performing services or occupying premises on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its subcontractors, subtenants, or contractors.

19. All-Gender Toilet Facilities.
(Admin. Code § 4.1-3)

Developer must include at least one all-gender toilet facility on each floor of any new building on City-owned land or that is constructed by or for the City where toilet facilities are required or provided. Unless not allowed by an existing lease, whenever extensive renovations are made on one or more floors in any building on land that the City owns or in a building that is leased to or by the City, Developer will provide at least one all-gender toilet facility on each floor where the renovations take place and toilet facilities are required or provided. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures. "Extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the required toilet facilities.

20. Indoor Air Quality.
(Env. Code § 711(g))

Developer agrees to comply with section 711(g) of the Environment Code and regulations adopted under Environment Code section 703(b) relating to construction and maintenance protocols to address indoor air quality.

Use Of Port Property

21. Southern Waterfront Community Benefits and Beautification Policy.
(Port Reso. No. 07-77)

(a) Policy Goals. The Port's *Policy for Southern Waterfront Community Benefits and Beautification* identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Developer must provide community benefits and beautification measures in consideration for the use of the Project Site. Examples of desired benefits include: (i) beautification, greening, and maintenance of any outer edges of and entrances to the FC Project Area; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Developer's interaction with the Port, neighbors, visitors, and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the FC Project Area that are low-emission diesel equipment and use biodiesel or other reduced particulate emission fuels; (v) commitment to use low-impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the FC Project Area of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified as LBEs under Administrative Code chapter 14B; and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Developer's performance of the Project Requirements under the DDA will satisfy the requirements under this policy. Developer agrees to provide the Port with documents and records regarding these activities at the Port's request.

(b) Agreement to Use Local Truckers. Except to the extent inconsistent with any pertinent collective bargaining agreement, Developer agrees that, for all directly contracted or

service agreement trucking opportunities associated with Developer's operations at the FC Project Area, including hauling materials on, off, and within the Project Site, Developer will make good faith efforts to use Local Truckers first. For purposes of this Section, "**truckers**" means a business that provides trucking services for a profit, and "**Local Truckers**" means truckers that CMD has certified as LBEs.

To the extent that Developer in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Developer must use Local Truckers for a minimum of 60% of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the 60% requirement; equipment rental and disposal fees will not be counted. Developer will not be in default of this provision for not meeting the 60% minimum if Developer offered trucking opportunities to Local Truckers, but the Local Truckers were unavailable or unwilling to perform the work.

During all periods of construction activities at the Project Site, Developer must submit a monthly report to the Port and CMD stating the total cost to Developer of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers. The monthly report must document all truckers who conducted contract or service agreement work for Developer, and identify truckers that are Local Truckers. If Developer fails to meet the 60% minimum in any month, the report must document Developer's good faith outreach efforts to contact Local Truckers and the reasons that the work could not be conducted by Local Truckers. At the Port's or CMD's request, Developer must provide additional documentation required to ensure Developer's compliance with this provision. Developer's failure to comply with this Section will be a Material Breach under the DDA.

Other Public Policies

22. Conflicts of Interest.
(Calif. Gov. Code §§ 87100 *et seq.* & §§ 1090 *et seq.*; Charter § 15.103; Campaign and Govt'l Conduct Code art. III, ch. 2)

Through its execution of the DDA, 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 Port if Developer becomes aware of any such fact during the DDA Term.

23. Sunshine.
(Calif. Gov. Code §§ 6250 *et seq.*; Admin. Code ch. 67)

Developer understands and agrees that under the California Public Records Act (Calif. Gov. 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.

24. 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 the DDA, 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 board of directors; (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.

25. Implementing the MacBride Principles – Northern Ireland.
(Admin. Code ch. 12F)

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

AMENDED IN COMMITTEE
10/26/17

FILE NO. 170863 ORDINANCE NO. 224-17

[Development Agreement - FC Pier 70, LLC - Pier 70 Development Project]

Ordinance approving a Development Agreement between the City and County of San Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east; waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b).

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font.*
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background and Findings.

(a) California Government Code Sections 65864 et seq. ("Development Agreement Law") authorize any city, county, or city and county to enter into an agreement for the development of real property within its jurisdiction.

(b) Chapter 56 of the Administrative Code sets forth certain procedures for processing and approving development agreements in the City and County of San Francisco (the "City").

(c) In April 2011, the Port Commission (the "Port") selected Forest City Development California, Inc., a California corporation, through a competitive process to

negotiate exclusively for the mixed-use development (the "Project") of approximately 28 acres (the "28-Acre Site") of Seawall Lot 349, a land parcel under Port jurisdiction that is bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east commonly known as Pier 70. Forest City Development California, Inc. is now wholly owned by Forest City Realty Trust, Inc., a New York Stock Exchange-listed real estate company. FC Pier 70, LLC ("Developer"), a wholly-owned ~~an~~ affiliate of Forest City Realty Trust, Inc., ~~Development California, Inc.,~~ will act as the master developer for the Project. ~~("Developer").~~

(d) In conjunction with this ordinance, the Board of Supervisors has taken or intends to take a number of other actions in furtherance of the Project, including approval of: (1) a trust exchange agreement between the Port and the California State Lands Commission; (2) a disposition and development agreement ("DDA") between Developer and the Port; (3) amendments to the General Plan; (4) amendments to the Planning Code that create the Pier 70 Special Use District (the "SUD amendments") over the 28-Acre Site and two adjacent parcels known as the "Illinois Street Parcels" and incorporate more detailed land use controls of the Pier 70 SUD Design for Development; (5) amendments to the Zoning Maps; (6) approval of a development plan for the 28-Acre Site in accordance with Charter Section B7.310 (adopted as part of Proposition D, November 2008) and Section 4 of the Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative (Proposition F, November 2014); (7) a memorandum of understanding for interagency cooperation among the Port, the City, and other City agencies (the "ICA") with respect to the subdivision of the 28-Acre Site and construction of infrastructure and other public facilities; (8) formation proceedings for financing districts and a memorandum of understanding between the Port and the Assessor, the Treasurer-Tax Collector, and the Controller regarding the assessment, collection, and allocation of ad valorem and special taxes to the financing

districts; and (9) a number of related transaction documents and entitlements to govern the Project.

(e) At full build-out, the Project will include: (1) 1,100 to 2,150 new residential units, at least 30% of which, in the Affordable Housing Area that includes the 28-Acre Site and a portion of the 20th/Illinois Parcel, will be on-site housing affordable to a range of low- to moderate-income households as described in the Affordable Housing Plan in the DDA; (2) between 1 million and 2 million gross square feet of new commercial and office space; (3) rehabilitation of three significant contributing resources to the historic district; (4) space for small-scale manufacturing, retail, and neighborhood services; (5) transportation demand management on-site, a shuttle service, and payment of impact fees to the Municipal Transportation Agency that it will use to improve transportation connections through the neighborhood; (6) 9 acres of new open space, potentially including active recreation on rooftops, a playground, a market square, a central commons, and waterfront parks along the shoreline; (7) on-site strategies to protect against sea level rise; and (8) replacement studio space for artists leasing space in Building 11 in Pier 70 and a new arts space.

(f) While the DDA binds the Port and Developer, other City agencies retain a role in reviewing and issuing certain later approvals for the Project. Later approvals include approval of subdivision maps and plans for horizontal improvements and public facilities, design review and approval of new buildings under the SUD amendments, and acceptance of Developer's dedications of horizontal improvements and public facilities for maintenance and liability under the Subdivision Code. Accordingly, the City and Developer negotiated a development agreement for the Project (the "Development Agreement"), a copy of which is in Board File No. 170863 and incorporated in this ordinance by reference. The DDA, the Development Agreement, the ICA, the Tax MOU, and all leases and vertical disposition development

agreements that the Port enters into in accordance with the DDA are referred to collectively as the "Transaction Documents."

(g) Development of the 28-Acre Site in accordance with the DDA and the Development Agreement will help realize and further the City's goals to restore and revitalize the Union Iron Works Historic District, increase public access to the waterfront, increase public open space and community facilities within the neighborhood, increase affordable and market-rate housing, and create a significant number of construction and permanent jobs along the southeastern waterfront. In addition, the Project will provide additional benefits to the public that could not be obtained through application of existing City ordinances, regulations, and policies.

Section 2. Environmental Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (Cal. Public Resources Code §§ 21000 et seq.) ("CEQA"). A copy of this determination is in Board File No. 170863 and incorporated in this ordinance by reference.

(b) The Board of Supervisors previously adopted Resolution No. 402-17, a copy of which is in Board File No. 170987, making CEQA findings for the Project. The Board of Supervisors adopts and incorporates in this ordinance by reference the Planning Commission's findings under CEQA.

Section 3. Consistency Findings.

The Planning Commission recommended that the Board of Supervisors approve the Development Agreement and amendments to the General Plan, the Planning Code, and the Zoning Maps at a public hearing on August 24, 2017, by Resolution Nos. 19978 and 19979, a copycopies of which isare in Board File No. 170863. The Board of Supervisors adopts and incorporates by reference in this ordinance the Planning Commission's findings of consistency

with the General Plan, as amended, and the eight priority policies of Planning Code Section 101.1.

Section 4. Public Trust Findings.

At a public hearing on September ~~12~~26, 2017, the Port Commission consented to the Development Agreement and approved the trust exchange agreement and the DDA, subject to Board of Supervisors' approval, finding that the Project would be consistent with and further the purposes of the common law public trust and statutory trust under the Burton Act (Stats. 1968, ch. 1333) by Resolution Nos. 17-44 and 17-47, ~~a copy~~ copies of which ~~is~~are in Board File No. 170863. The Board of Supervisors adopts and incorporates in this ordinance by reference the Port Commission's public trust findings.

Section 5. Approval of Development Agreement.

The Board of Supervisors:

(a) approves all of the terms and conditions of the Development Agreement in substantially the form in Board File No. 170863;

(b) finds that the Development Agreement substantially complies with the requirements of Administrative Code Chapter 56;

(c) finds that the Project is a large multi-phase and mixed-use development that satisfies Administrative Code Section 56.3(g); and

(d) approves the Workforce Development Plan attached to the DDA in lieu of requirements under Administrative Code Chapter 14B, Article VII of Chapter 23, ~~and~~Section 56.7(c), and Chapter 83 to the extent that Chapter 83 applies to construction work that is subject to the Local Hiring Requirements of the Workforce Development Plan.

Section 6. Administrative Code Chapter 56 Waivers.

The Board of Supervisors waives the application to the Project of the following provisions of Administrative Code Chapter 56 to the extent inconsistent with the Development Agreement, the DDA, or the ICA, specifically:

(a) Section 56.4 (Application, Forms, Initial Notice, Hearing); Section 56.7(c) (Nondiscrimination/Affirmative Action Requirements); Section 56.8 (Notice); Section 56.10 (Negotiation Report and Documents); Section 56.15 (Amendment and Termination); Section 56.17(a) (Annual Review); Section 56.18 (Modification or Termination); and Section 56.20 (Fee); and

(b) any other procedural or other requirements if and to the extent that they are not strictly followed.

Section 7. Other Administrative Code Waivers.

The Board of Supervisors waives the application to the Project of these provisions of the Administrative Code: (a) Chapter 6 (Public Works Contracting Policies and Procedures) other than the payment of prevailing wages as required in Chapter 6; (b) Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting); (c) Competitive Bidding Procedures ~~appraisal effective date, and Additional~~ Appraisal Review as defined in Section 23.3 (Chapter Definitions) and required by Section 23.3 (Conveyance and Acquisition of Real Property); (d) Section ~~23.26~~23.31 (Year-to-Year and Shorter Leases); (e) Section 23.30~~-23.42~~ (Lease of Real Property~~s When City is Landlord~~); (f) Sections 23.33 (Competitive Bidding Procedures); (~~f~~g) Section 23A.7 (Transfer of Jurisdiction Over Surplus Properties to the Mayor's Office of Housing~~and Community Development~~); ~~and~~ (~~g~~h) Subsection (c)(2) of Section 61.5~~(c)(2)~~ (Listing of Unacceptable Non-Maritime Land Uses); and (i) remedies and penalties for noncompliance with Section 4.9-1(c) (Nutritional Standards and Guidelines), Section 12Q.5(f) (Health Care Accountability), or

Section 12T (Criminal History in Hiring and Employment) that would result in termination of any Transaction Document, impairment of Developer's or any vertical developer's development rights at the 28-Acre Site, or debarment of Developer or any vertical developer from future contract opportunities with the City.

Section 8. Planning Code Waivers.

The Board of Supervisors:

(a) finds that the impact fees and exactions payable under the Development Agreement will provide greater benefits to the City than the impact fees and exactions under Planning Code Article 4 and waives the application of, and to the extent applicable exempts the Project from, impact fees and exactions under Planning Code Article 4 on the condition that Developer and all building developers comply with impact fees and exactions established in the Development Agreement; and

(b) finds that the Transportation Plan attached to the Development Agreement includes a Transportation Demand Management Plan ("TDM Plan") and other provisions that meet the goals of the City's Transportation Demand Management Program in Planning Code Section 169 and waives the application of Section 169 to the Project on the condition that Developer implements and complies with the TDM Plan for the required compliance period.

Section 9. Subdivision Code Waivers.

(a) The Board of Supervisors waives the application to the Project of time limits under Subdivision Code ~~Section 1333.3(b) (Rights Conveyed),~~ Section 1346(e) (Improvement Plans) and Section 1355 (Time Limit for Submittal) to the extent that they conflict with the ICA or the Development Agreement.

(b) The Board of Supervisors also waives the application to the Project of Subdivision Code Section 1348 (Failure To Complete Improvements Within Agreed Time),

and the following terms shall apply in lieu thereof: The Public Improvement Agreement, as defined in the ICA, shall include provisions consistent with the Transaction Documents and the applicable requirements of the Municipal Code and the Subdivision Regulations regarding extensions of time and remedies that apply when improvements are not completed within the agreed time.

Section 10. Authorization.

(a) The Board of Supervisors affirms that the waivers in this ordinance do not waive requirements under the Development Agreement Law and authorizes the City to execute, deliver, and perform the Development Agreement as follows:

(1) the Director of Planning, the City Administrator, and the Director of Public Works are authorized to execute and deliver the Development Agreement with signed consents of the Port Commission, the Municipal Transportation Agency, and the San Francisco Public Utilities Commission; and

(2) the Director of Planning and other appropriate City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with its terms.

(b) The Director of Planning is authorized to exercise discretion, in consultation with the City Attorney, to enter into any additions, amendments, or other modifications to the Development Agreement that the Director of Planning determines are in the best interests of the City and that do not materially increase the obligations or liabilities of the City or materially decrease the benefits to the City as provided in the Development Agreement. Final versions of any additions, amendments, or other modifications to the Development Agreement shall be provided to the Clerk of the Board of Supervisors for inclusion in Board File No. 170863 within 30 days after execution by all parties.

Section 11. Ratification of Past Actions; Authorization of Future Actions.

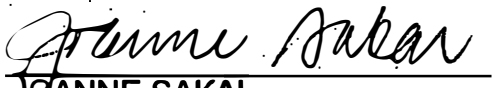
All actions taken by City officials in preparing and submitting the Development Agreement to the Board of Supervisors for review and consideration are hereby ratified and confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken by City officials consistent with this ordinance.

Section 12. Effective and Operative Dates.

(a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned, or the Mayor does not sign the ordinance within ten days after receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

(b) This ordinance shall become operative only on the effective date of the DDA. No rights or duties are created under the Development Agreement until the operative date of this ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
JOANNE SAKAI
Deputy City Attorney

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City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 170863 **Date Passed:** November 14, 2017

Ordinance approving a Development Agreement between the City and County of San Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east; waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b).

October 19, 2017 Budget and Finance Committee - CONTINUED

October 26, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 26, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

October 31, 2017 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

November 14, 2017 Board of Supervisors - FINALLY PASSED

Ayes: 9 - Breed, Cohen, Farrell, Fewer, Peskin, Ronen, Safai, Sheehy and Yee

Absent: 2 - Kim and Tang

File No. 170863

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 11/14/2017 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

11/15/17
Date Approved

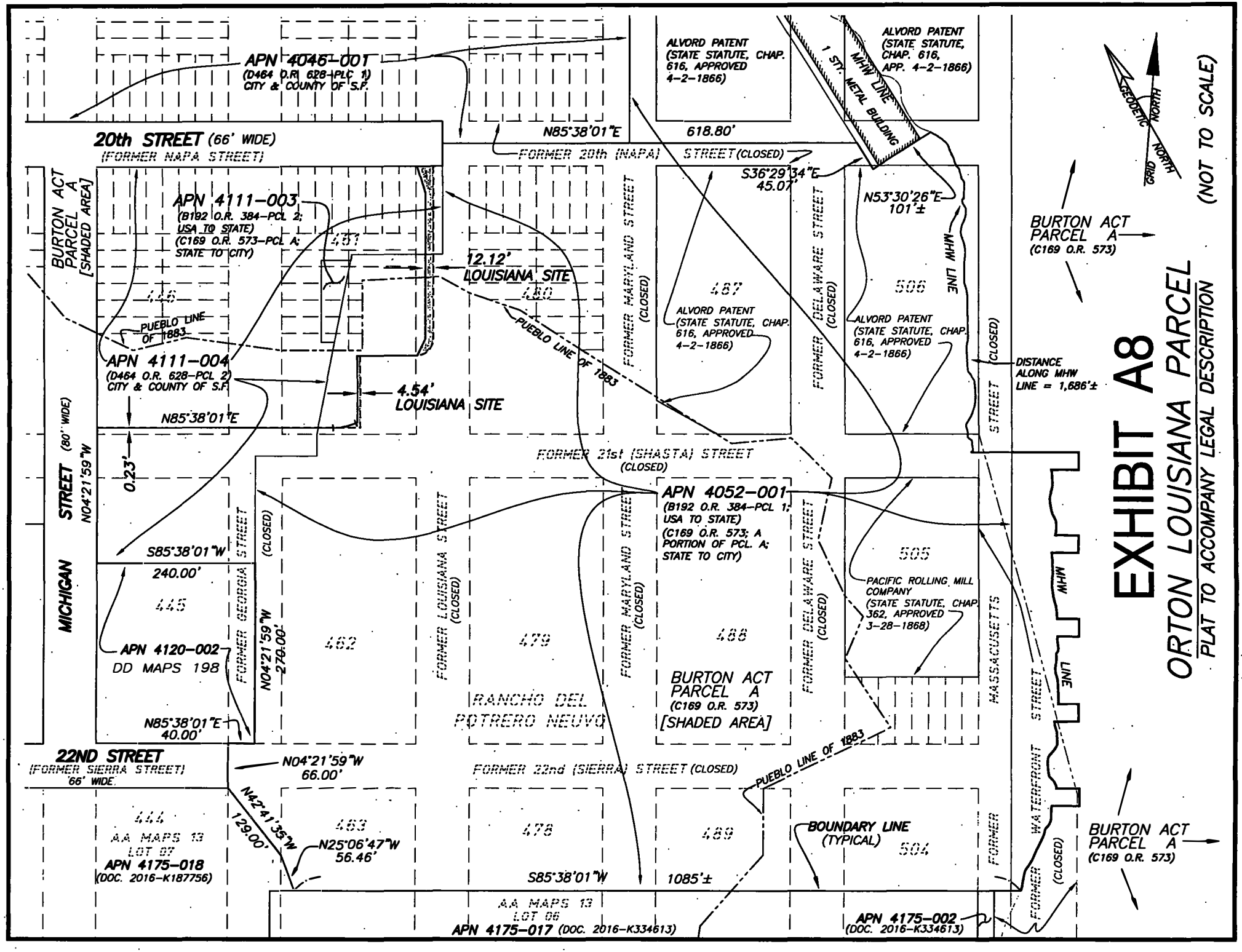
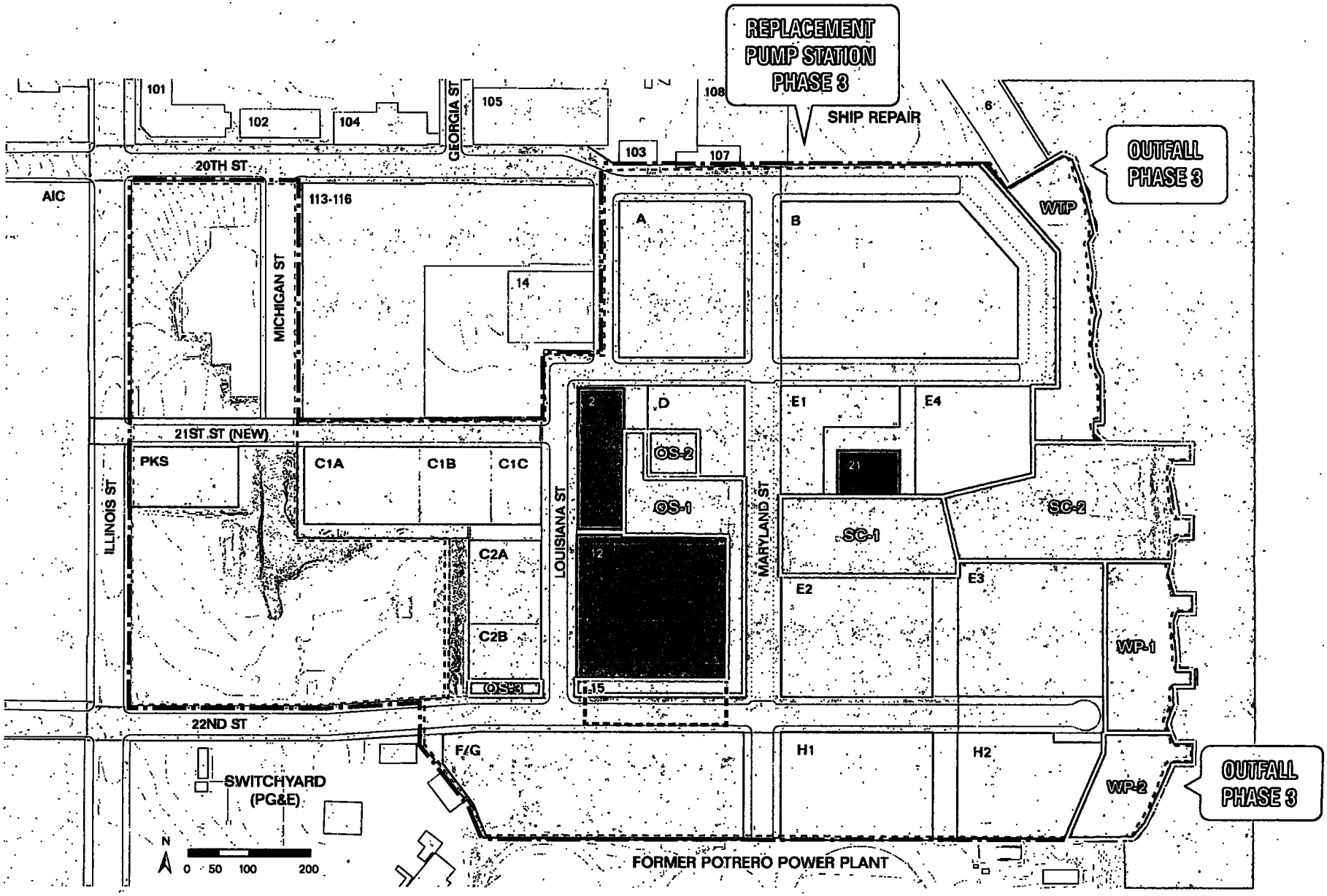


EXHIBIT A8
ORTON LOUISIANA PARCEL
PLAT TO ACCOMPANY LEGAL DESCRIPTION
(NOT TO SCALE)
APN 4046-001
(D464 O.R. 628-PLC 1)
CITY & COUNTY OF S.F.
20th STREET (66' WIDE)
(FORMER NAPA STREET)
N85°38'01"E
618.80'
FORMER 20th (NAPA) STREET (CLOSED)
ALVORD PATENT
(STATE STATUTE, CHAP. 616, APPROVED 4-2-1866)
1 STY. METAL BUILDING
MHW LINE
ALVORD PATENT
(STATE STATUTE, CHAP. 616, APP. 4-2-1866)
GEODETIC NORTH
GRID NORTH
S36°29'34"E
45.07'
N53°30'26"E
101'±
BURTON ACT PARCEL A
[SHADED AREA]
APN 4111-003
(B192 O.R. 384-PCL 2; USA TO STATE)
(C169 O.R. 573-PCL A; STATE TO CITY)
12.12'
LOUISIANA SITE
PUEBLO LINE OF 1883
APN 4111-004
(D464 O.R. 628-PCL 2)
CITY & COUNTY OF S.F.
4.54'
LOUISIANA SITE
N85°38'01"E
0.23'
FORMER MARYLAND STREET (CLOSED)
FORMER DELAWARE STREET (CLOSED)
ALVORD PATENT
(STATE STATUTE, CHAP. 616, APPROVED 4-2-1866)
ALVORD PATENT
(STATE STATUTE, CHAP. 616, APPROVED 4-2-1866)
DISTANCE ALONG MHW LINE = 1,686'±
BURTON ACT PARCEL A
(C169 O.R. 573)
MICHIGAN STREET (80' WIDE)
N04°21'59"W
FORMER 21st (SHASTA) STREET (CLOSED)
APN 4052-001
(B192 O.R. 384-PCL 1; USA TO STATE)
(C169 O.R. 573; A PORTION OF PCL. A; STATE TO CITY)
S85°38'01"W
240.00'
445
APN 4120-002
DD MAPS 198
N04°21'59"W
270.00'
FORMER GEORGIA STREET (CLOSED)
FORMER LOUISIANA STREET (CLOSED)
462
479
RANCHO DEL POTRERO NEUVO
FORMER MARYLAND STREET (CLOSED)
488
BURTON ACT PARCEL A
(C169 O.R. 573)
[SHADED AREA]
FORMER DELAWARE STREET (CLOSED)
505
PACIFIC ROLLING MILL COMPANY
(STATE STATUTE, CHAP. 362, APPROVED 3-28-1868)
MHW LINE
MASSACUSETTS STREET
N85°38'01"E
40.00'
22ND STREET
(FORMER SIERRA STREET)
66' WIDE
N04°21'59"W
66.00'
FORMER 22nd (SIERRA) STREET (CLOSED)
PUEBLO LINE OF 1883
N42°41'35"W
129.00'
N25°06'47"W
56.46'
444
AA MAPS 13
LOT 07
APN 4175-018
(DOC. 2016-K187756)
463
478
489
BOUNDARY LINE
(TYPICAL)
504
S85°38'01"W
1085'±
AA MAPS 13
LOT 06
APN 4175-017 (DOC. 2016-K334613)
APN 4175-002
(DOC. 2016-K334613)
FORMER WATERFRONT STREET (CLOSED)
BURTON ACT PARCEL A
(C169 O.R. 573)



PIER 70 SUD

EXHIBIT B1: PHASING PLAN

SITELAB urban studio 03/13/2018

SITE BOUNDARIES

- Pier 70 SUD
- 28-Acre Site
- Illinois Parcels

PHASES

- Phase 1
- Phase 2
- Phase 3
- SC-2 Indicates open space zones

DDA EXHIBIT B2

SCHEDULE OF PERFORMANCE[1]

Schedule of Performance for Phase Improvements other than Deferred Infrastructure, Public Spaces within Park Parcels[2] and 20th Street			
Phase	**Outside Date for Phase Submittal Application**	**Outside Date for Commencement of Phase Improvements**	**Outside Date for SOP Compliance Determination for Phase Improvements[3]**
1	**12 months after Reference Date ("Phase 1 Approval")**	**18 months after Phase 1 Approval**	**5 years after Commencement of Phase Improvements for Phase 1**
2	**2 years after SOP Compliance Determination[4] of all Phase 1 Phase Improvements**	**18 months after Phase 2 Approval**	**5 years after Commencement of Phase Improvements for Phase 2**

[1] All outside dates for performance set forth below are subject to the provisions regarding time for performance and the procedures for Excusable Delay as set forth in Article 4 of the DDA (Performance Dates) including Down Market Delay.

[2] Unless the SOP Compliance Request relates to Deferred Infrastructure, the Chief Harbor Engineer will make an SOP Compliance Determination for the applicable Port Acceptance Item without regard to Deferred Infrastructure. (DDA §15.7(c)(ii)).

[3] Developer will not be in breach of the Schedule of Performance if it has submitted a SOP Compliance Request at least 45 days prior to the Outside Date for SOP Compliance Determination, and if subsequently disapproved, is diligently prosecuting any deficiencies identified by the Chief Harbor Engineer.

[4] "SOP Compliance Determination" means the approval (or deemed approval) of a SOP Compliance Determination by the Chief Harbor Engineer in accordance with DDA §15.7.

3	**2 years after SOP Compliance Determination for all Phase 2 Phase Improvements**	**18 months after Phase 3 Approval**	**5 years after Commencement of Phase Improvements for Phase 3**

Schedule of Performance for 20th Street	
Phase	**Outside Date for SOP Compliance Determination**
Phase 1 (anticipated)	**3 years after the right-of-way improvements within that portion of 19th Street constructed by the Port as part of the Crane Cove Park project have been either: (i) determined to be complete and ready for their intended use by the Chief Harbor Engineer (if the improvements are to be owned by the Port) or (ii) recommended for approval to the Board of Supervisors by the Public Works Director (if the improvements are to be owned by the City).**

Schedule of Performance for Deferred Infrastructure (including Public Spaces within Deferred Infrastructure Zones)	
Description of Deferred Infrastructure	**Outside Date for SOP Compliance Determination Evidencing Completion of Deferred Infrastructure[5]**
Each Vertical DDA and each Vertical Coordination Agreement will assign responsibility for Deferred Infrastructure among Developer and Vertical Developer and will require the responsible party to construct the applicable Deferred Infrastructure within the associated Deferred Infrastructure Zone or adjacent Park Parcel in accordance with this Schedule of Performance.	Deferred Infrastructure must be completed no later than 12 months after SOP Compliance Determination for the adjacent Horizontal or Vertical Improvements, as follows: (1) For Deferred Infrastructure that does not directly front Vertical Improvements, the Deferred Infrastructure must have obtained

[5] Developer will not be in breach of the Schedule of Performance if it has submitted a SOP Compliance Request at least 45-days prior to the Outside Date for SOP Compliance Determination, and if subsequently disapproved, is diligently prosecuting any deficiencies identified by the Chief Harbor Engineer (DDA § 15.7(c)).

	a SOP Compliance Determination no later than 12 months after SOP Compliance Determination for the adjacent Public Spaces, whether or not Developer or a Vertical Developer have entered into a Vertical DDA. (2) For Deferred Infrastructure that fronts Vertical Improvements (and will therefore be subject to a Vertical DDA), the Deferred Infrastructure must be completed no later than 12 months after issuance of a Temporary Certificate of Occupancy for the Vertical Improvements on the associated Development Parcel.

Schedule of Performance for Public Spaces within Park Parcels (not including Deferred Infrastructure)[6][7]		
Phase	**Park Parcel #**	**Outside Date for SOP Compliance Determination Evidencing Completion of Public Spaces[8]**
Phase 0.5	**PLZ**	**PLZ is not a Developer obligation under this DDA. Port will require the Parcel K North Vertical Developer to complete the PLZ improvements within 12 months after a Temporary Certificate of Occupancy has been issued for a building on Parcel K North.**
Phase 1	**OS1**	**12 months after a Temporary Certificate of Occupancy has been issued for both Buildings 2 and Building 12.**
Phase 1	**OS2**	**OS2 is not a Developer obligation under this DDA. Port will require the Vertical Developer of Parcel D to obtain a SOP Compliance Determination for the OS2 improvements within 12 months after Port has issued a Temporary Certificate of Occupancy for a building on Parcel D.**
Phase 1	**OS3**	**OS3 is not a Developer obligation under this DDA. Port will require the Vertical Developer of Parcel C2-B to obtain a SOP Compliance Determination for the OS3 improvements within 12 months after Port has issued a Temporary Certificate of Occupancy for a building on Parcel C2-B.**

[6] Park Parcels are illustrated on DDA Exhibit B1 (Phasing Plan)

[7] Unless the SOP Compliance Request relates to Deferred Infrastructure, the Chief Harbor Engineer will make an SOP Compliance Determination for the applicable Port Acceptance Item without regard to Deferred Infrastructure. (DDA §15.7(c)(ii)).

[8] Developer will not be in breach of the Schedule of Performance if it has submitted a SOP Compliance Request at least 45 days prior to the Outside Date for SOP Compliance Determination, and if subsequently disapproved, is diligently prosecuting any deficiencies identified by the Chief Harbor Engineer (DDA § 15.7(e)).

Phase 1	**SC1**	**12 months after Port has issued a Temporary Certificate of Occupancy for a building on Parcel E2**
Phase 1	**SC2**	**18 months after Port has issued a Temporary Certificate of Occupancy for a building on Parcel E2**
Phase 2	**WP1**	**12 months after Port has issued a Temporary Certificate of Occupancy for a building on Parcel E3**
Phase 3	**WTP**	**12 months after Port has issued a Temporary Certificate of Occupancy for a building on Parcel B**
Phase 3	**WP2**	**12 months after Port has issued a Temporary Certificate of Occupancy for a building on Parcel H2**
Phase 3	**IHP**	**IHP is not a Developer obligation under this DDA. If the Port assigns this obligation to the Vertical Developer of the Hoedown Yard, the Port will require a Vertical Developer of the Hoedown Yard (or a portion thereof) to obtain a SOP Compliance Determination for the IHP improvements within 12 months after the last Temporary Certificate of Occupancy to be issued for buildings on HDY 1 and 2.**

Associated Public Benefits Schedule of Performance[9]		
Associated Public Benefits	**Outside Date for Vertical DDA**	**Outside Date for Close of Escrow and Commencement of Construction**
Parcel E4	Vertical Developer Affiliate or an Arts Master Tenant has entered into a Vertical DDA for Parcel E4 consistent with DDA § 7.12 no later than no later than the date that Port has issued a Temporary Certificate of Occupancy for an office building on the eastern portion of Parcel B if Parcel B is developed as two separate parcels, or the date that Port has issued a Temporary Certificate of Occupancy for an office building on the entirety of Parcel B if Parcel B is developed as a single parcel. As provided in §7.12, Developer may elect to develop Parcel E4	In accordance with the terms of the applicable Vertical DDA for Parcel E4.
Building 12	Vertical Developer Affiliate has entered into a Vertical DDA for Building 12 consistent with DDA	The Vertical DDA will require Close of Escrow and Commencement of Construction to occur no later than three years after entering into the Vertical DDA for Building 12, with diligent prosecution to completion

[9] With the Phase Submittal application for Phase 3 and within six months after the Port has issued a SOP Compliance Determination for all Vertical Improvements in all Phases, Developer must submit to the Port an Associated Public Benefits Report in accordance with DDA § 7.21, confirming Project compliance with all Associated Public Benefits.

	§ 7.14 no later than one year after Acceptance of Maryland St between 20th and 21st St.	thereafter.
Building 21	Vertical Developer Affiliate has entered into a Vertical DDA for Building 21 consistent with DDA § 7.14 within 1 year after Completion of Building E-1	The Vertical DDA will require Close of Escrow and Commencement of Construction for Building 21 no later than three years after entering into the Vertical DDA for Building 21, with diligent prosecution to completion thereafter.
Noonan Building Replacement	To be provided in accordance with DDA § 7.13.	
50,000 gsf of PDR	To be provided by Project completion in accordance with DDA § 7.17	
On-site childcare	Two child-care facilities, each with a capacity of a minimum of 50 children, to be provided; one in connection with Phase 1 and one in connection with Phases 2 or 3, all in accordance with DDA § 7.18.	
Active Recreation Rooftop Open Space	If not otherwise provided by the Port on Parcel C1A, the Phase Submittal for Phase 3 will identify the location for a minimum 20,000 gsf of contiguous rooftop open space that could be used for active recreation subject to available funding and other conditions in accordance with DDA § 7.15.	
Community Facilities	To be offered with each Phase Submittal until accepted, subject to the terms and condition of DDA § 7.19.	
Workforce Plan	Compliance in accordance with the requirements of the Workforce Development Plan.	
Affordable Housing	Compliance in accordance with the requirements of the Affordable Housing Plan.	

Phase Schedule of Performance for Option Parcels, including Early Ground Lease Parcels	
Option Parcel	**Outside Date**
Execute Vertical DDA for Early Lease Parcel in Phase 1 (DDA § 2.2(f))	Two years after Commencement of Phase Improvements for Phase 1
Execute Vertical DDA for Early Lease Parcel in Phase 2 (DDA § 2.2(f))	Two years after Commencement of Phase Improvements for Phase 2
Outside Date for Execution of a Vertical DDA for all Option Parcels in a Phase 1 (DDA § 2.2(g))	Three years after the SOP Compliance Determination for all Phase Improvements within Phase 1.
Outside Date for Execution of a Vertical DDA for all Option Parcels in a Phase 2 (DDA § 2.2(g))	Three years after SOP Compliance Determination for all Phase Improvements within Phase 2.
Outside Date for Execution of a Vertical DDA for all Option Parcels in a Phase 3 (DDA § 2.2(g))	Three years after SOP Compliance Determination for all Phase Improvements within Phase 3.

DDA EXHIBIT B3

AFFORDABLE HOUSING PLAN

of

DISPOSITION AND DEVELOPMENT AGREEMENT

(Pier 70 28-Acre Site)

TABLE OF CONTENTS

Attachments

AHP Attachment A: Housing Map
AHP Attachment B: City and County of San Francisco Inclusionary Affordable Housing Monitoring and Procedures Manual
AHP Attachment C: Initial In-Lieu Fee Rate Schedule

SUMMARY

This Affordable Housing Plan has been designed to facilitate development of at least 30% of all Residential Units built in the AHP Housing Area as BMR Units or Inclusionary Units. In addition, at build-out of each Phase Area of the 28-Acre Site, this Affordable Housing Plan requires that not fewer than 20% of all Residential Units in the AHP Housing Area be BMR Units or Inclusionary Units.

The DDA obligates Developer to construct all of the necessary Horizontal Improvements needed for the development of Affordable Housing Projects on three designated Affordable Housing Parcels in the AHP Housing Area. This Affordable Housing Plan also requires Vertical Developers of Market-Rate Rental Projects to provide 20% of the Rental Units as below-market-rate, on-site Inclusionary Units.

The Affordable Housing Projects will be developed by Affordable Housing Developers selected by MOHCD. Developer is required to deliver the Affordable Housing Parcels to MOHCD and to either construct or reimburse MOHCD for the Horizontal Improvements needed for development. The Parties anticipate that the Affordable Housing Parcels at full build-out will include no less than 327 BMR Units.

In the Development Agreement, the City has agreed to allocate and use Impact Fees and other City sources described below to fund a portion of the costs of the Affordable Housing Projects.

- Vertical Developers of Market-Rate Condo Projects on the 28-Acre Site will not be allowed to provide Inclusionary Units under this Affordable Housing Plan. Instead, they will be required to pay 28-Acre Site Affordable Housing Fees that will be deposited into the Citywide Affordable Housing Fund. MOHCD will administer and use these funds for the Affordable Housing Projects.

- Each Vertical Developer of a Commercial Project on the 28-Acre Site will be required to pay the 28-Acre Site Jobs/Housing Equivalency Fee. MOHCD will administer and use these funds for the Affordable Housing Projects.

- The City has formed an IRFD over the Hoedown Yard. Under the IRFD Financing Plan and the Tax Allocation MOU, the City has agreed to allocate and use Housing Tax Increment for the Affordable Housing Projects.

This Summary is provided for convenience and for informational purposes only. In the case of a conflict between the terms of this Summary and the Affordable Housing Plan, the provisions of the Affordable Housing Plan shall prevail.

1. DEFINITIONS

The following terms specific to this Affordable Housing Plan have the meanings given to them below or are defined where indicated. Initially capitalized and other terms not listed below are defined in the **Appendix Part B** or in other Transaction Documents. In accordance with *App ¶ 8.1 (General Rule)*, this Affordable Housing Plan and all AHP-specific definitions will prevail over any other Transaction Document definition in relation to Developer's affordable housing rights and obligations. All references to the DDA include this Affordable Housing Plan unless explicitly stated otherwise.

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

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

"**28-Acre Site Jobs/Housing Equivalency Fee**" means the 28-Acre Site Project-specific Impact Fee imposed under the Development Agreement.

"**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 Parcel**" means a development parcel upon which an Affordable Housing Project is to be built.

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

"**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.

"**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 28-Acre Site and Parcel K South.

"**AMI**" or "**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.

"**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 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**" means a below-market-rate Residential Unit constructed in an Affordable Housing Project. Inclusionary Units are not BMR Units.

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

"**Completed Residential Unit**" means a Residential Unit in the AHP Housing Area for which the Port has issued a Temporary Certificate of Occupancy.

"**Condo Unit**" means a Residential Unit that is intended to be offered for sale in fee for individual ownership.

"**Final Affordable Percentage**" is defined in **Subsection 2.1(a)** (Final Affordable Percentage).

"**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.

"**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. MOHCD shall establish minimum Household Size requirements for BMR and Inclusionary Unit occupancy eligibility.

"**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 Attachment A.**

"**HUD**" means the United States Department of Housing and Urban Development.

"**Inclusionary Obligation**" is defined in **Subsection 6.1(a)** (Development).

"**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 **Section 9.2** (Potrero Terrace and Annex) and **Section 9.3** (Housing for Special Populations) if applicable. BMR Units are not Inclusionary Units.

"**Interim Affordable Percentage**" is defined in **Subsection 2.2(b)** (Required Interim Threshold).

"**Marketing and Operations Guidelines**" is defined in **Subsection 6.1(c)** (Marketing).

"**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, as identified on the attached Housing Map or as later revised in accordance with the DDA and this Affordable Housing Plan.

"**Market-Rate Project**" means a Residential Project 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 Unit**" means any Residential Unit constructed on a Market-Rate Parcel that is not subject to affordability restrictions under this Affordable Housing Plan.

"**Maximum Inclusionary AMI**" is defined in **Subsection 6.1(a)** (Development).

"**MOHCD Manual**" is defined in **Subsection 6.1(c)** (Procedures for Monitoring and Enforcement).

"**Parking Charge**" means the market-rate charge for a Parking Space that is accessory to one or more Residential 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.

"**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.

"**Restrictive Covenant**" means a recorded document encumbering a Market-Rate Project that specifies the required number of Inclusionary Units at specified affordability levels in accordance with this Affordable Housing Plan.

"**Section 415**" means the City's Inclusionary Affordable Housing Program (Planning Code §§ 415 and 415.1 through 415.11).

"**Substantially Complete**" means that Developer has obtained an SOP Compliance Determination as to the applicable Phase Improvement.

"**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.

2. HOUSING DEVELOPMENT

2.1. Residential Development at Full Build-Out.

(a) Final Affordable Percentage. Due to the flexibility in uses permitted on certain Development Parcels under the Pier 70 Special Use District, the maximum number of Residential Units permitted on the 28-Acre Site ranges from 1,100 Residential Units (under a development scenario that maximizes commercial uses) to 2,150 Residential Units (under a development scenario that maximizes residential uses). This Affordable Housing Plan has been designed to achieve a development scenario in which, upon Final Completion of all Residential Projects, the sum of the Inclusionary Units and the BMR Units in the AHP Housing Area, including the BMR Credits, equals or exceeds 30% of the total number of Residential Units constructed in the AHP Housing Area (the "**Final Affordable Percentage**") at a midpoint development scenario of 1,702 units within the 28-Acre Site. The City, through MOHCD, will control the design, size, typology, construction, financing, operation, and nature of the Affordable Housing Projects to be built on the Affordable Housing Parcels. Thus, achievement of the Final Affordable Percentage will be controlled by the City. The inclusion of associated and ancillary uses, such as ground floor retail, child care, social services, parking, or other tenant-serving uses to the extent permitted by the Regulatory Requirements, will not affect the designation of the building as an Affordable Housing Project.

(b) Developer's Obligations. The Parties acknowledge that Developer's obligations under this Affordable Housing Plan are limited to delivering the Affordable Housing Parcels to Port for delivery to MOHCD as specified herein.

(c) Vertical Developers' Obligations. Vertical Developers' obligations under this Affordable Housing Plan and the Development Agreement are limited to: (i) satisfying the Inclusionary Obligation for any Market-Rate Rental Project; (ii) paying the 28-Acre Site Affordable Housing Fee for any Market-Rate Condo Project; and (iii) paying the 28-Acre Site Jobs/Housing

Equivalency Fee for any Commercial Project. For reference purposes only, the In-Lieu Fee Rate Schedule in effect on the Reference Date is attached as **AHP Attachment C**.

2.2. Interim Residential Development.

(a) Phasing Effect. The Parties understand that, due to the phased nature of the development of the AHP Housing Area, the Final Affordable Percentage may not be met at any given time prior to Final Completion of all Residential Projects on the AHP Housing Area. However, the Parties agree that at least 20% of Residential Units on the AHP Housing Area must at all times be Inclusionary Units or BMR Units, taking into account the BMR Credits earned.

(b) Required Interim Threshold. When a Temporary Certificate of Occupancy has been issued for all Residential Projects within each Phase other than the Final Phase, the sum of all Inclusionary Units for which a Temporary Certificate of Occupancy has been issued plus any BMR Credits earned must not be less than 20% of the sum of all Completed Residential Units *plus* any BMR Credits (the "**Interim Affordable Percentage**"). Developer acknowledges that the Port will not approve a Phase Submittal if development in accordance with the Phase Submittal would not meet the Interim Affordable Percentage.

(c) Illustrative Calculation. For example, if in Phase 2:

(i) Vertical Developers have built 875 Completed Residential Units, so the Interim Affordable Percentage is 175 (20% of 875);

(ii) of the Completed Residential Units, 75 are Inclusionary Units; and

(iii) Developer has caused the Affordable Housing Parcel Completion Date to occur for Parcel C2A and received 105 BMR Credits; then

(iv) the sum of completed Inclusionary Units + BMR Credits is 180; and

(v) Developer will have met the Interim Affordable Percentage because the sum of completed Inclusionary Units + BMR Credits (180) is greater than the Interim Affordable Percentage (175).

2.3. Development Process.

(a) Horizontal Improvements. Developer proposes to construct Horizontal Improvements for the 28-Acre Site in three Phases. The anticipated order of Phases is set forth in the Phasing Plan and the Schedule of Performance attached to the DDA, subject to revision in accordance with the DDA.

(b) Housing Data Table. To track Developer's obligations under this Affordable Housing Plan, each Phase Submittal must include a housing data table in a form reasonably acceptable to the Port. Port staff will review the housing data table in accordance with the DDA Section 3.2(b). Each housing data table must include the following information:

(i) the location and acreage of each Affordable Housing Parcel and each Market-Rate Parcel for the Current Phase and all Prior Phases and whether Developer proposes any changes from the Housing Map or previous approvals;

(ii) the number of BMR Credits that will be included in the Current Phase, and the number of BMR Credits that Developer has obtained for any Prior Phase;

(iii) the anticipated location of each anticipated Residential Project in the Phase and, for any Market-Rate Project, the anticipated acreage, height and density, number of Residential Units, housing tenure (rental vs. ownership), and on- or off-site parking to be provided, including the proposed number and location of units to be

designated in accordance with Zoning Administrator Bulletin 10, if known, of Inclusionary Units., and

(iv) the total number of Condo Units sold, available for sale or proposed to be sold in the Current Phase and any Prior Phase, to ensure that no more than 50% of all Market-Rate Units at full build-out of the 28-Acre Site will be sold as Condo Units.

(c) Proposals to Change. Developer must provide notice to the Port in accordance with *App ¶ 5 (Notices)* of any anticipated change in the number or proposed location of Inclusionary Units from those identified in the Phase Submittal. The Port in consultation with MOHCD will approve the change if Developer can demonstrate, in the Port's reasonable judgment, that the changes would not interfere with Developer's ability to meet the Interim Affordable Percentage for the Current Phase. Developer must specify the final number of Inclusionary Units for any Market-Rate Project in the related Appraisal Notice.

(d) Restrictive Covenant. The required number of any Inclusionary Units will be specified in the Parcel Lease and a Restrictive Covenant recorded against the Residential Parcel at Close of Escrow.

3. AFFORDABLE HOUSING PARCELS

3.1. Selection of Affordable Housing Parcels. Developer has preliminarily selected, and the Port and MOHCD have approved, Parcel C1B and Parcel C2A as the Affordable Housing Parcels on the 28-Acre Site. In consultation with MOHCD, the Port has also agreed that a portion of Parcel K South will be treated as an Affordable Housing Parcel. Parcel C1B, Parcel C2A, and Parcel K South are identified on the Housing Map.

3.2. Site Alteration Process.

(a) Developer Request. Developer may submit a request to the Port at any time to substitute an alternate parcel for any existing Affordable Housing Parcel or to make material changes to the size or boundaries of an Affordable Housing Parcel. Developer's request must be accompanied by: (i) a brief explanation as to why Developer is requesting the substitution or change; (ii) in the case of a substitution request, a demonstration that the parcel can support an equivalent number of affordable units; and (iii) if it can not support an equivalent number of affordable units, the number of BMR Credits that would be associated with the alternate parcel.

(b) Standard of Review. The Port will review Developer's request for parcel substitution or material change in consultation with MOHCD in accordance with this Subsection. If Developer seeks to reduce the size of any Affordable Housing Parcel because Developer does not need the BMR Credits allocated to the parcel to meet the Final Affordable Percentage (*i.e.*, under a maximum office scenario), the Port and MOHCD may approve or disapprove the request, each in its sole discretion. The Parties agree that the factors listed below may inform, but will not limit, the Port's and MOHCD's decisions.

(i) BMR Credits. Whether Developer can meet the Final Affordable Percentage or Interim Affordable Percentage requirements if the change would decrease the number of BMR Credits.

(ii) Frontages. Each parcel must have a minimum of one frontage that provides immediate vehicular access in a manner consistent with the Design for Development and immediate pedestrian access to a Public ROW.

(iii) Fiscal Impact. The alternative parcel or material change should not have a material negative impact on the reasonably anticipated or proposed financing for the proposed substitute parcel when compared to the original parcel.

(iv) Location. The alternative parcel, when compared to the original parcel, maintains the overall balance of providing the Affordable Housing Parcels with access to transit, proximity to parks, and other public amenities.

(v) Site Conditions. The proposed substitution or material change should not result in a parcel that is materially more difficult or expensive to develop (*e.g.*, sites that include the need for extensive retaining walls, subsurface improvements, or ongoing monitoring responsibilities, or that cannot accommodate the contemplated parking or common areas).

(vi) Other Matters. The Port and MOHCD may consider any additional or unique matters that arise during the course of the development of the 28-Acre Site.

(c) Non-Material Changes. This Section does not apply to any non-material changes to the area or boundaries of an Affordable Housing Parcel that do not conflict with this Affordable Housing Plan, but Developer must obtain the Port's consent to any change in the area or boundaries of an Affordable Housing Parcel in accordance with the DDA.

3.3. Developer's Obligation to Complete Infrastructure.

(a) Required Improvements. Under the DDA, Developer must meet the Project Requirement to deliver Completed Affordable Housing Parcels suitable to accommodate not less than 327 BMR Units. To meet this obligation, Developer will perform the following work with respect to each Affordable Housing Parcel (with such selection to be at Developer's option):

(i) Substantially Complete all Phase Improvements serving the parcel, whether located within or outside of its boundaries; or

(ii) provide appropriate guarantees, bonds, and public improvement agreements acceptable to the City and the Port to secure Developer's Substantial Completion of all Phase Improvements by the Affordable Housing Parcel Completion Date; or

(iii) make an election to pay MOHCD for the Affordable Housing Developer's costs of AHP Deferred Infrastructure pursuant to **Section 3.4** (Developer's Reimbursement Option).

(b) Required Completion Dates. Subject to Excusable Delay in accordance with the DDA, Developer shall meet the Affordable Housing Parcel Completion Date for:

(i) the first Affordable Housing Parcel within 18 months following City's acceptance of the Horizontal Improvements for Phase 1 on the 28-Acre Site; and

(ii) the second Affordable Housing Parcel within 18 months following City's acceptance of the Horizontal Improvements for Phase 2 on the 28-Acre Site; and

(iii) the third Affordable Housing Parcel within 18 months following City's acceptance of the Horizontal Improvements for the Final Phase of development on the 28-Acre Site.

(c) Notice of Anticipated Completion. At least 6 months before the Affordable Housing Parcel Completion Date, Developer shall give the Port and MOHCD notice of the availability of the Affordable Housing Parcel.

(d) Phase Improvements. In addition to the requirements in **Subsection 3.3(a)** (Required Improvements), Developer shall Substantially Complete all Phase Improvements (other than any AHP Deferred Infrastructure) serving the Affordable Housing Parcel in accordance with the DDA. Developer's obligation to Substantially Complete the Phase Improvements (other than

any AHP Deferred Infrastructure) will be secured by Phase Security as set forth in the DDA. The Port will include in any lease of the Affordable Housing Parcel that the tenant must provide to Developer required access for Developer's work, if any, on the Phase Improvements on condition that Developer's work does not materially interfere with or materially obstruct the Affordable Housing Developer's work to the maximum extent reasonably feasible and that the Affordable Housing Developer's work similarly does not materially interfere with Developer's work.

(e) Construction Coordination. Subject to **Section 3.4** (Developer's Reimbursement Option), Developer shall coordinate the construction of the Phase Improvements with the construction of the Affordable Housing Project to ensure that: (i) the Phase Improvements other than utility laterals serving the applicable Affordable Housing Parcel are Substantially Complete at or before the construction of the Affordable Housing Project is complete; and (ii) the utility laterals serving the applicable Affordable Housing Parcel are Substantially Completed in coordination with the construction of the Affordable Housing Project.

(f) No Other Developer Obligations. Developer's sole obligations with respect to development of Affordable Housing Projects on the Affordable Housing Parcels are the construction obligations under this Article. Under no circumstances will Developer have an obligation to contribute funds to MOHCD or any other person, even if available Housing Impact Fees and Housing Tax Increment are insufficient to fund construction of the Affordable Housing Projects on the Affordable Housing Parcels.

3.4. Developer's Reimbursement Option. In lieu of constructing all or a portion of Horizontal Improvements for any Affordable Housing Parcel, Developer may, in non-binding consultation with MOHCD, designate the same as AHP Deferred Infrastructure, which MOHCD will require the applicable Affordable Housing Developer to construct. Developer's election will be conditional upon entering into an agreement with MOHCD, in form reasonably satisfactory to MOHCD, in which Developer agrees to pay MOHCD for the costs of the AHP Deferred Infrastructure, as such costs are certified by MOHCD and submitted for reimbursement to the Developer.

4. AFFORDABLE HOUSING DEVELOPMENT

4.1. BMR Unit Production.

(a) MOHCD to Produce. MOHCD has agreed to coordinate with the Port to produce at least 327 BMR Units in the AHP Housing Area. MOHCD in its sole discretion will decide on the number of BMR Units to be constructed on each Affordable Housing Parcel, whether an Affordable Housing Project will be developed with Condo Units or Rental Units, the size of the BMR Units, whether the project will be targeted to a particular population (*e.g.*, senior housing, housing for formerly homeless households), and the allocations of BMR Units among affordability levels.

(b) Number of BMR Credits. The number of BMR Units actually built on an Affordable Housing Parcel will not affect the number of BMR Credits that Developer received upon delivery of the Completed Affordable Housing Parcel.

(c) Number of BMR Units. The Parties currently contemplate that MOHCD will produce 142 Units on Parcel C1B, 105 BMR Units on Parcel C2A, and 80 BMR Units on Parcel K South. MOHCD will have the right to produce fewer or more BMR Units on an Affordable Housing Parcel if the number produced would not: (i) result in a reduction of rentable area below that required to produce 327 BMR Units in the AHP Housing Area; or (ii) require any material changes to the Phase Improvements serving the parcel.

(d) Environmental Review; Phase Submittal. Before MOHCD elects to produce more than the number of BMR Units specified in **Subsection 4.1(c)** (Number of BMR Units) in

any Affordable Housing Parcel, MOHCD will (i) consult with the Planning Department to determine if the additional density would exceed the environmental analysis in the Final EIR and, if so, MOHCD will be solely responsible for undertaking any additional analysis required to comply with CEQA and implementing any required mitigation or improvement measures imposed as a condition to the additional density and (ii) be solely responsible for processing an amendment to the applicable Phase Submittal allowing for additional units in the Phase, and satisfying all conditions of approval to such amendment, so that the increase in BMR Units does not result in a decrease in the number of residential units permitted on any other parcel in such Phase.

4.2. Uses of Affordable Housing Parcel. Unless Developer, the Port, and MOHCD, each in its respective sole discretion, agrees otherwise, the Affordable Housing Parcels must be used only for production of BMR Units and ancillary community-serving, neighborhood retail or Parking Spaces within an Affordable Housing Project.

4.3. Ground Lease. Each Affordable Housing Project will be developed under a ground lease between the Port and the Affordable Housing Developer.

4.4. Release from Master Lease. Prior to the commencement of any ground lease between the Port and the Affordable Housing Developer, Developer and Port will execute a written release of the Master Lease between Developer and Port with respect to the applicable Affordable Housing Parcel.

5. HOUSING PROGRAM

5.1. Conveyance Agreements. In accordance with the DDA, the Port will convey fee title to or a leasehold interest in the parcel to each Vertical Developer of a Market-Rate Parcel. Each conveyance agreement will be substantially in one of the forms attached to the DDA and, among other things, will: (a) specify the maximum number of Market-Rate Units allowed to be developed on the Market-Rate Parcel; (b) require the recordation of a Restrictive Covenant setting forth the Inclusionary Obligation in accordance with **Subsection 6.1(f)** (Restrictive Covenant) as a condition to Close of Escrow of any Market-Rate Rental Project; and (c) require the Vertical Developer of any Market-Rate Condo Project to pay the 28-Acre Site Affordable Housing Fee in accordance with **Section 6.2** (Market-Rate Condo Projects).

5.2. Vertical Developer Discretion. Vertical Developers will be able to decide on the number, size, and type of Residential Units constructed, subject to any applicable limitations in the Regulatory Requirements, any applicable Restrictive Covenant, and its conveyance agreement.

6. INCLUSIONARY HOUSING REQUIREMENTS

6.1. Market-Rate Rental Projects.

(a) Development. Each Market-Rate Rental Project must satisfy its inclusionary obligations hereunder (the "**Inclusionary Obligation**") by providing twenty percent of all Residential Units as Inclusionary Units rented at a level affordable to households with incomes between 55% and 110% of Area Median Income, and not to exceed a maximum average of 80% of Area Median Income in each building (the "**Maximum Inclusionary AMI**").

(b) Financing. Vertical Developers are responsible for financing the development of the Inclusionary Units included within their Market-Rate Rental Projects and may access financing sources such as 4% LIHTCs, tax-exempt bond proceeds, and other sources of below-market-rate housing financing, to the extent the Market-Rate Rental Project qualifies for any available financing. The City has no obligation to provide any funding to Vertical Developers under this Affordable Housing Plan. Residential Units that are financed with 4% LIHTCs will count as Inclusionary Units, but will not be subject to any restrictions or monitoring by MOHCD except as set forth in Planning Code sections 415.8 and 415.9.

(c) Procedures for Monitoring and Enforcement.

(i) Subject to **clause (ii)** of this Subsection, procedures for renting an Inclusionary Unit must conform to the *City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual*, a current copy of which is attached as **AHP Attachment B**, subject to any update in effect when Inclusionary Units in the Market-Rate Rental Project are available for rent to the extent such update does not result in a Material Change (as defined in the Development Agreement) (the "**MOHCD Manuals**").

(ii) To the extent that the MOHCD Manual is inconsistent with or conflicts with this Affordable Housing Plan, this Affordable Housing Plan will prevail. Accordingly, MOHCD agrees that a Vertical Developer of a Market-Rate Rental Project may proceed under the following provisions.

(1) All Inclusionary Units must be on the 28-Acre Site. The Vertical Developer will have no in-lieu payment, off-site, or land dedication option.

(2) All Inclusionary Units must be affordable to households with household incomes of between 55% and 110% of Area Median Income, subject to meeting an average of the Maximum Inclusionary AMI at each Market-Rate Rental building.

(3) Units shall be designated in accordance with Zoning Administrator Bulletin 10 (Designation Priorities for the Inclusionary Affordable Housing Program).

(4) Bundling of parking with an Inclusionary Unit will be prohibited, as set forth in **Section 8.1** (Unbundling). Parking Spaces shall be made available to households renting Inclusionary Units at the same ratio of Parking Spaces to Residential Units for the 28-Acre Site Project overall.

(5) The maximum monthly parking rate for an Inclusionary Unit will be equal to the ratio of the Inclusionary Unit's rent as compared to rent for an equivalent (determined by factors including square footage, number of bedrooms, and location within the building) Market-Rate Unit. For example, if the equivalent Market-Rate Unit's monthly rent is $3,000 and the Inclusionary Unit's monthly rent is $1,500, the permitted parking rate for a tenant in the Inclusionary Unit would be 50% of market-rate Parking Charge. Parking Charges may be adjusted in concert with market rate adjustments, but no more than annually.

(d) Marketing. A Vertical Developer may not market or rent Inclusionary Units until MOHCD has approved, in its reasonable discretion, the following: (i) Marketing and Operations Guidelines, which must include any preferences required by the MOHCD Manual or this Affordable Housing Plan; (ii) conformity of the proposed Affordable Housing Cost for Inclusionary Units with this Affordable Housing Plan; and (iii) project-specific eligibility and income qualifications for tenant households (collectively "**Marketing and Operations Guidelines**").

(e) Marketing and Operations Guidelines.

(i) After the Port notifies MOHCD of the first Phase Submittal, MOHCD shall commence to develop and diligently pursue completion of area- or project-wide Marketing and Operations Guidelines for use by each Vertical Developer of a Market-Rate Rental Project at the 28-Acre Site.

(ii) If these project-wide Marketing and Operations Guidelines are not in place within 90 days before the date that any Vertical Developer expects to begin

marketing Inclusionary Units, then that Vertical Developer of a Market-Rate Rental Project shall be responsible for submitting its own proposed Marketing and Operations Guidelines to MOHCD. MOHCD will review and grant or withhold its approval of each set of Marketing and Operations Guidelines in its reasonable judgment within 30 days after it is delivered. If MOHCD does not respond in the initial 30-day period, the Vertical Developer may submit to MOHCD a second request for approval, and the Marketing and Operations Guidelines will be deemed approved if MOHCD does not respond within 30 days after the second request.

(f) Restrictive Covenant. Each Restrictive Covenant for a Market-Rate Parcel to be developed as a Market-Rate Rental Project must include the following.

(i) the total number of Residential Units and the number of Inclusionary Units that the Vertical Developer intends to build on the Market-Rate Parcel;

(ii) a statement that the term of the Inclusionary Obligation is for the life of the Market-Rate Rental Project; and

(iii) a covenant to keep the Inclusionary Units as Rental Units for the term of the Inclusionary Obligation.

6.2. Market-Rate Condo Projects.

(a) Limit on Total Market-Rate Condo Units. At full build-out of the 28-Acre Site Project, no more than 50% of all Market-Rate Units will be sold as Condo Units.

(b) Payment of 28-Acre Site Affordable Housing Fee. No on-site Inclusionary Units will be permitted in any Market-Rate Condo Project on the 28-Acre Site. Instead, each Vertical Developer of a Market-Rate Condo Project shall pay a fee in lieu of providing Inclusionary Units on-site (the "**28-Acre Site Affordable Housing Fee**"). In consideration of these requirements, the City has waived the collection of fees under Section 415 from the 28-Acre Site.

(c) Calculation of Fee.

(i) Affordable Housing Fees under Section 415 currently vary by unit size and number of bedrooms and are listed in the Inclusionary Housing Program Fee Schedule. The City has directed the Controller, in consultation with the Inclusionary Housing Technical Advisory Committee, to conduct a study to examine the appropriate amount and application of the Inclusionary Affordable Housing Fee under Section 415, and the Board of Supervisors may be adopting changes to the Fee Schedule in 2018.

(ii) The 28-Acre Site Affordable Housing Fee rate will be $79/gsf. This fee is equivalent to 28% of the number of Residential Units to be developed in the Market-Rate Condo Project based on the amounts currently charged under Section 415, as noted on the San Francisco Citywide Development Impact Fee Register effective as of January 1, 2017. For example, under a 28% fee requirement, a typical 100 unit project in which at least 15% of its units have two bedrooms and at least 10% of its units have three bedrooms, would be required to pay approximately $8,200,000 in 2017 dollars. Based on an average unit size of 1040 gsf per unit, this figure translates into a rate of $79 per gsf of residential use.

(iii) The 28-Acre Site Affordable Housing Fee rate will be adjusted annually in accordance with Section 409, based on the Annual Infrastructure Construction Cost Inflation Estimate (AICCIE) published by Office of the City Administrator's Capital Planning Group and approved by the Capital Planning Committee. No other adjustments to fees under Section 415 will apply to the 28-Acre Site. The Port will collect (or require evidence of prior payment of) 28-Acre Site Affordable Housing Fees from the Vertical

Developer of any Market-Rate Condo Project as a condition to issuance of the first construction permit.

(d) Use of Fees. MOHCD will use all 28-Acre Site Affordable Housing Fees collected by the City as set forth in **Section 7.4** (MOHCD's Rights and Obligations).

(e) MOHCD Role. MOHCD will monitor and enforce the Inclusionary Obligation in accordance with Planning Code section 415.9, except that all references to Section 415 will be deemed to refer to the requirements under this Section.

7. FINANCING AFFORDABLE HOUSING PROJECTS

7.1. Affordable Housing Parcels. As described in **Section 3.3** (Developer's Obligation to Complete Infrastructure), Developer will Substantially Complete Horizontal Improvements serving the Affordable Housing Parcels at its own cost, subject to **Section 3.4** (Developer's Reimbursement Option). In addition, the Port will ground lease each of the Affordable Housing Parcels to MOHCD or an Affordable Housing Developer at no cost to facilitate the development of the Affordable Housing Projects.

7.2. Housing Impact Fees. The City and the Port will make the following Impact Fees generated by vertical development in the 28-Acre Site available to MOHCD for the development of Affordable Housing Projects on the Affordable Housing Parcels.

(a) 28-Acre Site Affordable Housing Fees. The development of Market-Rate Condo Projects in the 28-Acre Site will generate 28-Acre Site Affordable Housing Fees, as provided in **Section 6.2** (Market–Rate Condo Projects).

(b) 28-Acre Site Jobs/Housing Equivalency Fees. As set forth in the Development Agreement and the form of Vertical DDA, each Vertical Developer of a Market-Rate Commercial Project within the 28-Acre Site will be required to pay the 28-Acre Site Jobs/Housing Equivalency Fee to the City before the Chief Harbor Engineer issues the first construction permit for its site.

7.3. Housing Tax Increment. The City has formed the IRFD over the Hoedown Yard to generate Housing Tax Increment for the development of the Affordable Housing Projects.

7.4. MOHCD's Rights and Obligations.

(a) Allocated Funds. Subject to **Subsection 7.4(c)** (Reimbursement of Advances), MOHCD will use Housing Impact Fees and Housing Tax Increment to construct the Affordable Housing Projects on the Affordable Housing Parcels.

(b) Reallocation of Funds. MOHCD will have the right to reallocate Housing Impact Fees and Housing Tax Increment to any other affordable housing project in San Francisco on condition that MOHCD replaces the reallocated funds with an equal amount from other sources when needed for the development of the Affordable Housing Projects on the Affordable Housing Parcels.

(c) Reimbursement of Advances. If MOHCD in its sole discretion elects to advance funds for the development of the Affordable Housing Projects on the Affordable Housing Parcels before Housing Impact Fees and Housing Tax Increment are available, MOHCD will have the right to be reimbursed from Housing Impact Fees and Housing Tax Increment as those funds become available.

8. PARKING REQUIREMENTS; RESIDENTIAL UNIT SIZE REQUIREMENTS

8.1. Unbundling. All Parking Spaces serving Market Rate Residential Buildings must be unbundled and offered for purchase or rent separately from any Residential Unit in the 28-Acre Site. Vertical Developers will have the sole discretion to determine whether Parking Spaces in a Market-Rate

Project are available for rent or purchase. MOHCD will have the sole discretion to determine whether Parking Spaces in an Affordable Housing Project are available for rent or purchase.

8.2. Parking Charge.

(a) Discretion to Set Rates. Each Vertical Developer of a Market-Rate Parcel and MOHCD for each Affordable Housing Parcel will determine, each in its sole discretion, the Parking Charge for Parking Spaces serving the parcel, subject to **Subsection 8.2(b)** (Limitations on Rates).

(b) Limitations on Rates. Vertical Developers must not charge renters of Inclusionary Units any fees, charges or costs, or impose rules, conditions or procedures on such renters, that do not equally apply to all market-rate renters.

8.3. Parking Allotment. No more than 0.25 Parking Spaces per Residential Unit may be developed on any Affordable Housing Parcel in the 28-Acre Site.

8.4. Residential Unit Size. At least 30% of all Residential Units constructed in the AHP Housing Area will be either 2-bedroom or 3-bedroom Residential Units, and at least 5% of the required 2-bedroom and 3-bedroom Residential Units will be 3-bedroom Residential Units. Compliance will be tracked by Phase, and shall be cumulative across all Phases. To verify compliance, each Phase Submittal to the Port will indicate the required percent of 2-bedroom or 3-bedroom units to be achieved on each parcel (excluding the Affordable Housing Parcels), and subsequent Appraisal Notices and VDDAs for each parcel shall require such percentages accordingly. For Phases 1 and 2, the Phase Submittal may fall behind this minimum ratio for proposed and previously approved units by up to 10%.

9. OUTREACH PROGRAMS

9.1. District 10. Given the 28-Acre Site's location within San Francisco's District 10, pre-marketing and marketing programs for Inclusionary Units in the Market-Rate Projects must target residents of District 10 to the greatest extent permitted by MOHCD's then-applicable policies and procedures. In addition, the residents of District 10 will be given the maximum neighborhood preference for leasing Inclusionary Units permitted under MOHCD's then-applicable policies and procedures.

9.2. Potrero Terrace and Annex. The Parties desire that certain BMR Units may be offered to households currently living at the public housing developments known as Potrero Terrace and Potrero Annex, or other public housing sites undergoing reconstruction to support the phased redevelopment of these sites as part of the City's Hope SF program. In that case, development, leasing, and management of such designated units within the Affordable Housing Project will be subject to 24 CFR Part 983 and other applicable federal rules and regulations governing the use of project-based vouchers.

9.3. Housing for Special Populations. The Parties may agree to target a limited number of either BMR Units or Inclusionary Units towards special populations, such as educators, artists, or formerly homeless individuals. In the case of Inclusionary Units, the Parties may execute an addendum adjusting the AMI requirements above the limits contained in this Affordable Housing Plan if needed to better target such populations.

10. MISCELLANEOUS

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

10.1. Third-Party Beneficiaries. The Parties agree that MOHCD is a third-party beneficiary of this Affordable Housing Plan, with the same rights and obligations as if it were a party. Except to the extent set forth in the immediately preceding sentence, there are no express or implied third-party beneficiaries of this Affordable Housing Plan.

10.2. Notices to MOHCD. Notices given under this Affordable Housing Plan are governed by *App ¶ 5 (Notices)*. Notices to MOHCD must be addressed as specified below.

To MOHCD:	Mayor's Office of Housing and Community Development
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:

10.3. Attachments. The attachments listed below are incorporated in and are a part of this Affordable Housing Plan.

AHP Attachment A: Housing Map
AHP Attachment B: City and County of San Francisco Inclusionary Affordable Housing Monitoring and Procedures Manual
AHP Attachment C: Initial In-Lieu Fee Rate Schedule

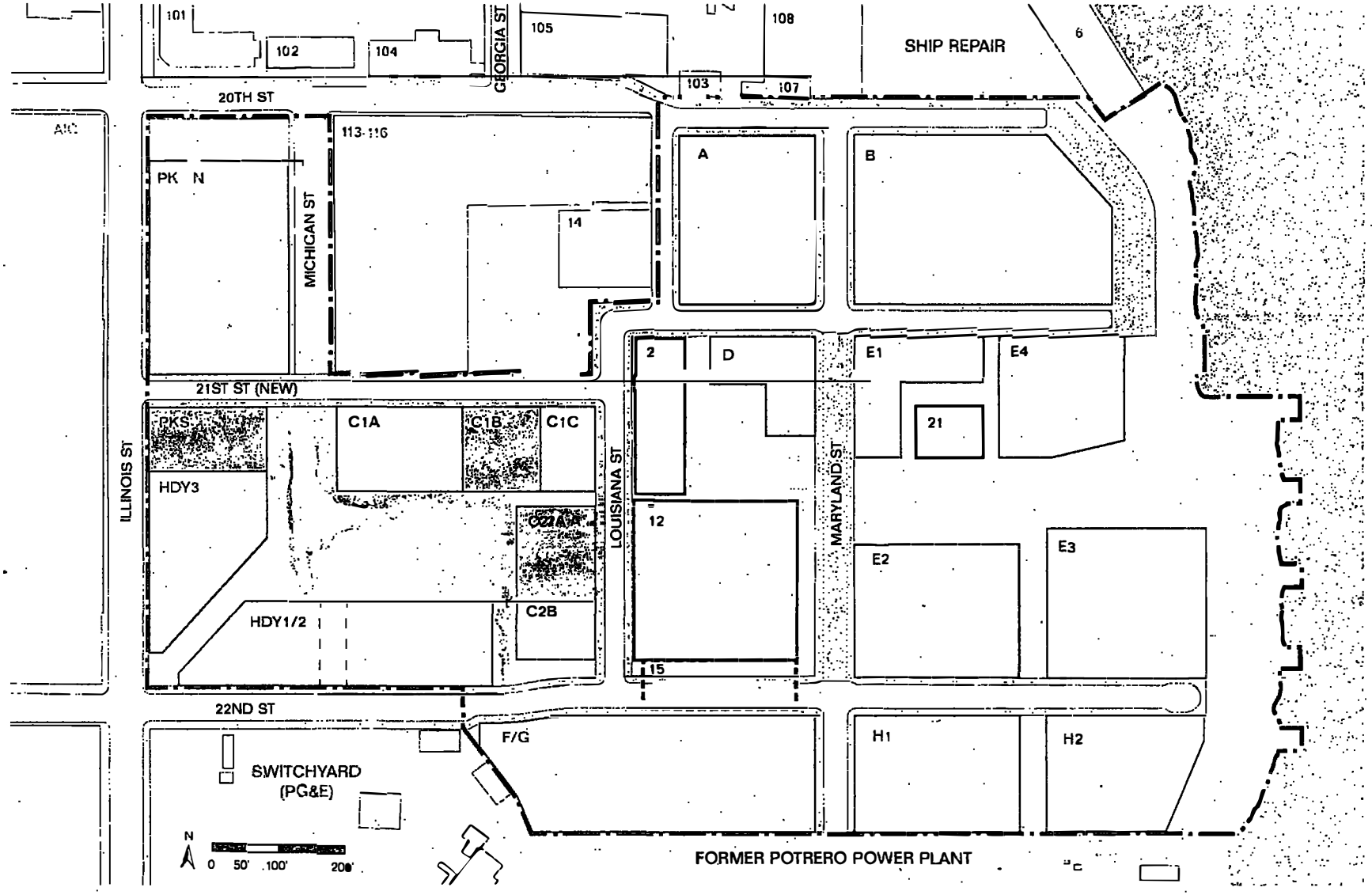


EXHIBIT A: HOUSING MAP

09/12/2017

Pier 70 SUD

Affordable Housing Parcel

CITY AND COUNTY OF SAN FRANCISCO

INCLUSIONARY AFFORDABLE HOUSING PROGRAM MONITORING AND PROCEDURES MANUAL

Effective May 10, 2013

Preface

The Inclusionary Affordable Housing Program ("Program") requires developers to sell or rent a certain percentage of units in new developments at a "below market rate" price that is affordable to Low-income, Median-income and Moderate-income Households. The Program is governed by San Francisco Planning Code Section 415 *et seq.*, and is administered by the San Francisco Mayor's Office of Housing ("MOH"). Planning Code Section 415 requires that MOH and the San Francisco Planning Department publish a Procedures Manual containing procedures for monitoring and enforcement of the policies and procedures for implementation of the Program. This Monitoring and Procedures Manual ("Manual") contains information regarding the Program for potential buyers and renters of below market rate units ("BMR Units"), as well as for information for Projects Sponsors, owners and property managers of BMR Units developed under the Program. Updates to the Manual occur as needed.

The purpose of the Program is to provide housing options to Low-income, Median-income and Moderate-income Households in San Francisco in order to maintain income and cultural diversity in San Francisco. The findings set forth in Section 415.1 of the San Francisco Planning Code further explain the need for such housing in San Francisco.

This Manual should be read in conjunction with the applicable requirements of the Program, found in San Francisco Planning Code Section 415 *et seq.*, including prior versions of that section. Previous versions of Planning Code section 415 *et seq.* can be found on the MOH website at www.sf-moh.org. While every effort has been made to harmonize the information in this Manual with the requirements of the Planning Code and previous versions of the Code, should there be any conflict with the Manual and the Planning Code or previous versions of Section 415 *et seq.* (whichever is applicable to a particular development), the terms of the Planning Code or those previous versions shall prevail over this Manual. The provisions of a Notice of Special Restrictions recorded on a Project or BMR Unit developed under the Program shall prevail over any general requirements in the Manual or the Planning Code.

Users of this Manual are encouraged to seek their own legal counsel to aid in understanding of the requirements of the Program. If there are general questions regarding the Manual, users may call the Mayor's Office of Housing at (415) 701-5500, or visit its website at www.sf-moh.org.

Any request for the interpretation and applicability of the provisions of the Planning Code may be sought by contacting the Zoning Administrator, pursuant to Planning Code Section 307(a).

The Procedures Manual in effect at the time of initial purchase or initial rental of a BMR Unit shall govern the regulation of that unit until it is sold or re-rented unless a BMR Owner or current BMR Renter chooses to be governed by all of the more up-to-date provisions of the then-current Procedures Manual. In that case, the BMR Owner or current BM Renter must agree to be governed by the totality of the new regulations; a BMR Owner or BMR Renter may not pick some provisions from the Procedures Manual in effect at the time of initial purchase or initial rental and some in effect in the then-current Procedures Manual. If the owner or tenant chooses to be governed by the then-current Procedures Manual, he or she shall sign an agreement with the City to that effect, and the Planning Department and MOH shall apply all of the rules and regulations in the then-current Procedures Manual to the BMR Unit.

The effective date of this Manual is May 10, 2013. Prior versions of this Manual were adopted on September 10, 1992 and June 28, 2007.

AHP ATTACHMENT B

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I. DEFINITIONS

The definitions contained in Section 401 of the San Francisco Planning Code shall apply to this Manual. Defined terms are capitalized throughout this Manual.

AMI OR AREA MEDIAN INCOME	As defined in Planning Code Section 401.
AFFORDABLE HOUSING FEE OR FEE	The fee paid to the City under Section 415.5 of the Planning Code.
AFFORDABLE TO QUALIFYING HOUSEHOLDS	As defined in Section 401 of the Planning Code.
ANNUAL GROSS INCOME	As defined in Section 401 of the Planning Code.
BMR	Below Market Rate
BMR BUYER	Below Market Rate Unit Buyer, including all members of the applicant Household.
BMR NOTE	As defined in Section II (G) of this Manual.
BMR OWNER	Owner of a Below Market Rate Unit, including all members of the Household.
BMR OWNERSHIP UNIT	A Below Market Rate Unit that is owned.
BMR RENTER	Below Market Rate Unit renter or current tenant of a BMR Rental Unit, including all members of the applicant Household
BMR RENTAL UNIT	A Below Market Rate Unit that is rented.
BMR UNIT	A Below Market Rate Unit as defined in Planning Code Section 401 as an "Affordable unit" or "affordable housing unit."
BACK END RATIO	As defined in Section II (D) of this Manual.
BASE PRICE	As defined in Section II (G) of this Manual.
CERTIFICATE OF FINAL COMPLETION AND OCCUPANCY	A certificate issued to a Project Sponsor by the San Francisco Department of Building Inspection (DBI) that certifies that all Building Code provisions and building specifications for the development project have been satisfied.

CERTIFICATE OF PREFERENCE	As defined in Section II (B) and III (B) of this Manual.
CERTIFIED REALTOR	A realtor certified with the California Association of Realtors.
CHANGE IN AMI FORMULA	As defined in Section II (F) of this Manual.
CITY	The City and County of San Francisco.
CITY DEED OF TRUST	As defined in Section II (G) of this Manual.
CLOSE OF ESCROW	The closing of the sale of Housing Unit.
COMBINED LOAN TO VALUE	The percentage of a property's value plus any outstanding debt on the property that a lender can or may loan to a borrower.
CONDITIONS OF APPROVAL	As defined in Planning Code Section 401.
CONDOMINIUM	As defined in Planning Code Section 401.
CONVERSION	Change in use of a property.
DBI OR DEPARTMENT OF BUILDING INSPECTIONS	As defined in Planning Code Section 401.
DEBT TO LOAN RATIO	The percentage of gross monthly income that goes toward paying for your monthly housing expense, alimony, child support, car payments and other installment debts, and payments on revolving or open-ended accounts, such as credit cards.
DEDICATED SITE	As defined in Planning Code Section 401.
DEED IN LIEU OF FORECLOSURE	A deed to real property accepted by a lender from a defaulting borrower to avoid the necessity of foreclosure proceedings by the lender.
DOMESTIC PARTNER	As defined in California Family Code, commencing with Section 297, whose definition does not include San Francisco Domestic Partnership.
EQUAL OPPORTUNITY HOUSING SYMBOL	The federal fair housing symbol used to identify the adherence to federal fair housing rules.
FICO	Fair Isaac Corporation. The best-known and most widely used credit score model in the United States.
FAIR MARKET APPRAISAL	The value of a BMR Unit determined without regard to sales or rental restrictions on that unit pursuant to an independent appraisal conducted

	by an appraiser acceptable to MOH.
FAIR HOUSING	State or federal laws that govern the fair and unbiased treatment of buyers and renters when selling or renting a housing unit.
FANNIE MAE OR FNMA	A New York stock exchange company. It is a public company that operates under a federal charter and is the nation's largest source of financing for home mortgages. Fannie Mae does not lend money directly to consumers, but instead works to ensure that mortgage funds are available and affordable, by purchasing mortgage loans from institutions that lend directly to consumers.
FIRST CERTIFICATE OF OCCUPANCY	As defined in Section 401 of the Planning Code.
FIRST CONSTRUCTION DOCUMENT	As defined in Section 401 of the Planning Code.
FIRST-TIME HOMEBUYER	As defined in Section 401 of the Planning Code and further defined in Section II of this Manual.
FIRST-TIME HOMEBUYER EDUCATION WORKSHOP	A course designed to provide basic education to first time homebuyers offered by a counseling agency certified by MOH as listed at www.sf-moh.org.
FREDDIE MAC	Federal Home Loan Mortgage Association. An independent stock company which creates a secondary market in conventional residential loans and in FHA and VA loans by purchasing mortgages.
FRONT END RATIO	As defined in Section II of this Manual.
GROSS INCOME	As defined in Section 401 of the Planning Code.
HOA OR HOMEOWNERS ASSOCIATION	A nonprofit association that manages the common areas of a condominium or planned unit development (PUD). Unit owners pay to the association a fee to maintain areas owned jointly.
HOA OR HOME OWNERS ASSOCIATION OR "HOA"DUES	Monthly payments due to a Homeowners Association for the upkeep, maintenance and improvement of common areas in a residential building.
HEAD OF HOUSEHOLD	Head of Household is defined as one who pays more than half the cost of maintaining a Household for the year and there cannot appear more than one Head of Household on a given application.

HOUSEHOLD	As defined in Planning Code Section 401.
HOUSEHOLD OF LOW INCOME	As defined in Planning Code Section 401
HOUSEHOLD OF MEDIAN INCOME	As defined in Planning Code Section 401.
HOUSEHOLD OF MODERATE INCOME	As defined in Planning Code Section 401.
HOUSING UNIT	As defined in Planning Code Section 401.
INCLUSIONARY HOUSING PROGRAM ORDINANCE	Sections 415-415.9 inclusive of the San Francisco Planning Code, as amended from time to time.
LIFE OF THE PROJECT	As defined in Planning Code Section 401.
LOAN TO VALUE RATIO	The percentage of a property's value that a lender can or may loan to a borrower.
MOH	As defined in Planning Code Section 401.
MANUAL OR PROCEDURES MANUAL	As defined in Planning Code Section 401.
MARKETING CONSULTANT	A person representing a development of BMR units who markets and sells the BMR units in accordance with the procedures set forth in this Manual and by MOH.
MARKETING PLAN	A compliance procedure, described in Section V of this Manual, which requires the Project Sponsor that has a BMR Unit requirement to undertake certain measures that are directed to advertise and sell available affordable Housing Units to qualified Households.
MAXIMUM HOUSEHOLD INCOME	The maximum income allowed for a Household applying for a BMR Unit as determined by household size through the income table named Maximum Income by Household Size Derived from the Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that Contains San Francisco.
MAXIMUM INCOME BY HOUSEHOLD SIZE DERIVED FROM THE UNADJUSTED AREA MEDIAN INCOME (AMI) FOR HUD METRO FAIR MARKET	The table produced by MOH annually to announce AMI levels for that calendar year as published on the MOH website at www.sf-moh.org.

RENT AREA (HMFA) THAT CONTAINS SAN FRANCISCO	
MAXIMUM PURCHASE PRICE	As defined in Planning Code Section 401.
MAXIMUM MONTHLY RENT	The monthly monetary consideration determined per Section II (C) paid by a BMR Renter Household for use of the designated BMR rental unit as the Household's principal residence.
MAXIMUM RESALE PRICE	The purchase price to be paid by a buyer of a BMR unit previously purchased by a Qualified Household, as calculated according to Section II (C) of this Manual.
MAYOR'S OFFICE OF HOUSING, OR MOH	As defined in Planning Code Section 401.
MINORITY COMMUNITIES	Minority communities or minority Households shall include, as a guideline, members of the following racial, ethnic, gender or otherwise specially disadvantaged groups: African-American - defined as persons of African origin. Latino - defined as persons of Mexican, Caribbean, Central American or South American origin. Asian - defined as persons of Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Southeast Asian or Asian Indian origin. Native American - defined as persons whose origins are of indigenous peoples of North America. Women Gay and Lesbian Individuals Families with dependents - defined as a Household with two or more persons in which the head of Household is an adult and at least one other Household member is an elderly or handicapped person who is financially dependent on the head of Household or a person under the age of 18 years who is related to the head of the Household by blood, marriage or adoption or related to the domestic partner by blood or adoption. Person with a disability - defined as a person who satisfied the definition of "handicapped" under Federal Fair Housing Law on the basis of presence of a long-term physical or mental impairment which substantially limits

	one or more of such person's major life activities including mobility, visual or hearing impairment, terminal illness or AIDS diagnosis. Elderly - defined as persons over the age of 65 years.
MOH-APPROVED FIRST-TIME HOMEBUYER EDUCATION PROVIDER	A housing counseling agency certified by MOH and listed at www.sf-moh.org.
MOH-APPROVED LENDER	A lender certified by MOH and listed at www.sf-moh.org. Approved MOH lenders must attend annual trainings for all MOH homeownership programs and be a part of an approved lending institution that pays an annual participation fee to MOH.
MOH-APPROVED REALTOR	A realtor certified by MOH and listed at www.sf-moh.org. Approved MOH realtors must attend annual trainings for the BMR Ownership Program.
MORTGAGE	A loan using a Housing Unit as collateral.
MULITPLE LISTING SERVICE OR MLS	An association of real estate agents providing for a pooling of listings and the sharing of commissions on a specified basis.
NOTICE OF SPECIAL RESTICTIONS (NSR)	As defined in Planning Code Section 401.
PLANNER	A staff member of the San Francisco Planning Department.
PLANNING APPROVAL	A general term for the Conditions of Approval, Planning Permits, Zoning Administrator determinations or other planning approvals issued for a specific housing development.
PLANNING CODE	The City and County of San Francisco Planning Code.
PLANNNG COMMISSION	As defined in Planning Code Section 401.
PLANNING DEPARTMENT	As defined in Section 401 of the Planning Code.
PRIMARY RESIDENCE	As defined in Section II (A) and III (A) of this Manual.
PRINCIPAL PROJECT	As defined in Planning Code Section 401.
PRINCIPALLY PERMITTED PROJECT	Development projects that do not require Planning Commission review in the form of a Conditional Use Permit or PUD.

PROCEDURES MANUAL OR MANUAL	As defined in Planning Code Section 401.
PROGRAM OR INCLUSIONARY HOUSING PROGRAM	As defined in Planning Code Section 401.
PROJECT	As defined in Planning Code Section 401.
PROJECT OWNER	The owner of a Project on which is subject to Planning Code Section 415 *et seq.*
PROJECT SPONSOR OR SPONSOR	As defined in Planning Code Section 401.
QUALIFYING HOUSEHOLD	As defined in Planning Code Section 401.
REDEVELOPMENT AGENCY	San Francisco Redevelopment Agency or its successor.
SRO	As defined in the Planning Code Section 890.88.
SECTION 8 OR SECTION 8 HOUSING CHOICE VOUCHER PROGRAM	A federal housing program as administered locally by public housing agencies in which a subsidy is paid to the landlord directly by the public housing agencies on behalf of the participating family.
SHORT SALE	A sale of real estate in which the proceeds from selling the property will fall short of the balance of debts secured by liens against the property and the property owner cannot afford to repay the liens' full amounts, whereby the lien holders agree to release their lien on the real estate and accept less than the amount owed on the debt. Any unpaid balance owed to the creditors is known as a deficiency.
SPECIAL ASSESSMENT	A proportional fee charged to the owner by the Homeowner's Association (HOA) to cover the cost of physical improvement to the entire building.
SPOUSE	A partner in a marriage.
TRANSFER	Any voluntary or involuntary sale, assignment or transfer of any interest in a BMR Unit
TRANSFER TAX	Tax on the passing of title to property from one person (or entity) to another.
UNBUNDLED PARKING	As defined in Planning Code Section 167.

UPGRADES	Any improvement made to a Housing Unit that is purchased either through the seller of the unit or purchased by the BMR Buyer upon purchase of a Housing Unit.
USE RESTRICTION	Any restrictions imposed by the Program or the City on the use or conveyance of a Housing Unit, as set forth in the NSR, Conditions of Approval, and/or other recorded documents or associated Planning Code provisions in effect at the time of Project Approval.
UTILITY ALLOWANCE	A dollar amount established periodically by the San Francisco Housing Authority based on U.S. Department of Housing and Urban Development (HUD) standards for cost of basic utilities for Households.
ZONING ADMINISTRATOR	The Zoning Administrator for the City and County of San Francisco.

II. OWNERSHIP PROGRAM

Buying, owning, and selling a BMR Ownership Unit differs in many ways from buying, owning, and selling a market rate unit. It is important that the buyers and sellers of BMR Ownership Units understand the rules and procedures of the Program fully. Among other items, this section sets forth the requirements for BMR Ownership Units including the qualifications for Qualified BMR Buyers, the application process, the establishment of the initial BMR Unit sales price and resale pricing, mortgage loan requirements, title and escrow requirements, restrictions on BMR Ownership Units and BMR Owners, and documentation and enforcement of sales restrictions for BMR Ownership Units.

A. QUALIFIED BUYER

Upon initial sale and resale of a BMR Unit, a BMR Buyer must meet the qualifications set forth below and MOH will use the procedures set forth below to determine Households that qualify as BMR Buyers.

First-time Homebuyer

No member of the applicant Household may have owned any interest in a Housing Unit for a three (3) year period prior to applying to qualify for purchase of a BMR Unit restricted under the Inclusionary Housing Program. The period shall be counted backwards from the application date for the BMR Unit.

An applicant shall be deemed to have owned an interest in a Housing Unit regardless of whether or not that interest results in a financial gain, is in another state or country, or if the applicant has ever used the property as a primary residence.

Notwithstanding the forgoing, the following interests shall not, by themselves, disqualify an applicant from falling within the definition of first time homebuyer: (1) ownership of timeshares; (2) loan co-signers from previous real estate transactions; (3) appearing on title solely in the capacity as a trustee for a trust, where the trust is the legal owner of the dwelling unit; (4) being a named beneficiary of a trust that includes a Housing Unit amongst the trust assets, but only if the trustor is living at the time; and (5) ownership of shares in a limited equity co-op.

MOH may verify first-time homebuyer status by (1) reviewing mortgage deductions on the three most recent years of federal tax returns for each applicant; (2) a signed statement on the application stating homeownership status; (3) a title search; or (4) other means reasonably calculated to determine First-time Homebuyer status.

Income and Asset Requirement

Per Planning Code Section 415.6 (c), initial sale BMR Ownership Units that are provided on the site of the Principal Project will be priced to be Affordable to Qualifying Households 90% of AMI on average, unless stated otherwise in Use Restrictions for the Project. Per Planning Code Section 415.7 (d), initial sale BMR Ownership Units that are provided off-site of the Principal Project will be priced to be Affordable to Qualifying Households with a Maximum Household Income that does not exceed 70% of AMI. In the case of the initial sale BMR Ownership Units only, the Maximum Household Income shall be set 10% above the Maximum Household Income level stated in Use Restrictions for the Project, not to

exceed 120% of AMI. Maximum Household Income amounts are adjusted on an annual basis by MOH.

These Maximum Income Levels apply except in the case of BMR Units that convert from rental to ownership as described in Section V (I) of this Manual.

MOH shall calculate Household income, including an asset test, based on the methodology contained in Section IV of this Manual.

BMR Ownership Units currently being marketed may adjust their Maximum Household Income used for qualifying applicants, but not for establishing the Maximum Purchase Price, as new Maximum Household Income levels are published by MOH at the beginning of each calendar year. Should a Project Sponsor or BMR Owner wish to update the Maximum Purchase Price levels as new Maximum Household Income levels are published by MOH at the beginning of each calendar year, the BMR Unit(s) must be removed from marketing and a new pricing and marketing process must be established.

Household Definition and Requirements

As defined in Planning Code Section 401, and for the purpose of qualifying for the Program, a Household is defined as any person or persons who reside or intend to reside in the same Housing Unit.

All Spouses or Domestic Partners must be included in the Household and must appear on the application, title and loan for the BMR Unit.

100% student Households as defined under the California Tax Credit Allocation Committee Compliance Manual 2012 Chapter 17 Category 11l are not eligible for the Program except under the exceptions contained in the IRS Section 42 (i) (3) (D).

All Household members who are under 18 years of age must be the legal dependent of an adult Household member, except in the case of emancipated minors, as claimed on the most recent federal income tax return, or legal minor children of titleholders.

Household Size Determination

The size of the Household is determined by counting together every person who intends to live in the BMR Unit, regardless of age or dependency status.

All adult Household members exempted from title and loan in Section II (A) below will be counted toward Household size and must appear on the application for the BMR Unit.

Pregnant applicants will be counted as two members of a Household with verifiable medical documentation.

Verified live-in assistants and foster children may be counted toward Household size in order to determine unit size and must appear on the application for the BMR Unit but will not be counted in income determinations and may not appear on title and loan for the BMR Unit.

Temporarily absent Household members who intend to live in the BMR Unit upon return must appear on the application for the BMR Unit. Such Household members include, but are not limited to,

Household members serving temporarily in the armed forces, or who are temporarily institutionalized.

Minimum Household Size

The size of a Household must be compatible with the size of the BMR Unit being purchased. A minimum of one person per bedroom is required. There is no restriction on purchasing a BMR Unit that has fewer bedrooms than the Household size; however, the Project may impose maximum Household size rules under the restrictions contained in Section II (B) of this Manual.

Occupancy Requirement

All members of the Household must occupy the BMR Ownership Unit as their primary residence, as defined by living in the BMR Unit at least 10 out of 12 months of the calendar year, and must occupy the BMR Unit within 60 days of the completion of the purchase.

Title and Loan Requirements

All adult Household members must appear as an owner or co-owner on the BMR Unit title and must co-sign for any purchase loan for the BMR Unit with the following exceptions:

(1) Legal dependents of titleholders as claimed on the most recent federal income tax return or legal minor children of titleholders. Spouses or Domestic Partners are not considered dependents;
(2) Household members younger than age 24 who are the child of a titleholder who will reside in the BMR Unit as their primary residence, regardless of being named as a dependent on the federal tax form of a titleholder; and,
(3) Recent immigrants with insufficient credit history as defined as a person who has been in the United States for 2 years or less as supported by entrance documentation or a sworn statement and lender documentation of the reason for loan denial, including a copy of the applicant's credit report.

First-time Homebuyer Education Workshop Requirement

All adult applicants age 18 and older must attend and complete a first-time homebuyer education workshop and receive a certificate of completion of such from a MOH-approved First-time Home Buyer Education Provider before applying for a BMR Unit. Applicants must provide a certificate of completion with the BMR application package. The certificate of completion from the workshop will be valid for two years from the date of issuance for the purpose of the Program. Applicants not required to complete the workshop include those adults who are not required to appear on the loan and title for the BMR Unit per the rules contained above in Section II (A) of this Manual.

Loan Preapproval Requirement

The applicant Household must obtain a loan preapproval from a MOH-approved Lender within the lending guidelines explained in Section II (D) in order to apply for a BMR Unit. The loan preapproval must refer to the building and/or the BMR Unit for which the applicant Household is applying and must include all adults age 18 and older as potential borrowers unless exempted from the requirement to

appear on the loan per Section II (A) of this Manual.

B. PROCESS

The following describes the process for applying for and purchasing a BMR Ownership Unit.

Application Process

New BMR Ownership Units shall be marketed for at least 45 days and resale BMR Ownership Units upon resale shall be marketed for at least 21 days, including a listing on the MOH website and local venues. Specific rules for marketing new BMR Ownership Units are contained in Section V (G) of this Manual. Specific rules for marketing resale BMR Ownership Units are contained in Section II (F) of this Manual. Applicants must submit a BMR application form and supporting documentation by a specific deadline for each BMR Ownership Unit by a specified deadline for that unit. All applications for BMR Ownership Units shall be entered into a lottery for the unit as described in Section II (B) of this Manual for initial sale and resale BMR Ownership Units.

Application Requirements

Applicants for all BMR Ownership Units must supply the following documentation to the Project Sponsor for the BMR Unit or, in the case of resale BMR Ownership Units, to the BMR Owner in order to apply for a BMR Ownership Unit:

An application from the proposed purchaser on a form specified by MOH;
Supporting documentation from all members 18 years or older of the purchaser Household, including:

Past three (3) years IRS returns;
Past three (3) years W-2 forms;
Three (3) current and consecutive pay stubs or equivalent;
Three (3) current and consecutive statements from every liquid asset account or personal cash holdings, including all custodial accounts held for minors;
Federal Tax Form T4506;
California Driver's License or State ID;
Certificate of completion of a first-time homebuyer workshop from a MOH-approved First-time Home Buyer Education Provider;
Loan preapproval for the specific BMR Unit or building from a MOH-approved Lender;
Verification of San Francisco residency or employment (only if applicable);
Copy of Certificate of Preference (only if applicable);
CalHome Citizenship Form (only if applicable).

If the application is approved, and to proceed with a BMR Unit purchase, the applicant's lender must supply the following documentation to MOH:

Lender Checklist;
Sales agreement;
Loan agreement (1003 and 1008);
Final Fair Market Appraisal;

Preliminary Title Report;
Mortgage loan commitment letter;
Good Faith Estimate (GFE);
Copy of Buyer's purchase approval letter from MOH;
City downpayment application (only if applicable).

Before proceeding with closing, the Title Company must send to MOH:

Original borrower's signed BMR Note;
Copy of signed City Deed of Trust;
Copy of signed City Declaration of Restrictions & Option to Purchase Agreement;
Copy of signed Acknowledgement of Declaration of Restrictions, Procedures Manual and Planning Code Ordinance;
Estimated Settlement Statement;
Copy of 1st lender note & deed;
Copy of 1st lender escrow instructions;
Request for Notice of Default.

After closing, the Title Company must send to MOH:

Executed BMR Note & Recorded City Deed of Trust;
Recorded City Declaration of Restrictions & Option to Purchase Agreement;
Recorded Acknowledgement of Declaration of Restrictions, Procedures Manual and Planning Code Ordinance;
Recorded Request for Notice of Default;
Final HUD-1 Statement;
ALTA Policy;
Completed sales agreement.

Changing an Application after Submission

No application changes shall be allowed after an application is submitted and after an application deadline has passed unless the change is (1) the removal of an applicant, (2) the addition of an applicant's Spouse or Domestic Partner or a new Household member in the case of an adoption or new guardianship; (3) an update of income qualification, such as a new job or a job that has ended; or (4) correction of technical errors, such as current phone number or other non-qualifying information.

Application Review Period

An application for a BMR Unit must be reviewed and approved for income qualification within the one hundred and twenty (120) days prior to the Close of Escrow of a BMR Unit.

Request for Application Reconsideration

An applicant requesting reconsideration of a disqualified application shall submit new information or documentation contesting the disqualification to MOH within 3 business days from the date of the disqualification letter and MOH shall respond by the end of a 7 business day period from the date of the

disqualification letter. In the case of such request, and when such a unit is available, the Project Sponsor shall maintain one appropriately sized BMR Unit for the disqualified Household for seven (7) business days from the date of the issuance of a disqualification letter but need not hold the applicant's preferred BMR Unit.

Realtor Representation

In the case where commission is being paid to the realtor of any buyer in a Project, commission shall be paid to the realtors of all BMR Buyers. The amount paid to realtors for BMR Buyers must be comparable to fees being paid for non-BMR Buyer representation in the Project.

In the case where no buyer's realtor in a Project is provided commission for realtor representation and the Project Sponsor's realtor serves as the agent for all buyers in the Project, the Project Sponsor's agent may represent the BMR Buyer as long as that agent is a Certified Realtor and agrees to legally represent the BMR Buyer in all aspects of the transaction.

Maximum Occupancy Standard

MOH does not establish a maximum household size for BMR Units. However, the Project Sponsor may apply a maximum occupancy standard to a Household occupying a BMR Unit as long as that standard is derived from the San Francisco Housing Code Section 503(b) and as long as that review is normal and customary and applied evenly to all tenants in the building.

Selection of BMR Buyers upon Initial Sale and Resale of BMR Units

Lottery Preferences

All Households may enter the lottery for a BMR Unit. However, those Households in which one member holds a Certificate of Preference (COP) from the former Redevelopment Agency or who lives or works in San Francisco will be given preference in the lottery ranking process, with COP holders being given the highest preference.

COP holders are primarily Households previously displaced by former Redevelopment Agency action in Redevelopment Project Areas per the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521.

If the number of BMR Units available exceeds the number of qualified applicants who hold a COP or who live or work in San Francisco, the BMR Units will become available to other qualified applicants.

Verification of Preference Qualification

To be considered a COP holder, a Household must submit a copy of the Certificate of Preference with the application. COP inquiries should be addressed to the Mayor's Office of Housing at (415) 701-5613.

To be considered a Household that lives or works in San Francisco, at least one member of the applicant Household must provide the following proof of residency or employment with the submitted

application:

Verification that the applicant lives in San Francisco:
(1) One utility bill with a San Francisco address dated within the 45 days preceding the application date for the BMR Unit. Utility bills can include gas, electric, garbage or water; or
(2) Current paystubs with a San Francisco address; or
(3) A current, formal lease with a San Francisco address.

OR

Verification that the applicant works in San Francisco:
MOH shall verify that a person works in San Francisco by reviewing an applicant's paystubs. If an applicant's employer is not based in San Francisco, or if a person's paystubs do not reflect a San Francisco work address, the applicant must supply a letter from the employer stating that the person works primarily in San Francisco and demonstrate that at least 75% of their working hours are in San Francisco.

Lottery Process

The following guidelines shall be applicable to the lottery process for all BMR Ownership Units:

A non-prioritized list of interested buyers will be kept by MOH. At least twenty-one (21) days prior to a lottery for initial sale BMR Units and at least fourteen (14) days prior to a lottery for resale BMR Units, all those signed up on the list will be notified of the availability of BMR Units and invited to participate in the lottery by MOH. The general public will be invited to participate in the lottery, as well;

Applicants who submit a complete application by the application deadline for the BMR Unit(s) will receive a numbered lottery ticket whose twin ticket shall be entered into the lottery. Applications missing a complete cover application, tax forms for all adults (or other applicable tax documents), all required certificates from a MOH-approved First-time Homebuyer Education Provider, and a loan preapproval will not be entered in to the lottery;

Lotteries for BMR Units shall be held in a public, accessible location that is arranged and paid for by the Project Sponsor;

A representative of MOH shall conduct the lottery in tandem with the Project Sponsor and record the order of lottery numbers drawn;

To conduct the lottery, MOH shall pull application tickets from a vessel in rank order and record the lottery results by application ticket number. COP holders will be drawn and ranked first, followed by applicants who live or work in San Francisco. MOH shall pull at least 10 ticket numbers for each BMR Unit available, should there be enough total applicants to do so;

Applications shall not be reviewed for eligibility before the lottery but only after the lottery ranking has been finalized;

The final lottery list shall be produced by MOH after the lottery once the lottery preferences have been clearly identified and applied;

Applicants shall be invited to attend lotteries, but attendance is not mandatory;

Lottery results shall be posted on either the MOH or Project Sponsor website but shall not include the names of applicants but only the application ticket numbers. The results of resale lotteries with 10 or fewer applicants may be announced by the Project Sponsor to each applicant rather than posting to a website.

Post-Lottery Process

Project Sponsors, MOH and BMR applicants shall adhere to the following process following the lottery for a BMR Unit:

MOH shall transmit a final lottery list to the Project Sponsor who shall notify all applicants of their position in the lottery and inform MOH of the lottery winners' intent to purchase the BMR Unit;

The Project Sponsor shall adhere to the rank order of the lottery list when offering BMR Units to lottery winners;

Applicants shall be reviewed post-lottery for Program qualifications and issued an approval or disqualification letter;

Per Section II (B) of this Manual, in the case of an request for reconsideration of a BMR application, and when such a BMR Unit is available, the Project Sponsor shall maintain one appropriately sized BMR Unit for the disqualified applicant for a seven (7) day period from the date of the issuance of a disqualification letter but need not hold the applicant's preferred BMR Unit;

To maintain the live or work lottery preference, the applicant must maintain the status of the preference from the time of the application to the time the BMR Unit is purchased.

Financing

A BMR Buyer must be granted ten (10) calendar days from date of the Program approval letter to enter into a sales contract for an available BMR Unit and must be offered at least a sixty-day (60) closing period with at least a forty-five day (45) financing contingency period within the sixty-day (60) closing period in the contract. This period can be extended if requested by the Project Sponsor or if needed to provide time for special products available to First-time Homebuyers.

Escrow

As is typical with market rate sale transactions, BMR Buyers may be required by the Project Sponsor or BMR Owner reselling a BMR Unit to work with a Title Company chosen by the Project Sponsor or BMR Owner when establishing an escrow account and finalizing the sale of the BMR Unit.

Transaction Fees for BMR Ownership Units

The Project Sponsor shall pay all usual, customary and reasonable transaction costs normally borne by the seller in a residential real estate transaction, with the following requirements:

Seller Transfer Tax shall be paid by the Project Sponsor in the case of all initial sales of BMR Units;

Seller realtor fees shall be paid by the Project Sponsor in all cases;

Buyer realtor fees shall be paid by the Project Sponsor in all cases in an amount commensurate with fees being paid for non-BMR Buyer representation in the Project per Section II (B) of this Manual.

C. ESTABLISHMENT OF INITIAL SALE AND RESALE PRICING

Pricing Process

Prior to marketing a BMR Ownership Unit for initial sale, the Project Sponsor shall transmit a copy of the Notice of Special Restrictions ("NSR"), final planning approval, approved floor plans indicating the location of the BMR Units in the building, and final HOA dues for each BMR Unit to MOH, together with a request for determination of initial sales pricing on a form provided by MOH. The pricing shall be valid for sixty (60) days and shall serve as the final pricing for the BMR Units only upon approval of the Marketing Plan for the BMR Units. However, no BMR Units shall begin marketing in one calendar year with Maximum Purchase Prices that were established in the previous calendar year.

MOH shall require the completion of a standard form in order to request BMR Unit pricing.

Income Table

The income table used to calculate the income level of a BMR Household and thereby price BMR Units shall be the table named "Maximum Income by Household Size derived from the Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco" unless the Project Sponsor, with permission from MOH, offers the BMR Units at a lower income level than that required by Use Restrictions and chooses to abide by an alternate income table in doing so.

Methodology for Pricing Initial Sale Units

MOH shall calculate the initial sales price of the BMR Unit according to the following assumptions:

(1) the income limits specified in Use Restrictions;
(2) total payments of no more than thirty-three (33) percent of the gross monthly income, including payments for taxes, insurance, homeowner or association's fees and related costs;
(3) a mortgage interest rate that is the ten (10) year rolling average of 30-year interest rate data provided by Freddie Mac; and
(4) a ten percent (10%) down payment assumption.

MOH shall price initial sale BMR Units based on the income level for a Household that is one person larger than the total number of bedrooms in the BMR Unit in all cases except for studio BMR Units, which assume a one-person Household, and SRO Units, which shall be priced based on three-fourths

(3/4) of the price for studio BMR Ownership Unit.

MOH shall transmit pricing information to the Project Sponsor within fifteen (15) business days of receiving a complete request for determination.

Parking Space Policy for BMR Ownership Units

Bundled Parking Policy for BMR Ownership Units

In Projects in which parking for the non-BMR units is sold or leased as a part of the sales price for any non-BMR Housing Unit, parking spaces shall be granted to BMR Buyers within the Maximum Purchase Price as established by MOH and at the same ratio of parking spaces to Housing Units in the Project overall. This policy shall apply in developments where even one parking space is included in the sales price for a non-BMR unit. All parking spaces granted to BMR Buyer Households shall be resold or re-leased with the BMR Unit upon resale.

Unbundled Parking Policy for BMR Ownership Units

In Projects in which parking is "unbundled," or sold or leased separately from every Housing Unit in a Project, parking spaces shall be made available to BMR Buyers at the same ratio of parking spaces to Housing Units the project overall. If the Project Sponsor qualifies for the option, the Maximum Purchase Price of each BMR Unit, as determined by MOH, shall be reduced by the cost of constructing a parking space (as determined and published annually by MOH) multiplied by the ratio of parking spaces to Housing Units in the Project overall. The Project Sponsor is then allowed to charge the BMR Buyer the market rate price for the parking space as long as that price is the lowest price available for a parking space to any buyer in the Project.

In Projects in which parking for non-BMR residential units is "unbundled," or sold or leased separately from every Housing Unit in a Project, the Project Sponsor may still choose to sell or rent the parking spaces for BMR Units within the Maximum Sales Price of the BMR Unit as established by MOH if the Project Sponsor so chooses or if the Project Sponsor is unable to provide sufficient documentation that 100% of the parking spaces in the Project are sold or rented separate from Housing Units.

The details of the unbundled parking policy for BMR Units are as follows:

Project Sponsors must offer BMR Buyers the opportunity to purchase or lease parking spaces according to the overall ratio of parking spaces to Housing Units in the Project;

In Projects in which 1:1 parking is available, the price of each BMR Unit will be lowered by a standardized amount equivalent to the cost of constructing either a structured, above-ground parking space or a below-grade parking space, exact amount to be established by MOH through cost analysis and adjusted annually;

In Projects with less than 1:1 parking availability, MOH will lower the price of each BMR Unit by an amount equivalent to the cost of constructing either a structured, above-ground parking space or a below-grade parking space multiplied by the ratio of parking spaces to Housing Units in the Project overall;

The price of each BMR Unit will be reduced regardless of the BMR Buyer's choice to purchase or lease a parking space;

BMR Buyers must be offered the opportunity to purchase or lease parking at the lowest market rate price offered to any buyer in the Project;

This policy applies only to Projects in which the parking is 100% unbundled, or sold or leased separately, from the all Housing Units in the Project. Project Sponsors choosing this option must provide proof that they have affirmatively marketed their non-BMR residential units as having unbundled parking and must alert all buyers to the fact that all Housing Units in the Project are sold or leased both with and without parking and at two respective sales prices. At a minimum, such Projects must provide non-BMR buyers with pricing materials that provide two prices for every Housing Unit, one price with parking and one price without parking, and must prove that all advertising for the non-BMR residential units either states that parking is sold separately from Housing Units or, at the very least, does not state that Housing Units in the Project are sold with a parking space included in one price;

Project Sponsors shall not charge special fees for parking to BMR Buyers that are not charged to all buyers;

The price of a parking space for a BMR Buyer must never exceed the maximum established during the initial marketing of the BMR Units, but may fall below this price for both non-BMR and BMR Buyers as long as the reduction is applied evenly to all buyers;

In buildings with less than 1:1 parking, the opportunity to purchase or lease a space will be allocated by lottery rank. All BMR Buyers must be offered the option of purchasing or leasing a parking space until all required parking spaces to be allocated to BMR Buyers are purchased or leased. Should any spaces remain after every BMR Buyer has been offered the option to purchase or lease a space, those spaces may be sold or leased to non-BMR Buyers;

A first parking space that is purchased either (1) at the same time that the BMR Unit is initially purchased or (2) purchased by a BMR Owner any time after the initial purchase of the BMR Unit shall be re-sold with the BMR Unit upon resale of the unit. The parking space shall be resold within the overall resale price as outlined in Section II (C);

BMR Buyers or BMR Owners may purchase or lease a second parking space at any time without any restrictions placed on the Project Sponsor or the BMR Buyer BMR Owner. However, this second parking space becomes the responsibility of the BMR Owner upon resale of the BMR unit.

Pricing Methodology for BMR Units upon Resale

Except for transfers pursuant to Section II (F) of this Manual, the BMR Owner shall transfer the BMR Unit at a sales price no greater than the following amount (the "Maximum Resale Price"):

(1) The price that the BMR Owner paid for the BMR Unit upon Close of Escrow ("Base Price") adjusted only by the percentage change in AMI (up or down) from the year of purchase to the year of the BMR Unit resale pricing (the "Change in AMI Formula");

(2) The cost of eligible capital improvements completed in compliance with Section II (F) of this

Manual;

(3) The cost of Special Assessments paid by the BMR Owner; plus
(4) The cost of using a Certified Realtor and Multiple Listing Service, up to 5% of the Base Price, which is before the addition of capital improvements, special assessments and realtor commission.

The current BMR Owner's purchase year is the calendar year in which the BMR Unit closed escrow. This rule applies regardless of when the BMR Unit was purchased within that calendar year. The resale pricing year is the calendar year in which the BMR Unit is being repriced.

The AMI percentage change will be based on 100% of AMI for a 4-person Household in both index years. This 4-person proxy will be applied regardless of BMR Unit size or income designation of the BMR Unit.

Example of Change in AMI Formula Pricing:

Household purchases BMR Unit in February 2008 for $300,000 and resells in July 2012. BMR Unit is a one-bedroom unit.

2008 4-person AMI = $94,300
2012 4-person AMI = $103,000
AMI change from 2008 – 2012 = 9.23%, or $27,678
New Base Price = $327,678
5% realtor commission = $16,384
Final Maximum Resale Price = $344,062

No other costs shall be recouped in the resale of a BMR Ownership Unit than those described under the Maximum Resale Price above.

A BMR Owner is not guaranteed that a buyer will purchase a BMR Unit at the Maximum Resale Price upon resale and may have to lower the resale price in order to attract a buyer. The Maximum Resale Price is simply the maximum amount that a BMR Owner may charge a BMR Buyer in a resale transaction.

The price of a BMR Unit at resale is not guaranteed to exceed the initial purchase price of the BMR Unit. However, any appreciation gained from the sale of a BMR Unit belongs to the BMR Owner upon resale unless the BMR Owner has an additional loan from the City or other entity that requires repayment and/or an appreciation share.

If the resale price as calculated above and before the addition of capital improvements and realtor commission is lower than the original purchase price for the BMR Unit, the BMR Owner may choose to resell the BMR Unit at the resale price as calculated, or at the original purchase price plus capital improvements and special assessments and realtor commission. The BMR Owner is not guaranteed that the BMR Unit will resell at the original purchase price, however.

D. FINANCING REQUIREMENTS

The purpose of the following financing requirements for BMR Ownership Units is to ensure that BMR

Buyers can afford to become homeowners within commonly accepted standards and to protect the BMR Unit from foreclosure. MOH will review loans factors important to sound lending, including but not limited to the following items.

Loan Requirement

All BMR Buyers must secure a loan to finance the purchase of a BMR Unit. All loans must be secured through a MOH-approved lender.

Loan Originator

All MOH BMR Buyers must work with a MOH-approved lender to secure a first or a subsequent loan. Such lenders are listed on the MOH website at www.sf-moh.org. Approved MOH lenders must attend annual trainings for all MOH homeownership programs and be a part of an approved lending institution that pays an annual participation fee to MOH.

Loan Term

Buyers must use 30-year loans at all times, except in the case of refinance.

Loan Payment Plan

Buyers must use fixed rate loans only. Buyers cannot use negative amortizing loans, adjustable rate mortgages, "balloon payment" loans, or interest-only loans. MOH reserves the right to identify additionally prohibited loan characteristics.

Loan to Value Ratio

The maximum allowable Loan to Value Ratio is 95%.

Downpayment Requirement

Buyers must make a minimum 5% down payment, which will vary based on the sales price of the home. Of the total 5%, 3% must be the BMR Buyer's own funds (held in a financial institution) and 2% can be from gift funds (not yet received).

Debt Ratios

The Buyer's front-end ratio or debt-to-income ratio (i.e. monthly housing payment) must be no lower than 28% and no higher than 38% of the BMR Buyer's income. Such ratios will be determined by a BMR Buyer's lender.

The front-end ratio may include:
Principal and interest payments on the first mortgage;
Principal and interest payments, if any, on subordinate, non-deferred loans;
Real estate taxes;
Hazard insurance premium;

Flood insurance premium, is applicable;
Private mortgage insurance premium, if applicable;
Monthly Homeowners' Association Dues for condominiums.

The Buyer's back-end ratio or total debt-to-income ratio (i.e. total debt monthly payment) should not exceed 45% of the Buyer Household's income.

The back-end ratio may include:
The monthly housing payment as defined above;
Long-term installment debt beyond 10 months remaining to be paid;
Revolving accounts and lines of credit;
Alimony, child support or maintenance, if applicable.

Interest Rates

MOH will review loans for reasonable interest rates that are reflective of current trends.

Documentation of Income

Buyers must supply full income and other documentation to a lender when applying for a loan for a BMR Unit.

FICO Score

MOH does not establish a minimum FICO score for BMR Buyers. Lenders determine the minimum FICO score according to their own guidelines and loan products.

Co-signing

Co-signing for a loan for a BMR Unit by a non-BMR Household member is not allowed.

Fees

All fees must be usual, customary and reasonable transaction fees normally incurred in a residential real estate transaction. Fees should be charged at Close of Escrow, if possible.

Seller Credits

Seller Credits are allowed as long as the sales price remains at or under the stated sales price and if there is no dowpayment assistance money from the City and no cash back to the BMR Buyer. Seller credit funds must be used in escrow.

Named Borrowers

All adult Household members must appear as an owner or co-owner on the BMR Unit title and must co-sign for any purchase loan for the BMR Unit with the following exceptions:

(1) Legal dependents of titleholders as claimed on the most recent federal income tax return or legal minor children of titleholders. Spouses or Domestic Partners are not considered dependents;
(2) Household members younger than age 24 who are the child of a titleholder who will reside in the BMR Unit as their primary residence, regardless of being named as a dependent on the federal tax form of a titleholder; and,
(3) Recent immigrants with insufficient credit history as defined as a person who has been in the United States for 2 years or less as supported by entrance documentation or a sworn statement and lender documentation of the reason for loan denial, including a copy of the applicant's credit report.

Appraisals

MOH requires a Fair Market Appraisal as a part of the lending and closing process. Lenders desiring to order an additional appraisal that compares BMR Units to other BMR Units may do for their lending purposes but such appraisal should compare BMR Units with similar characteristics, including similar AMI pricing targets.

BMR Note

Lenders should be aware of the placement of the BMR Note as defined in Section II (G) of this Manual.

Government-insured Loans

BMR Buyers may not be allowed to use government-insured loans such as FHA, Veteran's Administration loans, and other such loans at the current time as such loan programs have not agreed to accept loans that are restricted under the Program. MOH allows the use of such loans; however, such programs have not approved MOH's BMR program and therefore, have not lent to BMR Buyers under the Program.

Securitizing Loans

As securitized loans under the Program tend to be sold to the Federal National Mortgage Association ("FNMA"), BMR Buyers should ensure that lenders are either able to sell their loan to FNMA or manage the loan within the lending institution itself.

Refinancing

MOH must approve all refinancing agreements for BMR Ownership Units, including any new loans placed on the BMR Unit in any lien priority position. Owners may be permitted to refinance up to the original value of their first mortgage plus closing costs in order to obtain lower interest rates or lower monthly payments. Owners may refinance their BMR Units to withdraw cash only in an amount equal to the principal paid on the BMR Unit. MOH will not review the Household income for Program qualification upon refinancing. Owners must use a MOH-approved Lender to conduct the refinance and the new loan must be approved under the guidelines set out in Section II (D) of this Manual, including but not limited to a 95% loan to value ratio.

Home Equity Lines of Credit and Home Equity Loans

MOH does not allow BMR Owners to open Home Equity Lines of Credit but may approve a Home Equity Loan if that loan falls within the guidelines of Sections II (D) of this Manual. BMR Owners who use such programs without approval from MOH may be in violation of their Program restrictions and/or may not be allowed by MOH to refinance their BMR Unit.

Default and Foreclosure

In the event of loan default or risk of foreclosure on first mortgage, a BMR Owner must contact MOH to alert MOH of the default within 30 days of the default.

BMR Units that fall into foreclosure must be resold under their current restrictions. The Baseline Price used to resell a BMR Unit that was purchased by the primary lender at auction shall be the price paid at auction or the balance of the outstanding debt of the primary mortgage, whichever is higher.

In the event of a foreclosure, only a Qualified Buyer can purchase the BMR Unit at the foreclosure sale, with the exception of the first mortgage lender, who must then resell the BMR Unit to a Qualified Buyer.

See Section G of this Manual for information on the order of liens for a BMR Ownership Unit.

Short Sales

In the case of BMR Units that have not received loan assistance from the City, MOH will consent to a short sale request, provided that the short sale price does not exceed the Maximum Purchase Price allowed under the Program. The BMR Owner has the discretion to lower the purchase price to any chosen amount below the maximum purchase price allowed under the Program.

In the case of Units that have received loan assistance from the City, MOH will only consent to a short sale request if allowed under the specific regulations governing the source of the City loan assistance. BMR Owners should refer to the specific guidelines associated with such sources outside of this Manual.

Financing Additional Items upon Purchase

A loan for a BMR Unit shall not include storage units, other additional spaces for sale, or second parking spaces that were not provided with the BMR Unit as a part of the purchase of the BMR Unit. Such items and spaces will not be included in a BMR Unit resale and are the sole responsibility of a BMR Owner.

BMR Unit upgrades may not be financed as a part of a BMR Unit purchase and can never be added to the resale price of a BMR Ownership Unit that was purchased upon initial sale of the unit or within the first 10 years of the initial sale of the BMR Unit, as explained in Section II (F) of this Manual.

Exception for BMR Units Unable to Obtain Financing

When a BMR Unit is unable to secure financing upon resale due to pending litigation in the Project or due to a ratio of rental to ownership Housing Units in the Project that is unacceptable to lenders, and whose BMR Owners must sell their BMR Unit due to financial hardship or job relocation out of the Bay

Area, such BMR Unit may be eligible for an allowance to sell the BMR Unit to a Buyer who will pay cash for the unit rather than by obtaining a mortgage. This allowance differs from MOH's standard policy which requires that all BMR Buyers carry a mortgage on a BMR Unit.

Under this option, a BMR Buyer would be allowed to purchase the BMR Unit in cash and not carry a mortgage under the following rules. However, financing is allowed and encouraged in the case of these Projects, should it be obtained. All such financing must be secured through a MOH-approved Lender.

The process of selling a BMR unit to an all-cash buyer shall follow the ensuing requirements and process:

(1) After purchasing the BMR Unit in all cash, the Buyer's remaining monthly housing costs must equal no more than 38% of the Household monthly income. These costs include HOA dues, real estate taxes and home insurance as well as those set forth in Section II ( ) of this Manual. Settlement or trust funds may be used to determine the BMR Buyer's ability to meet monthly housing costs. BMR Buyers shall provide a credit report to verify any debt liabilities as well as other documents requested by MOH to confirm debt to loan ratios;

(2) The Buyer must be at or below the Maximum Income Level for the BMR Unit;

(3) In the case of cash purchases only, to gather a more comprehensive picture of a Household's true earnings, and to avoid selling a BMR Unit to a Household that is only temporarily low-income, MOH will average the past three years of federal tax income (in addition to the standard income test) to determine Household income. This method will present a more realistic picture of a Household's income. In the case that a Household has become recently retired or disabled, MOH may seek documentation of such and revert back to the current income review standard;

(4) MOH will exempt the cash assets that are used to purchase a BMR Unit from the standard asset test for the Household;

(5) BMR Buyers applying gift funds toward the purchase of the BMR Unit must supply a Gift Letter and verification of funds with the application for the BMR Unit.

Realtors should inform all potential BMR Buyers of the one-time nature of these policies and that the BMR Unit must be sold through the regular procedures of this Manual upon resale and inform potential BMR Buyers of the lawsuit pending against the Project or to the current rental to ownership unit ratio that is disallowing financing on the BMR Unit.

In the absence of a lender, the realtor for a BMR owner selling under this allowance shall coordinate all processes and deliver all forms typically provided by a Lender, including but not limited to a Fair Market Appraisal, credits reports and a Preliminary Title Report.

BMR Owners intending to obtain one of these allowances must submit a form provided by MOH and receive permission from MOH before selling to a cash BMR Buyer.

E. TITLE AND ESCROW REQUIREMENTS

Named Titleholders

All adult Household members must appear as an owner or co-owner on the BMR Unit title and must co-sign for any purchase loan for the BMR Unit with the following exceptions:

(1) Legal dependents of titleholders as claimed on the most recent federal income tax return or legal minor children of titleholders. Spouses or Domestic Partners are not considered dependents;
(2) Household members younger than age 24 who are the child of a titleholder who will reside in the BMR Unit as their primary residence, regardless of being named as a dependent on the federal tax form of a titleholder; and
(3) Recent immigrants with insufficient credit history as defined as a person who has been in the United States for 2 years or less as supported by entrance documentation or a sworn statement and lender documentation of the reason for loan denial, including a copy of the applicant's credit report.

Vesting

BMR Units may be vested in any form as long as all titleholders also appear on title as a fee owner for the BMR Unit.

F. RESTRICTIONS ON BMR OWNERSHIP UNITS AND OWNERS

Term of Restriction

All BMR Ownership Units are restricted in their resale price and other applicable restrictions for the Life of the Project unless otherwise noted in Use Restrictions for the Project.

Occupancy Requirements

BMR Ownership Units are to be owner-occupied and used as the owner's primary residence as defined by living in the BMR Unit at least 10 out of 12 months of the calendar year. The BMR Household must occupy the BMR Unit within 60 days of the completion of the purchase.

Rental Prohibition

BMR Units are not to be used as rental property. An owner of a BMR Unit may not rent or sublease any part or the entire BMR Unit without prior written consent of MOH.

MOH may grant consent to a BMR Owner to rent in circumstances where the Household is forced to temporarily relocate due to employment requirements; where the BMR Owner is unable to sell a BMR Unit at the original purchase price or at the original purchase price plus the Change in AMI repricing methodology per Section II (C) of this Manual; or for other reason deemed acceptable by MOH in its sole discretion, provided that:

(1) The total period for which the BMR Unit may be leased does not exceed twelve (12) months;

(2) The tenant satisfies the income requirements placed on the BMR Unit by Use Restrictions and of this Manual for the Unit as a BMR Ownership Unit and other qualifying Household requirements placed on the BMR Unit by Use Restrictions and of this Manual for the Unit as a BMR Rental Unit;

(3) Initial rent does not exceed the Maximum Monthly Rent, calculated according to the Maximum Household Income stated in the Use Restrictions for the Unit as a BMR Ownership Unit, or the BMR Owner's total housing expenses, as defined in Section I of this Manual, whichever is the lesser amount.

Maintenance and Insurance

The BMR Owner shall not destroy or damage the BMR Unit, allow the BMR Unit to deteriorate, or commit waste on the BMR Unit. Owners shall maintain the BMR Unit in compliance with all applicable laws, ordinances and regulations and in a good and clean condition and all appliances shall be in good and working order.

Transfer Procedures

A BMR Owner may Transfer the BMR Unit only to a Qualified Buyer. In connection with a proposed Transfer, Owner shall comply with the marketing and procedural requirements set forth in Section II (F) of this Manual. Excepting Transfers by foreclosure or an Acquisition Lender's acceptance of a Deed in Lieu of Foreclosure, or other circumstances approved by MOH, all Transfers shall take place through an escrow account with a mutually acceptable Title Company. No Transfer shall be permitted unless such title company complies with any and all escrow instructions provided by MOH.

Transfer to Spouse or Domestic Partner

If a BMR Owner marries or becomes a Domestic Partner after purchasing the BMR Unit, the Spouse or Domestic Partner may become a co-Owner. An Owner intending to add a Spouse or Domestic Partner as a co-Owner must present his or her marriage certificate or Domestic Partnership registration to MOH for review, and the proposed co-Owner shall execute an addendum to City documents related to the BMR Unit by which the co-Owner shall assume the same rights and responsibilities with respect to those documents as the Owner.

Transfer upon Owner's Death

Upon a BMR Owner's death, the Property may be Transferred to any co-Owner previously approved by MOH without further MOH approval, but such co-Owner shall notify MOH within thirty (30) days of the Transfer and MOH may require such co-Owner to execute an addendum to City documents related to the Property by which the co-Owner shall assume the same rights and responsibilities with respect to those documents as the Owner. If at the time of Owner's death, a co-Owner has not been previously approved by the City, such co-Owner must first present his or her marriage certificate or Domestic Partnership registration to the City for review, and if the documentation is approved by the City, the Property may be Transferred to such co-Owner in accordance with the preceding sentence.

Upon the death of a BMR Owner and all MOH-approved co-Owners, the Property may be Transferred by inheritance, will, or any other function of law to a child of the BMR Owner, provided however that such child otherwise qualifies under as a Qualified Buyer Household. The proposed transferee shall submit any financial and other information reasonably requested by MOH to verify that the proposed transferee meets the requirements of a Qualified Buyer Household. If MOH determines that the proposed transferee is a Qualified Buyer Household, the BMR Unit may be Transferred to the proposed transferee for no consideration (except to the extent necessary to pay off any existing lien secured by the BMR Unit). The proposed transferee shall execute a BMR Note, City Deed of Trust, and any other City documents related to the BMR Unit by which the proposed transferee shall assume the same rights and responsibilities with respect to those documents as the BMR Owner.

Upon the death of a BMR Owner and all MOH-approved co-Owners, if the Owner's child is not the entitled beneficiary of the BMR Unit, or if MOH determines that the proposed child transferee is not an Qualified Buyer Household, then the BMR Unit shall be Transferred pursuant to the requirements set forth in Section II (F) of this Manual, and the beneficiary of the BMR Unit shall only be entitled to receive the BMR Owner's proceeds from said Transfer.

In the case of an heir who is a current Household member at the time of the death of a titleholder, that heir shall be allowed one (1) year to live in the BMR Unit before either qualifying to inherit the BMR Unit as an Qualified Buyer Household or resell the BMR Unit under the procedures outlined in Section II (F) of this Manual.

Removing a Person from Title

Removal of a titleholder is allowed only in the case of death or dissolution of marriage or Domestic Partnership. MOH must approve such removals.

Resale Restrictions and Procedures

Upon the resale of BMR Ownership Units, a BMR Owner must adhere to the following procedures:

A BMR Owner must contract with a MOH-approved realtor to resell a BMR Ownership Unit. As described in Section II (C) of this Manual, the Maximum Resale Price of the resale BMR Unit will include commission for the realtor;

MOH shall calculate the Maximum Resale Price for the BMR Unit. The BMR Owner must, at least thirty (30) days prior to marketing the BMR Unit, advise MOH of his/her intent to sell the BMR Unit and shall work through a MOH-approved Realtor to request a determination of a Maximum Resale Price from MOH. MOH shall price the BMR Unit only upon receipt of a signed intent to resell the BMR Unit and request for pricing; a statement of all approved capital improvements made to the Unit; and a signed listing agreement with a MOH-approved certified realtor. MOH may require the completion of a standard form in the submission of such request. See Section II (C) of this Manual for an explanation of how BMR Ownership Units are priced upon resale;

Within the 30-day period, MOH shall inform the BMR Owner of the Maximum Resale Price of the BMR Unit and any other conditions of sale;

The BMR Unit must be marketed for at least 21 calendar days preceding an application deadline and lottery for the BMR Unit. Among other requirements, the BMR Owner's realtor must hold at least 3 open houses, including one week night and one weekend day open house; advertise the BMR Unit on the MLS to promote public awareness; accept applications; field all questions regarding BMR Units; provide applicants with lottery ticket or number; enter applicant information into a MOH-approved applicant tracking sheet within 24 hours of application deadline; and, ensure completeness of all applications;

All potential BMR Buyers who are on the general BMR interest list shall be notified by MOH of Units available for resale and invited to participate in the lottery, as well the general public;

A public lottery will be held by MOH for all BMR Units upon resale in accordance with Section II (B) of this Manual. MOH will conduct the lottery and record the results and the BMR Owner's realtor will make the results available to all interested applicants or members of the public;

To enter the lottery for resale, a BMR Buyer shall submit to the BMR Owner's realtor for approval the documentation outlined in Section II (B) plus a completed San Francisco Purchase Agreement. To proceed with a BMR Unit purchase post-lottery, the BMR Buyer's lender and Title Company must supply MOH with the documents outlined in Section II (B) of this Manual;

No sale may proceed without the written approval of MOH;

Broker fees paid by the BMR Owner must be shared in a commission agreement with the BMR Buyer's realtor. Such fees will be based on the MOH-calculated resale price before the addition of capital improvement amounts or realtor commission;

Sales agreements with terms requiring the payment of realtor fees by the BMR Buyer will not be approved;

No separate terms can be required within a sales agreement that requires the BMR Buyer to purchase appliances, furnishings, or other disallowed capital improvements;

All amenities and parking spaces that were purchased with the BMR Unit must be sold with the BMR Unit upon resale;

BMR Owners, BMR Buyers and realtors shall comply with the documentation and enforcement procedures set forth in Section II (G) of this Manual;

All new BMR Owners shall adhere to the requirements of this Manual;

Marketing of the resale of individual BMR Ownership Units shall be in compliance with all applicable federal, state and local laws related to Fair Housing. BMR Owners and their agents may be asked to certify that the BMR Unit has not been marketed in such a manner as to be discriminatory.

Units Unable to Resell

In the case of BMR Units that are unable to attract a buyer for a BMR Unit that has been repriced under

the Change in AMI Formula within a six (6) month period where the BMR Owner has made a good faith effort to sell the BMR Unit, or in cases where market rate comparisons reveal that the BMR Owner's purchase price for the BMR Unit is at or below current comparable market rate units, the BMR Owner may seek permission to rent the BMR Unit to a Qualified Renter Household for one year at a rent level that equals either the Maximum Monthly Rent levels allowed at the ownership AMI level of the BMR Unit as stated in Use Restrictions or the BMR Owner's total housing costs (whichever is lesser) with the option of entering into one additional year of rental if the current market rate comparisons continue exceed the original purchase price.

Furthermore, MOH may, upon application by the BMR Owner, consider granting the following exceptions on a one-time basis:

(1) a one-time waiver of the First-time Homebuyer rule for the purchasing Household;
(2) a one-time waiver of the minimum Household size rule for the purchasing Household;
(3) a one-time waiver of the asset test for the purchasing Household; and,
(4) a one-time allowance to exceed the maximum qualifying income level of the next BMR Buyer to be increased by 20% of that stated in Use Restrictions for the Project but not to exceed 120% of AMI at any time.

Owners of BMR Units that are repriced using a repricing formula other than the Change in AMI Formula must sign into this Manual in order for their BMR Unit to repriced under the Change in AMI Formula and adhere to all provisions within this Manual thereof. These allowances will not be provided to BMR Owners who are reselling their BMR Unit at a price established by any other formula than the Change in AMI Formula.

Capital Improvements and Special Assessments

BMR Units may begin claiming capital improvements toward their Maximum Resale Price that are made no sooner than 10 years after the BMR Unit was first occupied. Once the BMR Unit becomes eligible for capital improvements credit, BMR Owners may begin submitting documentation of completed work.

MOH will review all capital improvements claims and categorize them into three distinct categories: Eligible Capital Improvements, Eligible Replacement and Repair and Ineligible Costs. Each category is defined as follows:

(1) Eligible Capital Improvements include major structural system upgrades, new additions to the BMR Unit and improvements related to increasing the health, safety and energy efficiency of the property. Improvements that meet these criteria will be given 100% credit;

(2) Eligible Replacement and Repair includes in-kind replacement of existing amenities, repairs and general maintenance that keeps the property in good working condition. Costs that meet these criteria will be given 50% credit for repairs; and

(3) Ineligible costs include cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures. Homeowners may undertake these projects at their discretion, however they will not be given capital improvements credit.

Procedure for Submitting Capital Improvements

BMR Owners must submit capital improvements to MOH for review within 6-months of the completion of the project. In order to document the improvements, each BMR Owner must submit the following documentation:

(1) A list of the capital improvements with a description on a form provided by MOH:
(2) The receipt and invoice for each eligible improvement;
(3) Proof of payment, such as a cancelled check, bank account statement or credit card bill;
(4) A copy of site or building permits, if required; and
(5) Contractor's license number for Projects exceeding $500.

Upon receipt of a complete capital improvements claim, MOH staff may arrange a site visit to inspect the completed Project. Once the improvements have been verified, MOH will send a written response to approve or deny the submitted capital improvements within 60 days of original receipt. This information will be placed in the property file at MOH for use when the property is being sold.

Special Assessments

Homeowner's Association initiated special assessments are considered capital improvements and will be added to the resale price of the home at the full amount of the special assessment paid by the BMR Owner. In order to receive credit for special assessments, homeowners must submit the following documentation within 6-months of payment:

(1) An invoice for the special assessment; and
(2) Proof of payment, such as a cancelled check, bank account statement or credit card bill.

Capital Improvements Cap

In order to maintain the affordability of the BMR Unit for subsequent buyers, MOH will approve all eligible capital improvements, eligible replacement and repair, and special assessments when submitted. At the time of sale, MOH will cap all eligible capital improvements and eligible replacement and repair at 10% of the resale price. MOH will not cap special assessments.

List of Approved Capital Improvements

Eligible Capital Improvements

Major Electrical Wiring System Upgrade
Major Plumbing System Upgrade
Room Additions
Installation of Additional Closets and Walls
Alarm System
Smoke Detectors
Removal of Toxic Substances, such as:
Asbestos
Lead

Mold/Mildew
Insulation
Upgrade to Double Paned Windows
Fireplace Glass Screen
Upgrade to Energy Star Built-In Appliances, as follows:
Furnace
Water Heater
Stove/Range
Dishwasher
Microwave Hood

Eligible Replacement and Repair

Electrical Maintenance and Repair, such as:
Switches
Outlets
Plumbing Maintenance and Repair, such as:
Faucets
Supply Line
Sinks
Flooring
Countertops
Cabinets
Bathroom Tile
Bathroom Vanity
Replacement of Built-In Appliances, as follows:
Furnace
Water Heater
Stove/Range
Dishwasher
Microwave Hood
Garbage Disposal
Window Sash
Fireplace Maintenance or In-kind Replacement (Gas)
Heating System
Lighting System (Recessed)

Ineligible Costs

Cosmetic Enhancements, such as:
Fireplace Tile and Mantel
Decorative Wall Coverings or Hangings
Window Treatments (Blinds, Shutters, Curtains, etc.)
Installed Mirrors
Shelving
Refinishing of Existing Surfaces

Non-Permanent Fixtures, such as:
Track Lighting
Door Knobs, Handles and Locks
Portable Appliances (Refrigerator, Microwave, Stove/Oven, etc.)

Installations with Limited Useful Life Spans, such as:
Carpet
Painting of Existing Surfaces
Window Glass
Light Bulbs

Estate Planning

New purchasers of BMR Units may not purchase the BM Unit through a trust of any kind, including but not limited to living trusts. Existing BMR Owners may not transfer ownership of their BMR Units to trusts of any kind, including living trusts.

G. DOCUMENTATION AND ENFORCEMENT OF SALES RESTRICTIONS FOR BMR OWNERSHIP UNITS

At the request of MOH, and at the time of the initial or any subsequent sale of a BMR Unit, the BMR Buyer shall enter into such agreements or other documents as MOH may require ensuring that the BMR Unit will be subject to the Program requirements.

These documents include the following:

Promissory Note

A BMR Buyer shall execute and deliver to the City a promissory note in a form prepared by MOH (a "BMR Note") in an original principal amount equal to the difference between (i) the appraised fair market value of the BMR Unit as determined without regard to the sales and rental restrictions on such unit at the time of resale or default, and (ii) the Maximum Purchase Price of that unit at the time of the resale or default pursuant to the Use Restrictions. All such BMR Notes shall contain the above restrictions on resale and rental of a BMR Unit. The BMR Note shall provide for a stated rate of interest.

The BMR Note shall be due and payable, in full, on either: (1) the date of a Transfer of the Unit that is not performed in compliance with this Manual and the Use Restrictions; or (2) the date of an event of a default of any of the conditions, obligations or covenants contained in the BMR Note (including without limitation the covenant to sell the applicable BMR Unit in compliance with Use Restrictions). As further described below, the BMR Note shall be terminated, and no amount shall be due, upon a resale of the BMR Unit performed in compliance with this Manual and the Use Restrictions. Any funds received by the City from the repayment of BMR Notes shall be placed in the Citywide Affordable Housing Fund.

Deed of Trust

Repayment of the BMR Note shall be secured by a deed of trust encumbering the applicable BMR Unit in a form prepared by MOH (the "City Deed of Trust").

Declaration of Restrictions & Option to Purchase Agreement

BMR Buyers shall execute and deliver to the City a Declaration of Restrictions and Option to Purchase Agreement, a document that, among other requirements, requires the BMR Owner to comply with the Use Restrictions and grants the City an option to purchase the BMR Unit in the event that the BMR Owner defaults under the terms therein.

Buyer Acknowledgment of Special Restrictions

BMR Buyers shall execute and deliver to the City an acknowledgement that they have thoroughly reviewed this Manual and the recorded Declaration of Restrictions and Option to Purchase Agreement on the BMR Unit ("the Buyer Acknowledgment of Special Restrictions").

Function of Documents

Termination of Note and Reconveyance of Deed of Trust upon Resale

Upon any resale of a BMR Unit, assuming (1) that there has been no event of default that is continuing under the existing BMR Note, and (2) that the resale of the BMR Unit complies with this Manual and Use Restrictions, MOH shall accept a replacement BMR Note made to the order of the City by the new purchaser of the BMR Unit, in form and substance acceptable to MOH, as full satisfaction of the existing BMR Note. At the closing of the sale transaction, the deed of trust securing the existing BMR Note shall be reconveyed by the City, and the new purchaser of the BMR Unit shall deliver to the City a new Declaration of Restrictions and Option to Purchase Agreement, a new BMR Note, and a new City Deed of Trust securing the new BMR Note, which deed of trust shall be recorded against the applicable BMR Unit.

Term of Note and Deed

For all BMR Units, the BMR Note shall have a term commencing on the date of purchase and ending on the earlier of: (1) the sale of the BMR Unit to which it pertains, or (2) a default of any of the conditions, obligations or covenants contained in the BMR Note (including without limitation the covenant to sell the applicable BMR Unit in compliance with Use Restrictions).

Order of Liens

The BMR Note shall not be subordinated to any other liens or restrictions affecting the Project or a BMR Unit to which Use Restrictions apply except for the Buyer's primary mortgage loan. The BMR Note can only be subordinated to the primary mortgage and must be in second lien priority position in all circumstances.

The restrictions imposed by Use Restrictions, and any liens recorded pursuant thereto (including but not limited to the Declaration of Restrictions and Option to Purchase Agreement), shall not be subordinated to any liens or restrictions affecting the Project or a BMR Unit to which Use Restrictions apply, including but not limited to Buyer's primary mortgage loan. In no event shall the Program restrictions applicable to a BMR Unit be subordinated to any lien against such BMR Unit, unless specifically allowed in the Use Restrictions applicable to the Unit.

Recordation of Restrictions

Before the issuance of the First Construction Document by the Department of Building Inspection, a Notice of Special Restrictions and other appropriate documentation shall be recorded with the Office of the Recorder of the City and County of San Francisco for the BMR Units in order to implement the Use Restrictions.. Such restrictions and other recorded documents shall include language restricting the sale or rental of the BMR Units in accordance with Use Restrictions.

At the Close of Escrow for an individual BMR Unit, the Acknowledgement, Declaration of Restrictions and Option to Purchase Agreement, and the City Deed of Trust shall all be recorded against the BMR Unit with the Office of the Recorder of the City and County of San Francisco.

H. Monitoring of BMR Ownership Units

MOH shall monitor and require occupancy certification for BMR Ownership Units on an annual or bi-annual basis. Owner(s) of a BMR Unit will be required to submit an annual monitoring and enforcement report on a form provided by MOH and submitted on a date and at a location determined by MOH. The report shall provide information regarding occupancy status, changes in title and any other information MOH may reasonably require in order monitor compliance with the BMR Unit's specific Use Restrictions.

III. RENTAL PROGRAM

Renting a BMR Rental Unit differs in many ways from renting a market rate unit. It is important that the Project Owners and renters of BMR Rental Units understand the rules and procedures of the Program fully. Among other items, this Section sets forth the requirements for BMR Rental Units including the qualifications for BMR Renters, the application process, the establishment of the Maximum Monthly Rent; permissible reasons for Project Owners to deny a BMR Unit to a potential BMR Renter Households; permissible reasons for Project Owners to evict or fail to renew the lease of a BMR Renter Household, the lease agreement process, restrictions on BMR Rental Units and Renters, Documentation and Enforcement of Restrictions for BMR Rental Units, monitoring of BMR Rental Units, and conversion of a BMR Rental Unit to a BMR Ownership Unit.

A. QUALIFIED RENTER

The following section addresses the necessary qualifications to rent a BMR Rental Unit.

Non-homeowner Requirement

Each member of an applicant Household must establish that he/she does not own an interest in a Housing Unit as of the date of application for a BMR Rental Unit.

An applicant shall be deemed to have owned an interest in a Housing Unit regardless of whether or not that interest results in a financial gain, is in another state or country, or if they have ever used the property as a Primary Residence.

Notwithstanding the forgoing, the following interests shall not, by themselves, disqualify an applicant from falling within the definition of non-homeowner: (1) ownership of timeshares; (2) loan co-signers from previous real estate transactions; and (3) appearing on title solely in the capacity as a trustee for a trust, where the trust is the legal owner of the dwelling unit.

MOH may verify non-homeowner status by (1) reviewing mortgage deductions on the three most recent years of federal tax returns for each applicant; (2) a signed statement on the application stating homeownership status; (3) a title search; or (4) other means reasonably calculated to determine first-time homebuyer status.

Income and Asset Requirement

Per Planning Code Sections 415.6 (c) and 415.7 (d), initial rental BMR Rental Units will be priced to be Affordable to Qualifying Households at 55% of AMI, unless stated otherwise in the Use Restrictions for the Project. Maximum Household Income levels are adjusted on an annual basis.

BMR Rental Units currently being marketed may adjust their Maximum Household Income used for qualifying applicants, but not for establishing the Maximum Monthly Rent, as new Maximum Household Income levels are published by MOH at the beginning of each calendar year. Should a Project Sponsor or Project Owner wish to update the Maximum Monthly Rent levels as new Maximum Household Income levels are published by MOH at the beginning of each calendar year, the BMR Rental Units must be removed from marketing and a new pricing and marketing process must be established.

Household Definition and Requirements

As defined in Planning Code Section 401, and for the purpose of qualifying for the Program, a Household is defined as any person or persons who reside or intend to reside in the same Housing Unit.

All Spouses or Domestic Partners must be included in the Household and must appear on the application and lease for the BMR Unit.

100% student Households as defined under the California Tax Credit Allocation Committee Compliance Manual 2012 Chapter 17 Category 11l are not eligible for the Program except under the exceptions contained in the IRS Section 42 (i) (3) (D).

All Household members who are under 18 years of age must be the legal dependent of an adult Household member, except in the case of emancipated minors, as claimed on the most recent income tax return, or legal minor children of titleholders.

Household Size Determination

The size of the Household is determined by counting together every person who intends to live in the BMR Unit, regardless of age or dependency status.

Pregnant applicants will be counted as two Household members with verifiable medical documentation.

Verified live-in assistants and foster children may be counted toward Household size in order to determine unit size and must appear on the application for the BMR Unit but will not be counted in income determinations and may not appear on the lease for the BMR Unit.

Temporarily absent Household members who intend to live in the BMR Unit upon return must appear on the application for the BMR Unit. Such Household members include, but are not limited to, Household members serving temporarily in the armed forces, or who are temporarily institutionalized.

Minimum Household Size

The size of a Household must be compatible with the size of the BMR Unit being rented. A minimum of one person per bedroom is required. There is no restriction on renting a BMR Unit that has fewer bedrooms than the Household size; however, the Project may impose maximum Household size rules under the restrictions contained in Section III (D) of this Manual.

Occupancy Requirement

All members of the BMR Household must occupy the BMR Rental Unit as their Primary Residence, as defined by living in the BMR Unit at least 10 out of 12 months of the calendar year, and must occupy the BMR Unit within 60 days of the completion of the lease commencement date.

Leaseholder Requirements

All adult Household members must appear on the lease for the BMR Unit with following exceptions:

(1) Legal dependents of leaseholders as claimed on the most recent federal income tax return or legal minor children of leaseholders. Spouses or Domestic Partners are not considered dependents; or
(2) Household members younger than age 24 who are the child of a leaseholder who will reside in the BMR Unit as their primary residence, regardless of being named as a dependent on the federal tax form of a leaseholder.

Should the Project require all adults to be on the lease for the BMR Rental Unit, these exceptions will not apply.

B. PROCESS

Application Process

New BMR Rental Units shall be marketed for at least a 28-day period, including a listing on the MOH website and local venues. Applicants must submit a MOH BMR rental lottery application by a specific deadline for each new BMR Rental Unit and submit a complete BMR rental application in order to qualify for a BMR Unit after the lottery. For more details on the marketing requirements for new BMR Rental Units, see Section V (G) of this Manual.

BMR Rental Units upon re-rental shall be marketed for at least 7 days, including a listing on the MOH website and local venues. All applications for BMR Rental Units upon re-rental shall be entered into a lottery as described in section II (B) of this Manual unless the Project is specifically permitted by MOH to maintain a wait list of applicants. Applicants must submit a BMR application form and supporting documentation by a specific deadline for each BMR Rental Unit. For more details on the marketing requirements for BMR Rental Units upon re-rental, see Section V (H) of this Manual.

Application Requirements

Households applying for new and re-rental BMR Rental Units must supply the following documentation in order to qualify for the unit:

An application from the proposed renter Household on a form specified by MOH;
Supporting documentation from all members 18 years or older of the renter Household, including:
Past one (1) year IRS returns;
Past one (1) year W-2 forms;
Three (3) current and consecutive pay stubs or equivalent;
Three (3) current and consecutive statements from every liquid asset account or personal cash holdings, including all custodial accounts held for minors;
Verification of San Francisco residency or employment (only if applicable);
Copy of Certificate of Preference (only if applicable).

In the case of new BMR Rental Units, applicants shall submit an abridged application form only and supply full income and other documentation if selected in the lottery process to proceed with a rental.
In the case of re-rental BMR Rental Units, applicants shall submit a complete application within 7 days of the posting of the unit on the MOH website in order to be entered into a lottery for the unit.

To proceed with renting new and re-rental BMR Rental Units post-lottery, the Project Owner must supply a reviewed and approved application, also approved by MOH, as well as a draft lease agreement to MOH before MOH will approve the rental.

Changing an Application after Submission

No application changes shall be allowed after an application is submitted and after an application deadline has passed unless the change is (1) the removal of an applicant; (2) the addition of an applicant's Spouse or Domestic Partner or a new Household member in the case of an adoption or new guardianship; (3) an update of income qualification, such as a new job or a job that has ended; or (4) correction of technical errors, such as current phone number or other non-qualifying information.

Application Review Period

An application for a BMR Unit must be reviewed and approved for income qualification within the one hundred and twenty (120) days prior to the signing of the lease.

Request for Application Reconsideration

An applicant requesting reconsideration of a disqualified application shall submit new information or documentation contesting the disqualification to MOH within 3 business days from the date of the disqualification letter and MOH shall respond by the end of a 7 business day period from the date of the disqualification letter. In the case of such request, and when such a unit is available, the Project Sponsor shall maintain one appropriately sized BMR Unit for the disqualified Household for seven (7) business days from the date of the issuance of a disqualification letter but need not hold the applicant's preferred BMR Unit.

Fees for Applying

Project Owners shall not charge BMR Rental Unit applicants any fees for applying for a BMR Unit that (1) are not applied evenly to all tenants in the building; or (2) that are beyond actual cost.

Selection of BMR Renters upon Initial Rental and Rerental of BMR Units

Lottery Preferences

All individuals and Households may enter the lottery for a BMR Unit. However, those Households in which one member holds a Certificate of Preference (COP) from the former Redevelopment Agency or who lives or works in San Francisco will be given preference in the lottery ranking process, with COP holders being given the highest preference.

COP holders are primarily Households previously displaced by former Redevelopment Agency action in Redevelopment Project Areas per the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521.

If the number of BMR Rental Units available exceeds the number of qualified applicants who hold a COP or who live or work in San Francisco, the BMR Units will become available to other qualified applicants.

Verification of Preference Qualification

To be considered a COP holder, a Household must submit a copy of the Certificate of Preference with the application. COP inquiries should be addressed to the Mayor's Office of Housing at (415) 701-5613.

To be considered a Household that lives or works in San Francisco, at least one applicant must provide the following proof of residency or employment with the submitted application:

Verification that the applicant lives in San Francisco:
(1) One utility bill with a San Francisco address dated within the 45 days preceding the application date for the BMR Unit. Utility bills can include gas, electric, garbage or water; or
(2) Current paystubs with a San Francisco address; or
(3) A current, formal lease with a San Francisco address.

OR

Verification that the applicant works in San Francisco:
MOH shall verify that a person works in San Francisco by reviewing an applicant's paystubs. If an applicant's employer is not based in San Francisco, or if a person's paystubs do not reflect a San Francisco work address, the applicant must supply a letter from the employer stating that the person works primarily in San Francisco and demonstrate that at least 75% of their working hours are in San Francisco.

Lottery Process

MOH shall work in collaboration with the Project Sponsor to utilize a public lottery to select BMR Renters upon initial rental and rerental of BMR Rental Units. The following guidelines shall be applicable to the lottery process for new BMR Rental Units:

A non-prioritized list of interested applicants will be kept by MOH. At least twenty-one (21) days prior to a lottery for initial rental BMR Rental Units and at least seven (7) days prior to a lottery for rerental BMR Rental Units, all those signed up on the list will be notified of the availability of BMR Units and invited to participate in the lottery by MOH. The general public will be invited to participate in the lottery, as well;

Applicants who submit a complete application by the application deadline for the BMR Unit(s) will receive a numbered lottery ticket whose twin ticket shall be entered into the lottery. Applications missing a complete cover application will not be entered in to the lottery;

Lotteries for BMR Rental Units shall be held in a public, accessible location that is arranged and paid for by the Project Sponsor;

A representative of MOH shall conduct the lottery in tandem with the Project Sponsor and record the order of lottery numbers drawn;

To conduct the lottery, MOH shall pull application tickets from a vessel in rank order and record the lottery results by application ticket number. COP holders will be drawn and ranked first, followed by applicants who live or work in San Francisco. MOH shall pull at least 10 ticket numbers for each BMR Unit available, should there be enough total applicants to do so;

Applications shall not be reviewed for eligibility before the lottery but only after the lottery ranking has been finalized;

The final lottery list shall be produced by MOH after the lottery once the lottery preferences have been clearly identified and applied;

Applicants shall be invited to attend lotteries, but attendance is not mandatory;

Lottery results shall be posted on either the MOH or Project Sponsor website but shall not include the names of applicants but only the application ticket numbers. The results of rerental lotteries with 10 or fewer applicants may be announced by the Project Sponsor to each applicant rather than posting to a website.

Post-Lottery Process

Following the lottery, MOH shall transmit a final lottery list to the Project Sponsor who shall notify all applicants of their position in the lottery and inform MOH of the lottery winners' intent to rent the BMR Unit;

The Project Sponsor shall adhere to the rank order of the lottery list when offering BMR Rental Units to lottery winners;

Applicants shall be reviewed by the Project Sponsor or Project Owner with MOH's approval post-lottery for Program qualifications and issued an approval or disqualification letter;

Per this section, in the case of an request for reconsideration, and when such a BMR Unit is available, the Project Sponsor shall maintain one appropriately sized BMR Unit for the disqualified Household for a seven (7) business day period from the date of the issuance of a disqualification letter but need not hold the Household's preferred BMR Unit;

To maintain the live or work lottery preference, the applicant must maintain the status of the preference from the time of the application to the time of purchasing the BMR Unit.

Annual Recertification

BMR Renters must provide annual Household income documentation to the Project Owner upon request and other information MOH may reasonably require to monitor compliance with the BMR Unit's Use Restrictions to certify continued qualification under the Program. Failure to provide such information could result in a Project Owner's inability to renew the lease of a BMR Renter. The recertification process is explained in more detail in Section III (I) of this Manual.

C. ESTABLISHMENT OF INITIAL RENTAL AND RERENTAL PRICING

Pricing Process

Prior to marketing a BMR Unit for initial rental, the Project Sponsor shall transmit a copy of the Notice of Special Restrictions ("NSR"), final planning approval and approved floor plans indicating the location of the BMR Units in the building to MOH, together with a request for determination of initial Maximum Monthly Rent on a form provided by MOH. The pricing shall be valid for sixty (60) days and shall serve as the final pricing for the BMR Rental Units only upon approval of the Marketing Plan for the BMR Units. However, no BMR Units shall begin marketing in one calendar year with rental rates that were established in the previous calendar year.

Prior to marketing a BMR Units upon rerental, the Project Owner shall contact MOH to confirm the Maximum Rent Level of the vacant BMR Rental Unit.

MOH shall require the completion of a standard form in order to request BMR Unit Maximum Monthly Rent levels.

Income Table

The income table used to calculate the income level of a BMR Household and thereby price BMR Units shall be the table named "Maximum Income by Household Size derived from the Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco" as published at www.sf-moh.org unless the Project Sponsor, with permission from MOH, offers the BMR Units at a lower income level than that required by Use Restrictions and chooses to abide by an alternate income table in doing so.

Methodology for Establishing Maximum Monthly Rent Levels for BMR Rental Units

MOH shall calculate initial rent levels of the BMR Rental Unit according to the following assumptions: (1) the income limits specified in Use Restrictions; (2) total payments of no more than thirty (30) percent of gross monthly income, based on the income limits required by Use Restrictions (and not based on an individual Household's income); and (3) a Utility Allowance reduction where applicable. MOH shall assume a one-person larger Household than the number of bedrooms in the BMR Unit when establishing the rent levels of all BMR Units except for studio units, which assume a one person Household, and SRO Units, which shall be priced based on three-fourths (3/4ths) of the Maximum Monthly Rent for a studio BMR Rental Unit.

In the case of renters using a Section 8 Voucher, Project Owners may collect the fully allowed rental reimbursement amount from the Housing Authority but shall not charge the tenant a rent higher than the Maximum Monthly Rent established by MOH.

Parking Space Policy for BMR Rental Units

Bundled Parking Policy for BMR Rental Units

In Projects in which parking for the non-BMR residential units is leased as a part of the rental rate for

such units, parking spaces shall be granted to BMR Renters within the Maximum Monthly Rent as established by MOH and at the same ratio of parking spaces to Housing Units for the Project overall. All parking spaces granted to BMR Renters shall be re-leased with the BMR Unit upon re-rental. This policy shall apply in cases where even one parking space is included in the rental rate for a non-BMR Unit.

Unbundled Parking Policy for BMR Rental Units

In Projects in which parking is "unbundled," or leased separately from every Housing Unit, parking spaces shall be made available to BMR Renters at the same ratio of parking spaces to Housing Units for the Project overall and the Project Owner must charge the BMR Renter a maximum monthly lease rate for parking spaces that is equivalent to either (1) a percentage of the lowest parking rate available in the Project that is determined by the average difference between Maximum Monthly Rent for BMR Units and non-BMR unit rental levels over the previous three (3) years as published annually by MOH on January 1 or (2) $100, whichever is higher. Should MOH fail to publish the average difference between Maximum Monthly Rent levels for BRM Units and non-BMR unit rental levels over the previous three (3) years for a given year, the maximum monthly lease rate for parking spaces for BMR Units for that given year shall be $100.

Project Owners choosing the unbundled parking option must provide proof that they have affirmatively marketed their non-BMR units to alert potential renters to the fact that all units in the Project are rented both with and without parking and at two respective monthly lease rates. Parking spaces not leased by BMR Renters may be made available to non-BMR renters once every space required is offered to a pending BMR Renter in the case of newly marketed BMR Units. In the case of BMR Rental Units upon re-rental, the new BMR rental should be offered the opportunity to lease a space that was leased by the previous tenant.

Methodology for Establishing Maximum Monthly Rent Levels upon Re-rental of BMR Rental Units

Rental rates for Qualified Renter Households shall not exceed the applicable amounts published in accordance with the provisions of Section II (C) of this Manual.

Permissible Rent Increases for BMR Rental Units

The Project Owner shall adjust (up or down) the Maximum Monthly Rent allowed for each BMR Renter on each anniversary of a BMR Renter's occupancy in an amount that does not exceed the amount determined by MOH based on the percent of median income established in Use Restrictions. These rents shall be made available on the MOH website at www.sf-moh.org. The Project Owner must follow all applicable federal, state and local laws when introducing the Maximum Monthly Rent adjustment.

At no time shall an annual increase exceed the actual allowable increase for that year. In cases where the Maximum Monthly Rent level has decreased, the tenant's rent must be decreased. In cases where the annual adjustments have not been applied year to year, the Project Owner may not take advantage of any increases that were not applied until the BMR Unit is vacant and re-rented.

BMR Renters should be aware of the fact that annual rent changes are not based on the San Francisco Rent Board and that rents may exceed the rate of inflation.

Source of Annual Rent Levels for BMR Rental Units

The qualifying Household Maximum Income Limits and Maximum Monthly Rent for BMR Units shall be updated annually as soon as January 1 of each year and will be available on the MOH website at www.sf-moh.org.

Rent Subsidies

Tenants of BMR Units must be permitted to use certified long-term government and non-profit rent subsidies including but not limited to the Section 8 Rental Voucher Program. Any imposed rent-to-income standard must be based on the amount the BMR Renter pays toward the rent under such subsidy.

Additional Fees Required of Renters

Project Owners shall inform MOH of any additional required fees that will be applied to BMR Renters. Such fees will be allowed only if applied to all renters in the Project do not increase the Maximum Monthly Rent under the Program.

D. PERMISSIBLE REASONS FOR PROJECT OWNERS TO DENY BMR RENTER APPLICANTS

Project Owners may deny BMR rental applicants based on the set of criteria described below. However, MOH must review and approve such criteria before it is applied to the applicant Household.

The Project must adhere to all applicable federal, state and local standards for rental selection criteria.

Inability to Pay Rent

The Project Owner may require a rent-to-income standard for BMR Renters. However, the Project must not require any Household to earn more than 2.5 times the rent each month in gross Household income and must also make allowances for a BMR applicant to prove demonstrated ability to pay rent in an amount lower than the 2.5 ratio. If a rent subsidy is used per Section III (C)), the tenant's rent to income requirement will then be based on the amount of rent the BMR Renter pays after the rent subsidy is applied.

Credit

The Project Owner may require each adult Household member age 18 and older to clear a credit check as long as that credit check is normal and customary and applied evenly to all tenants in the building.

Eviction History

The Project Owner may require each adult Household member age 18 and older to clear an eviction history review as long as that review is normal and customary and applied evenly to all tenants in the building.

Criminal History

The Project Owner may require each Household member to clear a criminal history review as long as that review is normal and customary and applied evenly to all tenants in the building.

Maximum Occupancy Standard

MOH does not establish a maximum household size for BMR Units. However, the Project Owner may apply a maximum occupancy standard to a Household occupying a BMR Unit as long as that standard is derived from the San Francisco Housing Code Section 503(b) and as long as that review is normal and customary and applied evenly to all tenants in the building.

E. PERMISSIBLE REASONS FOR PROJECT OWNERS TO EVICT OR FAIL TO RENEW THE LEASE OF A BMR RENTER HOUSEHOLDS

A Project Owner may choose not to renew the lease of a BMR Renter Household for the following reasons only:

(1) Non-payment of rent, meaning that the BMR Renter has failed to pay the rent to which the landlord is lawfully entitled under the written agreement between the tenant and landlord;
(2) Illegal use of the BMR Unit, meaning that the tenant is using or permitting a BMR Rental Unit to be used for any illegal purpose;
(3) Nuisance, meaning that the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the rental unit, or is creating a substantial interference with the comfort, safety or enjoyment of the landlord or tenants in the building, and the nature of such nuisance, damage or interference is specifically stated by the landlord in the writing
(4) Breach of Lease; and
(5) Conversion of a BMR Rental Unit to a BMR Ownership Unit as defined in Section V (I) of this Manual.

The Project Owner must not renew the lease of a BMR Renter if the BMR Renter is not in conformance with Program Rules, as follows:

If a BMR Renter is violating the requirements in this Manual, including but not limited to exceeding the income maximum for recertification as explained in Section III (G) of this Manual, not meeting the minimum Household size requirement or not occupying the BMR Unit as the Household's primary residence. MOH must review and approve any decisions not to renew the lease of a BMR Renter Household in the case of the BMR Renter violating the requirements in this Manual before the Project Owner can take such action.

F. LEASE AGREEMENT PROCESS

The Project Owner shall allow a BMR Renter no fewer than 7 calendar days from the date of the Program approval letter or Project approval of the renter, whichever occurs later and which date must be made clear to the renter at the time of final approval, to enter into a lease for an available BMR Unit and that lease shall commence no sooner than 10 calendar days from the signing unless the BMR Renter prefers to begin the lease period sooner.

G. RESTRICTIONS ON BMR RENTAL UNITS AND RENTERS

Term of Restriction

All BMR Rental Units are restricted in their re-rental rate and other applicable restrictions for the Life of the Project unless otherwise noted in Use Restrictions for the Project.

Occupancy Requirement

All members of the BMR Household must occupy the BMR Unit as their primary residence, as defined by living in the BMR Unit at least 10 out of 12 months of the calendar year, and must occupy the BMR Unit within 60 days of the completion of the lease commencement date.

Rental Prohibition

BMR Renters may not sublease the entire BMR Unit nor rent a room within the BMR Unit or part of the BMR Unit at any time.

Maintenance

BMR Renters and Project Owners shall not destroy or damage the BMR Unit, allow the BMR Unit deteriorate, or commit waste on the BMR Unit. Renters and Owners of BMR Rental Units shall the BMR Unit in compliance with all applicable laws, ordinances and regulations and in a good and condition and all appliances shall be in good and working

Lease Changes

BMR Renters may not add or subtract any person from the lease for a BMR Rental Unit without consent from the Project Owner and from MOH. Should the Project Owner and MOH consent to the addition or subtraction of a qualified Household member in BMR Rental Unit, the new Household must submit a new application for the BMR Unit and meet the current eligibility standards for a BMR Rental Unit.

Transferring Units

Current BMR Renters may apply for other current new or re-rental BMR Rental Units but have no preference in the process, but for those outlined for all applicants in Section III (B) of this Manual, nor is a Project Owner required to make a vacant BMR Unit available for another current BMR Renter in the building.

Annual Recertification

BMR Renters must provide annual Household income documentation to the Project Owner upon request and other information MOH may reasonably require to monitor compliance with the BMR Unit's Use Restrictions to certify continued qualification under the Program. Failure to provide such information could result in a Project Owner's inability to renew the lease of a BMR Renter. The recertification process is explained in more detail in Section III (I) of this Manual.

Permissible Increase in Income

Upon annual recertification, existing BMR Renters whose income exceeds 200% the original income target as stated in Use Restrictions for the BMR Unit will no longer be considered Qualified Renter Households under the Program and are no longer qualified to occupy a BMR Unit. The Project Owner must bring the BMR Unit into compliance with the Program no sooner than the end of the current lease term of the tenant Household.

Example of 200% of Original Income Target:

Maximum AMI allowed in Use Restrictions = 55% of AMI
200% of maximum AMI allowed in Use Restrictions = 110% of AMI

H. DOCUMENTATION AND ENFORCEMENT OF RESTRICTIONS FOR BMR RENTAL UNITS

All leases must be 12-month leases.

MOH shall require specific lease language to be included in the lease, including an acknowledgement of the restrictions on the BMR Rental Unit and any monitoring procedures, including but not limited to this Procedures Manual. The material terms of the lease shall not change from year to year but for the Maximum Monthly Rent level.

All adult Household members must appear on the lease for the BMR Unit with following exception:

(1) legal dependents of leaseholders as claimed on the most recent federal income tax return or legal minor children of leaseholders. Spouses or state Domestic Partners are not considered dependents; and
(2) Household members younger than age 24 who are the child of a leaseholder who will reside in the BMR Unit as their primary residence, regardless of being named as a dependent on the federal tax form of a leaseholder.

Should the Project require all adults to be on the lease for the BMR Unit, these exceptions will not apply.

I. MONITORING OF BMR RENTAL UNITS

BMR Rental Units shall be monitored on an annual basis to determine the continued eligibility of the BMR Renter Household. BMR Renter Households, Project Owner(s) or those charged with the management of affordable BMR Rental Units satisfying the requirements of their Use Restrictions are required to submit an annual monitoring and enforcement report on a form provided by MOH and submitted on a date and at a location determined by MOH. The report shall provide information regarding rents, Household and income characteristics of tenants of designated BMR Units, services provided as part of the housing service such as security, parking, utilities, and any other information MOH may reasonably require for monitoring compliance with the BMR Unit's Use Restrictions.

In addition, Project Owners shall be required to recertify BMR Renters for continuing Program qualification within 365 days of the annual renewal of each BMR Renter lease. Non-renewal of the lease

for a BMR Renter shall require at least a ninety (90) day notice to the BMR Renter of the lease non-renewal. Project Owners shall require existing BMR Renters to complete a new BMR application as provided by MOH at www.sf-moh.org and review such application under the application review guidelines also available at www.sf-moh.org.

Upon recertification, existing BMR Renters must meet the qualification standards for BMR Renters as contained in Section III (A), including but not limited to continuing to be income qualified per Section III (G) of this Manual, and adhering to the minimum Household size and occupancy requirements set forth in Section III (A) of this Manual. BMR Renters must also be in compliance of the Restrictions on BMR Units and Renters as contained in Section III (G) of this Manual.

BMR Renters must provide annual Household income documentation to the Project Owner upon request and other information MOH may reasonably require to monitor compliance with the BMR Unit's Use Restrictions to certify continued qualification under the Program. Failure to provide such information could result in a Project Owner's inability to renew the lease of a BMR Renter.

J. CONVERSION OF RENTAL UNIT TO OWNERSHIP UNIT

BMR Renters should be aware of the fact that a private rental building subject to this Program may choose to convert all of the BMR Units in the Project to ownership units and therefore may convert their BMR Rental Units to restricted BMR Ownership Units. See Section V (I) of this Manual for information on this process.

IV. INCOME REVIEW PROCEDURES FOR BMR OWNERSHIP AND RENTAL UNITS

A. Sources of Income

Income maximums are based on "gross" income derived from all sources as detailed in Internal Revenue Code (26 USC Section 61), whether or not exempt from federal income tax. Such income includes, but is not limited to, the following:

Compensation for services, including fees, commissions, and similar items;
Income from assets;
Gross income derived from business;
Gains derived from dealings in property;
Interest;
Rents;
Royalties;
Dividends;
Alimony and separate maintenance payments;
Annuities;
Income from life insurance and endowment contracts;
Pensions;
Income from discharge of indebtedness;
Distribution share of partnership gross income;
Income in respect of a decedent;
Income from an interest in an estate or trust; and
Public benefits including but not limited to CalWorks, SSI, Disability income.

B. Determining Baseline Household Income

MOH projects future income based on the gross income on each applicant's past three statements from each source of income. MOH must review income documentation for all Household members 18 years and older, regardless of dependency status.

Calculating Income from Paystubs

For employed applicants, annual income is derived by dividing the year-to-date gross income by the current pay period count and then by annualizing an estimated pay period amount by the total pay period count over one year.

Example of Calculating Income with Paystubs:
Year-to-date (YTD) income as stated on the most recent paystub for the calendar year = $20,000
Current pay period on most recent pay stub = 10
Estimated pay period amount = $2,000 ($20,000 divided by 10)
Total number of pay periods in one year for the applicant = 24
Annualized pay = $48,000 ($2,000 x 24)

Tips and Bonuses

When calculating income based on paystubs, tips and commission will be annualized. Bonuses will be annualized unless the applicant can provide documentation from the employer that the bonus was a one-time occurrence. In this case, the bonus amount will be removed from the annualization of the income and added in one time to the total annual income that is determined.

Seasonal Workers

MOH will not annualize current income for seasonal workers who provide a Verification of Employment from their employer(s) verifying that the work does not occur year-round.

Calculating Income from Government Income

For applicants receiving government income of any source, the income is derived by multiplying a regular monthly statement by 12 months or by referring to an annual award letter.

Calculating Income from Self-employed Income

All self-employed applicants must submit a notarized Self-Employed affidavit provided by MOH. If self-employed for 2 or more years of federal income tax returns, MOH will average net income on the 2 years of tax returns. If self-employed less than 2 years of federal tax forms, MOH will annualize the submitted Profit & Loss statement.

Calculating Income from Cash Income

In the case of an applicant who is paid in cash for employment, MOH will require a Verification of Employment from the applicant's employer to confirm annual income and IRS form 4506-T to verify that no taxes were paid.

Unemployed Applicants

Unemployed applicants who are receiving no income at all should submit an Unemployed Affidavit as provided by MOH in place of income statements. Applicants receiving unemployment benefits do not need to complete the Unemployed Affidavit as unemployment benefits are considered income.

Verification of Employment

An official Verification of Employment that is signed by an applicant's employer shall be used as the final proof of an applicant's income, if needed.

Income from Commercial Property or Land Owned

The net income from any commercial property or land owned by any applicant shall be counted toward the annual Household income.

C. Asset Test

MOH will apply an asset test to all applicants, including all custodial accounts held for minors. Household assets up to $60,000 will not be counted toward Household income. 10% of all assets above $60,000 will be added to the total Household income.

Assets include all liquid asset accounts, including but not limited to savings, checking accounts, Certificates of Deposit, stocks, and gifts. MOH will not count qualified retirement accounts toward an applicant's income. Such retirement accounts are limited to accounts that are intended for retirement and that would incur a penalty if withdrawn before a specified retirement age per each account. Such accounts include but are not limited to 401K and 403B accounts. MOH will also not count 529 college savings toward an applicant's income.

Example of Addition of the Asset Test to Baseline Household Income:

Household of 4 earns $50,000 a year
Total Household assets = $140,000
First $60,000 of assets is excused: $140,000 - $60,000 = $80,000 remaining
10% of remaining $80,000 is added to income: $80,000 x 10% = $8,000
Total amount added to income: $8,000
New total Household income: $50,000 + 8,000 = $58,000

D. Asset Test Exemption for Seniors

For any senior aged 62 and older who is the Head of Household, MOH shall discount $127,000 from total assets prior to performing the typical imputed income calculations.

For married seniors where one person is the Head of Household and the other has been nonworking, MOH shall discount $190,000 (rather than 2x the single rate) from total assets prior to performing the typical imputed income calculations.

Any actual IRA or other retirement funds will be deducted from these amounts first. For example, if an applicant has $10,000 in an IRA, and $170,000 in non-IRA assets, MOH will reduce the waiver amount by $10,000, from $127,000 to $117,000.

The asset deduction amount will be adjusted each year based on the then-current running total as published at www.sf-moh.org.

V. PROCEDURES FOR PROJECT SPONSORS AND PROPERTY MANAGERS: GENERAL COMPLIANCE PROCEDURES

A. Approval Process

To comply with Planning Code Section 415 *et seq.*, Project Sponsors will work with the Planning Department and with their assigned Planner to choose the fee or to qualify for an alternative to the Affordable Housing Fee under the Program. Project Sponsors may review information about their options at www.sf-moh.org or contact the Planning Department at 415-558-6377.

Project Sponsors must sign an Affidavit of Compliance with the Inclusionary Housing Program with the Planning Department stating their intention to pay the Affordable Housing Fee or to qualify for the on-site, off-site or land dedication alternatives before receiving entitlement from the Planning Department or, in the case of Principally Permitted Projects, before the Planning Department will approve the building permit for the Project. The assigned Planner for the Project will guide the Project Sponsor through this process and apply the current Conditions of Approval to the Project as set forth by the Planning Code and the Planning Department. The current Affidavit of Compliance is found on the Planning Department's website at: http://www.sf planning.org/Modules/ShowDocument.aspx?documentid=8422 or by calling the Planning Department at 415-558-6377. Project Sponsors shall consult with the Planning Department and MOH to explore the off-site and land dedication options before seeking Project approval from the Planning Department.

Once a Project has received Planning Department approval in the form of an entitlement or building permit approval, the Project Sponsors shall record a Notice of Special Restrictions (NSR) that includes the Conditions of Approval under the Program, and the location of any on-site or off-site BMR Units in the case of such Projects, and transmit a copy of the recorded NSR to the Planning Department and MOH.

Following Planning Department approval of a Project subject to the Program, the Planning Department must transmit a copy of such approval plus the Affidavit of Compliance with the Inclusionary Housing Program to MOH. The Planning Department shall also enter the Project's Program requirements in a database shared with DBI, which will then ensure that the Project does not receive its First Construction Document or First Certificate of Occupancy, depending on the method of compliance, unless the Project is in conformity with the Program. If the Project Sponsor intends to pay the Affordable Housing Fee, a fee determination letter must be secured from the Mayor's Office of Housing prior to Planning Department Approval of a Building Permit Application. The Planner will then enter the Affordable Housing Fee amount in the shared database.

Further sections of this Manual provide details on the exercise of each option.

B. COMPLIANCE THROUGH PAYMENT OF THE AFFORDABLE HOUSING FEE

Project Sponsors who pay the Affordable Housing Fee ("Fee") to satisfy the Program requirements shall be charged on a per-unit size basis under a fee schedule that shall be updated annually on January 1 of each year. The Fee shall be based on the percentage requirements set forth in Planning Code Section 415. The Fee requirement shall be calculated by using the direct fractional result of the total number of

units in a Project multiplied by the percentage requirement, rather than rounding up the resulting figure.

The Fee is established as the amount of the affordability gap as defined in Section 415.5 of the Planning Code.

Commencing on January 1, 2013, no later than January 1 of each year, MOH shall adjust the Fee. The Fee shall be adjusted based on the change in the Construction Cost Index as published by Engineering News Record.

The Project Sponsor shall request a Fee determination from MOH by completing a form supplied by MOH and available at www.sf-moh.org. Among other items, this form shall include:

Project Sponsor contact information;
The name and address of the Project;
The number of total units by unit size;
A copy of the recorded NSR for the Project; and
An estimate of the Fee amount due.

MOH shall provide a Fee determination letter within ten (10) business days of the receipt of the request form. The letter shall be sent to the Project Sponsor and shared with the Planning Department. The Planning Department shall enter the amount due into a database shared with DBI, who will then issue a report outlining preliminary estimates of all development impact and in-lieu fees owed for a development project and require payment of this fee before the issuance of a First Construction Document. Payments for development impact and in-lieu fees must be made at the Permit Center, DBI, 1660 Mission, 6th floor, San Francisco, CA 94103. Questions about paying the Affordable Housing Fee after MOH has issued a fee determination letter should be directed to DBI at 558-6131.

In cases in which the Project Sponsor chooses to pay the Fee once the Fee has been established by MOH but a new fee schedule has since been established since MOH's determination of the Fee amount, DBI will alert the Project Sponsor of the schedule update and the Project Sponsor will then seek an updated Fee due amount from MOH. If the Fee schedule update has occurred within 30 days of the date of the issuance of the MOH fee determination letter, the Project Sponsor may choose to pay the Fee under the prior schedule if the payment is made within such 30-day period.

Prior to issuance by DBI of the First Construction Document for the Project Sponsor, the Project Sponsor must have paid in full the sum required to DBI, or the required portion of the fee due in accordance with any fee deferral allowances permitted under Section 403 of the Planning Code.

C. COMPLIANCE THROUGH NEW CONSTRUCTION ON-SITE

When qualifying for the on-site alternative per Sections 415.3 and 415.6 of the Planning Code, the Project Sponsor may provide the number and type of BMR Units satisfying the applicable Use Restrictions through the construction of said units on the site of the Principal Project.

The Project Sponsor shall construct and, when applicable, manage the BMR Units. Per Planning Code Section 415.8 (a) (2), BMR Units shall not remain vacant for a period exceeding sixty (60) days without

the written consent of MOH.

Number of Units Required

The number of BMR Units required under the on-site alternative of the Program is established by Section 415.6 of the Planning Code or by other related Planning Code sections.

Pricing and Maximum Income Levels

Per Section 415.8 (a) (4), the Maximum Income Levels specified in the Use Restrictions for the Project shall be the required income percentages for the Life of the Project, with the exception set forth in Section II (F) and V (G) of this Manual and excepting the fact that the qualifying income level for BMR Ownership Units only shall be 10% higher than the required income level used for pricing BMR Ownership Units, as explained in Section II (C) of this Manual.

See Section II (C) of this Manual for information on the pricing of BMR Ownership Units, including a description of the parking policy for such units. See Section III (C) of this Manual for information on the pricing of BMR Rental Units, including a description of the parking policy for such units.

Term of Restriction

Per Planning Code Section 415.8 (a) (1), all BMR Units constructed pursuant to Planning Code Sections 415.6 (on-site alternative) and 415.7 (off-site alternative) must remain Affordable to Qualifying Households for the Life of the Project. In some circumstances, the term of the restriction is established by sections of the Planning Code in effect at the time of Project approval or by the specific Notice of Special Restrictions recorded against the Project.

Timing of Construction and Delivery of On-site Units

Per Planning Code Section 415.6 (b), on-site BMR Units must be constructed, completed, ready for occupancy and marketed no later than the non-BMR Housing Units in the Principal Project.

Design, Size and Location of On-site Units

Per Planning Code Section 415.6 (c), all on-site BMR Units constructed must be provided as BMR Ownership Units unless the Project Sponsor meets the eligibility requirement of Section 415.5 (g). In general, BMR Units constructed under this Section 415.6 shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to non-BMR Units in the Principal Project. A Notice of Special Restrictions shall be recorded prior to issuance of the First Construction Document and shall specify the number, location and sizes for all BMR Units required under this Section 415.6. The interior features in affordable units should be generally the same as those of the non-BMR Housing Units in the Principal Project, but need not be the same make, model or type of such item as long as they are of good and new quality and are consistent with then-current standards for new housing. The square footage of affordable units do not need to be the same as or equivalent to those in the non-BMR Housing Units in the Principal Project, so long as it is consistent with then-current standards for new housing. Where applicable, parking shall be offered to the BMR Units subject to the terms and conditions of the unbundled parking policy for BMR Units as specified in this Manual and amended from

time to time. On-site BMR Units shall be Ownership BMR Units unless the project applicant meets the eligibility requirement of Section 415.5(g).

Development Subsidies

Per Planning Code Section 415.6 (e), BMR Units constructed under Section 415.6 as part of an on-site Project shall not have received development subsidies from any Federal, State or local program established for the purpose of providing affordable housing, and shall not be counted to satisfy any affordable housing requirement. Other units in the same on-site project may have received such subsidies.

Per Planning Code Section 415.6 (f), notwithstanding the provisions of Section 415.6 (e), a Project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and four percent (4%) tax credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as the project provides 20 percent (20%) of the Principal Project units as affordable at 50 percent (50%) of AMI for on-site housing. The income table to be used for such Projects when the units are priced at 50 percent (50%) of AMI is the income table used by MOH for the Inclusionary Housing Program as defined in Section I of this Manual, not that used by TCAC or CDLAC. Except as provided in this subsection, all BMR Units provided under this section must meet all of the requirements of Planning Code Section 415 *et seq.* and this Manual for on-site housing.

Marketing

See Section V (G) of this Manual for information on the marketing of initial sale BMR Units.

Monitoring

See Section V (J) of this Manual for information on the monitoring of BMR Ownership Units and BMR Rental Units.

Requirement to Record Restrictions

Per Planning Code Section 415.6 (c), a Notice of Special Restrictions shall be recorded prior to issuance of the First Construction Document and shall specify the number, location and sizes for all BMR Units required under Planning Code Section 415.6.

D. COMPLIANCE THROUGH NEW CONSTRUCTION OFF-SITE

When qualifying for the off-site alternative per Sections 415.3 and 415.7 of the Planning Code, the Project Sponsor may provide the number and type of BMR Units satisfying the Use Restrictions through the construction of said units off-site from the Principal Project.

The Project Sponsor shall construct and, when applicable, manage the BMR Units. Such BMR Units shall not remain vacant for more than sixty (60) days at any time from the date of final completion. Off-site Projects shall maintain insurance from the Project's architect, contractor and the Project Sponsor.

Approval Process

Project Sponsors choosing the off-site option shall adhere to all requirements contained in Planning Code Section 415.7 and shall adhere to the following procedures.

If the Project Sponsor is eligible and selects pursuant to Section 415.5 (f) to provide off-site BMR Units to satisfy the requirements of Section 415.1 *et seq.*, the Project Sponsor shall notify the Planning Department and MOH of its intent as early as possible. The Planning Department and MOH shall provide an evaluation of the Project's compliance with the requirements of Section 415.5 (f) and 415.7 prior to approval by the Planning Commission or Planning Department.

The Planning Department through its designated Planner shall require the Project Sponsor to indicate the intent to satisfy the Inclusionary Housing Program requirement partially or completely through off-site BMR units on the Affidavit for Compliance with the Inclusionary Housing Program. On an additional, standardized off-site form, the Planner shall (1) define the BMR Unit percent requirement of the Project under Planning Code Section 415.7; (2) confirm that the off-site proposal meets the required BMR Unit percent requirement under Planning Code Section 415.7; (3) confirm that the off-site proposal is within one mile of the Principal Project; (4) confirm that the off-site proposal includes ownership units per Planning Code Section 417.7 (d) and, if not, that the off-site proposal qualifies as a rental project per Planning Code Section 415.5 (g); and (5) confirm that the off-site housing meets the Quality Standards for Off-site Affordable Housing Units per Section V (D) of this Manual. The Project Sponsor should deliver all site information at least 120 days prior to the scheduled Planning Commission approval hearing.

The Planner will then share the standardized off-site form with MOH. MOH will also review the off-site proposal to confirm its compliance with Section 415 *et seq.*

The Project Sponsor shall record a Notice of Special Restrictions on both the Principal Project and the off-site Project, noting the Use Restrictions of each.

Number of Units Required

The number of BMR Units required under the off-site option of the Program is established by Section 415.7 (a) of the Planning Code.

Pricing and Maximum Income Levels

Per Section 415.8 (a) (4), the Maximum Income Levels specified in the Use Restrictions for the Project shall be the required income percentages for the Life of the Project, with the exception of allowances set forth in this Manual.

Per Section 415.7 (a) d) of the Planning Code, all off-site units constructed under this Section must be provided as BMR Ownership Units for the Life of the Project, unless the Project meets the eligibility requirement of Section 415.5 (g). Per Planning Code Section 417 (d), off-site BMR Ownership Units must be affordable to Qualifying Households earning no more than 70 percent (70%) of AMI and off-site BMR

Rental Units must be affordable to Qualifying Households earning no more than 55 percent (55%) of AMI.

See Section II (C) of this Manual for an explanation of the pricing mechanism for BMR Ownership Units, including a description of the parking policy for BMR Units. See Section III (C) of this Manual for an explanation of the pricing mechanism for BMR Rental Units, including a description of the parking policy for BMR Units.

Term of Restriction

Per Planning Code Section 415 (8) (a) (1), all BMR Units constructed pursuant to Planning Code Sections 415.6 and 415.7 must remain Affordable to Qualifying Households for the Life of the Project.

Timing of Construction and Delivery of Off-site Units

Per Planning Code Section 415.7 (b), off-site BMR Units must be constructed, completed, ready for occupancy and marketed no later than the market rate units in the Principal Project. In no case shall the Principal Project be issued a First Certificate of Occupancy until the off-site project has received its First Certificate of Occupancy.

Geographic Location of Off-site BMR Units

Per Planning Code Section 415.7 (c), the Project Sponsor must ensure that off-site BMR Units are located within one mile of the Principal Project.

Quality Standards for Off-Site BMR Units

All BMR Units constructed off-site under the provisions of Section 415.7 shall be of good quality and generally equivalent to current market rate housing standards commonplace in San Francisco as determined by the Zoning Administrator in accordance with official Planning Department policy. Off-site BMR Units shall be comparable in number of bedrooms, number of bathrooms, exterior appearance and overall quality of construction to market rate units in the Principal Project, and shall meet at a minimum, or exceed, the following standards:

Individual Unit Sizes

Per Planning Code 417 (d), the total square footage of the off-site affordable units constructed under Section 415.7 shall be no less than the calculation of the total square footage of the on-site non-BMR Housing Units in the Principal Project multiplied by the relevant on-site percentage requirement for the project specified in Section 415.7. In addition, average individual BMR Unit square footages shall be no less than 70% of the average Principal Project unit square footage for corresponding unit types classified by number of bedrooms, and in no case shall individual unit square footages be less than the following for each unit type:

Studios:	350 square feet
1-Bedrooms:	550 square feet
2-Bedrooms:	800 square feet

3-Bedrooms: 1,000 square feet
4-Bedrooms: 1,250 square feet

Exceptions to these square footage minimums may be made at the Zoning Administrator's discretion where the Principal Projects average unit size by corresponding unit type classification is less than these minimums. When using such discretion, the Zoning Administrator shall take into account any anticipated occupant for a particular development.

The average off-site BMR Unit size for a given unit type may be permitted to be less than 70% of the average size of the corresponding unit type of the Principal Project at the discretion of the Zoning Administrator on a case-by-case basis, provided there is a corresponding increase in unit numbers and all other provisions of this section are met. No reduction in the required total minimum BMR Unit square footage per Section 415.7(d) of the Planning Code shall be permitted.

Design of Off-site BMR Units

Room sizes

No required bedroom shall be smaller than 120 square feet, and at least one bedroom in every BMR Unit, except for studios, shall be a minimum of 144 square feet. The minimum horizontal dimension for any bedroom, excluding alcoves not included in the minimum square foot calculation, shall be 10 feet.

Primary rooms in studios shall be no less than 165 square feet excluding any contiguous kitchen area. The minimum horizontal dimension for any such primary room, excluding alcoves not included in the minimum square foot calculation, shall be 11 feet.

No living room shall be smaller than 144 square feet, with a minimum dimension excluding alcoves not included in the minimum square foot calculation, of 11 feet.

At least one bathroom shall meet ADA size requirements, and all other full bathrooms required by this section must be at least 40 square feet in size.

Smaller room size minimums may be permitted at the discretion of the Zoning Administrator on a case-by-case basis, if such smaller room sizes are typical of the principal Project and are consistent with current City building and housing codes.

Interior Heights

Prevailing floor-to-ceiling heights in each BMR Unit shall be no less than 8'-6". Lower ceiling heights in bathrooms, hallways, or small portions of other rooms may be permitted to allow for central heat and air ductwork where necessary, but in no case shall any ceiling height in such areas be less than 8'-0".

Kitchen and Bathroom Amenities

At a minimum, all kitchens shall have a full size four-burner cook top and full size oven, with

built-in exhaust hood/microwave oven unit (or an equivalent thereof), full size kitchen sink with in-drain electric disposal, full size dishwasher, full size refrigerator/freezer, good quality upper and lower level cabinets with doors, quality counter top surfaces, and a suitable good quality floor surface. While appliances and finishes need not match or be equivalent to those in the Principal Project, they should be new and of good quality in terms of performance, durability and appearance. At the discretion of the Zoning Administrator, appliance sizes may be scaled down for studio units if such downsizing is typical of the Principal Project. For the purpose of preserving interior materials or character of older buildings or providing aesthetic compatibility therein, fully restored vintage appliances and finishes may be used as long as they are of good quality, durability, and in good working condition.

Bathrooms shall consist of a shower stall, toilet and lavatory. At least one bathroom in each unit shall have both a shower stall and standard size tub or a combination tub-shower unit.

Closets

Each Housing Unit shall have a coat closet and a linen closet, plus a closet for each bedroom. Minimum dimensions for coat closet shall be 4'X 2'. Minimum closet dimensions for required linen closet shall be 36"X 18". Minimum closet size for the first/master bedroom shall be 16 square feet with a minimum depth of two feet. Minimum closet size for each additional bedroom shall be 12 square feet with a minimum depth of two feet.

Laundry facilities

Off-site BMR Projects shall provide laundry facilities comparable to the Principal Project. Each BMR Unit shall contain laundry facilities if such facilities are provided in the Principal Project. Each floor shall contain a laundry facility if such facilities are in the Principal Project, with one full-size washer and one-full size dryer for every four units per floor. There shall be a common laundry room for the entire building if such a facility is provided in the Principal Project with one washer and one dryer unit for every eight units. Individual laundry facilities within units shall consist of both a washer and dryer unit. Studios, one- and two-bedroom units may utilize stacker units; three bedroom units and larger shall have full size laundry machine units. Laundry machines shall be new and of good quality and durability.

Finish qualities

Finish qualities throughout Housing Units and common areas including: doors; windows; wall and floor materials and finishes; bathroom finishes and fixtures; trim; hardware; lighting and other electric features, need not match or be equivalent to that of the Principal Project, but should be new and of good quality in terms of performance, functionality, durability and appearance and should reflect current residential interior styles, except in cases where vintage styles are appropriate to the interior finish design of the building, or where it is desired to preserve historic features or finishes.

Parking

Parking provided for off-site BMR Units shall be comparable to the parking provided at the

Principal Project in terms of the ratio of parking spaces to Housing Units. Should development budgets or zoning restrictions not allow such a parking arrangement, the rent or sales price of the BMR Units will be reduced to reflect the absence of the required parking spaces according to the Unbundled Parking Policy described in Sections II (C) and III (C) of this Manual.

Zoning Administrator Discretion

Smaller room size minimums may be permitted at the discretion of the Zoning Administrator on a case-by-case basis, if such smaller room sizes are typical of the Principal Project and are consistent with current City building and housing codes.

The standards in this section may be reduced at the discretion of the Zoning Administrator on a case-by-case basis provided the intent of this section -- that all BMR Units shall be of good quality and generally equivalent to current market rate housing standards commonplace in San Francisco -- is generally being met as determined by the Zoning Administrator. Absent timely amendments to this section, requirements may be added or eliminated at the discretion of the Zoning Administrator to allow for changes in market standards or in technology. In adding or eliminating such requirements, the Zoning Administrator shall take into account the likely occupancy of the off-site BMR Units in consultation with MOH.

Development Subsidies

Per Planning Code Section 415.7 (f), individual BMR Units constructed as part of a larger off-site project under Section 415.7 shall not receive development subsidies from any Federal, State or local program established for the purpose of providing affordable housing, and shall not be counted to satisfy any affordable housing requirement for the off-site development. Other units in the same off-site project may receive such subsidies.

Per Planning Code Section 415.7 (g), notwithstanding the provisions of Section 415.7(f) above, a project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and four percent (4%) credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as the project provides twenty five percent (25%) of the units as affordable at 50 percent (50%) of AMI for off-site housing. The income table to be used for such projects when the units are priced at 50 percent (50%) of AMI is the income table used by MOH for the Inclusionary Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection, all BMR Units provided under this section must meet all of the requirements of Planning Code Section 415 *et seq.* and this Manual for off-site housing.

Marketing

See Section V (G) of this Manual for information on the marketing of initial sale BMR Units.

Monitoring

See Section V (J) of this Manual for information on the monitoring of BMR Ownership Units and BMR Rental Units.

Requirement to Record Restrictions

Per Planning Code Section 415.6 (c), a Notice of Special Restrictions shall be recorded prior to issuance of the First Construction Document and shall specify the number, location and sizes for all BMR Units required under Planning Code Section 415.7.

E. COMPLIANCE THROUGH LAND DEDICATION IN EASTERN NEIGHBORHOODS

Project Sponsors choosing the land dedication option under Section 419.5 of the Planning Code shall adhere to all requirements contained in such section and shall adhere to the following procedures.

Initial Planning Department Review of Project

Prior to any project approvals from the Planning Department or Planning Commission, the Planning Department through its designated Planner shall require the Project Sponsor to indicate the intent to satisfy the Inclusionary Housing Program requirement partially or completely through land dedication on the Affidavit for Compliance with the Inclusionary Housing Program.

On an additional standardized form provided by MOH, the Planner shall:

(1) define the tier and percent requirement of the Project under Section 419;

(2) identify whether the Principal Project for which the land dedication is provided applies to a single site or to a collective of sites within a 1-mile radius;

(3) confirm that the land dedication requirement meets the required percent of total developable area of the Principal Project [which excludes land already substantially developed, subsequent non-developable uses required in connection with the project approval (ie. Open spaces, streets, alleys, walkways, or other public infrastructure), easements and other parts of the land that are not developable];

(3) confirm that the percentage of land being dedicated to fully or partially fulfill the Project Sponsor's requirement under the Program accommodates at least the same percent of total potential units to be constructed on the Principal Project;

(4) calculate the total number of BMR Units that would have been owed if they were provided as on-site BMR Units on the Principal Project;

(5) state whether the dedicated land is in the form of air rights; and

(6) note if the Section 419.5 rental incentive applies.

The Planner will then submit the standardized land dedication form to MOH.

MOH Review and Recommendation

The Project Sponsor must deliver to MOH all site information at least 120 days prior to the scheduled approval hearing by the Planning Commission. MOH will issue a denial or conditional approval letter prior to issuance of project approvals from the Planning Commission or Planning Department and after MOH has completed its due diligence review of complete information submitted by the Project Sponsor.

In order to determine whether to issue a letter verifying acceptance, MOH will review the proposed land dedication to determine whether it satisfies the following requirements of Section 419.5, among others:

(1) The dedicated site will result in a total amount of inclusionary units not less than forty (40) units. MOH may conditionally approve and accept dedicated sites which result in no less than twenty-five (25) units at its discretion;

(2) The dedicated site will result in a total amount of units that is equivalent or greater than the minimum percentage of the units that would have been provided on-site at the Principal Project, as required by Table 419.5, had the BMR Units been provided on-site. MOH may also accept dedicated sites that represent the equivalent of or greater than the required percentage of units for all units that could be provided on a collective of sites within a one-mile radius, provided the total amount of inclusionary units provided on the dedicated site is equivalent to or greater than the total requirements for all Principal Projects participating in the collective, according to the requirements of Table 419.5;

(3) The dedicated site is suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria. The site must allow development of affordable housing that is sound, safe and acceptable;

(4) The dedicated site includes or will include infrastructure necessary to serve the units, including sewer, utilities, water, light, street access and sidewalks;

(5) The developer must apply for and pay for environmental review under CEQA of the land dedication and complete any applicable CEQA review prior or simultaneous to approval of the Principal Project;

(6) The value of the dedicated land is equal to or greater than the value of the Principal Project multiplied by the applicable required land dedication percentage. Value shall be determined by Fair Market Appraisals of the Principal Project and the proposed land dedication submitted by the Project Sponsor and subject to review and approval by MOH.

Required Materials

In order for MOH to perform this review of the proposed land dedication site, the Project Sponsor must provide the following due diligence documents to MOH with respect to the proposed site:

(1) Preliminary Title Report dated within 30 days of submittal;
(2) Recent Land/Site Surveys;

(3) Geotechnical Report;
(4) Phase I Report;
(5) Phase II Report if hazardous materials are suspected in the Phase I Report;
(6) Cost estimate for mitigation of any hazardous materials;
(7) Land Use Memo that assesses the conformance of the proposed affordable housing project at the land dedication site with existing zoning, occupancy and use restrictions;
(8) Fair Market Value Appraisal to be completed to Uniform Standards of Professional Appraisal Practice standards by qualified appraisers holding a California Certified General Appraisal License (issued by the Office of Real Estate Appraisers), preferably with a Member of the Appraisal Institute member designation (issued by the Appraisal Institute), and with experience valuing similar properties in the Bay Area;
(9) Infrastructure Study assessing the availability and capacity of infrastructure (sewer, utilities, water, light, street access and sidewalk) available to support the proposed affordable housing project. If adequate infrastructure is not provided, a third-party cost estimate of providing such infrastructure must be provided;
(10) Density Studies compliant with site's underlying zoning, including one version that assumes Principal Project stated unit mix and size standards and one version that assumes 30% of units are 3-bedroom units;
(11) Cost study for each version of the density study in order to estimate how much it would cost to develop affordable housing according to each density study, taking into account federal prevailing wage labor rates;
(12) Schedule for delivery of land, including estimated dates for First Construction Document, demolition, lot division, etc;
(13) Intent of developer to deliver vacant site.

Developable units as assumed for the preceding studies should be comparable in size to the Principal Project unit sizes and at no time smaller than the following unit sizes:

- Studios = 350
- 1-BR = 550 square feet
- 2-BR = 800 square feet
- 3-BR = 1,000 square feet
- 4-BR = 1,250 square feet

Developable projects as assumed for the preceding studies must be able to accommodate the same parking ratio as that being provided by the Principal Project.

Approval Letter and Conditions

If MOH determines that the site is acceptable in accordance with Code Section 419, MOH will issue a formal approval letter. If MOH's acceptance of the site is dependent on certain conditions being satisfied prior to the conveyance of the site, MOH shall identify such conditions in the letter. At a minimum, MOH's acceptance of the site shall always be conditioned on a finding of consistency with the

General Plan and approval of the conveyance by the Board of Supervisors and Mayor. Other conditions may include, but shall not be limited to:

(1) If the proposed land dedication site is found to have any hazardous materials or other environmental damage that requires remediation prior to development of Housing Units, MOH's acceptance of the site shall also be conditioned on the Project Sponsor clearing the site of such hazardous materials to the satisfaction of MOH in its sole discretion prior to conveyance to City. Alternatively, if approved by MOH, any required environmental remediation may be able to be mitigated after conveyance within a mitigation cost standard that is determined by MOH and borne by the Project Sponsor. If MOH agrees to allow environmental remediation work to be done after conveyance, MOH's acceptance of the site shall also be conditioned on the Project Sponsor placing sufficient funds (as determined by MOH) to pay for such remediation in an escrow account concurrently with the conveyance, which funds shall be released to MOH when the environmental remediation costs are incurred.

(2) If mitigation measures relevant to the land dedication are required as part of the Principal Project's environmental clearance, MOH's acceptance of the site shall also be conditioned, when appropriate, on the Project Sponsor completing such measures for the dedicated site concurrently with the Principal Site. If applicable, the Project Sponsor shall be obligated under the Conditions of Approval to satisfy this condition post-conveyance.

(3) Removal of exceptions to title deemed unacceptable to MOH shall be in its sole discretion.

(4) MOH shall not be required to identify all conditions in the letter; failure to reference any conditions in the letter shall not preclude the City from imposing such reasonable conditions after the letter is issued as may be deemed appropriate by MOH in light of any new information discovered after the letter is issued. Notwithstanding the foregoing, no new conditions may be added after the Agreement (as defined below) has been approved by the Board of Supervisors and Mayor and executed by MOH.

Should MOH issue a formal conditional approval letter, the Project Sponsor will seek entitlement for the Principal Project. Should the Project become entitled, the Board of Supervisors must then approve the land dedication per the standard City land conveyance process by grant deed, unless another method is approved. If approved by the Planning Commission, the Board of Supervisors, and the Mayor, the Project Sponsor must convey the land before issuance of First Construction Document for the Principal Project, with all conditions set forth in the Agreement (as defined below) and the MOH conditional approval letter having been met. In certain circumstances, the City may provide for a later conveyance if adequate security is provided to the City by the Project Sponsor.

If MOH issues an acceptance letter, MOH and Project Sponsor will enter into a purchase and sale agreement in a form prepared by MOH (the "Agreement"). The Agreement will state that the sale of the

land dedication site will be for $1, and will be subject to all of the conditions precedent as identified by MOH. Upon execution of the Agreement by Project Sponsor, MOH shall present the Agreement and the proposed conveyance to the Board of Supervisors for approval. Upon approval of the Agreement and approval of the conveyance by the Board of Supervisors and the Mayor, and upon satisfaction or waiver of all of the conditions precedent, the Project Sponsor shall convey the land to MOH. Subject to the terms of the Agreement, in the event that any conditions have not been satisfied or waived by the issuance of the First Construction Document for the Project (or such later date as agreed to by the Planning Commission in the Principal Project's condition of approval), regardless of reason, the Project Sponsor shall not be able to use land dedication to satisfy its Inclusionary Housing Program Requirements and must satisfy the requirements of the Program through another means.

F. COMPLIANCE THROUGH MIDDLE INCOME ALTERNATIVE IN EASTERN NEIGHBORHOODS

MOH shall develop procedures for this compliance option with the next update of this Manual.

G. MARKETING PROCEDURES FOR INITIAL SALE AND RENTAL OF BMR UNITS

General Requirements for Marketing of all Initial Sales and Rentals of BMR Units

The Project Sponsor shall use good faith and affirmative efforts to attract potential Qualifying Owner and Qualifying Renter Households from all Minority Communities and Low-income, Median-income and Moderate-income communities through the marketing and advertising of the BMR Units. Toward that goal, the Project Sponsor shall prepare and provide to MOH a copy of the Marketing Plan for the sale or rental of the BMR Units prior to accepting applications or statements of interest for the purchase or lease of the BMR Units. No marketing or advertising material shall be distributed or published without the prior written approval of the Marketing Plan by MOH and all such materials shall be consistent with the approved Marketing Plan. Approval or disapproval of the Marketing Plan shall be made within ten (10) business days of receipt of a complete marketing plan. In instances where the Marketing Plan has been disapproved; MOH will provide recommendations to remedy any deficiencies.

To ensure access and outreach to Minority Communities and Low-income, Median-income and Moderate-income communities, the Project Sponsor must hire as part of the marketing and outreach strategy a Marketing Agent certified by MOH as having demonstrated capacity in reaching identified targeted populations. The targeted populations will be identified by MOH based on an analysis of the demographic characteristics Low-income, Median-income and Moderate-income communities of San Francisco, and applicants to the BMR program. The Project Sponsor must also work with the MOH-approved First-time Homebuyer Education Providers to market their BMR Units. Such outreach will be prescribed by MOH in a Marketing Plan template provided by MOH.

The Project Sponsor shall submit the Marketing Plan to MOH at least thirty (30) calendar days prior to the anticipated commencement of the Project's marketing and outreach and at least one hundred and twenty days (120) prior to the anticipated close of escrow for BMR Ownership Units and lease origination dates for BMR Rental Units.

Content of Marketing Plan

MOH shall prescribe the form of the Marketing Plan and shall provide the format to the Project Sponsor for completion and submittal. Unless determined by MOH to be inapplicable to a particular Project, the Marketing Plan shall include:

The name, address, email address, and phone number of the Project Sponsor;

The name, address, email address, and phone number of the sales or rental agent(s);

An attached copy of all planning approvals, the NSR and approved floor plans associated with the Principal Project and any applicable off-site Project;

The name of the City Planner assigned to the Project;

A description of the total number of units in the Principal Project or applicable off-site Project;

A description of the total number of Market Rate units in the Project;

A description of the total number of BMR Units in the Project;

The Home Association Dues (HOA Dues) for each BMR Unit;

All amenities included in the sale or rental of the BMR Unit;

Parking available to all residential tenants in the Project;

BMR Buyer or BMR Renter qualifications;

Workshop and open house dates;

A media plan;

A strategy for marketing to residents of the immediate neighborhood;

A comprehensive strategy for reaching out to Low-income, Median-income, moderate-income and Minority Communities in San Francisco;

Dates and strategy for the application process;

Dates and strategy for the lottery selection process;

Dates and strategy for the process of working with lottery winners;

Marketing materials which clearly define Program eligibility and which specify documentation and monitoring procedures;

Notices that BMR Buyers are subject to special Use Restrictions, including an acknowledgement of these restrictions in the case of both BMR Ownership and BMR Rental Units and a sample packet of the City's

escrow closing documents that each BMR Buyer will be expected to execute upon purchase in the case of a BMR Ownership Units;

Listing of BMR Ownership Units with the San Francisco Multiple Listing Service (MLS);

A list of community housing organizations that will receive written notification regarding the availability of the BMR Units prior to commencement of advertising or marketing of such units;

A list of community housing organizations that the Project Sponsor or the Project Sponsor's marketing representative must work with in order to meet language or cultural needs of minority communities.

Conduct of Marketing Plan

No marketing of the BMR Unit(s) shall begin until the Project Sponsor has received written approval of the Marketing Plan following confirmation from MOH of the number, type, location, and price or rent of the BMR Units and permissible income limits of purchasers or tenants, pursuant to II (C) and III (C) of this Manual.

Projects Sponsors shall submit to MOH a complete Marketing Plan in a template provided by MOH. MOH shall have ten (10) business days to review and approve the Plan. The submitted Marketing Plan should not commence any sooner than thirty (30) days from the date of the submission to MOH, as reflected in all dates set forth in the plan.

All available BMR Ownership Units must be advertised by the Project Sponsor and listed on the MOH website of available BMR Units for at least forty-five (45) days prior to the application deadline for the BMR Unit(s). All available BMR Rental Units must be advertised by the Project Sponsor and listed on the MOH website of available BMR Units for at least twenty-eight (28) days prior to an application deadline for the BMR Unit(s).

BMR Units must be advertised in at least five (5) local newspapers that reach Minority and Low-, Median and Moderate-income Communities in San Francisco for a continuous period of at least the first three (3) weeks of the required marketing period and at least one local newspaper of general San Francisco circulation for at least two weekend days prior to the established application deadlines for the BMR Units.

Project Sponsors must hold at least three (3) open houses to show the BMR Units, with at least one open house date on a weekday evening and one open house date on a weekend. BMR Buyers or BMR Renters should be afforded the opportunity to view the BMR Units post-lottery in the same fashion as non-BMR buyers or renters in the Project.

Project Sponsors offering three or more BMR Units may be required to hold an information session open to the public in which the Project Sponsor presents the Project and explains the BMR program. Project Sponsors offering larger quantities of BMR Units may be required, at MOH's discretion, to hold additional information sessions. Information sessions for BMR Units shall be held in a public, accessible location that is arranged and paid for by the Project Sponsor.

As a part of the Marketing Plan submission, the Project Sponsor must provide a flyer for the BMR Units

that must include specific information set forth in the marketing plan template and may choose to use a template flyer provided by MOH if preferred.

Project Sponsors shall pay for a mailing to Certificate of Preference holders to announce new BMR Unit offerings. The mailing shall be coordinated by MOH and MOH shall send the Project Sponsor a bill for such mailing in the amount of 10 cents a page for copying the flyer plus the price of mailing the flyer to each of the Certificate of Preference holders at the then current standard first class mail rate.

Project Sponsors shall make a Program application available to the public on their own website and in person at a designated location at the least. At the end of the required marketing period, applicants shall submit the Program application directly to the Project Sponsor by a mandated day and time. Applicants submitting an application shall be issued a lottery ticket by the Project Sponsor. A twin ticket shall be held by the Project Sponsor to be entered into the lottery if the application is deemed by MOH to be complete. The Project Sponsor, with oversight from MOH, shall evaluate the application and determine within fifteen (15) business days if the applicant meets the eligibility for a BMR Renter or BMR Owner as described in Sections II and III of this Manual.

The application deadline shall be followed by a public lottery for all new BMR Units, as described in Sections II (B) and III (B) of this Manual. The Project Sponsor shall submit to MOH within 24 hours of the application deadline a list of all lottery applicants on a spreadsheet provided by MOH. The Project Sponsor may be allowed a longer period of time to submit the applicant list in the case of larger Projects with approval from MOH. This list shall be used as the final applicant list for use in the lottery.

The Project Sponsor shall alert sales or rental staff to the BMR Units and provide such staff with a copy of this Manual and the special Use Restrictions applicable to the BMR Units.

The sales or rental programs and procedures shall not have the effect of excluding or discriminating against any person on the basis of race, religion, national origin, sex, sexual orientation, gender identity, health status, source of income such as disability insurance, social security, TANF, or any other basis prohibited by federal, state or local law.

The Equal Housing Opportunity symbol shall be displayed in a visible location at any sales of rental office, and shall be incorporated in all advertisements and printed materials.

Application Review Process

Following the publication of the lottery results, BMR applications shall be reviewed by Project Sponsors by applying the application review guidelines as described in Section V (G) of this Manual and at www.sfgov.org.and presented to MOH for review before the issuance of an approval or disqualification letter to the applicants. The Project Sponsor shall verify the Household eligibility (as approved by MOH) within fifteen (15) working days of the receipt of a complete application. Should an applicant be approved by MOH and is otherwise approved, that applicant will either enter into a lease for the BMR Unit or work with an approved lender to secure a loan. In the case of BMR Ownership Units, the Project Sponsor shall submit the BMR Buyer application to MOH for approval at least sixty (60) days prior to the anticipated close of escrow. In the case of BMR Rental Units, the Project Sponsor shall submit the BMR Renter application to MOH for approval at least fifteen (15) days prior to the anticipated signing of the lease.

Inability to Find a Buyer or Renter for an Initial Sale or Initial Rental BMR Unit

In cases where, despite the Project Sponsor's good faith efforts, no eligible BMR Owner or BMR Renter has contracted to purchase or rent a BMR Unit within six (6) months after the lottery for the BMR Units, the Project Sponsor shall inform MOH, which may then increase the permissible income levels for prospective BMR Buyers or BMR Renters of that BMR Unit up to a maximum twenty (20) percent over the income percentage limit specified in Use Restrictions (but only 10% above the actual Maximum Income Level for the BMR Unit for BMR Ownership Units that are priced under this Manual), but not to exceed 120% AMI at any time, on a one-time basis only, but shall not increase any current or future permissible sales or rental price of that BMR Unit as indicated in Use Restrictions or this Manual. Project Sponsors shall inform all BMR Buyers of the one-time nature of the qualifying income increase.

H. MARKETING PROCEDURES FOR RESALE AND RERENTAL OF BMR UNITS

Marketing Procedures for Resale of BMR Units

Section II (F) of this Manual contains requirements for the marketing of BMR Ownership Units upon resale.

Marketing Procedures for BMR Rental Units upon Rerental

Maximum Monthly Rent of BMR Rental Units upon Rerental

The Project Sponsor shall notify MOH of a vacancy of a BMR Unit prior to offering the BMR Rental Units for rent and prior to marketing the unit according to the marketing procedures set forth below.

Rental rates for qualifying Households shall not exceed the applicable Maximum Monthly Rent published in accordance with the provisions of Section III (C) of this Manual.

Marketing Procedures for BMR Rental Units upon Rerental

Marketing of BMR Rental Units upon re-rental shall be in compliance with all applicable federal, state and local laws related to fair housing rules. Project Owners may be asked to certify that the BMR Units have not been marketed in such a manner as to be discriminatory.

The rental programs and procedures shall not have the effect of excluding or discriminating against any person on the basis of race, religion, national origin, sex, sexual orientation, health status, source of income such as disability insurance, social security, TANF, or any other basis prohibited by federal, state or local law.

Upon re-rental, BMR Rental Unit managers must follow the process established by MOH for re-renting BMR Units. This process includes the following:

The Project Sponsor shall inform MOH at least thirty (30) days prior to the intended lease origination date of a new BMR Renter of the availability of any such BMR Rental Unit before beginning any general marketing;

Units must be listed on the MOH website list of available BMR Units for at least a seven (7) business day period in a form provided by MOH;

Applicants must complete a MOH BMR rental application and return the application and all supporting materials to the Project Owner by the application deadline;

All applications shall be entered into a lottery for the BMR Unit as described in Section III (B) unless the Project is specifically permitted by MOH to maintain a waitlist of applicants.

I. CONVERSION OF BMR RENTAL UNITS TO OWNERSHIP UNITS

When authorized by Use Restrictions placed on a Principal Project, a BMR Rental Unit may be permitted to be converted for owner occupancy only upon satisfaction of all of the following additional conditions:

If the BMR Unit is subject to Use Restrictions specifying that the BMR Unit be a rental unit, conversion shall be subject to the approval of the Planning Commission;

The conversion from rental to condominium ownership of the BMR Unit shall be subject to any applicable City procedures, standards, fees and regulations in effect at the time of application;

The BMR Unit must be in good physical condition at the time of sale as verified by an inspection;

The Project Sponsor shall prepare and submit a Marketing Plan and conduct sales of the BMR Units in conformity with the Requirements of this Manual in force at the time of marketing and sale;

Existing tenants shall be offered a right of first refusal to purchase the BMR Unit, which right of first refusal shall afford the tenant at least six (6) months or the balance of the existing lease period, whichever is longer, from the time of official notice to exercise the right to purchase or to vacate the unit;

Should the current BMR Renter decide to purchase the BMR Unit, such unit shall be priced at the level of affordability dictated for the current BMR Rental Unit as stated in Use Restrictions or at the actual income level of the current BMR Renter, whichever is higher;

In the case of a BMR Unit whose current BMR Renter exercises the right of first refusal, the BMR Renter must be eligible under the BMR Buyer Program and the gross annual Household income of the BMR Renter at the time of application should not exceed 120% of AMI or at the actual income level of the BMR renter, whichever is higher; ,

Should the current BMR Renter decide not to purchase the BMR Unit, the unit shall be priced at the level of affordability dictated for the unit as stated in the Use Restrictions for the Project had the BMR Unit initially been sold rather than rented;

Should the current BMR Renter decide not to purchase the BMR Unit, the Project Owner shall provide a relocation allowance to the current BMR Renter in an amount equal to current relocation allowances required under the San Francisco Rent Ordinance;

In the case of a BMR Unit whose current BMR Renter does not exercise the right of first refusal, the prospective purchaser must meet all of the requirements of a BMR Buyer described in Section II (A) of this Manual;

Upon conversion, the BMR Unit(s) shall record a new Notice of Special Restrictions identifying the BMR Unit as a restricted BMR Ownership Unit under the current version of Section 415 of the Planning Code;

Once converted, BMR Units shall be subject to all restrictions applicable to the marketing, sale and resale of BMR Ownership Units as set forth in this Manual, including resale restrictions as set forth in Section II (F) of this Manual.

J. MONITORING AND REPORTING PROCEDURE

Monitoring and Reporting Procedures for BMR Ownership Units

BMR Ownership Units shall be monitored according to the requirements set forth in Section II (H) of this Manual.

Monitoring and Reporting Procedures for BMR Rental Units

BMR Rental Units shall be monitored according to the requirements set forth in Section III (I) of this Manual.

K. STATISTICAL INFORMATION FOR BMR UNITS

MOH may at any time require the Project Sponsor to collect information from the owners or tenants of all BMR Units in the Project regarding their ethnicity, gender, age, and such other information as may be requested to allow MOH to verify that there have been no discriminatory practices in the selection of such tenants or owners. The collection of such information shall be conducted in a manner and using a form acceptable to MOH, ensuring that the information is being collected after the BMR Renter or BMR Owner selection process is complete, and is used solely for statistical reasons and not as the basis for making any decision regarding the qualification of a tenant or owner for occupancy of a BMR Unit.

L. DOCUMENT RETENTION POLICY

Project Sponsors of BMR Units shall retain initial application forms and Household income documentation for the greater of (1) five (5) years from the date of a BMR Renter or BMR Owner's occupancy of a BMR Unit, or (2) the duration of the tenure of the BMR Owner or BMR Renter occupying the BMR Unit. This data may be requested by MOH, along with an administrative fee if any is authorized at the time of the request.

M. CONFLICT OF INTEREST

The Project Sponsor may not sell or rent a BMR Unit to the Project architect, attorney, prime contractor,

or to anyone of its or their employees, directors, officers or agents, or to any of their family members, as determined by MOH.

N. PENALTIES

Failure to comply with the requirements of Planning Code Section 415, any Use Restrictions for the Project, or the Procedures Manual may result in an enforcement action by the City including but not limited to the imposition of penalties under the Planning Code.

O. PUBLIC RECORDS

Applicants, owners, and project sponsors should be aware that any information provided to the City and County of San Francisco will be used, disseminated, and retained as needed in conducting the City's official business and may be subject to disclosure in accordance with the California Public Records Act and the San Francisco Sunshine Ordinance.

AHP ATTACHMENT C

Mayor's Office of Housing and Community Development

Inclusionary Housing Program Fee Schedule 2017

Effective June 6, 2016, the fees below are applicable to all developments subject to the ordinance. These fees will be multiplied per the off-site unit count otherwise required for all new developments subject to the ordinance. The fee schedule in place at the time of payment will be applied to each specific project.

2017 Fee Schedule

SRO/Group Housing unit - $148,506

Studio unit - $198,008

1-bedroom unit - $268,960

2-bedroom unit - $366,369

3-bedroom unit - $417,799

4-bedroom unit - $521,431

The next fee update will occur on January 1, 2018. For questions regarding the calculation of a fee amount, please contact Kate Conner at the Planning Department at (415) 558-6409 or kate.conner@sfgov.org.

Background

As adopted by the Board of Supervisors, the Inclusionary Affordable Housing Ordinance (Section 415.5 of the San Francisco Planning Code) prescribes that an Affordable Housing Fee (the "Fee") must be paid for residential developments subject to Section 415 et seq. The Fee is based on the number of units applicable under the "off-site" option as established in Section 415.7 of the Planning Code. The current applicable percentage varies depending on the number of units proposed, unless the development submitted its first planning application under an earlier version of the program. Certain Area Plans such as the Eastern Neighborhoods Plan also require a different off-site percentage. Please see MOHCD's Inclusionary Housing Program Overview page for specific requirements.

The fee is established in Section 415.5 of the Planning Code and is based on the affordability gap using data on the cost of developing residential housing as derived from the "San Francisco Inclusionary Housing Program Financial Analysis 2012" prepared by Seifel Consulting and the maximum purchase price for the equivalent unit size under the Inclusionary Affordable Housing Program. The Planning Department and the Mayor's Office of Housing and Community Development will update this technical report from time to time as they deem appropriate in order to ensure that the affordability gap remains current.

The fee is indexed to the Construction Cost Index (CCI) for San Francisco as published by Engineering News-Record.

The San Francisco Planning Department shall calculate the fee using the direct fractional result of the total number of units.

DDA EXHIBIT B4

WORKFORCE DEVELOPMENT PLAN

(Pier 70 28-Acre Site)

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PIER 70 28-ACRE SITE WORKFORCE DEVELOPMENT PLAN

I. Project Background. The development plan for the 28-Acre Site under the Transaction Documents provides for the development of a new mixed-use neighborhood composed of office, retail, market rate and affordable residential uses, as well as entirely new infrastructure, utilities, parks and open space. This Workforce Development Plan sets forth the activities Developer and Vertical Developer shall undertake, and require their Construction Contractors, Consultants, Subcontractors, Subconsultants, and Commercial Tenants, as applicable, to undertake, to support workforce development in both the construction and end use phases of the 28-Acre Site Project, as set forth in this Workforce Development Plan.

The Port and Developer have entered into the DDA that provides for the development of the 28-Acre Site Project in a series of Phases. In connection with the DDA, the Port and the Developer will enter into a Master Lease providing Developer the right to construct Horizontal Improvements within the 28-Acre Site Project after Port approval of Phase Submittals and issuance of necessary Regulatory Approvals. Developer will enter into contracts with Contractors and Consultants to construct all Horizontal Improvements allowed under the Master Lease.

The DDA also sets forth a process for the conveyance of Option Parcels by Parcel Leases to Vertical Developers. When a Vertical Developer is selected, the Port and the Vertical Developer will enter into a Vertical DDA that provides the procedures for the Port's delivery of a Parcel Lease to the Vertical Developer and sets forth the rights and obligations for the Vertical Developer's construction of Vertical Improvements and Deferred Infrastructure. Vertical Developers will enter into contracts with Construction Contractors and Consultants to construct the Vertical Improvements allowed in the Vertical DDAs. Upon completion of the Vertical Improvements, the applicable Parcel Lease, between the Port and the Vertical Developer, shall govern the operation and use of the Vertical Improvements.

II. Purpose of the Workforce Development Plan. This Workforce Development Plan sets forth the employment and contracting requirements for the construction and operation of the 28-Acre Site Project. This Workforce Development Plan has been jointly prepared by the Port and Developer (on behalf of itself and each Vertical Developer), in consultation with others including OEWD and other relevant City Agencies.

The purpose of this Workforce Development Plan is to ensure training, employment and economic development opportunities are part of the development and operation of the 28-Acre Site Project. This Workforce Development Plan creates a mechanism to provide employment and economic development opportunities for economically disadvantaged persons and San Francisco residents. The Port and Developer agree that job creation and equal opportunity contracting opportunities in all areas of employment are an essential part of the redevelopment of Pier 70. The Port and Developer agree that it is in the best interests of the 28-Acre Site Project and the City for a portion of the jobs and contracting opportunities to be directed, to the extent possible based on the type of work required, and subject to collective bargaining agreements, to local, small and economically disadvantaged companies and individuals whenever there is a qualified candidate.

This Workforce Development Plan identifies goals for achieving this objective and outlines certain measures that will be undertaken in order to help ensure that these goals and objectives are successfully met. In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project.

This Workforce Development Plan requires:

- Developer or Vertical Developers to fund certain OEWD job readiness and training programs run by CityBuild and TechSF.

- Developer or Vertical Developer shall include in all leases, subleases or other occupancy contracts provisions that require all Permanent Employers that occupy more than 25,000 gsf to enter into a First Source Hiring Agreement (in the forms attached hereto as Attachment A-1 and Attachment A-2) that will require participation in the City's Workforce System towards the hiring goals of Chapter 83 hiring goals applicable to Covered Operations for First Source referrals and, where applicable, partnership with TechSF. Developer shall also include in such leases, subleases or other occupancy contracts provisions that require Lessees and service providers to identify a single point of contact and contact OEWD's Business Services team to discuss its obligations under the First Source Hiring Agreement.

- On an annual basis, Developer shall provide First Source program and contact information to Permanent Employers that occupy less than 25,000 gsf, so they may avail themselves of referral services offered by OEWD.

- Developer and Vertical Developers of projects that are not otherwise covered by local hire requirements to enter into a First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

- Developer and Vertical Developers to meet the hiring and apprenticeship goals applicable to certain construction work for Local Residents and Disadvantaged Workers for Covered Projects as set forth in Attachment B (Local Hiring Requirements).

- Developer and Vertical Developers to meet the utilization and outreach goals applicable to certain construction work for Local Business Enterprises in accordance with the requirements set forth in Attachment C (LBE Utilization Plan).

- Developer to meet the outreach goals applicable to the initial leasing of retail space suitable for use by local diverse small businesses.

The foregoing summary is provided for convenience and for informational purposes only. In case of any conflict between this Workforce Development Plan and the ***DDA***, the provisions of this Workforce Development Plan shall control.

III. Workforce Development Plan.

A. DEFINITIONS

The following terms specific to this Workforce Development Plan have the meanings given to them below or are defined where indicated. Other initially capitalized terms are defined in the **Appendix Part B** or in other Transaction Documents. This Workforce Development Plan and all Workforce-Development Plan-specific definitions will prevail over any other Transaction Document in relation to the rights and obligations of Developer's and Vertical Developers with respect to workforce development. All references to the DDA or Vertical DDA, as applicable, include this Workforce Development Plan unless explicitly stated otherwise.

"**Chapter 83**" is defined in Section III.D.2 hereof.

"**Commercial Activity**" means retail sales and services, restaurant, hotel, education and office uses, technology and biotechnology business, and any other non-profit or for-profit commercial uses permitted under the SUD that are conducted within a Vertical Improvement.

"**Commercial Lease**" is defined in Section III.D.2 hereof.

"**Commercial Tenant**" means a tenant, subtenant or other occupant that enters into a lease, sublease or other occupancy contract for a Covered Operation.

"**Construction Contractor**" means a construction contractor hired by or on behalf of Developer or a Vertical Developer who performs Construction Work on the 28-Acre Site or other construction work otherwise covered under the LBE Utilization Plan or First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

"**Construction Work**" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement.

"**Construction Workforce Requirements**" is defined in Section III.C.1 hereof.

"**Consultant**" is defined in Attachment C attached hereto.

"**Covered Operations**" means (i) Commercial Activity which results in the expansion of entry and apprentice level positions that are located within a newly constructed Vertical Improvement or an addition, or alteration thereto, where the Vertical Improvement (or addition or alteration thereto) contains more than 25,000 gross square feet in floor area, and (ii) the operation of a Residential Project containing more than 25,000 square feet or more than 10 Residential Units. Covered Operations do not include (a) any operations or activities conducted by tenants, subtenants or owners of Residential Units, (b) Residential Projects containing less than 25,000 square feet or fewer than 10 dwelling units, (c) Vertical Improvements containing less than 25,000 square feet and (d) activities or operations conducted by tenants, subtenants and other occupants of less than 25,000 gross square feet of sublease space within a Vertical Improvement.

"**Disadvantaged Worker(s)**" is defined in Attachment B attached hereto.

"**Final, Binding and Non-Appealable**" means 90-days after the subject approval, or if a third party files an action challenging the approval during such 90-day period, thirty days after the final judgment or other resolution of the action or issue.

"**FSHA**" means the City's First Source Hiring Administration.

"**FSHA Operations Agreement**" means a First Source Hiring Agreement for Business, Commercial, Operation and Lease Occupancy of the Building, for Permanent Employers or for Permanent Tech Employers, as more particularly described in Section III.D.2. hereof.

"**Internship**" shall mean a learning and career preparation method that occurs within the context of a course or program. Internships include career exploration and direct experience and include guidance by staff, mentors, employers, and peers. An intern obtains a good understanding of the requirements of the occupation and an overview of all aspects of their chosen industry, and develops college and career readiness and success skills, such as critical thinking, problem-solving, collaboration and communication.

"**Job Readiness and Training Funds**" is defined in Section III.B.1 hereof.

"**Lessee**" shall mean a Tenant, business operator and any other occupant of a commercial office building. Lessee shall include every person, tenant, subtenant, or any other entity occupying the building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

"**Local Business Enterprise(s)**" or "**LBE**" means a firm that has been certified as an LBE as set forth in Administrative Code Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance).

"**Local Resident(s)**" is defined on Attachment C attached hereto.

"**NEDO**" is a neighborhood economic development organization.

"**OEWD**" means the City's Office of Economic & Workforce Development.

"**Operations Workforce Requirements**" is defined in Section D.1 hereof.

"**Permanent Employer**" shall mean each employer in a Covered Operation.

"**Permanent Tech Employer**" shall mean a Permanent Employer that both (i) employs primarily Technology Occupations and Technology-Enabled Occupations, and (ii) occupies more than 25,000 gsf within the 28-Acre Site Project.

"**Prevailing Rate of Wages**". The Prevailing Rate of Wages as defined in Section 6.1, and established under subsections 6.22(e)(3) and 6.22(f), of the Administrative Code.

"**Prevailing Wage Covered Project**" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

"**Referral**" shall mean a member of the Workforce System who has participated in an OEWD workforce training program.

"**Registered Apprenticeship**" shall mean a work experience that combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at the outset of a training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Registered apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, registered apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

"**Subconsultant**" is defined in Attachment C attached hereto.

"**Subcontractor**" is defined in Attachment A3 attached hereto.

"**TechSF**" shall mean a program which has been established by the City and County of San Francisco and managed by the OEWD, to provide training, education and job placement assistance services to jobseekers, and connects local employers to a qualified workforce in order to help all involved benefit from the growth of the local technology industry, Technology-Enabled Occupations and Technology Occupations across all sectors. For the purposes of this document, this term will refer to any successor programs, which provide similar services.

"**Technology-Enabled Occupations**" shall mean occupations that require skills related to Information, Media and ICT Literacy as highlighted in California's Digital Literacy definition, "[one's capacity] for using digital technology, communications tools, and/or networks in creating, accessing, analyzing, managing, integrating, evaluating, and communicating information in order to function in a knowledge based economy and society." Technology-Enabled Occupations require the ability to analyze, access and work with common computing and communications devices, operating systems, networking systems and applications. These occupations require the ability to understand and use ICT computing, communications and information technologies; use technologies for advance research, analysis and administrative operations. These occupations also require the ability to create, interpret and work with an increasing variety of digital media.

"Technology Occupations" shall mean positions that require core competencies in information and communication technology (ICT) systems and solutions. These occupations develop and deploy technologies and infrastructures to both support their enterprise and product users. Additionally, technology occupations require skills in research, design, development and analysis of custom technological products; including but not limited to software, web, application, and cloud-based products. Technology occupations also include positions that are related to the sales, marketing and engineering of these technology-based products. Technology occupations typically occur in the major industry clusters as defined by the North American Industry Classification System (NAICS): Software Publishers; Wired Telecommunications; Wireless Telecommunications; Satellite Communications; Data Processing, Hosting and Related Services; Internet Publishing and Broadcasting and Web Search Portals; and Computer Systems Design. Major technology occupation clusters as identified by the Bureau of Labor Statistics include but are not limited to: information support and services; network systems; program and software development; and web and digital communications.

"Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

"Work Experience" shall mean any experience which combine an on-the-job learning component with related classroom instruction designed to maximize the value of on-the-job experiences. Work Experience Education is classified in the California Education Code as General, Exploratory, or Vocational. General work experience exposes students to the world of work; exploratory work experience also allows students to experience a variety of careers; and vocational work experience allows students to explore a career interest in greater depth.

"Workforce System" is defined in Attachment A1 attached hereto.

B. WORKFORCE JOB READINESS AND TRAINING FUNDS.

1. **Application**. Developer will provide OEWD with $1 Million in funding to support the job training and readiness programs run by CityBuild and TechSF as more particularly set forth in this **Section III.B.1** (all funds required under this Section III.B.1, the **"Job Readiness and Training Funds"**). The funding requirements under Sections III.B.2 and III.B.3 will be binding on Developer and its successors and assigns under the DDA. The funding requirements under Section III.B.4 will be binding on Developer or may be assigned to the applicable Vertical Developer under the terms of their Vertical DDA and/or Parcel Lease.

2. **CityBuild Program**. The 28-Acre Site Project will pay a total of **$250,000** across the three Phases of development in accordance with this Section III.B.2 that the City will use to fund CityBuild programs.

    a. Purpose and Amount. The 28-Acre Site Project will pay the City a total of $250,000 that the City will use to fund CityBuild programs run by OEWD's Workforce Development Division. Funds will be allocated by amount and program in OEWD's discretion. but such programs may include the CityBuild Academy, an 18-week pre-apprenticeship training

program that prepares citywide residents for entry into the trades; the Construction Administration & Professional Service Academy, an 18-week program offered at City College of San Francisco that prepares San Francisco residents for entry-level careers as professional construction office administrators; or the CityBuild Women's Mentorship Program, a volunteer program that connects women construction leaders with experienced professional and mentors.

b. Manner and Timing of Payment. Developer will pay the CityBuild program funds in accordance with the following schedule:

i. Phase 1: Developer will pay the City $83,333 within fifteen days after the Phase 1 Approval becomes Final, Binding and Non-Appealable.

ii. Phase 2: Developer will pay the City $83,333 within fifteen days after the Phase 2 Approval becomes Final, Binding and Non-Appealable.

iii. Phase 3: Developer will pay the City $83,334 within fifteen days after the Phase 3 Approval becomes Final, Binding and Non-Appealable.

3. **CityBuild Services**. The 28-Acre Site Project will pay a total of **$100,000** that will be used to remove barriers to permanent employment.

a. Purpose and Amount. The 28-Acre Site Project will pay $100,000 to fund the delivery of services to assist individuals, interested in entering CityBuild or the trades, with addressing barriers to employment. The services will offer case management and supportive services (driver license, housing, union dues, tools, uniform/boots). The resources will be primarily for Bayview Hunter's Point neighborhood residents and surrounding areas. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction. These funds will be distributed directly to Young Community Developers. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction.

b. Manner and Timing of Payment. Developer will make the payment directly to Young Community Developers within fifteen days after the Phase 1 Approval become Final, Binding and Non-Appealable.

4. **TechSF Bridge Training for BVHP/Dogpatch Communities & Targeted End Use Jobs**. The 28-Acre Site Project will pay $650,000 associated with commercial-office development in Phase 1 and in future Phases, in accordance with this Section.

a. Purpose and Amount. The Vertical Developers of the first commercial-office project in Phase 1 and the Vertical Developer of the first commercial-office project to be developed in any subsequent Phase will be required to pay funds to the City that will be used by OEWD to support moderate-skilled job training and education programs that prepare individuals in the Bayview Hunter's Point neighborhood residents and surrounding areas in zip codes 94124, 94107, 94103, 94102, 94110, 94134, 94115, and 94112 and other disadvantaged citywide residents for technology (e.g., IT administrator, data scientist, etc.) and technology-enabled (e.g., office administration) office skills positions for Lessee's new employee hiring and incumbent employee advancement offered through the TechSF initiative or OEWD-identified partners. Tech SF will customize technology training based on the types of Lessee leasing space within the Phase, which may include office skills, advanced manufacturing or biotech technology training.

b. Manner and Timing of Payment.

i. Phase 1: The Vertical DDA for the first office-commercial project in Phase 1 will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

ii. Phase 2 or 3: The Vertical DDA for the first office-commercial project to be proposed in Phase 2 (or the first office-commercial project to be proposed in Phase 3 if no office commercial project is proposed for Phase 2) will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

c. Accounting. Developer and Vertical Developers will have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in accordance with the provisions of this **Section III.B.4**. The Job Readiness and Training Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall maintain records as part of the City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available upon Developer's request.

d. Board Authorization. By approving the DDA and form of Vertical DDA, including this Workforce Development Plan, the Board of Supervisors authorizes the City (including OEWD) to accept and expend the Job Readiness and Training Funds paid by the Developer as set forth herein. The Board of Supervisors also agrees that any interest earned on any the Job Readiness and Training Funds shall remain in designated accounts for use by OEWD for workforce readiness and training consistent with this Exhibit O and shall not be transferred to the City's general fund.

C. CONSTRUCTION WORK

1. **Application**. Developers, Vertical Developers and Construction Contractors shall comply with the applicable provisions of this **Section III.C.1** (the "**Construction Workforce Requirements**") that are requirements of the DDA with respect to Developer, and of the Vertical DDA with respect to Vertical Developers.

2. **Local Hiring Requirements**. Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must comply with the Local Hiring Requirements set forth on Attachment B attached hereto with respect to Covered Projects (as defined therein).

3. **First Source Hiring Program for Construction Work**. Developer, with respect to any Horizontal Improvements that are not subject to the Local Hiring Requirements, and each Vertical Developer with respect to each Vertical Improvement that is not subject to the Local Hiring Requirements, will enter into a Memorandum of Understanding with the City's First Source Hiring Administration in the form attached hereto as Attachment A-3 under which each Developer and Vertical Developer must include in their contracts with Construction Contractors for Construction Work that is not subject to the Local Hiring Requirements, a requirement that the applicable Construction Contractor enter into a First Source Hiring Agreement in the form attached thereto as Exhibit A, and to provide a signed copy of the relevant Form exhibits to the FSHA.

4. **Local Business Enterprise Requirements**. Developer, all Vertical Developers and their respective Contractors and Consultants (as defined in Attachment C) must comply with the Local Business Enterprise Utilization Program set forth in Attachment C hereto.

5. **Obligations; Limitations on Liability**. Developer and each Vertical Developer shall use good faith efforts, working with the OEWD or its designee, to enforce the applicable Construction Workforce Requirements with respect to its Construction Contractors (as defined above). Contractors and Consultants (as defined in Attachment C), and each Construction Contractor, Contractor and Consultant, as applicable, shall use good faith efforts, working with OEWD or its designee, to enforce the Construction Workforce Requirements with respect to its Subcontractors and Subconsultants (regardless of tier). However, Developer and Vertical Developers shall not be liable for the failure of their respective Construction Contractors, Contractors and Consultants, and Construction Contractors, Contractors and Consultants shall not be liable for the failure of their respective Subcontractors and Subconsultants.

6. **Prevailing Wages**.

   a. Prevailing Wages. Subject to any collective bargaining agreements in the building trades, Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must (A) pay, and

shall require its respective Construction Contractors (and subcontractors regardless of tier) to pay, all persons performing work on a Prevailing Wage Covered Project no less than the applicable Prevailing Rate of Wages, and (B) comply with, and require its Contractors and Subcontractors to comply with, the provisions of Administrative Code 23.61, which requires Contractors and Subcontractors to comply with Administrative Code subsections 6.22(e)(5), (6), (7) and subsection 6.22(f) for any Prevailing Wage Covered Project .

b. Enforcement. City's Office of Labor Standards Enforcement ("*OLSE*") enforces labor laws adopted by San Francisco voters and the San Francisco Board of Supervisors. The Port designates OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the Work.

D. PROJECT OPERATIONS

1. **Application.** Covered Operations within the 28-Acre Site Project will be subject to the applicable First Source Hiring Requirements (including TechSF) and Retail Marketing Requirements set forth in this **Section III.D.1** (collectively, the "**Operations Workforce Requirements**"). The Operations Workforce Requirements will be binding on Vertical Developers entering into Parcel Leases.

2. **First Source Hiring Program for Operations.**

a. First Source Hiring Agreements. Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to comply with the operational requirements of the then-current Administrative Code Chapter 83 ("**Chapter 83**") in accordance with this Workforce Development Plan (subject to limitations on Changes to Existing City Laws as provided in Section 5.3 of the Development Agreement). Compliance with Chapter 83 will be achieved by the following:

i. Vertical Developer will include in all leases, subleases or other occupancy contracts for Covered Operations (each, a "**Commercial Lease**"), a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment A-1.

ii. Vertical Developer will require the applicable party to provide a signed copy of each FSHA Operations Agreement within 10 business days of execution of the Commercial Lease.

iii. With the execution of each applicable Commercial Lease, Vertical Developer will provide information and require Lessee to notify OEWD Business Services.

b. First Source Hiring Agreements for Permanent Tech Employers. The purpose of the FSHA Tech Operations Agreement is to facilitate job training and education opportunities for participants in the TechSF Program. In addition to the First Source Hiring Agreements above, Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to :

i. If Vertical Developer is a Permanent Tech Employer, provide hiring executive(s) contact information to OEWD Business Services for itself, and enter into a FSHA Tech Operations Agreement in the form of Attachment A-2;

ii. Vertical Developer will include in all lease, subleases or other occupancy contracts for Covered Operations (each, a **"Commercial Lease"**), a requirement that the Commercial Tenant to enter into the FSHA Tech Operations Agreement in the form in Attachment A-2; and

iii. Provide contact information for any Commercial Tenant that is a Permanent Tech Employer. Vertical Developer will provide the executive(s) contact information within 10 days of execution of, or, if available, prior to execution of the applicable Commercial Lease, and will provide updated contact information annually thereafter.

iv. With the execution of each applicable Commercial Lease with a Permanent Tech Employer, Vertical Developer will provide information related to TechSF and require Lessee to notify OEWD Business Services staff. Vertical Developer will only be required to provide information as supplied to it by OEWD Business Services staff. If no information is supplied by OEWD Business Services staff, then this subsection will be deemed complete.

3. Local Diverse Small Business Retail Marketing Program.

a. Application. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 in accordance with this Section III.D.3.

b. Program Goals. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 designed to (i) attract and support diverse small businesses in retail, PDR, arts and commercial spaces within the 28-Acre Site, with a specific focus on District 10

entrepreneurs and businesses, and to (ii) leverage resources available through existing local, state and federal programs delivered through local partner organizations (e.g., OEWD, NEDOs, *etc.*). Developer, working with its Vertical Developer Affiliates, will seek to incorporate 5% local small diverse businesses within traditional retail and PDR spaces in the 28-Acre Site Project, excluding Parcel E4.

c. Marketing Program.

i. Using its best available information, Developer will provide in each Phase Submittal, the projected commercial space available in the Phase and a general overview of retail, PDR, arts and commercial spaces that could be available for sublease within the applicable Phase to local diverse small businesses. To the extent feasible, the information will include the items described below, at a conceptual level, with the understanding that the description will be based on Developer's best projections at the time, but will be subject to change as the Phase is developed:

(1) Potential type of use: retail, services, PDR, restaurant, etc.;

(2) Type of space: new construction, rehabilitated space, floor to ceiling heights, likely mechanical systems, loading access, parking availability;

(3) Approximate size of spaces;

(4) Location: building parcels and street/park frontage locations;

(5) Projected timing: timing for delivery of core and shell space availability and anticipated lease sign target date prior to the delivery of core and shell; and

(6) Contact: name of broker or Developer contact for any follow up questions.

ii. Developer will provide Port and OEWD with an update to the information described above within six to eight months after the initial Phase Submittal if the information provided with the Phase Submittal has changed materially.

iii. During each Phase, Developer will coordinate with OEWD and real estate brokers with the goal of identifying small businesses that might lease space within Vertical Improvements in the Phase by complying with the following process:

(1) From and after the applicable Phase Approval, Developer provide information on the potential leasing opportunities to OEWD. OEWD to coordinate businesses, entrepreneurs, and NEDOs about potential opportunities.

(2) OEWD/Small Business Services will provide support through during lease negotiations with local diverse small businesses identified through this marketing program and engage 1-2 NEDOs that serve small businesses with specific focus on those based in District 10. It is anticipated that OEWD will require each NEDO to provide the following services:

(a) Initial consultation to determine potential businesses and entrepreneurs to conduct outreach about potential opportunities at the 28-Acre Site.

(b) Consultation with entrepreneurs and businesses necessary to successfully locate their business at the 28-Acre Site. This could include services typically provided by NEDOs such as business plan support, small business financing, loan applications, understanding bank underwriting criteria, and training in basic financial management concepts, including, building equity, maintaining adequate working capital, managing growth and other issues critical to the growth and financial stability of the businesses.

(c) NEDOs will identify businesses/entrepreneurs that are eligible and interested in leasing space at Pier 70.

(d) NEDOs will share information on outreach events and conversations with OEWD and Developer.

(e) Provide support during lease negotiations with local diverse small businesses identified through this marketing program.

iv. Subject to restrictions on visitor-serving Priority Retail Frontages on Parcels E1, E2 and E3 set forth in Section 7.20 of the DDA, Developer, working through its Vertical Developer Affiliates, will specifically consider neighborhood-serving retail and services that could potentially sublease space subject to Parcel Leases between Port and Vertical Developer Affiliates, including grocery stores, dry cleaners, hardware, after-school programs, recreation and activity spaces, and similar neighborhood-serving businesses.

v. Developer, through its Vertical Developer Affiliates, will engage brokers to manage the overall marketing and outreach strategy for leasing of commercial, retail, and neighborhood spaces within

Option Parcels taken down by Vertical Developer Affiliates, including the Building 12 market hall. When entering into such contracts with brokers, Developer will emphasize the goals of the small business program and the marketing information prepared by Developer at the beginning of each Phase and will require the applicable broker(s) to engage with the businesses that OEWD/NEDOs have identified in clause (iii) above for the potential spaces available.

d. Sublease Commitments. Developer, working through its Vertical Developer Affiliates. will use good faith efforts to market new sublease space coming on the market with the initial opening of each Vertical Improvement to diverse local small businesses that it identifies through the marketing program described in **Subsection III.D.3.c** above, at fair market rents and subject to then-existing market conditions. In order to provide time for the small business to develop, Developer will provide a mutual option to extend after the initial lease term. The initial term and option to extend would be a minimum of 8 years. In its evaluation of potential subtenants hereunder, Developer, acting through its Vertical Developer Affiliates, will consider the history and past success of the proposed retail subtenant and its business, as well as the type of business, its ability to enhance the overall 28-Acre Site Project, and its long term viability. Each such potential subtenant must meet standard experience and financial qualifications associated with investment reporting, including (i) the proposed programmatic layout; (ii) its long term proforma and business model; and (iii) financial qualifications, which may include reasonable guarantees of performance.

E. GENERAL PROVISIONS

1. **Enforcement**. OEWD shall have the authority to enforce the Construction Workforce Requirements and the Operations Workforce Requirements. The Port and OEWD staff agree to work cooperatively to create efficiencies and avoid redundancies and to implement this Workforce Development Plan in good faith, and to work with all of the 28-Acre Site Project's stakeholders, including Developer and Vertical Developers, Construction Contractors (and Subcontractors) and Permanent Employers, in a fair, nondiscriminatory and consistent manner.

2. **Third Party Beneficiaries**. Each contract for Construction Work and Covered Operations shall provide that OEWD shall have third party beneficiary rights thereunder for the limited purpose of enforcing the requirements of this Workforce Development Plan applicable to such party directly against such party.

3. **Flexibility**. Some jobs will be better suited to meeting or exceeding the hiring goals than others. hence all workforce hiring goals under a Construction Contract will be cumulative, not individual, goals for that Construction Contract or

Permanent Employer. In addition, Developer and Vertical Developers shall have the right to reasonably spread the workforce goals, in different percentages, among separate Construction Contracts or Permanent Employers so long as the cumulative goals among all of the Construction Contracts or Permanent Employers at any given time meet the requirements of this Workforce Development Plan. The parties shall make such modifications to the applicable First Source Hiring Agreements consistent with Developer and Vertical Developers' allocation. This acknowledgement does not alter in any way the requirement that Developer, Vertical Developers, Construction Contractors and Permanent Employers comply with good faith effort obligations to meet their respective participation goals for the Construction Work and Covered Operations.

4. **Exclusivity**. In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project. Without limiting the generality of the foregoing, if the City implements or modifies any workforce development policy or requirements after the date of this Workforce Development Plan, whether relating to construction or operations, that would otherwise apply to the 28-Acre Site Project and Developer asserts that such change as applied to the 28-Acre Site Project would be prohibited by the Development Agreement (including an increase in the obligations of Developer, any Vertical Developer, or their contractors under any provisions of the DDA or any Vertical DDA), then the parties shall resolve the issue through the Dispute Resolution procedures of Section III.F below.

F. DISPUTE RESOLUTION.

1. **Meet and Confer**. In the event of any dispute under this Workforce Development Plan (including, without limitation, as to compliance with this Workforce Development Plan), the parties to such dispute shall meet and confer in an attempt to resolve the dispute. The parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Arbitration Provisions of Attachment D (Dispute Resolution) attached hereto, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction.

2. **Arbitration**. Disputes arising under this Workforce Development Plan may be submitted to the provisions of Attachment D (Dispute Resolution) hereof if the meet and confer provision of Section III.F.1 above does not result in resolution of the dispute.

Attachment A-1

Form of First Source Hiring Agreement for Operations

City and County of San Francisco First Source Hiring Program

Office of Economic and Workforce
Development Workforce
Development Division

Attachment A-1: First Source Hiring Agreement

For Business, Commercial, Operation and Lease Occupancy of a Vertical Improvement

This First Source Hiring Agreement (this "FSHA Operations Agreement"), is made as of , by and between (the "Lessee"), and the First Source Hiring Administration, (the "FSHA"), collectively the "Parties":

RECITALS

WHEREAS, Lessee has plans to occupy a portion of the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between [Developer/Vertical Developer] and the City acting through the San Francisco Port Commission;

WHEREAS, the **[Developer/Vertical Developer]** was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract");and

WHEREAS, as a material part of the consideration given by Lessee under the Contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");

[Use the following WHEREAS for Vertical Developer operations of Vertical Improvements]

WHEREAS, Lessee has plans to operate the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between Lessee and the City acting through the San Francisco Port Commission; and

[Use the following WHEREAS for subtenants of Vertical Improvements]

WHEREAS, as a material part of the consideration given by Lessee under the property contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");]

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Operations Agreement, initially capitalized terms shall be defined as follows:

a. "Entry Level Position" shall mean any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.

b. "Developer" shall mean FC Pier 70, LLC, a Delaware limited liability company, including any successor during the term of this FSHA Operations Agreement.

c. "Lessee" shall mean every commercial tenant, subtenant, or any other entity occupying a Workforce Improvement for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer required to enter into a First Source Hiring Agreement as defined in Chapter 83.

d. "Project Site" shall mean the area consisting of an approximately 28-acre site located in the Pier 70 area bounded by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east.

e. "Referral" shall mean a member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

f. "Vertical Developer" shall mean *[insert name of applicable Vertical Developer]*, including any successor during the term of a FSHA Operations Agreement.

g. "Vertical Improvement" shall mean a new building that is built at the Project Site.

h. "Workforce Improvement" shall mean Vertical Improvements that are subject to Chapter 83.

i. Workforce System: The First Source Hiring Administration established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire.

Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. Notwithstanding anything to the contrary herein, nothing in this FSHA Operations Agreement precludes Lessee from immediately advertising and filling an Entry Level Position that performs essential functions of its operation prior to notifying OEWD provided, however, the obligations of this FSHA Operation Agreement to make good faith efforts to fill such vacancies permanently with Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business. If Lessee has an immediate need to fill an Entry Level Position that performs essential functions, Lessee shall provide OEWD notice of such position, and the fact that there is an immediate need to fill such position, on or before the date such position is advertised to the general public.

c. This FSHA Operations Agreement shall be in full force and effect as to each Workforce Improvement until ten (10) years following the date Lessee opens for business at the Premises, and all subsequent leases within 10 years of that date. After that date, this FSHA Operations Agreement shall terminate and be of no further force and effect on the parties hereto, but the requirements of Chapter 83 shall continue to apply.

d. Unless otherwise agreed to by the Parties, compliance with this FSHA Operations Agreement shall be determined on an individual Workforce Improvement basis and will be measured by dividing the number of new Entry Level Positions occupied by Referrals by the total number of new Entry Level Positions within the Workforce Improvement. Notwithstanding anything to the contrary, new Entry Level Positions occupied by Referrals within the Project Site, but not within the Vertical Improvement, may, at the election of Developer, be counted towards compliance of the Workforce Improvement for this Agreement.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this FSHA Operations Agreement. Determination of good faith efforts shall be based on all of the following:

a. Lessee will execute this FSHA Operations Agreement and Exhibit B-1 attached hereto upon entering into leases for the commercial space of the Workforce Improvement. Lessee will also accurately complete and submit Exhibit B-1 annually to reflect employment conditions.

b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this FSHA Operations Agreement.

c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public, subject to the provisions of Section 2 above. The Lessee must identify a single point of contact responsible for communicating Entry Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.

d. Lessee attempts to fill at least 50% of open Entry Level Positions with Referrals. Specific hiring decisions shall be the sole discretion of the Lessee.

e. Nothing in this FSHA Operations Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this FSHA Operations Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Operations Agreement.

Lessee's failure to meet the criteria set forth in this Section 3 does not impute "bad faith", but shall trigger a review of the referral process and compliance with this FSHA Operations Agreement. Failure and noncompliance with this FSHA Operations Agreement will result in penalties as defined in SF Administrative Code Chapter 83. Lessee agrees to review SF Administrative Code Chapter 83, and execution of the FSHA Operations Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this FSHA Operations Agreement shall be in writing and sent via mail or email as follows:

If to OEWD:

ATTN:

If to Lessee:

ATTN:

5. ENTIRE AGREEMENT

This FSHA Operations Agreement and the Transaction Documents contain the entire agreement between the parties and shall not be modified in any manner except by an

instrument in writing executed by the parties or their respective successors. If any term or provision of this FSHA Operations Agreement shall be held invalid or unenforceable, the remainder of this FSHA Operations Agreement shall not be affected. If this FSHA Operations Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This FSHA Operations Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Lessee, their obligations shall be joint and several.

Section titles and captions contained in this FSHA Operations Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This FSHA Operations Agreement shall be governed and construed by laws of the State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the following have executed this FSHA Operations Agreement as of the date set forth above.

Date:_____ Signature:_____

Name of Authorized Signer: _____

Company: _____

Address:_____

Phone:_____

Email: _____

Business Name: _____ **Phone:** _____

Main Contact: _____ **Email:** _____

_____ _____

Signature of authorized representative* **Date**

**By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of Exhibit B First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed Exhibit B and Exhibit B-1. Lessee will also complete and submit an Exhibit B-1 annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) If an **Entry Level Position** becomes available.

Section 1: Select your Industry

☐ Auto Repair	☐ Entertainment	☐ Personal Services
☐ Business Services	☐ Elder Care	☐ Professionals
☐ Consulting	☐ Financial Services	☐ Real Estate
☐ Construction	☐ Healthcare	☐ Retail
☐ Government Contract	☐ Insurance	☐ Security
☐ Education	☐ Manufacturing	☐ Wholesale
☐ Food and Drink	☐ I don't see my industry *(Please Describe)*_____	

Section 2: Describe Primary Business Activity

_____

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
mailto:Business.Services@sfgov.orgWebsite: www.workforcedevelopmentsf.org

Attachment A-2

Form of First Source Hiring Agreement for Tech Operations

[see attached]

Attachment A-2: Form of First Source Hiring Agreement
For Commercial Office Lease Occupancy by Permanent Tech Employers

This First Source Hiring Agreement (this "**Agreement**") for Permanent Tech Employers, is made as of , 20XX by and between (the "**Lessee**"), and the First Source Hiring Administration, (the "**FSHA**"), collectively the "Parties":

RECITALS

WHEREAS, the San Francisco Port Commission and **[insert name of master tenant under a Parcel Lease]** (the "**Port Tenant**") are parties to that certain Parcel Lease dated as of _____, 20XX (the "**Parcel Lease**") for the building at [Address] (the "**Premises**"); and

WHEREAS, the Workforce Development Plan attached as Exhibit [XX] to the Parcel Lease (the "**Workforce Development Plan**") requires all Covered Operations that are also Permanent Tech Employers (as those terms are defined in the Workforce Development Plan) to enter into a First Source Hiring Agreement for operations in the form of this Agreement, in satisfaction of the requirements of the City's First Source Hiring Program under Chapter 83 of the San Francisco Administrative Code ("**Chapter 83**"); and

WHEREAS, Lessee is a Permanent Tech Employer and is **[the Port Tenant under the Parcel Lease][a "Covered Subtenant" under that certain Sublease with the Port Tenant dated as of _____, 20XX (the "Covered Sublease")]**; and

WHEREAS, as a material part of the consideration given by Lessee under the **[Parcel Lease][Covered Sublease]**, Lessee, as a Permanent Tech Employer, has agreed to enter into this Agreement that sets forth participation and reporting requirements to participate in the Tech SF Initiative managed by the Office of Economic and Workforce Development (OEWD); and

WHEREAS, the form of this Agreement may be subject to change upon mutual agreement of the Port Tenant or Covered Subtenant, as applicable, and OEWD subject to provisions of the Workforce Development Plan.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "AMI" means unadjusted median income levels derived from the Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

b. "Disadvantaged Worker" as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).

c. Internship: A learning and career preparation method that occurs within the context of a course or program. Internships include careers exploration and direct experience and include guidance by staff, mentors, employers, and peers. An intern obtains a good understanding of the requirements of the occupation and an overview of all aspects of their chosen industry, and develops college and career readiness and success skills, such as critical thinking, problem-solving, collaboration and communication.

d. Local Resident: An individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

e. Permanent Tech Employer shall mean an employer that both (i) employs primarily Technology Occupations and Technology-Enabled Occupations, and (ii) occupies more than 25,000 gsf within the Project.

f. Referral: A member of the Workforce System who has participated in an OEWD workforce training program.

g. Registered Apprenticeship combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at outset of training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Registered Apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, Registered Apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

h. Technology-Enabled Occupations: occupations that require skills related to Information, Media and ICT Literacy as highlighted in California's Digital Literacy

definition, "[one's capacity] for using digital technology, communications tools, and/or networks in creating, accessing, analyzing, managing, integrating, evaluating, and communicating information in order to function in a knowledge based economy and society." Technology-Enabled Occupations require the ability to analyze, access and work with common computing and communications devices, operating systems, networking systems and applications. These occupations require the ability to understand and use ICT computing, communications and information technologies; use technologies for advance research, analysis and administrative operations. These occupations also require the ability to create, interpret and work with an increasing variety of digital media.

i. Technology Occupations: defined as positions that require core competencies in information and communication technology (ICT) systems and solutions. These occupations develop and deploy technologies and infrastructures to both support their enterprise and product users. Additionally, technology occupations require skills in research, design, development and analysis of custom technological products; including but not limited to software, web, application, and cloud-based products. Technology occupations also include positions that are related to the sales, marketing and engineering of these technology-based products. Technology occupations typically occur in the major industry clusters as defined by the North American Industry Classification System (NAICS): Software Publishers; Wired Telecommunications; Wireless Telecommunications; Satellite Communications; Data Processing, Hosting and Related Services; Internet Publishing and Broadcasting and Web Search Portals; and Computer Systems Design. Major technology occupation clusters as identified by the Bureau of Labor Statistics include but are not limited to: information support and services; network systems; program and software development; and web and digital communications.

j. TechSF: A program which has been established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development, to provide training, education and job placement assistance services to jobseekers, and connect local employers to a qualified workforce in order to help all involved benefit from the growth of the local technology industry, and technology-based and technology-enabled occupations across all sectors. For the purposes of this document, this term will refer to any successor programs which provide similar services.

k. TechSF Community Benefits Program: defined in Section 3 hereof.

l. Work Experience: Experience which combine an on-the-job learning component with related classroom instruction designed to maximize the value of on-the-job experiences. Work Experience Education is classified in the California Education Code as General, Exploratory, or Vocational. General work experience exposes students to the world of work; exploratory work experience also allows students to experience a variety of careers; and vocational work experience allows students to explore a career interest in greater depth.

m. Workforce System: The First Source Hiring Administrator established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee is required to hold one meeting with OEWD's Business Services Team regarding the hiring of individuals through TechSF for any available positions in Technology Occupations or Technology-Enabled Occupations. Provided Lessee utilizes nondiscriminatory screening criteria, Lessee shall have the sole discretion to interview and hire any Referrals.

b. Hiring decisions shall be entirely at the discretion of Lessee. Lessee will notify OEWD's Business Services Team of every hire who is a Referral from Tech SF..

c. Lessee will report to OEWD Business Services annually (beginning with the one-year anniversary date of its **[Parcel Lease][Covered Sublease]** on activities conducted by Lessee under this Agreement related to the compliance of good faith effort obligations enumerated in Section 3 hereof, which may include number of Referrals, hires, or other metrics covered by the TechSF Community Benefits Program.

d. This Agreement will be in full force and effect as to the **[Parcel Lease][Covered Sublease]** until the earlier of [for **Parcel Lease:** ***insert the date that is 10 years from the execution of the Parcel Lease***][**for Covered Subleases and subsequent Subleases within 10-year period:** ***insert the date that is 10 years from the date of execution]***.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Within forty-five days after the commencement of the applicable **[Parcel Lease]|Covered Sublease]**, Lessee will contact OEWD as required by the Workforce Development Agreement. Within six months after the commencement of the applicable **[Parcel Lease]|Covered Sublease]**, or at a later date if agreed to by OEWD, Lessee will prepare and submit to OEWD its community benefits program designed to facilitate job training and education opportunities for participants in the TechSF program or (or successor program designated by OEWD) (the "**TechSF Community Benefits Program**") and will implement the TechSF Community Benefits Program for the term of this Agreement. The TechSF Community Benefits Program shall either consist of the measures in subsections (a) through (c) of this Section 3, or the Lessee will have discretion in designing its own unique TechSF Community Benefits Program to an equal or higher qualitative standard as the measures described below. If a Lessee elects to design its own unique TechSF Community Benefits Program, such program will require approval from OWED, not to be unreasonably withheld. The TechSF Community Benefits Program may be revised annually with the consent of OEWD. The following measures (which may be in addition to other measures reasonably implemented by Lessee) will qualify as compliance with this requirement:

a. Provide indoor space to host temporary jobseeker networking, career panel and other OEWD-identified job placement assistance events related to technology or technology-

enabled occupations through the Workforce System. OEWD/Tech SF would manage the planning, coordination and marketing for events. Programming may include one of the following:

i. hosting one event per year at site location for up to 150 individuals, if requested by OEWD/Tech SF. If no such request is made, then this subsection will be deemed to have been satisfied for the year.
ii. participating in two additional TechSF activities per year.

b. Host at least 5 Work Experience and/or Internship opportunities for every 100 permanent employees per year, targeting OEWD Referrals and Bayview Hunter's Point and surrounding area neighborhood residents, and other Disadvantaged Workers.

c. Volunteer employee time for on-site training opportunities, which could include workplace tours, job shadowing, classroom lectures, mock interviews, career panels, resume workshops, mentoring, student showcases or other supportive activities.
   i. Lessee shall provide 100 employee hours per year (e.g. 25 employees at 4 hours each or other combination to be determined by the Lessee), through company's Community Social Responsibility (CSR) agenda or other policies.

d. Target creating up to five (5) Registered Apprenticeship positions (as that term is defined in the Workforce Development Plan) for every 100 permanent employees, per year, to the extent a USDOL or DAS approved training program exists within the City of San Francisco for occupations which the Lessee is currently hiring for, and interview qualified Referrals through the TechSF Initiative.

Lessee's failure to prepare and implement the TechSF Community Benefits Program set forth in this Section 3 does not impute "bad faith" but shall trigger a review of the referral process and compliance with this Agreement. Violations of this Agreement will be subject to penalties outlined in Chapter 83.

4. COLLECTIVE BARGAINING AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts ("**Collective Bargaining Agreements**"). In the event of a conflict between this Agreement and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Agreement.

5. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

6. ENTIRE AGREEMENT; MISC.

This Agreement contains the entire agreement between the parties with respect to the subject matter thereunder and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If this Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Lessee, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: _____ Signature:: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

City and County of San Francisco First Source Hiring Program

Office of Economic and Workforce Development
Workforce Development Division

Attachment A3: First Source Hiring Agreement For Construction

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of , by and between the City and County of San Francisco (the "City") through its First Source Hiring Administration ("FSHA") and ("Project Sponsor").

WHEREAS, Project Sponsor, as developer, proposes to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"); and

WHEREAS, the Administrative Code of the City provides at Chapter 83 for a "First Source Hiring Program" which has as its purpose the creation of employment opportunities for qualified Economically Disadvantaged Individuals (as defined in Exhibit A); and

WHEREAS, the Project requires a building permit for a commercial activity of greater than 25,000 square feet and/or is a residential project greater than ten (10) units and therefore falls within the scope of the Chapter 83 of the Administrative Code; and

WHEREAS, Project Sponsor wishes to make a good faith effort to comply with the City's First Source Hiring Program.

Therefore, the parties to this Memorandum of Understanding agree as follows:

A. Project Sponsor, upon entering into a contract for the construction of the Project with Contractor after the date of this MOU, will include in that contract a provision requiring the Contractor to enter into a First Source Hiring Agreement in the form attached hereto as Exhibit A. It is the Project Sponsor's responsibility to provide a signed copy of Exhibit A to First Source Hiring program and CityBuild within 10 business days of execution.

B. CityBuild shall represent the First Source Hiring Administration and will provide referrals of Qualified (as defined in Exhibit A) Economically Disadvantaged Individuals for employment on the construction phase of the Project as required under

Chapter 83. The First Source Hiring Program will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent jobs located within the commercial space of the Project.

C. The owners or residents of the residential units within the Project shall have no obligations under this MOU, or the attached First Source Hiring Agreement.

D. FSHA shall advise Project Sponsor, in writing, of any alleged breach on the part of the Project's contractor and/or tenant(s) with regard to participation in the First Source Hiring Program at the Project prior to seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code.

E. As stated in Section 83.10(d) of the Administrative Code, if Project Sponsor fulfills its obligations as set forth in Chapter 83, it shall not be held responsible for the failure of a contractor or commercial tenant to comply with the requirements of Chapter 83.

F. This MOU is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code. The parties agree that this MOU shall be recorded and that it may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

G. Except as set forth in Section E, above: (1) this MOU shall be binding on and inure to the benefit of all successors and assigns of Project Sponsor having an interest in the Project and (2) Project Sponsor shall require that its obligations under this MOU shall be assumed in writing by its successors and assigns. Upon Project Sponsor's sale, assignment or transfer of title to the Project, it shall be relieved of all further obligations or liabilities under this MOU.

Signature: _____ Date:

Name of Authorized Signer: Email:

Company: Phone:

Address:

Project Sponsor:

Contact: Phone:

Address: Email:

_____ Date:

First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl. San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager, ken.nim@sfgov.org

Exhibit A:
First Source Hiring Agreement

This First Source Hiring Agreement (this "Agreement"), is made as of , by and between , the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"), and a copy of this Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.

b. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.

c. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on the Project.

d. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.

e. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.

f. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.

g. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.

h. "Entry Level Position". A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.

i. "First Opportunity". Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.

j. "Job Classification". Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

k. "Job Notification". Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.

l. "Publicize". Advertise or post available employment information, including participation in job fairs or other forums.

m. "Qualified". An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this Agreement.

n. "System". The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.

o. "System Referrals". Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.

p. "Subcontractor". A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)'s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor's employment needs under the Contract:

i. On Exhibit A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on the project for each trade.

ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.

iii. Contractor will collaborate with CityBuild staff to identify, by trade, the number of Core workers at project start and the number of workers at project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.

iv. Contractor and Subcontractors will provide documented verification that its "core" employees for this contract meet the definition listed in Section 1.a.

b.

i. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the project.

ii. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:

(A) If Contractor meets the criteria in Section 5(a) below that establishes "good faith efforts" of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and

(B) After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes "good faith efforts" of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.

c. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the first opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process, Contractor's only obligations with regards to any available Entry Level Positions subject to such collective bargaining agreement(s) during the term of the Contract shall be the following:

a. Contractor shall notify the appropriate union(s) of the Contractor's obligations under this Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).

b. Contractor shall use "name call" privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on the Project in a timely matter in order to facilitate CityBuild's notification to these unions of the Project's workforce requirements.

i. Submit a "Job Request" in the form attached hereto as Attachment A-1, Form 3, to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). You should simultaneously contact your union about the position as well, and let them know that you have contacted CityBuild as part of your local hiring obligations.

j. Developer has an ongoing, affirmative obligation and must advise each of its Subcontractors of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the project, including openings that arise from layoffs of original crew. Developer/contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the developer/contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.

k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Project developer and/or Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Project developer and/or Contractor will request a meeting with the Project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.

l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Project, source of hire, and any other pertinent information as pertain to compliance with this Agreement.

m. Maintain accurate records of your efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor and/or Project developer through a San Francisco community-based organization whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Project developer and/or Contractor on a project-by-project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and the City's online project reporting system (currently Elation), provided, however, that Contractor shall retain the primary responsibility for meeting the

c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

5. CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction Exhibit A-1: CityBuild Workforce Projection Form 1; and

b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this Agreement. Such review shall be conducted by FSHA in accordance with Section 11(c) below.

c. Meet with the Project's owner, developer, general contractor, or CityBuild representative to review and discuss your plan to meet your local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.

d. Contact a CityBuild representative to review your hiring projections and goals for the Project. The Project developer and/or Contractor must take active steps to advise all of its Subcontractors of the local hiring obligations on the Project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the project

e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying your expected hiring needs during the Project's duration.

f. Notify your respective union(s) regarding your local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate your union's collective bargaining agreement(s).

g. Be sure to reserve your "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable collective bargaining agreement(s).

requirements imposed under this Agreement. Contractor shall ensure that this Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

8. CONTRACTOR'S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this Agreement, CityBuild shall:

a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.

b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor's Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;

c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;

d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;

e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;

f. Provide Contractor with reporting forms for monitoring the requirements of this Agreement; and

g. Monitor the performance of the Agreement by examination of records of Contractor as submitted in accordance with the requirements of this Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:

(1) Applicants
(2) Job offers
(3) Hires
(4) Rejections of applicants

b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.

c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this Agreement.

12. DURATION OF THIS AGREEMENT

This Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this Agreement shall terminate and it shall be of no further force and effect on the parties hereto.

13. NOTICE

All notices to be given under this Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA: First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to CityBuild: CityBuild Compliance Manager
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to Developer:

Attn:

If to Contractor:

Attn:

a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, "Contractor Reports") shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

15. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

16. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. SUCCESSORS

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several.

18. HEADINGS

Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions

19. GOVERNING LAW

This Agreement shall be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

CONTRACTOR:

Date: _____ Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

FIRST SOURCE HIRING PROGRAM
EXHIBIT A-1 - CITYBUILD
CONSTRUCTION CONTRACTS

FORM 1: CITYBUILD WORKFORCE PROJECTION

Instructions

- *The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.*
- *All subcontractors with contracts in excess of $100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.*
- *The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.*
- *It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.*
- *All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.*

Construction Project Name:	_____	Construction Project Address:	_____
Projected Start Date:	_____	Contract Duration:	_____ *(calendar days)*
Company Name:	_____	Company Address:	_____
Main Contact Name:	_____	Main Phone Number:	_____
Main Contact Email:	_____		
Name of Person with Hiring Authority:	_____	Hiring Authority Phone Number:	_____
Hiring Authority Email:	_____		

Name of Authorized Representative	Signature of Authorized Representative*	Date

By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Table 1: Briefly summarize your contracted or subcontracted scope of work

Table 2: Complete on the following page

- *List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees.*
- *Total Number of Workers on the Project: The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.*

Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			

Table 3: List your core or existing employees projected to work on the project

- *Please provide information on your projected core or existing employees that will perform work on the jobsite.*
- *"Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.*

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
FOR CITY USE ONLY: CityBuild Staff: _____ Approved: Yes☐ No☐ Date: _____ Reason: _____				
		J☐ A☐		
		J☐ A☐		

FORM 3: CITYBUILD JOB NOTICE FORM

INSTRUCTIONS: To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: workforce.development@sfgov.org
2. Contact Workforce Development at 415-701-4848 or by email: local.hirc.ordinance@sfgov.org

   OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

ATTENTION: Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.

Section A. Job Notice Information

Trade _____ # of Journeymen _____ # of Apprentices _____

Start Date _____ Start Time _____ Job Duration _____

Brief description of your scope of work: _____

Section B. Union Information *(Union contractors complete Section B. Otherwise, leave Section B blank)*

Local # _____ Union Contact Name _____ Union Phone # _____

Section C. Contractor Information

Project Name: _____

Jobsite Location: _____

Contractor: _____ _____ Prime ☐ Sub ☐

Contractor Address: _____

Contact Name: _____ Title: _____

Office Phone: _____ Cell Phone: _____ Email: _____

Alt. Contact: _____ Phone #: _____

Contractor Contact Signature _____ Date _____

OEWD USE ONLY *Able to Fill* Yes ☐ No ☐

WORFORCE DEVELOPMENT PLAN – ATTACHMENT B

LOCAL HIRING PLAN FOR CONSTRUCTION

1.1 SUMMARY

A. This Attachment B to the Pier 70 28-Acre Site Workforce Development Plan ("**Local Hiring Plan**") governs the obligations of the Project to comply with the City's Local Hiring Policy for Construction pursuant to Chapter 82 of the San Francisco Administrative Code (the "**Policy**"). In the event of any conflict between Administrative Code Chapter 82 and this Attachment, this Attachment shall govern.

B. The provisions of this Local Hiring Plan are hereby incorporated as a material term of the DDA and each Vertical DDA. Under the DDA and each Vertical DDA, the Developer or Vertical Developer thereunder, as applicable, shall require any Contractor performing Construction Work to agree that (i) the Contractor shall comply with all applicable requirements of this Local Hiring Plan; (ii) the provisions of this Local Hiring Plan and the Policy are reasonable and achievable by Contractor and its Subcontractors; and (iii) they have had a full and fair opportunity to review and understand the terms of the Local Hiring Plan.

C. The Office of Economic and Workforce Development (OEWD) is responsible for administering the Local Hiring Plan and will be administering its applicable requirements. For more information on the Policy and its implementation, please visit the OEWD website at: www.workforcedevelopmentsf.org.

D. Capitalized terms not defined herein shall have the meanings ascribed to them in the DDA or the Policy, as applicable.

1.2 DEFINITIONS

A. "Apprentice" means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.

B. "Area Median Income (AMI)" means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

C. "Construction Work" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA or Parcel Lease, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable residential buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement. Work occurring prior to execution of the DDA is not subject to Local Hire.

D. "Covered Project" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

E. "Contractor" means a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs Construction Work on the 28-Acre Site

F. "Disadvantaged Worker" as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).

G. "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of 3 business days' notice.

H. "Local Resident" means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

I. "Non-Covered Project" means any construction projects not covered by the San Francisco Local Hiring Policy.

J. "Project Work". Construction Work performed as part of a Covered Project.

K. "Project Work Hours" means the total onsite work hours worked on a construction contract for a Covered Project by all Apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.

L. "Subcontractor" means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Contractor or another subcontractor to provide services to a Contractor or another subcontractor in fulfillment of the Contractor's or that other subcontractor's obligations arising from a contract for construction work on a Covered Project who performs Construction Work on the 28 Acre site.

M. "Targeted Worker" means any Local Resident or Disadvantaged Worker.

N. "Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

1.3 LOCAL HIRING REQUIREMENTS

A. Total Project Work Hours By Trade. For all construction contracts for Covered Projects, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers. The participation levels required under this Local Hire Program will be determined by for each Phase under the DDA, and in no event shall be greater than 30%; however, Parties acknowledge that Developer intends to require each construction contract

Covered Projects to meet the mandatory participation levels on an individual contract level.

B. Apprentices: For all construction contracts for Covered Projects, at least 30% of the Project Work Hours performed by Apprentices within each trade is required to be performed by Local Residents, with an aspirational goal of achieving 50%. Hiring preferences shall be given to Apprentices who are referred by the CityBuild program This document also establishes a goal of no less than 25% of Project Work Hours performed by Apprentices within each trade to be performed by Disadvantaged Workers.

C. Out-of-State Workers. For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to OEWD the number of Project Work Hours performed by residents of states other than California.

D. Pre-construction or other Local Hire Meeting. Prior to commencement of Construction Work on Covered Projects, Contractor and its Subcontractors whom have been engaged by contract and identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by Developer or Vertical Developer or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority. Contractor and its Subcontractors who are engaged after the commencement of Construction Work on a Covered Project shall attend a future preconstruction meeting or meetings as mutually agreed by Contractor and OEWD staff.

E. This Local Hiring Plan does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Local Hiring Plan shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

F. Construction Work for Non-Covered Projects will be subject to the First Source Hiring Program for Construction Work in accordance with Section III.C.3 of the Workforce Development Plan.

1.4 CITYBUILD WORKFORCE DEVELOPMENT PROGRAM: EMPLOYMENT NETWORKING SERVICES

A. OEWD administers the CityBuild Program. Subject to any collective bargaining agreements in the building trades and applicable law, CityBuild shall be a primary resource available for Contractor and Subcontractors to meet Contractors' local hiring requirements under this Local Hiring Plan. CityBuild has two main goals:

1. Assist with local hiring requirements under this Local Hiring Plan by connecting Contractor and Subcontractors with qualified journey-level, Apprentice, and pre-Apprentice Local Residents.

2. Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force.

B. Where a Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of this Local Hiring Plan. the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers, including the following:

1. Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.

2. Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All workers networked through CityBuild will qualify as Disadvantaged Workers under this Local Hiring Plan. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is a "Disadvantaged Worker" as defined above.

C. CONDITIONAL WAIVER FROM LOCAL HIRING REQUIREMENTS

A. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the Local Hiring Requirements of Section 1.3 on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.

1. Specialized Trades: OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of this Local Hiring Plan will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the Project Work Hours utilized in each designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade.

2. Credit for Hiring on Non-Covered Projects: Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:

   a. the Targeted Workers are paid the prevailing wages or union scale for work on the Non-Covered Projects: and

   b. such credit hours shall be committed to by the Contractor on future projects to satisfy any short fall the Contractor may have on a Covered Project. Such commitment shall be in writing by the Contractor, shall extend for a period of time negotiated between the contractor and OEWD, and shall commit to satisfying any assessed penalties should Contractor fail to achieve the required credit hours.

3. Sponsoring Apprentices: Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new Apprentices in trades in which noncompliance is likely and retaining those Apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California

Department of Industrial Relations that the new Apprentices are registered and active Apprentices. Contractor will be required to write a sponsorship letter on behalf of the identified candidate to the appropriate Local Union and will make the necessary arrangements with the Union to hire the candidate as soon as s/he is indentured.

4. Direct Entry Agreements: OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with the California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with this Local Hiring Plan by Contractor or its Subcontractors hiring and retaining Apprentices who are enrolled through such direct entry agreements. Contractor may also utilize OEWD-approved organizations with direct entry agreements with Local Unions, including District 10 based organizations to hire and retain Targeted Workers. To the extent that Contractor or its Subcontractors have hired Apprentices or Targeted Workers under a direct entry agreement entered into by OEWD or reasonably approved by OEWD, OEWD will not assess penalties for non-compliance with this Local Hiring Plan.

5. Corrective Actions: Should local employment conditions be such that adequate Targeted Workers for a craft, or crafts, are not available to meet the requirements and Contractor can document their efforts to achieve the requirements through the mechanisms and processes in this document, a corrective action plan must be negotiated between Contractor and OEWD.

1.5 LOCAL HIRING FORMS

A. Utilizing the City's online Project Reporting System, Contractors for Covered Projects shall submit the following forms, as applicable, to the Contracting City Agency and OEWD:

1. Form 1: Local Hiring Workforce Projection. OEWD Form 1 (Local Hiring Workforce Projection), a copy of which is attached hereto, shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

2. Form 2: Local Hiring Plan. For Covered Projects estimated to cost more than $1,000,000, Contractor shall prepare and submit to Contracting City Agency and OEWD for approval a Local Hiring Plan for the project using OEWD Form 2, a copy of which is attached hereto. This Form 2 shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

3. Job Notifications. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.

4. Form 4: Conditional Waivers. If a Contractor or a Subcontractor believes the local hiring requirements cannot be met, it will submit OEWD Form 4 (Conditional Waiver), a copy of which is attached hereto, as more particularly described in Articles 1.4 and 1.5 above.

1.6 ENFORCEMENT, RECORD KEEPING, NONCOMPLIANCE AND PENALTIES

A. Subcontractor Compliance. Each Contractor and Subcontractor shall ensure that all Subcontractors agree to comply with applicable requirements of this document. All Subcontractors agree as a term of participation on the Project that the City shall have third party beneficiary rights under all contracts under which Subcontractors are performing Project Work. Such third party beneficiary rights shall be limited to the right to enforce the requirements of this Local Hiring Plan directly against the Subcontractors. All Subcontractors on the Project shall be responsible for complying with the recordkeeping and reporting requirements set forth in this Local Hiring Plan. Subcontractors with work in excess of the of $600,000 shall be responsible for ensuring compliance with the Local Hiring Requirements set forth in Section 1.3 of this Local Hiring Plan based on Project Work Hours performed under their Subcontracts, including Project Work Hours performed by lower tier Subcontractors with work less than the Threshold Amount.

B. Reporting. Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and will monitor compliance with this Local Hiring Plan electronically.

C. Recordkeeping. Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of Construction Work, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on a Covered Project.

1. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the Apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a Local Resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the Covered Project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method) as allowed by law.

2. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.

3. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the OEWD.

D. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Contractor and Subcontractors working on a Covered Project with requirements of this Local Hiring Plan. Contractor shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of Covered Projects. Contractor and all Subcontractors shall also allow representatives of OEWD to have access to employees of the Contractor and Subcontractors and the records required to be maintained under this document.

E. Noncompliance and Penalties. Failure of Contractor and/or its Subcontractors to comply with the requirements of this document and the obligations set forth in this Local Hiring Plan may subject Contractor to the consequences of noncompliance, including but not

limited to the assessment of penalties, but only if City determines that the failure to comply results from willful actions of Contractor and/or its Subcontractors, and not by reason of unavailability of sufficient qualified Local Residents and Disadvantaged Workers to meet the goals required hereunder. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled.

1. **Penalties Amount.** If any Contractor or Subcontractor fails to satisfy the Local Hiring Requirements of this Local Hiring Plan applicable to Project Work Hours performed by Local Residents, and the applicable Contractor or Subcontractor is unable to provide evidence reasonably satisfactory to the City that such failure arose solely due to unavailability of qualified Local Residents despite Contractors or Subcontractors good faith efforts in accordance with this Local Hiring Progam, then the Contractor, and in the case of any Subcontractor so failing, and Subcontractor shall jointly and severally forfeit to the City, an amount equal to the Journeyman or Apprentice prevailing wage rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under subsection 6.22(e)(3) of the Administrative Code, for the primary trade used by the Contractor or Subcontractor on the Covered Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. The assessment of penalties under this subsection shall not preclude the City from exercising any other rights or remedies to which it is entitled.

2. **Assessment of Penalties.** OEWD shall determine whether a Contractor and/or any Subcontractor has failed to comply with the Local Hire Requirement. If after conducting an investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of penalties to the Contractor and/or any Subcontractor that sets forth the basis of the assessment and orders payment of penalties in the amounts equal to the Journeyman or Apprentice prevailing wage rates, as applicable, for the primary trade used by the Contractor or Subcontractor on the Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. Assessment of penalties under this subsection shall be made only upon an investigation by OEWD and upon written notice to the Contractor or Subcontractor identifying the grounds for the penalty and providing the Contractor or Subcontractor with the opportunity to respond pursuant to the recourse procedures prescribed in this Local Hiring Plan.

3. **Recourse Procedure.** If the Contractor or Subcontractor disagrees with the assessment of penalties, then the following procedure applies:

   a. The Contractor or Subcontractor may request a hearing in writing within 15 days of the date of the final notification of assessment. The request shall be directed to the City Controller. Failure by the Contractor or Subcontractor to submit a timely, written request for a hearing shall constitute concession to the assessment and the forfeiture shall be deemed final upon expiration of the 15-day period. The Contractor or Subcontractor must exhaust this administrative remedy prior to commencing further legal action.

   b. Within 15 days of receiving a proper request, the Controller shall appoint a hearing officer with knowledge and not less than five years' experience in

labor law, and shall so advise the enforcing official and the Contractor or Subcontractor, and/or their respective counsel or authorized representative.

c. The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days of such notification unless all parties agree to an extended period.

d. Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the hearing officer shall consist of findings and a determination. The hearing officer's findings and determination shall be final.

e. The Contractor or Subcontractor may appeal a final determination under this by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure Section 1084 *et seq.*, as applicable and as may be amended from time to time.

1.8 COLLECTIVE BARGAINING AGREEMENT

Nothing in this Local Hiring Plan shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (Collective Bargaining Agreements"). In the event of a conflict between this Local Hiring Plan and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Local Hiring Plan.

END OF DOCUMENT

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 1
CONSTRUCTION CONTRACTS

FORM 1: LOCAL HIRING WORKFORCE PROJECTION

Contractor: _____ **Project Name:** _____ **Contract #:** _____

The Contractor must complete and submit this *Local Hiring Workforce Projection* (Form 1) prior to the start of construction and quarterly until all subcontracting is complete. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount.

Will you be able to meet the mandatory Local Hiring Requirements?

☐ **YES (*Please provide information for all contractors performing construction work in Table 1 below.)***

☐ **NO (*Please complete Table 1 below and Form 4: Conditional Waivers.*)**

INSTRUCTIONS FOR COMPLETING TABLE 1:

1. Please organize the contractors' information based on their Trade Craft work.
2. For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (*i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.*)
3. If you anticipate utilizing Apprentices on this project, please note the requirement that 30% of Apprentice hours must be performed by San Francisco residents.
4. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

TABLE 1: WORKFORCE PROJECTION

Trade Craft	Contractor *List contractors by Trade Craft*		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
Example: *Laborer*	*Contractor X*	***Journey***	800	250	31%
		Apprentice	200	100	50%
Example: *Laborer*	*Contractor Y*	***Journey***	500	100	20%
		Apprentice	0	0	0
Example:	**TOTAL LABORER**	***Journey***	1300	350	**27%**
		Apprentice	200	100	**50%**
Example:		**TOTAL**	**1500**	**450**	**30%**
		Journey			
		Apprentice			
		Journey			
		Apprentice			
		Journey			
		Apprentice			

DISCLAIMER: *If the Total Work Hours for a Trade Craft are less than 5% of the Total Project Work Hours, the Trade Craft is exempt from the Mandatory Requirement. Subsequently, if the Trade Craft exceeds 5% of the Total Project Work Hours at any time during the project, the Trade Craft is subject to the Mandatory Requirement.*

Name of Authorized Representative	Signature	Date	Phone	Email

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 2
CONSTRUCTION CONTRACTS

FORM 2: LOCAL HIRING PLAN

Contractor: _____ **Project Name:** _____ **Contract #:** _____

If the Estimate for this Project exceeds **$1 million**, then Contractor must submit a *Local Hiring Plan* using this Form 2 through the City's Project Reporting System. Form 2 shall be initially submitted prior to the start of construction and include all known subcontractors. Contractor shall update this Form 2 quarterly as subcontractors are identified and shall continue with updates until all subcontracting is complete. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved *Conditional Waivers* (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.

INSTRUCTIONS:

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 30% of apprentice hours must be performed by San Francisco residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
Example: *Laborer*	*1500*	*450*	*30%*	*200*	100	50%

List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Start Date	Number of Working Days	*Contractor Signature
Contractor X Joe Smith	250	100	350	3/25/13	60	*Joe Smith*
Contractor Y Michael Lee	100	0	100	5/25/13	30	*Michael Lee*

We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.

City Use Only	
OEWD Approval	☐ Yes ☐ No
Signature and Date:	

SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 4
CONSTRUCTION CONTRACTS

FORM 4: CONDITIONAL WAVIERS

Contractor: _____ **Project Name:** _____ **Contract #:** _____

Upon approval from OEWD, Contractors and Subcontractors may use one or more of the following pipeline and retention compliance mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by OEWD. If applicable, each subcontractor must submit their individual Waiver request to OEWD and copy their Prime Contractor. This form can be submitted at any time.

TRADE WAIVER INFORMATION: Please provide information on the Trades you are requesting Waivers for:

Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours	Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours
1.			3.		
2.			4.		

Please check any of the following Conditional Waivers and complete the appropriate boxes for approval:

☐ **1. SPECIALIZED TRADES** ☐ **2. SPONSORING APPRENTICES** ☐ **3. CREDIT FOR NON-COVERED PROJECTS**

1. SPECIALIZED TRADES: Will your firm be requesting Conditional Waivers for "Specialized Trades" designated by OEWD and listed on OEWD's website or project-specific Specialized Trades approved by OEWD during the bid period? ☐ Yes ☐ No

Please CHECK off the following Specialized Trades you are claiming for Condition Waiver:

☐ MARINE PILE DRIVER ☐HELICOPTER, CRANE, OR DERRICK BARGE OPERATOR ☐IRONWORKER CONNECTOR
☐ STAINLESS STEEL WELDER ☐TUNNEL OPERATING ENGINEER ☐ELECTRICAL UTILITY LINEMAN ☐MILLWRIGHT
☐ TRADE CRAFT IS LESS THAN 5% OF TOTAL WORK HOURS. *LIST:*

a. List OEWD-approved project-specific Specialized Trades approved during the bid period:

OEWD APPROVAL: ☐ **Yes** ☐ **No** | **OEWD Signature:**

2. SPONSORING APPRENTICES: Will you be able to work with OEWD to sponsor an OEWD-specified number of new apprentices in the agreeable trades into California Department of Industrial Relations' Division of Apprenticeship Standards approved apprenticeship programs? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS: Construction Trade	Est. # of Sponsor Positions	Union (Yes / No)	If Yes, Local #	Est. Start Date	Est Duration of Working Days	Est Total Work Hours Performed
		Y ☐ N ☐				
		Y ☐ N ☐				

OEWD APPROVAL: ☐ **Yes** ☐ **No** | **OEWD Signature:**

3. CREDIT for HIRING on NON-COVERED PROJECTS: If your firm cannot meet the mandatory local hiring requirement, will you be requesting credit for hiring Targeted Workers on Non-covered Projects? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS: Labor Trade, Position, or Title		Est. # of Off-site Hires	Est Total Work Hours Performed	Offsite Project Name	Project Address
	Journey				
	Apprentice				

OEWD APPROVAL: ☐ **Yes** ☐ **No** | **OEWD Signature:**

WORKFORCE DEVELOPMENT PLAN

ATTACHMENT C - LBE UTILIZATION PLAN

1. Purpose and Scope. This Attachment C ("**LBE Utilization Plan**") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Workforce Plan or Section 14B.20 as applicable. The Port and Developer will seek to, whenever practicable, conduct outreach to contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities such as the 94107, 94124, and 94134 zip codes. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.

2. Roles of Parties. In connection with the design and construction phases of all Construction Work (as defined in the Workforce Plan), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs"). Developer and each Vertical Developer shall participate in a local business enterprise program, and the City's Contract Monitoring Division will serve the roles as set forth below.

3. Definitions. For purposes of this Attachment, the definitions shall be as follows:

a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.

b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Contracting Party as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Contracting Party.

c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of an LBE Improvement.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of an LBE Improvement.

e. "Contracting Party" means a Project Sponsor, Contractor or Consultant retained to work on LBE Improvements, as the case may be.

f. "Contractor" shall mean a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs construction work on an LBE Improvement.

g. "Follow-on Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to an approved building permit or site permit/addenda issued after the building permit or site permit/addenda for the Initial Tenant Improvements.

h. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.

i. "Initial Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to the first building permit or site permit/addenda issued for such spaces after completion of building core and shell.

j. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.

k. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

l. "LBE Improvements" means, as applicable, (a) all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA and (b) Workforce Buildings.

m. "Project Sponsor" shall mean the Developer of Horizontal Improvements or the Vertical Developer under a Vertical DDA.

n. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for an LBE Improvement.

o. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for Construction Work.

p. "Workforce Buildings" means the following: (i) residential buildings, including associated residential units, common space, amenities, parking and back of house construction; (ii) commercial office, retail, parking buildings core & shell; (iii) tenant improvement for all commercial spaces in residential or commercial buildings (office, retail) which are 15,000 square feet (per square footage on building permit application) and above; and (iv) all construction related to standalone affordable housing buildings. Workforce Buildings shall expressly exclude: (i) residential owner-contracted improvements in for-sale residential units; (ii) tenant improvements for the Arts Building (E4), including core and shell and tenant improvements; and (iii) tenant improvements related to PDR spaces. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such

improvements. Such association will consider, in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.

4. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Plan and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of 17% of the total cost of all Contracts for an LBE Improvement awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A); Follow-on Tenant Improvements and services are not included in the numerical goal. Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation requirement, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. Where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, that there are not sufficient qualified Small and Micro-LBEs available, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro- LBEs, and for SBA-LBEs.

6. Project Sponsor Obligations. For each LBE Improvement, the Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns. The LBE Liaison shall be a LBE Consultant with the experience in and responsible for making recommendations on how to maximize engagement of local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. For the term of the DDA or VDDA as applicable, at least once per year, each Project Sponsor and the Port shall hold a public workshop for applicable contractor communities to publicize anticipated contracting opportunities for LBE Improvements for the succeeding year, which workshops may be held independently or in conjunction with each other; provided, that the Port's obligations hereunder shall be limited to contracting opportunities relating to operations and maintenance of publicly-owned improvements within the 28-Acre Site. Each Project Sponsor will use good faith efforts to hire Small, Micro or SBA-LBEs for ongoing service contracts including janitorial, security and parking management contracts and advertise these contracting opportunities with the CMD except to the extent impractical or infeasible (e.g., a parking management contract cannot be broken down to allow two parking operators). Each project sponsor agrees to utilize a "subguard" policy or other means (i.e., OCIP or CCIP) to provide bonding capacity or assistance for LBEs working on the Project at the developer or contractor's option, should the firm be required to bond.

If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.

b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant, in their sole discretion, may divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.

c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant may advertise for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (http://mission.sfgov.org/OCABidPublication) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As Contractor deems necessary, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals for LBEs to ask questions about the selection process and technical specifications/requirements.

d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.

e. Public Solicitation. The Project Sponsor or its prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.

f. Outreach and Other Assistance. The Project Sponsor or its prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract

information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

g. Contacts. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.

h. Good Faith/Nondiscrimination. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).

i. Incorporation into contract provisions. Project Sponsor shall include in Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including the overall LBE participation goal and any LBE percentage that may be required under such Contract (Note: Developer/applicable tenants shall follow this programs Good Faith Efforts for Follow-on Tenant Improvements and services, but such work is not subject to the numerical LBE goal).

j. Monitoring. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

k. Maintain Records and Cooperation. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;

l. Quarterly and Annual Reports. During construction, the LBE Liaison(s) shall prepare a quarterly and annual report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and

m. Meet and Confer. Attend the meet and confer process described in Section 10.

8. Good Faith Outreach. Good faith efforts shall be deemed satisfied solely by compliance with Section 7. Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 7.a, and following CMD's notice under Section 9.a. shall undertake reasonable efforts at CMD's request to support CMD's outreach identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

9. CMD Obligations. The following are obligations of CMD to implement this LBE Utilization Plan:

a. During the fifteen (15) business day notification period for upcoming Contracts required by Section 7.a, CMD will work with the Project Sponsor and its Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.

b. Provide assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.

c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.

d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.

e. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, CMD staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.

10. Meet and Confer Process. Commencing with the first Contract that is executed for an LBE Improvement, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation.

11. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 7 and 10 above.

12. Collective Bargaining Agreements. Nothing in this Attachment C shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Attachment C and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.

13. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding

good faith efforts as set forth in Section 7. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

a. Name/Type of Contract(s) let (e.g. civil engineering contract, environmental consulting, etc.)
b. Name of Contractors (including identifying which are LBEs and non-LBEs)
c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
d. Scope of work performed by LBEs (e.g. under an architect. an LBE could be procured to provide renderings)
e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
f. Total LBE participation is defined as a percentage of total Contract dollars.
g. Outcomes with respect to Developer's efforts to engage (hire) local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

14. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

15. Remedies. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this Attachment C. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Attachment C, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed $25,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

For all other violations of this Attachment C, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.3 of the Development Agreement.

16. Duration of this Agreement. This Attachment C shall terminate (i) as to each work of Horizontal Improvement where work has commenced under the DDA, upon issuance of a SOP Compliance Determination for the applicable Horizontal Improvement; and (ii) as to each Workforce Building where work has commenced under the applicable Vertical DDA, upon issuance of a SOP Compliance Determination for the applicable Vertical Improvements thereunder; (iii) as to all Initial Tenant Improvements and Follow-on Tenant Improvements, ten (10) years after issuance of the first Temporary Certificate of Occupancy for the Vertical Improvements in which the Initial Tenant Improvements or Follow-on Tenant Improvements are located, and (v) for any Horizontal Improvements or Workforce Building that has not commenced before the termination of the Development Agreement, upon the termination of the Development Agreement. Upon such termination, this Attachment C shall be of no further force and effect.

17. Notice. All notices to be given under this Attachment C shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD: _____
_____
_____
Attn: _____

If to Project Sponsor: _____
_____
_____
Attn: _____

If to Contractor: _____
_____
_____
Attn: _____

If to Consultant: _____
_____
_____
Attn: _____

Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

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Attachment D

Dispute Resolution

1. Arbitration

Any dispute involving the alleged breach or enforcement of this Workforce Development Plan (excluding disputes relating to the First Source Hiring Agreement and the applicable City ordinances, which shall be resolved in accordance with their respective terms) shall be submitted to arbitration in accordance with this **Attachment** D.

The arbitration shall be submitted to the American Arbitration Association, San Francisco, California office ("*AAA*") which will use the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. If there is a conflict between the Commercial Rules of the AAA and the arbitration provisions in this Attachment D, the arbitration provisions of this Attachment D shall govern. The arbitration shall take place in the City and County of San Francisco.

2. Demand for Arbitration

The party seeking arbitration shall make a written demand for arbitration ("***Demand for Arbitration***") in accordance with the notice procedures of Appendix Pt. A, Section 5 (Notices). The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying the entities believed to be involved in the dispute; (2) a copy of the notice of default, if any, sent from one party to the other; (3) any written response to the notice of default; and (4) a brief statement of the nature of the alleged default.

3. Parties' Participation

All persons or entities affected by the dispute (including, as applicable, OEWD, the Port, Developer, Vertical Developers, Construction Contractor (and subcontractor) and Permanent Employer) and shall be made Arbitration Parties. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such affected person or entity as an Arbitration Party; provided that, upon request by any party, the arbiter may dismiss such party if it is not reasonably affected by the dispute.

4. OEWD Request to AAA

Within seven (7) business days after service or receipt of a Demand for Arbitration, OEWD shall transmit to AAA a copy of the Demand for Arbitration and any written response thereto from an Arbitration Party. Such material shall be made part of the arbitration record.

5. Selection of Arbitrator

One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the Arbitration Parties in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator

within seven (7) business days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be the arbitrator's agreement to: (i) submit to all Arbitration Parties the disclosure statement required under California Code of Civil Procedure Section 1281.9; and (ii) render a decision within thirty (30) days from the date of the conclusion of the arbitration hearing.

*6. **Setting of Arbitration Hearing***

A hearing shall be held within ninety (90) days of the date of the filing of the Demand for Arbitration with AAA, unless otherwise agreed by the Arbitration Parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

*7. **Discovery***

In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05 as it may be amended from time to time.

*8. **California Law Applies***

California law, including the California Arbitration Act, Code of Civil Procedure Part 3, Title 9, §§ 1280 through 1294.2, shall govern all arbitration proceedings in any Employment and Contracting Agreement.

*9. **Arbitration Remedies and Sanctions***

The arbitrator may impose only the remedies and sanctions set forth below:

a. Order specific, reasonable actions and procedures to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance with the Workforce Development Plan.

b. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the applicable sections of the Workforce Development Plan, or from granting extensions or modifications to existing contracts related to services covered by the applicable sections of the Workforce Development Plan, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract.

c. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any Arbitration Party to comply with any of the requirements in this Workforce Development Plan. Contracts may be continued upon the condition that a program for future compliance is approved by OEWD. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of the Workforce

Development Plan unless the breaching party has failed to cure after being provided written notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent uncured willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "***willful breach***" means a knowing and intentional breach.

d. Direct any Arbitration Party to produce and provide to OEWD any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

10. ***Arbitrator's Decision***

The arbitrator will normally make his or her award within twenty (20) days after the date that the hearing is completed but in no event past thirty (30) days from the conclusion of the arbitration hearing; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party and shall also copy all Arbitration Parties by email (if email addresses are provided).

11. ***Default Award; No Requirement to Seek an Order Compelling Arbitration***

The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) the person or entity received actual written notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

12. ***Arbitrator Lacks Power to Modify***

Except as expressly provided above in this Attachment D, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Workforce Development Plan or to negotiate new agreements or provisions between the parties.

13. ***Jurisdiction/Entry of Judgment***

The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The prevailing Arbitration Party(ies) shall be entitled to reimbursement for the arbitrator's fees and related costs of arbitration. If a subcontractor is the losing party and fails to pay the fees within 30 days, then the applicable Construction Contractor (for whom that subcontractor worked) shall pay the fees. Each Arbitration Party shall pay its own attorneys' fees, provided, however, those attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

*14. **Exculpation***

Except as set forth in **Section 13** of this Attachment D, each Arbitration Party shall expressly waive any and all claims against OEWD, the Port and the City for costs or damages, direct or indirect, relating to this Workforce Development Plan or the arbitration process in this Attachment D, including but not limited to claims relating to the start, continuation and completion of construction.

DDA EXHIBIT B5

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 though 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.

AECOM

Pier 70 Special Use District TDM Program

July 24, 2017

AECOM

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 TMASF 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 menus 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 exceed.

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

	Residential			Commercial			Phase Trip Estimates	
Phase	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**
Air Quality Mitigation Measures					
Mitigation Measure M-AQ-1f: Transportation Demand Management. 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: • 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 Planning Staff prior to approval of the project	Project sponsors to submit the TDM Plan to Planning Staff for review. Transportation Demand Management Association to submit monitoring report annually to Planning Staff and implement TDM Plan Adjustments (if required).	The TDM Plan is considered complete upon approval by the Planning Staff. 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.	Planning Department

MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
memberships for project occupants; • 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. 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. 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.					

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**
TDM Plan Monitoring and Reporting: 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. • 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: o 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**
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. o 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. o 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. o 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.) o 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**
identity of individual survey responders is protected. *TDM Plan Adjustments.* 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.					

DDA Exhibit B6

Arts Program For Building E4

Eligible Uses

- Arts activities that include performance, exhibition, rehearsal, production, post-production and educational activities of any of the following: Dance, music, dramatic art, film, video, graphic art, painting, drawing, sculpture, small-scale glassworks, ceramics, textiles, woodworking, photography, custom-made jewelry or apparel, and other visual, performance and sound arts and craft.
- Arts spaces will include studios, workshops, archives and theaters, and other similar spaces customarily used principally for arts activities. Studios, workshops, performance space and other similar spaces customarily used principally for arts activities (rehearsal, performance, visual arts, display, design, multimedia, classrooms, galleries, theatre, events, and exhibitions), and related accessory administrative office and support space.
- Commercial arts and art-related business service uses including, but not limited to, recording and editing services, small-scale film and video developing and printing; titling; video and film libraries; special effects production; fashion and photo stylists; production, sale and rental of theatrical wardrobes; and studio property production and rental companies.
- Community or public use space (for example community meetings or events), with a minimum size of 1,000 square feet.
- Retail and restaurant uses not to exceed 10,000 usable square feet in the aggregate.
- Studio space to accommodate the Noonan Tenants, if Building E4 is designated by Developer as Noonan Replacement Space under DDA Section 7.13. Procedures for assigning space to Noonan Tenants and criteria for selection of subsequent artists to occupy the Noonan Tenant Replacement Space, whether in E4 or in a separate location, will be governed by the Artist Transition Plan described in DDA Section 7.13.

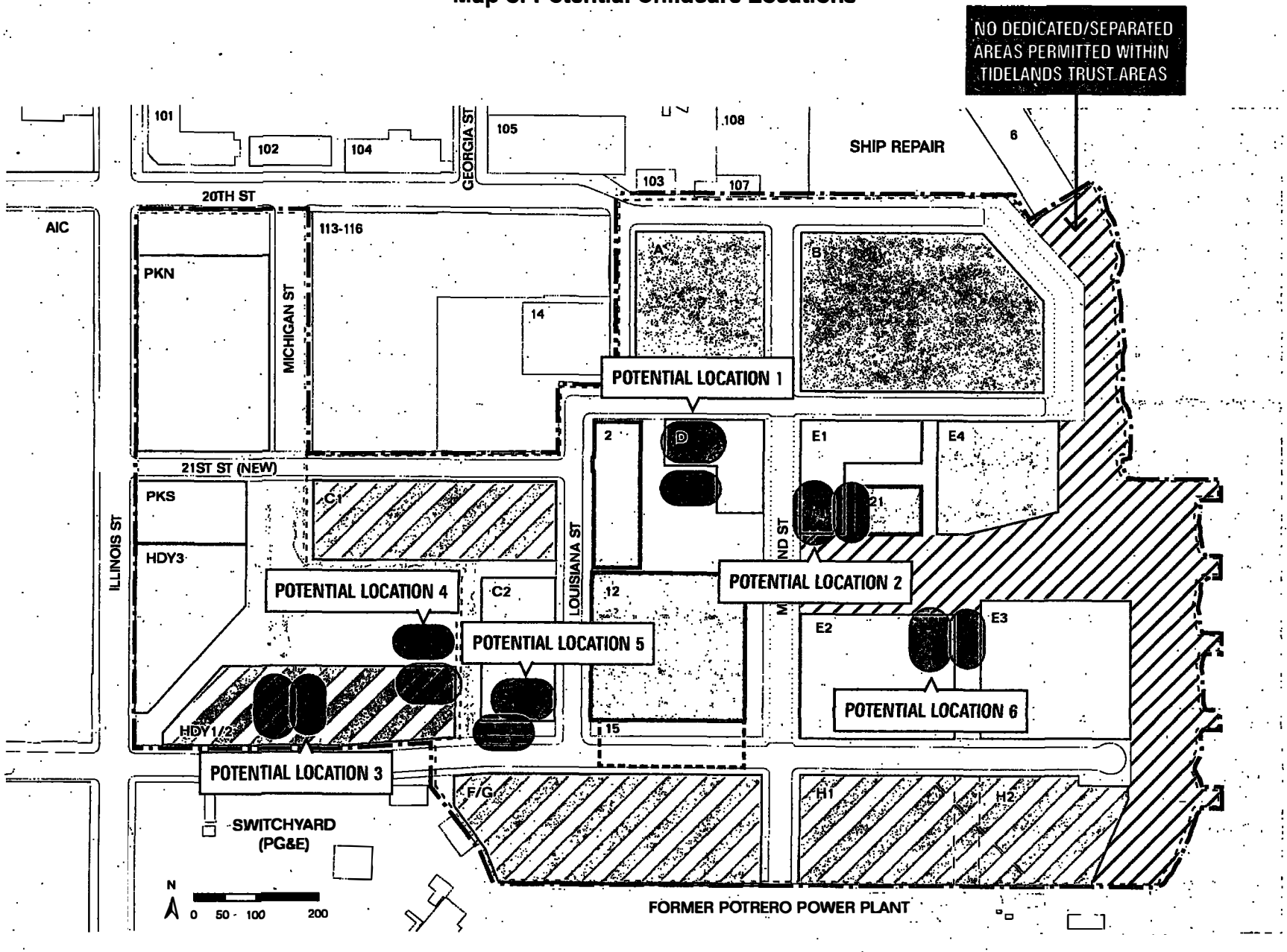
Arts Organization Programming and Tenancy

For non-Noonan Tenant Replacement Space arts and cultural space within E4, an Arts Master Tenant meeting the qualifications specified in Section 7.12(f) of the DDA (or, if none, a qualified arts non-profit organization selected by Developer in consultation with Port) will:

- Create a set of selection criteria to evaluate artists and/or arts organization desiring to occupy the space. Example criteria may include demonstrated commitment to sustained artistic practice(s), programming strength and quality, demonstrated commitment to promoting forms of expression and cultural traditions that have been historically marginalized, demonstrated commitment to providing space to access art and creativity for historically marginalized communities, fundraising capacity, execution/operational capacity, leadership/staff/board strength and stability, demonstrated commitment to community service and engagement, financial stability and economic disadvantage.

- Establish a selection committee (which could include representatives from the Arts Master Tenant or other operator of E4 and other established San Francisco/Bay Area artists) to review new applications.
- Prioritize artists and/or arts organizations using the following geographic locations: artists in designated zip code(s) in the adjacent Pier 70 area; artists in the rest of San Francisco; artists in the greater San Francisco Bay Area (Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma); and all other artists.
- Establish rents for artists, arts organizations, and users at reasonable rates for comparable non-profit artist space in San Francisco, but at a minimum, sufficient to reimburse the Arts Master Tenant for its costs, including any financing costs, operation and maintenance costs, reserves and any administrative fees or other commercially standard costs of operating a building.

DDA Exhibit B7
Map of Potential Childcare Locations



PIER 70 SUD

LAND USE & CHILD CARE LOCATIONS

SITELAB urban studio 01/11/2018

SITE BOUNDARIES
- Pier 70 SUD
- 28-Acre Site
- Illinois Parcels

PREDOMINANT LAND USE
- Commercial Office
- Residential
- Retail, Arts, and Light Industrial

CHILD CARE AMENITIES
- Potential Indoor Location
- Potential Outdoor Space

DDA EXHIBIT B8

PIER 70 SUD INFRASTRUCTURE PLAN

September 19, 2017

TABLE OF CONTENTS

FIGURES

1. INTRODUCTION / PROJECT DESCRIPTION

1.1 Purpose

This Infrastructure Plan is an exhibit to the Interagency Cooperation Agreement (ICA) between Forest City Pier 70, LLC (Developer), the Port of San Francisco (Port) and relevant agencies from the City and County of San Francisco (City), Port, and Developer for the Pier 70 Special Use District (SUD) Project (Project). The Infrastructure Plan defines the Infrastructure (as referred to as Horizontal Improvements in the ICA) for the Project and identifies the responsibilities of the City, Port and Developer for design, construction and operation of the Infrastructure, including elements of sustainability, environmental management, demolition, geotechnical improvements, grading, street and transportation improvements, open space and park improvements, potable water system, non-potable water system, auxiliary water supply system, combined sewer system, stormwater management system and dry utility system.

1.2 Site Description

The Project site consists of an approximately 35-acre area bounded by Illinois Street to the west, 20th Street to the north, San Francisco Bay to the east, and 22nd Street to the south. Two development areas constitute the Project site. The "28-Acre Site" is an approximately 28 acre area generally located between 20th Street, Michigan Street, 22nd Street, and San Francisco Bay that includes a number of Port-owned parcels within the overall Pier 70 area. The "Illinois Parcels" form an approximately 7-acre site that consists of an approximately 3.4-acre Port-owned parcel along Illinois Street at 20th Street and the approximately 3.6-acre "Hoedown Yard," at Illinois and 22nd Streets, which is owned by PG&E. The Hoedown Yard includes a City-owned 0.2-acre portion of the Michigan Street right-of-way that bisects the parcel.

1.3 Land Use

Under the proposed Pier 70 Special Use District (SUD), the Project will include a mixed-use land use program that includes residential, commercial office, district parking, retail, arts, light industrial and open space uses. Several parcels are zoned to allow either residential, district parking or commercial office uses – for this reason, the Project Environmental Impact Report (EIR) analyzes both a maximum residential scenario and a maximum commercial scenario. Through the course of Project build-out, land uses will be selected for each parcel through the Phase Submittal and parcel disposition processes. In order to provide a conceptual system design that functions in either development scenario (or a blend between the two), where the scenarios impact infrastructure design, this Infrastructure Plan analyzes the scenario that conservatively controls design. The following land use tables are used to determine infrastructure demands in this document only. These numbers do not represent the final land use program and may be adjusted in the future within the limits studied under the EIR. Adjustments will not significantly change the utility demands.

Table 1.0: Land Use, Maximum Residential Scenario

Land Use	28-Acre Site	Illinois Parcels	Project Total
Residential	2,155 units	870 units	3,025 units
Commercial	884,200 gsf	11,800 gsf	896,000 gsf
Retail	234,992 gsf	33,360 gsf	268,352 gsf
Restaurant	58,748 gsf	8,340 gsf	67,088 gsf
Art/Light Industrial	143,110 gsf	-	143,110 gsf

Table 1.1: Land Use, Maximum Commercial Scenario

Land Use	28-Acre Site	Illinois Parcels	Project Total
Residential	1,326 units	518 units	1,844 units
Commercial	1,739,450 gsf	243,900 gsf	1,983,350 gsf
Retail	237,174 gsf	37,899 gsf	275,073 gsf
Restaurant	59,294 gsf	9,475 gsf	68,769 gsf
Art/Light Industrial	143,110 gsf	-	143,110 gsf

1.4 Infrastructure Plan Overview

This Infrastructure Plan describes the construction and development of Infrastructure to be provided by Developer for the Project, including associated off-site improvements needed to support the Project. The Project shall use the San Francisco Subdivision Regulations (Subdivision Regulations) and Port Building Code as the basis for design standards, criteria, specifications, and acceptance procedures for Infrastructure in the Project.

This Infrastructure Plan also describes the Project Infrastructure obligations of the City, Port and other City Agencies. As a condition of the Developer's performance under this Infrastructure Plan, the Developer shall obtain requisite approvals in accordance with the ICA.

This Infrastructure Plan focuses on the Infrastructure required to build the Project as described in the Project EIR. The EIR also includes a number of Project variants, which may or may not be implemented. Some of these variants are also described in the Infrastructure Plan, but are not required components of the Infrastructure.

1.5 Developer's Obligations

The Development Term Sheet between the Port and the Developer includes requirements for the Developer to process entitlement approvals and environmental clearance through the EIR for the entire Pier 70 SUD Project, consisting of 35 acres in total. However, the Developer's Infrastructure obligations do not include all of the Infrastructure required within the Pier 70 SUD Site. While infrastructure planning and conceptual design has been performed for the whole Project in support of the entitlement and EIR efforts, the scope of this Infrastructure Plan is limited to only those responsibilities assigned to the Developer. Developer (or its assignee) has Infrastructure obligations that are generally limited to design and construction of Infrastructure within the Developer Obligation Area shown in Figure 1.0, which includes the 28-Acre Site and within the right-of-ways of the Numbered Streets outside the 28-Acre Site. Numbered Streets consist of 20th, 21st, and 22nd Street between Illinois Street and the western boundary of the 28-Acre Site. In addition to the improvements within the Developer Obligation Area, Developer is obligated to design and construct several offsite improvements, including: a new AWSS main in 20th Street between the connection to existing at 3rd Street and Illinois Street; a possible new AWSS main in 22nd Street between Maryland Street and the existing AWSS to the west contingent upon the conditions stated in Section 13.3; the combined sewer pump station and associated structures just north of 20th Street in the vicinity of Building 108; traffic signalization at 20th Street, 21st Street, and 22nd Street; retaining walls required to support the public right-of-way at certain locations; and a combined sewer force main replacement in Illinois Street between 20th Street and 21st Street if deemed necessary by the SFPUC (see Section 14.2), at its sole discretion, after considering the results of a condition and sizing assessment to be performed by the Developer.

The Developer's Infrastructure obligations exclude certain improvements outside of the Developer Obligation Area associated with the Remainder Area shown in Figure 1.0 to be

designed and constructed by the Port or other 3rd Parties. Specifically, exclusions to the Developer's obligations relating to the Remainder Area consist of, but are not limited to, the following work to be performed by others: 22nd Street AWSS extension between 3rd Street and Illinois Street to serve Hoedown Yard development, Illinois Streetscape Frontage; Illinois Parcels Service Infrastructure; the Irish Hill Playground; 20th Street Plaza; Michigan Street improvements; and generally scope related to environmental management, demolition & abatement, sea level rise mitigation, geotechnical improvements, site grading and drainage within the Illinois Parcels Site. In addition, the potential District Parking Structure and rehabilitation of existing Buildings 2, 12 and 21 to remain, which is not considered an element of Infrastructure, are explicitly excluded from the Developer's obligations.

1.6 Property Acquisition, Dedication, and Easements

The mapping, street vacations, property acquisition, dedication and acceptance of streets and other Infrastructure improvements will occur through the Subdivision Map process in accordance with the San Francisco Subdivision Code and San Francisco Subdivision Regulations. Improvements described in this Infrastructure Plan shall be constructed within the public right-of-way or dedicated easements within public open space areas to provide for access and maintenance of Infrastructure facilities.

Public utilities within easements will be installed in accordance with applicable City regulations for public acquisition and acceptance within dedicated public service easement areas, including provisions for maintenance access. Proposed easements are shown in this Infrastructure Plan (see Figure 14.0).

As further discussed in Section 8.2, portions of the existing site are subject to the State Lands Public Trust (Trust) including certain proposed utility zones within public right-of-way and park and open space parcels.

A tentative map will be prepared for the Developer Obligation Area as shown in Figure 1.0, and the Remainder Area will be completed in a second tentative map for the Illinois Parcel by others. Final maps will be submitted for the public right of way prior to permits for each phase of infrastructure. Final maps for each parcel (or groups of parcels) will be submitted for each development project.

1.7 Project Datum

Elevations referred to herein are based on Old City Datum plus 100-feet, referred to herein as Project Old City Datum (POCD). San Francisco Vertical Datum 13 (SFVD13) is included for reference as the Project may be subject to change of datum to SFVD13 in the future.

1.8 Master Plans

Each Infrastructure system described herein has been more fully described and evaluated in Draft Master Utility Plans (MUPs), which have been simultaneously submitted to the City as reference information for the Infrastructure Plan. These MUPs provide more detailed layouts of each Infrastructure system. The Infrastructure Plan is to be approved by the City as part of the ICA approval process. Approval of this Infrastructure Plan does not imply approval of the MUPs, which will be approved after ICA execution and prior to approval of street improvement plans for the first phase of development.

1.9 Conformance with EIR and Entitlements

This Infrastructure Plan has been developed to be consistent with the project description as well as mitigation measures contained in the EIR and other entitlement documents. Regardless of the status of their inclusion in this Infrastructure Plan, the mitigation measures of the EIR shall apply to the Project.

1.10 Applicability of Codes and Infrastructure Standards

This Infrastructure Plan may be materially modified to the extent such modifications are in conformance with the Subdivision Regulations and are mutually agreed to by the Port, City and the Developer consistent with the terms of the ICA.

1.11 Project Phasing

It is anticipated that the Project will be developed in several Phases subject to the submittal and approval process outlined in the ICA. A Project Phasing Plan will be submitted for approval with the Basis of Design at the start of each Phase. The Phasing Plan will provide a utility-by-utility schematic showing existing and proposed infrastructure, temporary and permanent connections, and demonstrate how continuity of existing services will be maintained.

Each Phase will include Development Parcel(s) and associated Infrastructure (Phase Infrastructure) to serve the incremental build-out of the Project. Phase Infrastructure will be defined in Improvement Plans and associated Public Improvement Agreement for each Phase to be approved by the City and Port prior to filing final maps for the associated Development Parcel(s). Phase infrastructure must be designed and constructed to create complete systems within each phase. The parties acknowledge that certain Infrastructure, as described in this Infrastructure Plan, such as abatement, demolition, environmental management, grading, geotechnical improvements and utility connections, may be required or desired outside the current Phase. The parties will cooperate in good faith in determining the scope and timing of such advance Infrastructure, so as not to delay the construction of Development Parcels and associated Phase Infrastructure.

Demolition or abandonment of existing infrastructure and construction of each proposed Development Parcel and associated Phase Infrastructure will impact site accessibility. During construction of each Development Parcel and associated Phase Infrastructure,

interim access shall be provided and maintained for active utility access and emergency vehicles, subject to San Francisco Fire Department (SFFD) requirements. Within active streets to remain open, pedestrian access shall be maintained on at least one side where adjacent to an active construction area.

1.12 Acceptance of Phased Infrastructure

Any Acceptance of streets and other Infrastructure Improvements will occur according to the San Francisco Subdivision Code and San Francisco Subdivision Regulations, unless otherwise approved as an exception by the City. The Acquiring Agency shall accept full, complete, and functional Streets and Infrastructure as designed in conformance with the Subdivision Regulations and utility standards, and constructed in accordance with the project plans and specifications, subject to any design modifications or exceptions that may be authorized by the Public Works Director under the San Francisco Subdivision Code.

Utilities to be accepted cannot rely on utilities constructed to a temporary standard, however they may rely on utilities constructed to a permanent standard that will be removed or replaced in a later phase subject to approval as an exception by the City.

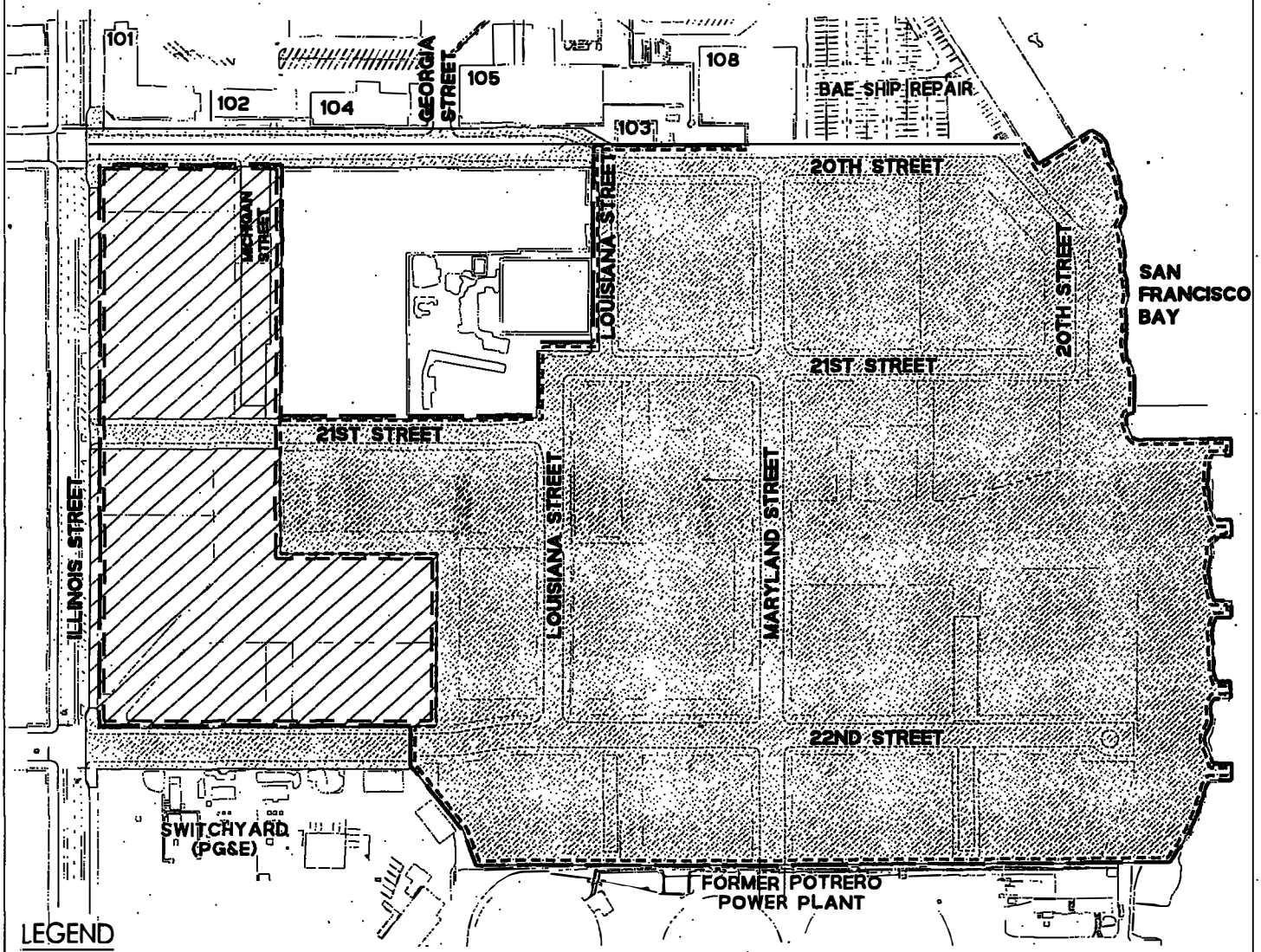
With the consent of both the Acquiring Agency and the agency owning the existing infrastructure, certain portions of Phase Infrastructure to be accepted may rely upon existing infrastructure that is required to be replaced in a subsequent Phase provided the existing infrastructure adequately serves the present Phase demands. Existing infrastructure may not be in between two segments of new infrastructure.

Phase Infrastructure may include improvements on Port property outside of the present Phase boundary within a subsequent Phase area (see Figure 14.0). The Acquiring Agency shall accept Phase Infrastructure that is constructed within Port property outside of the

Phase boundary, subject to a demonstration of how the subsequent Phase Infrastructure can be sequenced to avoid impacting the Phase Infrastructure.

1.13 Operation and Maintenance

With the exception of certain Streetscape Improvements identified in the Draft Streetscape Master Plan (SSMP) to be privately maintained, further described in Section 8.5.4 of this plan, the Acquiring Agency will be responsible for maintenance of Infrastructure installed by the Developer upon acceptance, except as otherwise agreed to. A maintenance agreement, as required by the Public Improvement Agreement (PIA), will be prepared in conjunction with the first phase of improvement plans and may be subject to a Major Encroachment Permit (MEP).



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PIER 70 SUD INFRASTRUCTURE PLAN

FIGURE 1.0: DEVELOPER OBLIGATION AREA

2. Sustainability

2.1 Sustainable Infrastructure

A key component of Project's redevelopment is its sustainable infrastructure. This Infrastructure Plan incorporates various strategies that support the long term sustainable vision for this new urban community. Innovative street designs, efficient land planning, and modern, efficiently-sized Infrastructure serve as the cornerstones for this new sustainable community.

The Developer's Infrastructure obligations include the design and construction of certain sustainability improvements within the Developer Obligation Area identified in Section 1.5. A summary of the key sustainable strategies that are to be incorporated into Infrastructure to be installed by the Developer are as follows:

Section 3 – Environmental Management

- Environmental management to satisfy all applicable statutory and regulatory requirements for redevelopment uses

Section 4 – Demolition and Abatement

- Demolition and abatement of identified unusable and dilapidated structures
- Renovation of select historic buildings to satisfy current seismic, structural, and code requirements
- Demolition or abandonment of sub-standard utility infrastructure
- Re-use of recycled materials on-site where feasible, including exploration of use of local materials

Section 5 – Sea Level Rise

- Grading and utility infrastructure designed to provide resiliency for long term protection against sea level rise
- Financing mechanism put in place to fund continuing monitoring and future improvements at the Project site to adapt to varying amounts of sea level rise

Section 6 – Geotechnical Conditions

- Geotechnical improvements to improve seismic stability

Section 7 – Site Grading and Drainage

- Grading plans designed to remove the new proposed development areas from existing FEMA flood plain designation
- Initial grading and drainage designs to provide long term protection and future adaptability to accommodate potential sea level rise
- Grading design to minimize the need to import soil from offsite locations while accommodating grades adjacent to existing historic structures
- Erosion and sedimentation control measures during construction will be utilized consistent with an approved Storm Water Pollution Prevention Plan for the site

Section 8 – Street and Transportation Systems

- Efficient and smart site layout provides a dense, transit-oriented development that encourages shared resources, bicycling and walking for leisure and commuter transport
- New Infrastructure to improve circulation and safely support alternative transportation modes such as bicycles, buses, and shuttles to regional transit hubs.

- Livable community designed to optimize the pedestrian experiences throughout the Project area
- New public bicycle and pedestrian paths to provide connection to open spaces to support safety and wellness of visitors and dwellers
- Provide bike share stations on-site

Section 11 – Low Pressure Water System

- New reliable and efficient potable water system
- Use of water conservation fixtures to reduce potable water demands

Section 12 – Non-Potable Water System

- Use of water conservation fixtures to reduce non-potable water demands
- Option 1: Newly constructed buildings will collect graywater and rainwater as required to be reused for toilet and urinal flushing, irrigation, and cooling tower makeup
- Option 2: A District-Scale Water Treatment and Recycling System (WTRS) will treat blackwater (project generated wastewater including toilet flows) to a non-potable standard and deliver to Development Parcels via a new non-potable water distribution system

Section 13 – Auxilliary Water Supply System

- New AWSS to improve reliability of fire suppression systems and enhance resiliency during a seismic event.

Section 14 – Combined Sewer System

- Option 1: Graywater collection for non-potable reuse in buildings as required reduces demand on wastewater conveyance and treatment facilities and low pressure water infrastructure
- Option 2: Possible on-site district-scale Water Treatment and Recycling System (WTRS) will treat blackwater to a non-potable standard for reuse on site to reduce demand on off-site wastewater conveyance and existing treatment facilities and low pressure water infrastructure
- New wastewater collection system to reduce the amount of groundwater intrusion
- New low flow fixtures generating reduced discharge into the wastewater system
- Replacement of 20th Street Pump Station to accommodate existing and proposed flows from the current Pier 70 sewershed including the Project
- New stormwater collection system designed for long term protection from flooding and adaptability for sea level rise
- Designed to convey stormwater to the City Combined Sewer System for treatment downstream

Section 15 – Stormwater Management

- Stormwater management facilities included in street designs and open spaces to reduce runoff rate and volume impacting the City Combined Sewer System
- Variant: 30% of building rooftops to include green roofs in accordance with the Better Roofs Ordinance

Section 16 – Dry Utility Systems

- Replace overhead electrical distribution with a joint trench distribution system following the roadways.
- New power, gas and communication systems to serve the development

- Variant: Installation of photovoltaics on at least 15% of building rooftops in accordance with the Better Roofs Ordinance for renewable generation
- Use of energy efficient fixtures and equipment to reduce energy demands
- Variant: Renewable Energy Generation and Microgrid Distribution System with Load Management controls to enhance resiliency and reduce carbon emissions

Additional Project Infrastructure Variants

Project has also been designed with enough flexibility to consider the addition of the following district-scale sustainable facilities into the infrastructure program for the development as desired and feasible;

- District Heating and Cooling System Variant
- Vacuum Waste Collection System Variant

The Infrastructure Plan has been prepared to allow for implementation of the above variants with little to no impact to the required Infrastructure components.

3. Environmental Management

3.1 General Site Characterization

Several investigations and remediation activities have been conducted throughout the Pier 70 Master Plan Area between 1989 and 2011. The Site Investigation (SI) and Human Health Risk Assessment conducted in 2009 and 2010 included soil gas, soil and groundwater sampling and analysis. Results from that and previous investigations were evaluated with respect to applicable regulatory standards and risk-based site-specific Cleanup Levels presented in the Feasibility Study and Remedial Action Plan (FS/RAP) to identify Constituents of Concern (COCs).

3.2 Regulatory Framework and Management Approach

The FS/RAP for the Site was prepared on behalf of the Port with oversight by the San Francisco Bay Regional Water Quality Control Board (RWQCB) and the San Francisco Department of Public Health (SFDPH). The approved remedy consists of engineering controls (e.g., removing, replacing, or capping soil with durable cover) and institutional controls (e.g., deed restrictions, soil management measures, health and safety plans) to manage potential health risks. The remedy consists of the following:

- Durable Covers (defined as hardscape such as asphalt, concrete, non-moveable pavers, or a minimum of two feet of clean soil) over existing native soil that meet the remedial action objective of preventing human exposure to constituents of concern in the soil beneath the Site.
- Long-term maintenance and monitoring of durable covers to ensure that covers continue to function as designed.
- Institutional controls to minimize the potential to impact human health and the environment after installation of durable cover.

The Risk Management Plan (RMP) provides a framework for managing residual COCs in soil in a manner that protects site users under current and future land use.

3.3 Requirements for Future Excavation Work

Any future construction work that involves ground disturbing activities is subject to both the Maher Ordinance and the RMP. The RMP describes risk management measures that include notifying the Port, RWQCB, and SFDPH of planned activities; limiting access and posting signage around portions of the Site that are under construction; managing soil including soil disposal and compliance with the Dust Control Plan for the Site; managing storm water and groundwater; and reestablishing durable cover following completion of ground disturbing activities. The RMP also outlines procedures for addressing unexpected subsurface conditions encountered during development.

The Developer's Infrastructure obligations include implementation of the RMP within the areas identified in Section 1.5.

4. Demolition, Abatement and Historic Structure Stabilization

4.1 Scope of Demolition

The Developer's Infrastructure obligations include the demolition and abatement of non-retained existing buildings and demolition or abandonment infrastructure features within the Developer Obligation Area identified in Figure 1.0 (excluding Building 117, to be demolished by others in advance of the Project). This includes buildings not intended for long-term reuse, site structures (retaining walls, utility structures), streets and pavements, and existing utilities not intended for long-term reuse. In certain cases, underground utilities may be abandoned rather than demolished subject to City and Port approval.

The Developer will either: a) separate demolition debris material by type at the site and deliver to a facility that reuses or recycles those materials; or, b) process as mixed demolition debris and transport off-site by a Registered Transporter for delivery to a Registered Facility that processes mixed debris for recycling. Certain inert materials, such as concrete, may be crushed on site for reuse as engineered fill or aggregate. The feasibility of materials recycling and reuse may be limited by the requirements for abatement of hazardous materials and the potential value of the recycled material.

4.2 Existing Infrastructure Demolition or Abandonment

Existing utility demolition or abandonment scope includes storm drain, combined sewer, water and electric, gas and communications abandonment or removal. Where feasible, demolished utility materials will be recycled.

Concrete and asphalt pavements will be demolished, and where feasible, recycled and used on site or made available for use elsewhere. The recycled concrete/asphalt materials will be allowed for pavement and structural slab sub-base material, utility trench backfill, and, where feasible, concrete and asphalt mixes, as approved by the City and Geotechnical Engineer of Record.

As part of a standard vegetation grubbing and clearing operation, trees and other plant materials will be protected in place, relocated, or removed as needed from future grading areas. All trees and plants to be removed will be recycled for composting purposes.

CCSF Ordinance 175-91 restricts the use of potable water for soil compaction and dust control activities undertaken in conjunction with any construction or demolition project occurring within the boundaries of San Francisco, unless permission is obtained from San Francisco Public Utilities Commission (SFPUC). Non-potable water must be used for soil compaction and dust control activities during project construction or demolition. Recycled water is available from the SFPUC for dust control on roads and streets. However, per State regulations, recycled water cannot be used for demolition, pressure washing, or dust control through aerial spraying. Recycled water will be supplied by truck for activities that require its use.

4.3 Building 15 Retention

Building 15 is a historic building that will be retained partially over 22nd St and the Building 12 Plaza area to enhance the SUD character and maintain the relationship with Building 12. Improvements will include removal of skin from Building 15, raising of grades around base and modification of foundation, and structural retrofit of frame.

4.4 Phases of Demolition and Abatement

Demolition and abatement will occur in phases based on the principle of adjacency and as-needed to facilitate a specific proposed Development Phase. The amount of demolition will be the minimum necessary to support the Development Phase and maintain minimum required access and utility connections. The phased demolition of smaller areas will allow the existing utility services, vehicular access areas, and vegetation to remain in place as long as possible in order to reduce disruption of existing uses of the

Project site and adjacent facilities. Developer will monitor new and existing) utilities to remain within the Phase boundary pre and post demolition, as required.

5. Sea Level Rise and Adaptive Management Strategy

5.1 Sea Level Rise Introduction

Sea Level Rise (SLR) has the potential to increase flooding along shoreline areas as the 100-year high tide (Base Flood Elevation) increases over time. The Project will be built to protect against a reasonable amount of SLR and designed to accommodate higher SLR through an Adaptive Management approach that allows the Project Infrastructure to be adjusted over time in response to measured SLR.

The Sea-Level Rise Task Force of the Coastal and Ocean Working Group of the California Climate Action Team released their State of California Sea-Level Rise Guidance Document based on the June 2012 National Academy of Sciences (NAS) Sea-Level Rise for the Coasts of California, Oregon and Washington. Table 5.1 summarizes the low estimate, projected and high estimate Sea Level Rise projections for the San Francisco Bay area. These estimates are consistent with the "Guidance for Incorporating Sea Level Rise into Capital Planning in San Francisco: Assessing Vulnerability and Risk to Support Adaptation," dated December 14, 2015 as prepared by the City and County of San Francisco Sea Level Rise Committee for the San Francisco Capital Planning Committee, adopted by the Capital Planning Committee.

Table 5.1: Sea Level Rise Projections for San Francisco Bay (NAS, 2012)

Time Period	Low Estimate (Inches)	Projected (Inches)	High Estimate (Inches)
2000-2050	4.8	11.0	23.9
2000-2070	9.0	19.0	38.7
2000-2100	16.7	36.2	65.5

Source: Moffat and Nichol Memorandum "Pier 70 Development, Sea Level Rise and Proposed Improvements," December 4, 2014.

5.2 Adaptive Management Approach

Because the actual rate of future SLR is uncertain, the Adaptive Management approach will embrace a pro-active adaptive management strategy that can respond to changes that will come about in the future as a result of additional scientific study and monitoring of actual SLR conditions. The Adaptive Management strategy will include four basic fundamentals

- Initial infrastructure design to accommodate reasonable SLR scenarios,
- Infrastructure design that can be adjusted in the future in response to actual SLR,
- Monitoring of scientific updates and actual SLR data, and
- Funding mechanism to implement necessary improvements to address SLR.

5.3 Initial Grading Design

Coastal flooding at the site includes two components: 1) combined high water and wave action along the perimeter shoreline, and 2) extreme still water elevation for inland areas. The flood elevations for the perimeter shoreline areas are determined by the combined effects of high still water elevation plus a combination of tides, swell, wind, waves, tsunami, and shoreline geometry, or Total Water Level (TWL) with a 1 percent chance of occurring each year. Figure 5.0 shows graphic illustration of shoreline with elevation requirements at the perimeter and Bay Trail and includes Table 5.1 with summary of elevation for minimum design criteria for Shoreline, Bay Trail, Building Finished Floor, and Open Space.

5.3.1 Shoreline

The shoreline area east of the Bay Trail area will be improved to provide protection against the current 1 percent chance TWL caused by a combination of tides, waves and shoreline geometry. This area slopes to the water and is designed to allow for

additional inundation with future SLR. No specific allowance for SLR is provided and this area will eventually be subject to tides as sea level rises.

5.3.2 Bay Trail

The Bay Trail area will be elevated to an elevation above TWL plus an allowance for 24-inches of SLR.. The elevations in the Bay Trail area will provide perimeter protection for the project to the west. The elevation and types of protection in the Bay Trail area may vary along the length of the Project shoreline as TWL varies based on shoreline orientation and the proposed adjacent land plan.

5.3.3 Building Finished Floor

Buildings are inboard of the shoreline perimeter protection area and finished floor elevations will be design based on two conditions. The first is the 1 percent chance SWL elevation, plus an allowance for 66-inches SLR, plus 6-inches of freeboard. The second is the Bay Trail protection elevation plus additional elevation to provide for overland release of storm water from the building pad to the shoreline.

5.3.4 Open Space

Open space inboard of the shoreline perimeter protection area will be designed to allow for drainage away from building and overland release of storm water from the open space over the Bay Trail protection and shoreline.

5.4 Initial Combined Sewer System Design

The new Combined Sewer System (CSS) will be designed to conform to the requirements of the Subdivision Regulations with potential exceptions or design modifications as noted in Section 14, subject to City approval. The 2015 Subdivision Regulations require "that the hydraulic grade line shall, in general, be four feet below the pavement or ground surface, and at no point less than two feet" (referred to as freeboard). Freeboard in the vicinity of the Historic Core fronting 20th Street, Louisiana Street, and 21st Street, where grades cannot be raised because they are constrained by existing historic buildings and streets, will require exception to Subdivision Regulations requirements where freeboard may be less than the required 2-feet in its current condition and cannot be improved enough to meet the requirements of the Subdivision Regulations. At a minimum, the new CSS must maintain freeboard in these areas for all design storms. Developer will submit requests for exception for areas with less-than required freeboard for review and approval by City. See 14.2.6 Existing Condition on 20th Street for additional information. Location and sewer asset-specific design criteria for freeboard as related to SLR scenarios will be consistent with City guidelines (*Guidance for Incorporating SLR into Capital Planning in San Francisco,* 2015), where possible. The CS outfall will require a flap gate, which will be installed at the time of outfall repair.

5.4.1 Stormwater Management

Stormwater Management features will be designed with a minimum of 30 inches of freeboard between hydraulic grade in drainage/underdrainage systems and the CS system at the point of connection. Freeboard will be allowed to reduce to 6-inches with 24-inches of SLR.

5.5 Infrastructure Adaptation for Future SLR

Information relating to monitoring, decision making framework, reporting, funding and improvements are included in Section 5.6.

5.5.1 Shoreline

The shoreline area will experience more frequent inundation with SLR. Elevation in this area will not be modified, however improvements will be made to protect the area from erosion caused by wave action and runoff.

5.5.2 Bay Trail

For SLR values greater than the 24-inches, the perimeter designs will provide the ability to make future changes to the perimeter if over topping of the Bay Trail area protection becomes a nuisance or hazardous at some locations. The appropriate type of adjustments will be determined through the decision making framework described below and may include increasing the shoreline elevations through the construction of small berms or low walls, or other appropriate measures.

5.5.3 Building Finished Floor

Building finished floor elevations is not anticipated. SLR beyond an elevation that may impact building finished floor elevations will require perimeter and storm water system improvements to protect the structures.

5.5.4 Open Space

Future adaptation of open space areas is not anticipated. SLR beyond an elevation that may impact the open space will require perimeter storm water system improvements for SLR protection.

5.5.5 Combined Sewer System

The new CSS will be designed to accommodate modification in the future in response to SLR. Modification will include the addition of pump stations near the CSS diversion structures (Central Basin outfalls 30 and 30A) that allow discharge to San Francisco Bay. Ownership and operation of SLR pump stations will be determined in the development of adaptive management strategy (see Section 5.2). After 66 inches SLR, additional perimeter protection will be required for the replacement 20th Street Pump Station.

5.5.5.1 Stormwater Management

Future adaptation of Stormwater Management features is not anticipated. Beyond 24-inches SLR, the CSS modifications mentioned in the section above will also mitigate SLR impacts to the Stormwater Management features.

5.6 SLR Monitoring Program

As part of the Project, monitoring program will be created to review and synthesize SLR estimates prepared for San Francisco Bay by the National Oceanic Atmospheric Administration and State Agencies. The monitoring program will require periodic review of updated SLR guidance from Local, State and Federal regulatory agencies. The monitoring program will be managed by the Shoreline Adaptation Community Facilities District (SACFD). Monitoring program will be coordinated with City programs addressing SLR.

5.6.1 Decision Making Framework

When the data from the monitoring program demonstrates that SLR in San Francisco Bay is expected to exceed the allowances designed for in the initial improvements, a range of additional improvements can be made to protect the Project from flooding and periodic wave overtopping. Planning, design, and review

takes significant amount of time, thus work will begin on improvements before those SLR effects are problematic. In coordination with the City, the SACFD will be responsible for determination of decision on which improvements will be made at the time improvements are required, which will depend on a variety of factors, including, but not limited to:

- Consultation with the SFPUC and other local agencies,
- New Local, State or Federal requirements about how to address SLR,
- Available technology and industry best practices at the time, and
- Both the observed rate of actual SLR and updated estimates of future SLR

5.6.2 Sea Level Rise Monitoring and Implementation Report

The monitoring program will require periodic preparation of a report on the progress of the adaptive management strategy. SACFD will commission the report which will be prepared no less than every 5 years and more frequently if required by regulators. The report will include:

- The publication of the data collected and literature reviewed under the monitoring program,
- A review of changes in Local, State or Federal regulatory environment related to SLR, and a discussion of how the Project is complying with applicable new regulatory requirements.
- A discussion of the improvements recommended to be made if sea levels reach the anticipated thresholds identified in the Decision Making Frameworks within the next 5-years, and
- A report of the funds collected for implementation of the adaptive management strategy, and a projection of funds anticipated to be available in the future.

5.6.3 Funding Mechanism

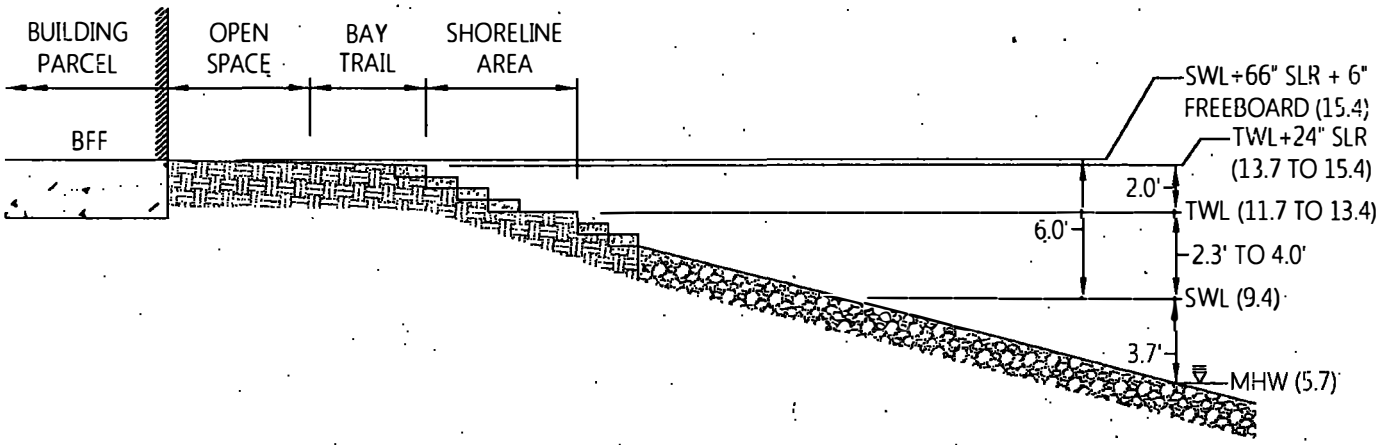
The Project's financing plan includes a Shoreline Adaptation tax to create project-generated funding that will be dedicated to paying for monitoring and flood protection improvements necessary to implement the Adaptive Management Strategy. Funds will be overseen by the SACFD.

ABBREVIATIONS:

SWL	STILL WATER LEVEL
TWL	TOTAL WATER LEVEL
BFF	BUILDING FINISHED FLOOR
MHW	MEAN HIGH WATER
SLR	SEA LEVEL RISE
ELEV	ELEVATION

LEGEND:

(XX.X) ELEVATION



NOTE: 1. ELEVATIONS PROVIDED IN SFVD13 DATUM

TABLE 5.1 - MINIMUM DESIGN CRITERIA

AREA	MINIMUM DESIGN CRITERIA
SHORELINE	SHORELINE BASE FLOOD ELEVATION (TWL) + 0-INCHES SLR
BAY TRAIL	SHORELINE BASE FLOOD ELEVATION (TWL) + 24-INCHES SLR
BUILDING FINISHED FLOOR	BASE FLOOD ELEVATION (SWL) + 66-INCHES SLR + 6-INCHES FREEBOARD
OPEN SPACE	DRAINAGE AWAY FROM STRUCTURES, OVERLAND RELEASE OVLR BAY TRAIL

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PLOT DATE: 09-18-17 PLOTTED BY: rols

6. Geotechnical Conditions

6.1 Existing Site Geotechnical Conditions

The Project Site was formerly occupied by serpentinite bluffs overlooking tidal mud flats extending into San Francisco Bay. The western portion of the site was occupied by a large hill, referred to as Irish Hill. Rock from blasting and quarrying of Potrero Point and Irish Hill during the late 1800s and early 1900s was placed in the tidal areas to extend and develop the shoreline toward the east. The Pier 70 area was previously occupied by shipbuilding and ironwork industries. The concrete ship slipways (Slipways 5 through 8) constructed in the early 1940s for ship construction and maintenance, are buried within the southeastern portion of the site. The portion of the site west of the 1869 shoreline is underlain by shallow bedrock; east of the 1869 shoreline the site is underlain by fill, Bay Mud, clay and sand, and bedrock. High groundwater level at the Project Site corresponds to the level of the San Francisco Bay. Groundwater may be present within fractures and sand seams in the bedrock at higher elevations (western portion of the site.).

6.2 Site Geotechnical Approach

The Developer's Infrastructure obligations include the design and construction of certain geotechnical improvements within the Developer Obligation Area identified in Figure 1.0.

6.2.1 Shoreline Stabilization

Preliminary analysis indicates the shoreline could be subject to lateral slope displacement under seismic loading. The amount of displacement predicted would not be tolerable for rehabilitated or proposed buildings or sensitive infrastructure within a certain distance from the shoreline. Lateral displacement can be mitigated by reinforcing this slope with a structural wall or ground improvement along the shoreline. Structural wall solutions may include but are not limited to tied-back sheet pile walls, rows of secant piles, and king-pile walls. Ground improvement may

consist of treatments such as deep soil mixing (DSM), vibro-compaction, vibro-replacement, and deep dynamic compaction.

6.2.2 Surcharging

Portions of the site are underlain by Bay Mud where artificial fill was historically placed beyond the original shoreline. Bay Mud can undergo excessive settlement over long periods of time, especially under new fill or building loads. Potential options for addressing consolidation of the Bay Mud underlying design loads include use of deep foundations to support the new loads or installation of wick drains and surcharging areas where grades will be raised or relatively light structures are planned.

The portion of the Project Site situated over the concrete slipways is not expected to undergo settlement under the weight of new fill loads as the slipways are supported by a vast number of pile foundations bearing on competent material below.

6.3 Phases of Geotechnical Stabilization

The geotechnical stabilization will be completed in phases to match the Phases of the Project. The extent of geotechnical stabilization will be the minimum necessary for the current Phase.

6.4 Schedule for Additional Geotechnical Studies

Developer will perform design-level geotechnical studies prior to commencing preparation of Phase Improvement Plans and submit to the City for review as part of the Basis of Design. The design level geotechnical studies will provide a specification for the design of the stabilization program, including monitoring of program results.

7. Site Grading and Drainage

7.1 Existing Site Conditions

The project site has varying topography, sloping up from the San Francisco Bay. From the shoreline for approximately 1,000-feet west, the site is relatively flat rising only approximately 10 feet total from the shoreline. The site then increases in grade steeply and levels off at it approaches Illinois Street with an approximately 30-foot increase in elevation at Illinois Street. Site grading is constrained along the northern boundary, the existing Port historic buildings to remain and 20th Street existing grades at the location of the lowest elevations at the site on 20th Street near the northeast corner of Buildings 113-116. Existing site topography is shown on Figure 7.0. The project site has almost no vegetation, with the exception of a multi-trunk eucalyptus tree and grasses on the Irish Hill which extends approximately 24-feet above surrounding grade, and scattered vegetation in the northeast portion of the 28-Acre Site. Impervious surface covers approximately 98 percent of 28-Acre Site and approximately 43 percent of the Illinois Parcels with most of the remainder of the Illinois Parcel being a rock knoll and compacted gravel.

7.2 Proposed Project Grading Overview

The Developer will be responsible for the design and construction of the proposed grading and retaining walls within the Developer Obligation Area shown in Figure 1.0, including transition areas at the edge of the Developer Obligation Area. Proposed Project grading is shown on Figure 7.1. Proposed grading for the Project raise from the shoreline to approximately elevation 104 POCD or 15 SFVD13 and grades gently toward the west to the approximate beginning of the existing steep slope. The site then grades up steeply, to match grade at Illinois Street. Existing grading at the eastern end of 20th Street and adjacent to the existing historic building to remain constrain grading and limit the Project

ability to modify grading and overland release in these areas. Retaining walls are required to support the public right-of-way at several locations.

7.3 Elevation and Grading Design Criteria

SLR will result in changing water levels in the San Francisco Bay that the project will need to accommodate.

7.3.1 Basic Tide Elevations

Minimum project elevations are based on the FEMA 100-year design tide elevation, or Base Flood Elevation (BFE). The project includes two design criteria. The first is the Still Water Level (SWL) that include the static 100-year tide elevation for design of Development Parcels and the Project combined sewer system. The second criteria is the BFE required Project shoreline protection, or TWL. The TWL elevation varies along the project shoreline and takes into account near shore bathymetry, shoreline grading and coincident events including tides, storm surges, and waves that result in a 1% annual chance of flooding along the shoreline. In addition, the Subdivision Regulation requires combined sewer analysis be based on a tide elevation of 96.5 POCD or 7.9 SFVD13. Required elevations are identified in Section 7.3.4. Shoreline elevations are dependent on an assumed shoreline geometry. The final geometry will be analyzed by the project shoreline engineer to confirm that elevations conform to FEMA requirements.

7.3.2 Potential Sea Level Rise

SLR will result in changing water levels in the San Francisco Bay that the project will need to accommodate. More specific discussion of SLR is included in Section 5. The design criteria employed at the time of this Infrastructure Plan are based on the best scientific forecasts and potential design strategies currently available. The

forecasts will likely change over time and will provide revised guidance for future projects. Allowance for SLR is identified in Section 7.3.4.

7.3.3 Long Term Settlement

As described in Section 6, geotechnical stabilization techniques will be utilized where required to create a stable platform for the proposed development. The stabilization techniques will reduce the potential for settlement due to liquefaction in the sandy soils and compression of the Bay Mud below the site. The final grading plans will be developed to accommodate the additional minimal amounts of long term settlement anticipated due to secondary compression of the soils.

7.3.4 Design Tide Elevations

Design tide elevations are a combination of basic tide elevation with an allowance for SLR. Design tide elevations for the Shoreline, Bay Trail and Building Pads are shown in Table 7.0.0 in reference to the POCD datum and Table 7.0.1 in reference to the SFVD13 datum. The combined sewer is generally designed with a tide elevation of 96.5 POCD or 7.9 SFVD13 and four feet of freeboard, allowing for up to 2 feet of sea level rise while maintaining a potential minimum 2 feet of freeboard. The equipment and structures of the replacement 20th Street Pump Station will be protected from 66 inches of SLR to elevation 103.5 POCD or 14.9 SFVD13. In addition, the Pump Station will be designed and protected from any potential overland flows from uplands upland areas.

Table 7.0.0: Design Tide Elevation, POCD

	Basic Tide Elevation (Feet)	SLR Allowance (Inches)	Freeboard (Inches)	Design Elevation (Feet)
Shoreline	100.3 (min.) 102.1 (max.)	0	0	100.3 (min.) 102.1 (max.)
Bay Trail	100.3 (min.) 102.1 (max.)	24	0	102.3 (min.) 104.1 (max.)
Building Pads	98.0	66	6	104.0

Table 7.0.1: Design Tide Elevation, SFVD13

	Basic Tide Elevation (Feet)	SLR Allowance (Inches)	Freeboard (Inches)	Design Elevation (Feet)
Shoreline	11.65 (min.) 13.45 (max.)	0	0	11.7 (min.) 13.5 (max.)
Bay Trail	11.65 (min.) 13.45 (max.)	24	0	13.7 (min.) 15.5 (max.)
Building Pads	9.35	66	6	15.4

7.4 Site Grading Designs

A description of the grading design for the Project is included below. The conceptual grading plan for the Project are shown on Figure 7.1. Grading may require transition slopes or retaining walls beyond the Developer Obligation Area. The parties will cooperate in good faith in determining the timing and scope of such grading so as not to delay the construction of Development Parcels and associated Phase Infrastructure.

7.4.1 Proposed Building Areas

The minimum grades for the site including the shoreline areas are influenced by the BFE. According to the FEMA requirements, in order for the proposed building areas to be above the Zone A flood plain, the proposed finished floor elevations and below grade garage entrance elevations must remain above the BFE. While FEMA does not require an allowance for sea level rise, the building finish floor elevations will be set to accommodate a minimum 66-inches of SLR plus an additional 6-inches of freeboard. Therefore, the minimum finished floor elevations and garage entrances for the proposed new buildings will be set at 104.0 POCD or 15.4 SFVD13 (BFE + 66-inches + 6-inches). In general, the final building finished floor elevations and garage entrances will increase the further they are from the shoreline to provide overland release to the Bay.

7.4.2 Existing Building 12

The existing elevation of building 12 is lower than the proposed surrounding street elevation. There are currently three grading options considered for Building 12:

- Raising the exterior grade and leaving interior grade as is
- Raising the exterior and interior grade and modifying windows and doors at base of building
- Raising the structural frame along with exterior and interior grade

7.4.3 Proposed Roadway Areas and Retaining Walls

A portion of 20th Street will be raised near the waterfront to provide SLR protection, requiring a retaining wall where there is a grade difference with the BAE Shipyard parking lot. A portion of the northern spur of the remnant of Irish Hill would be removed for construction of 21st Street. Retaining walls would be necessary along both sides of portions of 21st Street to retain Irish Hill, to address the grade

difference between 21st Street and Michigan Street and to protect the adjacent existing Building 116 to remain. The reconfigured 22nd Street would also require a retaining wall to accommodate the proposed elevation difference between the streets and the adjacent PG&E facility to the south. Retaining walls will be outside of right of way and privately owned and maintained.

Some streets will be graded using a "saw tooth" design with a minimum 0.5% slope between grade breaks. Saw toothed grading alternates between high and low points creating a pattern resembling the edge of a saw. This pattern allows for positive drainage in the streets while maintaining minimal elevation differences between the high and low points. See Figure 7.2 for illustration of saw tooth grading.

The "saw-tooth" grading plan will be developed in conjunction with the design of the stormwater system. The run-off from a 100-year storm during a 100-year tide will be contained within the storm drain system below the street curb lines.

The "saw tooth" grading plan will provide overland release paths by increasing the elevation of the high points so that the downstream high point elevation of the flow line in the gutter is equal to or lower than the top of curb elevation at the upstream low point. The downstream high point may be raised to the back of walk/right of way line if an acceptable wastewater vent trap detail, backwater valve, or other alternate design solution is approved by the SFPUC. This overland release design will protect the new building finished floors from storm/tides larger than the 5-year event or system maintenance issue such as blocked catch basin or pipes. This will continue through the downstream basins until there is capacity in the storm system or storm water is released to the open space. The new building finish floor elevations will be above the back of walk/right of way elevation and therefore

protected from flooding. Also some areas of the site are straight graded and direct overland flow to open space areas or the bay.

7.4.4 Open Space Areas

The Bay Trail along the shoreline would have minimum design elevations ranging from 102.3 to 104.1 POCD or 13.7 to 15.5 SFVD13. These elevations would allow for 24- inches of SLR. Grade will increase gradually west of the Bay Trail to provide positive overland release, including open space areas. The shoreline area east of the Bay Trail would be designed to provide safe public access to the water in the near term and allow for adaptive management over the longer term.

7.5 Proposed Site Grading Conforms

Project grading will conform to existing grades to remain at project boundaries or construct walls to address abrupt changes in grade. At the south edge of the site, roads and parcels generally conform to the property south of the project site. A portion of the reconstruction of 22nd Street will require a retaining wall or embankment to address grade change to the south, adjacent to the PG&E Switchyard. At the west edge of the site, grading will conform to existing grades at Illinois Street. At the north edge of the site, grading will generally conform to existing grades, with exception to the east end of 20th Street which transitions to proposed grades up to 3 feet higher than existing to conform to proposed grading at the Bay Trail. Grades at the Bay Trail will be raised to address future sea level rise. For additional information regarding sea level rise and adaptive management strategies refer to Section 5 of this document.

7.6 Cut/Fill Quantities

While the Developer is only responsible for grading within the Developer Obligation Area, soil from the Remainder Area will be made available for use as fill throughout the site.

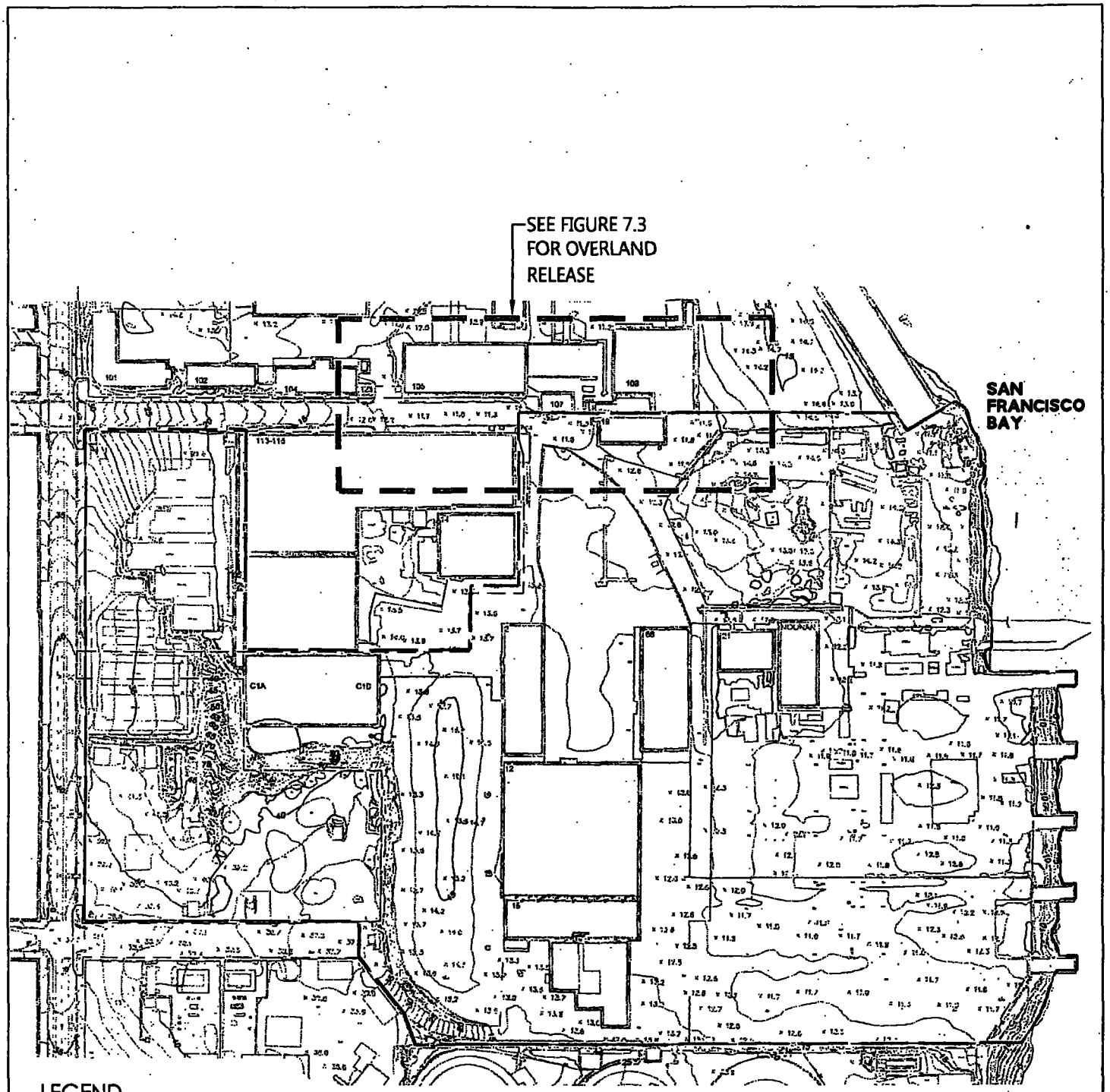
Table 7.1 summarizes the cut and fill quantities for the Developer Obligation Area and Remainder Areas:

Table 7.1: Cut and Fill Summary

	Cut (Cubic Yards)	Fill (Cubic Yards)
Developer Obligation Area	115,155	119,518
Remainder Area	49,122	5,402

7.7 Phases of Site Earthwork

Grading will occur based on the principle of adjacency and as needed to facilitate a specific proposed Development Phase and consistent with the Project Phasing Plan to be approved with the Basis of Design. The amount and location of the grading proposed will be the minimum necessary to support the Development Phase. The new Development Phase will conform to the existing grades as close to the edge of the Development Phase area as possible while maintaining the integrity of the remainder of the Project. Interim grading will be constructed and maintained as necessary to support existing facilities impacted by proposed Development Phases.



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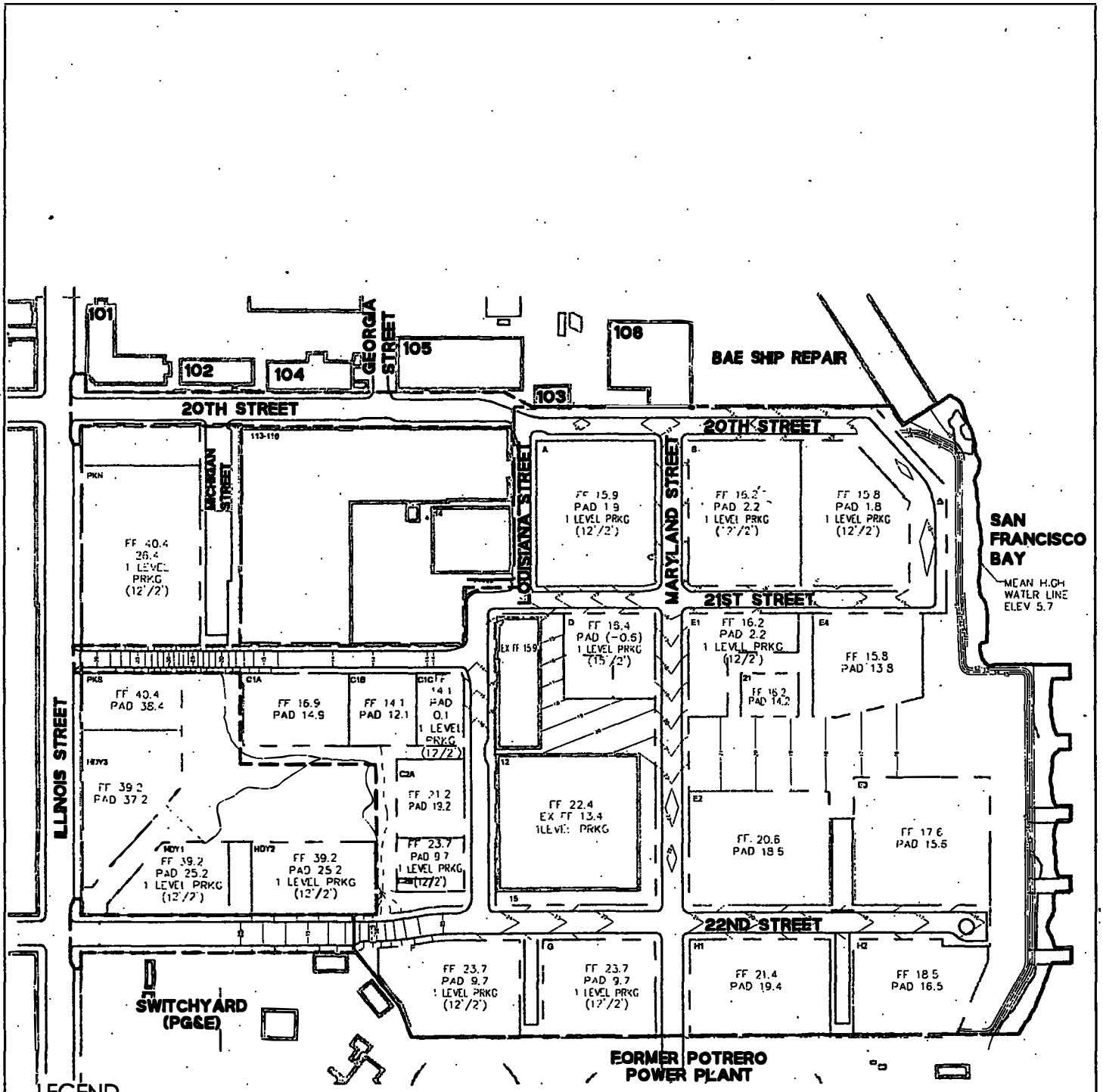

LEGEND

- PIER 70 SUD BOUNDARY
- ID — PROPOSED DEVELOPMENT PARCEL
- PROPOSED ELEVATION CONTOUR
- DEVELOPER OBLIGATION AREA

ABBREVIATIONS

ELEV	ELEVATION
FF	FINISHED FLOOR
LP	LOW POINT
PRKG	PARKING
EXFF	EXISTING FINISHED FLOOR

PROJECT ELEVATIONS SHOWN ARE SFVD13 DATUM.

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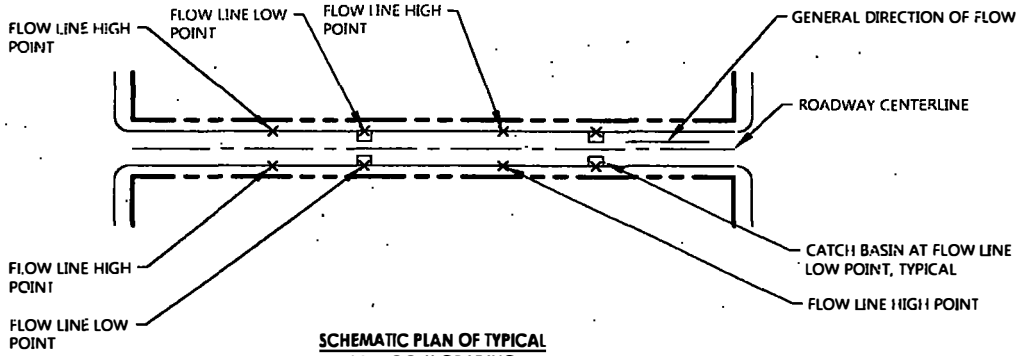
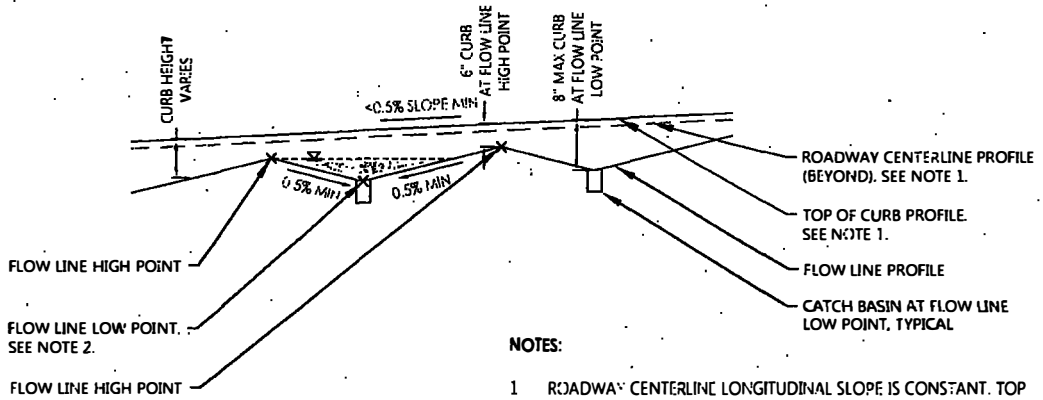
PIER 70 SUD INFRASTRUCTURE PLAN

FIGURE 7.1: PROPOSED GRADING



SCHEMATIC PLAN OF TYPICAL SAWTOOTH GRADING



OPTION 1

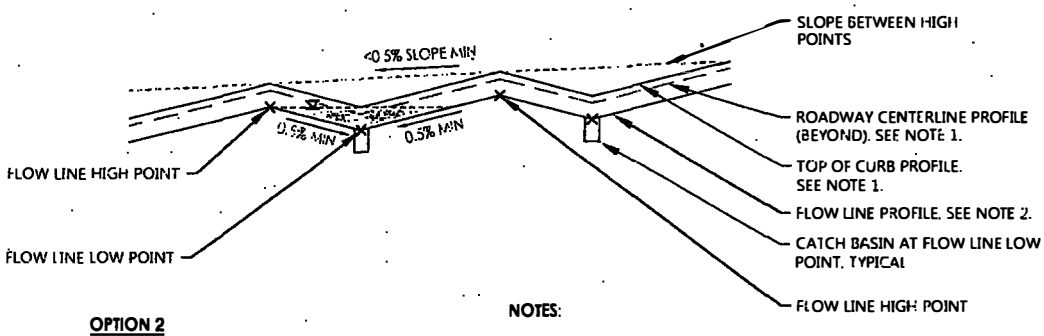
SCHEMATIC PROFILE OF FLOW LINE SAWTOOTH GRADING WITH CONSTANT SLOPE CENTERLINE AND TOP OF CURB

NOTES:

1 ROADWAY CENTERLINE LONGITUDINAL SLOPE IS CONSTANT. TOP OF CURB FOLLOWS ROADWAY CENTERLINE PROFILE.

STREET CROSS SLOPE VARIES BETWEEN 2% AND 5% AND CURB HEIGHT VARIES BETWEEN 6-INCHES AND 8-INCHES (EXCEPT AT CURB RETURNS, CROSSWALKS, ACCESSIBLE PARKING SPACES, AND ACCESSIBLE PASSENGER LOADING ZONES) TO ACHIEVE A FLOW LINE WITH A 0.5% MINIMUM LONGITUDINAL SLOPE.

2. THE LOW POINT OF THE FLOW LINE COINCIDES WITH THE STEEPEST STREET CROSS SLOPE AND 8-INCH CURB.



OPTION 2

SCHEMATIC PROFILE OF FLOW LINE SAWTOOTH GRADING WITH PARALLEL SAWTOOTH ROADWAY CENTERLINE AND TOP OF CURB

NOTES:

1. ROADWAY CENTERLINE PROFILE AND TOP OF CURB FOLLOWS FLOW LINE PROFILE.

2. FLOW LINE HIGH POINT ELEVATIONS ARE LOWER THAN THE UPSTREAM TOP OF CURB LOW POINT ELEVATIONS.

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8. Street and Transportation Systems

The Project Site is uniquely situated between the existing Dogpatch neighborhood and the waterfront. Its location means the new street grid is intended to serve local access only at low speeds; there are no throughways designed to move large volumes of traffic between different parts of the City. The streets in the Project Site are a closed loop that represent the end of the road. In addition to vehicular and pedestrian traffic, site infrastructure will also provide for access by bicycles, transit and emergency vehicles.

8.1 Streetscape Master Plan

The Draft Pier 70 SUD Streetscape Master Plan (SSMP), including a Roadway and Utility Sections Supplement, has been submitted for City review and provides additional detail for streetscape design for the project, building upon the Pier 70 SUD Design for Development.

8.2 Public Streets

The proposed primary streets on the project site would be 20th and 22nd streets. The proposed Maryland Street would be a secondary north-south running street, new minor streets proposed as part of the Project include a new 21st Street, running west-to-east from Illinois to the Waterfront, and Louisiana Street, running north from 22nd Street to 20th Street. A jog on Louisiana Street from 21st Street to 20th Street to accommodate existing historic structures within the 20th Street Historic Core would be provided. All proposed streets would include sidewalks, as well as street furniture. With the exception of Louisiana Street between 20th and 21st Street, all proposed streets would be two-way, with a single lane of travel in each direction. Louisiana Street between 20th and 21st Street would be one-way in the southbound direction, with a single lane of travel and a single sidewalk on the east side. The proposed streets would provide access for emergency vehicles and freight loading on the west fronting the Historic Core. Michigan Street, Louisiana Street, and 21st Street would be designed as primary on-street loading corridors.

The roadway network is designed for SU-30 vehicles. Additionally, vehicles accessing the site up to the size of a WB-40, and WB-50 on a limited path (entering 20th Street, south on Louisiana Street, exiting 22nd Street) will be subject to a Driveway and Loading Operations Plan (DLOP) to manage conflicts with truck deliveries and other roadway users. Refer to Section 2.7 of the SSMP regarding commercial truck access to the Project.

As part of the Proposed Project, Michigan Street between 21st Street and 20th Street will be vacated. Street vacation to be submitted in the future will be consistent with the approved SSMP.

Portions of the existing site are subject to the State Lands Public Trust (Trust) including existing and proposed street right of way, and proposed development parcels and open space. Proposed development parcels will be removed from the Trust in exchange for additional Trust over proposed streets and open space areas. Figure 8.0 shows streets that will be located in the future Trust and Figure for 9.0 shows open space that will be located in the future Trust.

The proposed right-of-way width will be preliminarily approved as part of the MUPs and SSMP separately, which includes a Roadway and Utility Sections Supplement providing detailed sections of each street segment. The Developer will be responsible for design and construction of streets within the Developer Obligation Area. See table 8.0 for further detail regarding street configuration and responsibility.

8.2.1 Roadway Dimensions

Table 8.0: Right-of-Way Dimensions

Street	Responsibility	Right-of-Way Width (feet)	Street Elements with Width(feet)
20th Street between Illinois Street and Georgia Street)	Developer	66	14 SW/8 P/11 S/11 S/8 P/ 14 SW* (*Sidewalk width may vary due to historic structure encroachments)
20th Street between Georgia Street and Louisiana Street	Developer	66	17 BT*/8 P/11 TL/11 TL/8 P/ 11 SW* (width varies due to irregular historic building frontages)
20th Street between Louisiana Street and Waterfront	Developer	57	16 BT/11 TL/10 TL/8 P/12 SW
20th Street at Waterfront	Developer	67	15 SW/8 P/12 TL/12 TL/ 20 BT
21st Street	Developer	49	10 SW/11 TL/10 TL/8 P/10 SW
22nd Street between Illinois Street and SUD Boundary	Developer	66	12 SW/5.5 B/11 TL/11 S/5.5 B/ 9 P/12 SW
22nd Street between SUD Boundary and Louisiana Street	Developer	60	12 SW/7 B/11 TL/11 S/7 B/ 12 SW
22st Street between Louisiana Street and Maryland Street	Developer	62	12 SW/8 P/11 S/11 S/8 P/12 SW
22nd Street between Maryland Street and Waterfront	Developer	60	12 SW/8 P/10 S/10 S/8 P/12 SW
Louisiana Street between 20th Street and 21st Street*	Developer	30	20 TL/10 SW
Louisiana Street between 21st and 22nd Street	Developer	54	12 SW/11 TL/11 TL/ 8 P/12 SW
Maryland Street north of 22nd Street	Developer	60	12 SW/8 P/10 S/10 S/8 P/12 SW
Maryland Street south of 22nd Street	Developer	62	12 SW/8 P/11 TL/11 TL/8 P/ 12 SW
Michigan Street*	Other	54.5	10 SW/13 TL/ 13 TL/ 18.5 L

** May be Port-owned private street*Abbreviations

ROW	Right-of-Way	BT	Bay Trail
TL	Travel Lane	S	Sharrow
SW	Sidewalk	L	Loading
B	Bicycle Lane	E	Easement
P	Parking		
L	Loading		

8.3 Bicycle Access

The project extends regional Bay Trail and Blue Greenway along the shoreline and adds additional designated Class 2 and sharrow (class three) bicycle routes for connectivity from Illinois Street through the site. See Figure 8.1 for proposed bicycle routes. Refer to Section 2.3.2 of the SSMP for additional information and detail regarding bicycle routes and circulation. SFMTA retains the right to modify facilities post-construction after street acceptance as demand requires.

8.4 Transit Access

The project will establish a Transit Management Agency (TMA) to coordinate and implement Transportation Demand Management (TDM) strategies and provide a shuttle service to connect the site to regional transit hubs including BART and Caltrain. A route for TMA shuttles has been designated as shown on Figure 8.2.

Additionally, SFMTA is currently analyzing potential MUNI routes for access to Pier 70 and has indicated the route as shown on Figure 8.2. There will be a bus stop in both the inbound and outbound direction to be constructed prior to commencement of the MUNI bus route. The project will provide bus bulbs at these locations for effective bus loading operations, per SFMTA request.

Refer to Section 2.8 of the SSMP and Pier 70 SUD Vehicle Turning Supplement for additional information regarding transit access and specific turning studies for vehicle turning through the transit routes indicated.

8.5 Streetscape Design Considerations

8.5.1 Raised Streets

Based on its location and historic industrial character, the Project proposes a series of Raised Streets – a curbless street variant of Shared Public Ways as defined in the

San Francisco Better Streets Plan (BSP) – on 20th at the Waterfront and Maryland Street between 21st and 22nd Streets, where pedestrian activity in the vicinity of retail, adjacent plazas and parks will be more intensive than other parts of the site. The design intent is to calm traffic moving through this area to create a safe environment for pedestrians that encourages public recreational use and socialization. In order to distinguish from the BSP Shared Public Way category, which is intended to apply to small streets and prioritizes pedestrian use of the entire right-of-way over vehicles and bicycles, the term "Raised Streets" is introduced to capture the concept as applied in the Project. Within the Raised Streets, specific crosswalk locations will be provided to designate where pedestrians have priority to cross and parking lanes help separate the pedestrian zone from travel lanes. Drainage of Raised Streets is addressed in Section 14.2.8,.

8.5.2 Traffic Calming

Roadways are designed as local streets with minimum lane widths with a strategic layout to avoid throughways, intended to reduce speeds and promote pedestrian and bicycle safety. In addition, raised streets and streetscape features such as bulbouts have been included to further the same purpose.

8.5.3 Fire Department Access

Fire trucks will utilize the entire travel way for turning movements at intersections. Intersections will be designed to provide 7-feet clear when fire trucks enter on-coming travel lanes. Fire truck turnaround locations will be coordinated with the SFFD and constructed consistent with the Fire Code at dead-end street locations.

The final street layouts and cross sections are detailed in the SSMP. The final configurations will be reviewed by the SFFD for conformance to the Fire Code.

Refer to Pier 70 SUD Vehicular Turning Supplement for detailed fire truck turning studies through proposed roadway network.

8.5.4 Street Pavement, Curb and Gutter, and Sidewalk Sections

The existing portions of 20th and 22nd Streets within the Developer Obligation Area will be reconstructed as a part of the Project. The City standard structural section for reconstructed existing and new on-grade roadways consists of eight inches of Portland Cement Concrete and two-inch asphalt concrete wearing surface. Alternative cross sections such as asphalt wearing surface over Class 2 aggregate base, cobblestones, decorative paving, and porous paving may be used if approved by the Acquiring Agency. City standard roadways will be maintained by the Acquiring Agency. Alternative materials have been proposed as a part of the SSMP and will be maintained by an Independent Maintenance Entity to be established by the project.

City standard curb and gutter will be maintained by the Acquiring Agency. Sidewalks and non-standard curb conditions such as flush curbs at raised streets, if approved by the Acquiring Agency and any affected City Department, will be maintained by an Independent Maintenance Entity to be established by the Project.

Based on Measure M-TR-10 of the Mitigation Monitoring and Reporting Program for the Pier 70 Mixed-Use District Project (MMRP) on Illinois Street, the Developer will replace curb ramps on east side at 20th Street intersection, construct new curb ramps on east side at newly constructed 21st Street intersection, and replace curb ramps on four corners at 22nd Street intersection. Replacement of the sidewalk on east side of Illinois Street between intersections with 20th, 21st, and 22nd Streets will be the responsibility of others, and will be a minimum of 10 feet in width, with

obstructions such fire hydrants and power poles relocated as feasible to ensure accessible path of travel to and from Project.

Paving in Illinois Street will be restored as needed based on utility trenching.

8.5.5 Street Lights

Streetlighting units - consisting of poles, foundations, and fixtures - will be designed and constructed for the proposed roadway network. Street lighting shall comply with City of San Francisco standards. The SSMP identifies a set of lamp fixtures and fixture types that will be specified, and surplus stock will be provided for repair and replacement of street lights by SFPUC. Project may submit street lighting units to the City for approval, and if not acceptable, the poles, foundations, and fixtures will be maintained by the project through an Independent Maintenance Entity through an MEP. The City, at its discretion, may choose to maintain approved fixtures and related electrical wiring on private poles through an agreement with the Independent Maintenance Entity.

8.6 Traffic Control and Signalization

The project will design and construct signalization to be implemented at the offsite intersections of Illinois Street at 20th Street and 22nd Street (based on MMRP Measure M-TR-10), as well as at the new intersection created at Illinois Street and 21st Street.

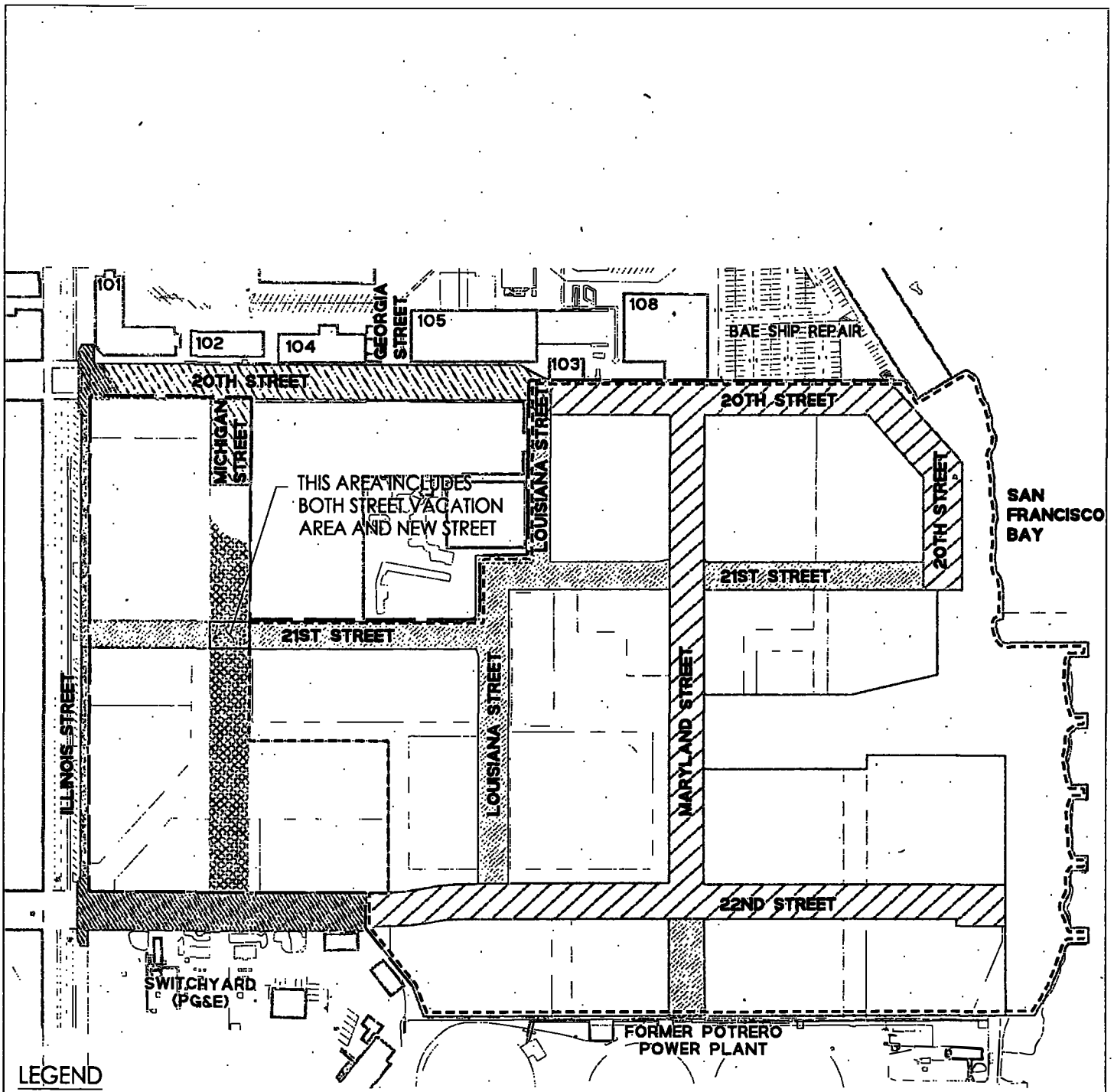
8.7 Maintenance and Street Acceptance

The Acquiring Agency will be responsible for maintenance and repair of the roadways under its ownership, except as otherwise agreed to and permitted through an MEP. The Developer will be responsible for maintenance of new and/or improved public streets within the Developer Obligation Area until such time as they are accepted by the Acquiring Agency for maintenance and liability purposes.

Upon acceptance of the new and/or improved public streets by the Acquiring Agency, responsibility for the operation and maintenance of the roadway and streetscape elements will be designated as defined in the various City of San Francisco Municipal Codes, except as otherwise agreed to and permitted through an MEP. An Independent Maintenance Entity, such as a Maintenance Community Facilities District (Maintenance CFD), will be established prior to occupancy and will provide a comprehensive management approach for those items that fall outside of the City's responsibility.

8.8 Phasing of Improvements

The new roadway system will be constructed in phases to match the Phases of the Project. The amount of the existing roadway repaired and/or replaced will be the minimum necessary to serve the Phase. The Phase will connect to the existing roadways as close to the edge of the Phase area as possible while maintaining safe access to the new development and the remainder of the Project site. The existing land uses will continue to utilize the existing roadways until replaced with new roadways. Bus stops will be added just prior to commencement of the MUNI bus route or with the last phase, whichever is earlier, and not necessarily with the phase in which they are located. Repairs and/or replacement of the existing facilities will be made as necessary to serve the Phase. Fire truck turnaround areas will be coordinated with the SFFD consistent with the Fire Code.



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PIER 70 SUD INFRASTRUCTURE PLAN

FIGURE 8.0: STREET LAYOUT

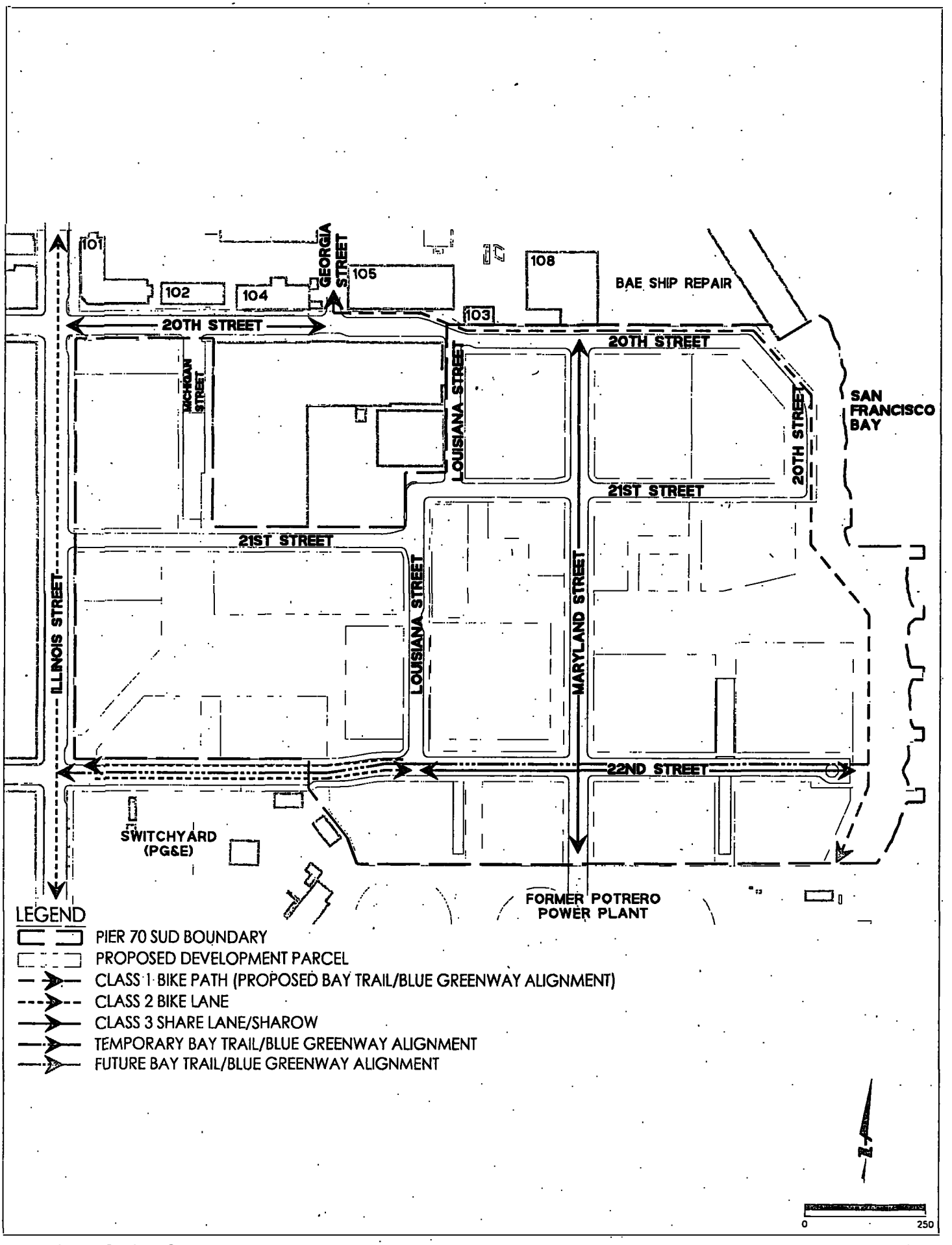

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FIGURE 8.1: BICYCLE ROUTE

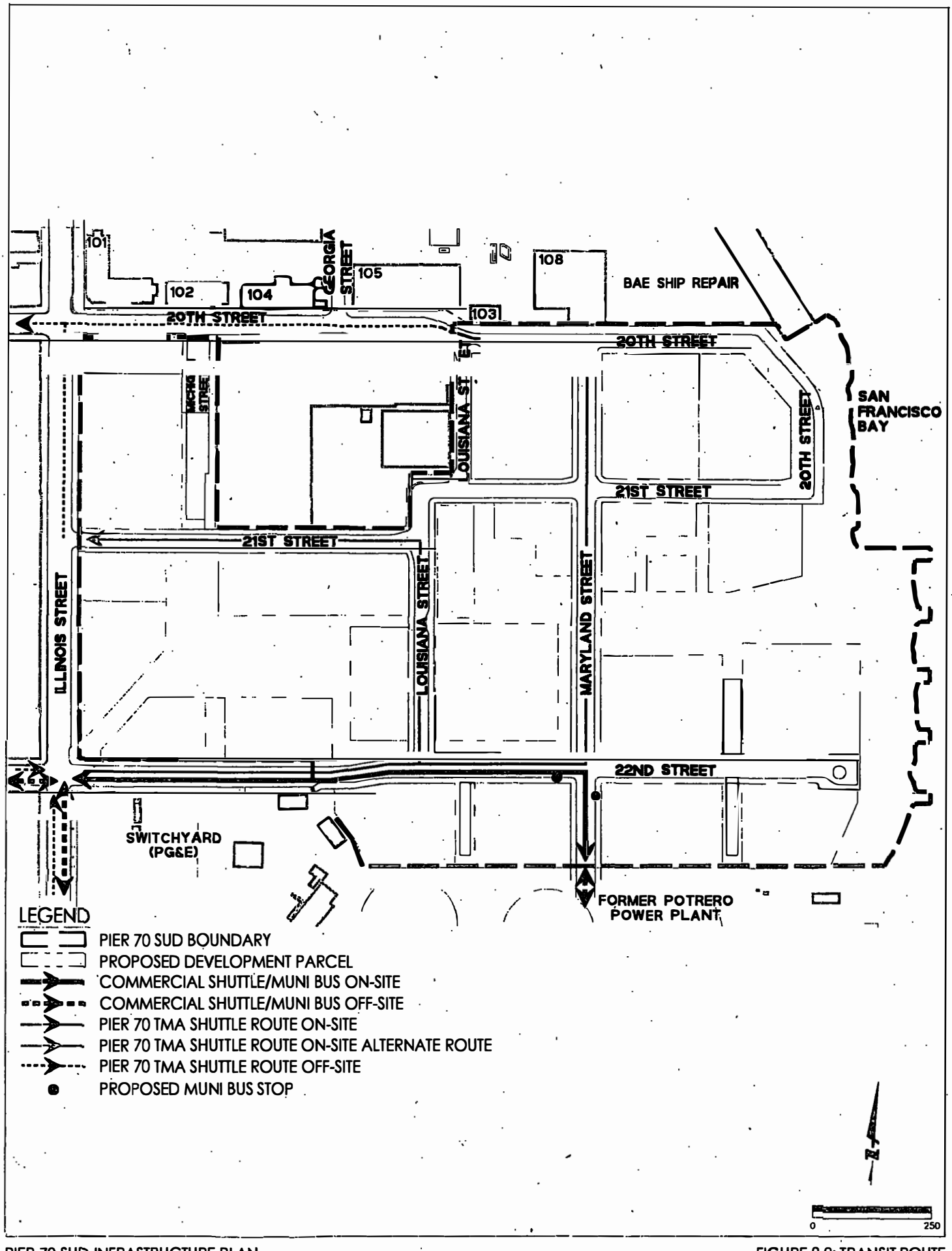

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FIGURE 8.2: TRANSIT ROUTE

9. Open Space and Parks

9.1 Open Space and Parks Overview

New parks will include open plazas adjacent to historic buildings, linear commons lined with retail uses, a waterfront promenade, a waterfront terrace with multi-use lawn, the extension of the Bay Trail through the Project site, a playground nestled between several buildings and a hill, and mid-block passages connecting the public realm to streets.

The proposed open space and parks respond to several key objectives:

1. To connect the Dogpatch neighborhood to the waterfront
2. To create a variety of vibrant public spaces for social interaction and respite
3. To enhance the resiliency of the site against sea-level rise
4. To retain a defining feature of the Historic District open areas
5. To project an identity for the site that draws from the character of the adjacent neighborhood and the history of the Pier 70 industrial waterfront.

In total approximately nine acres of parks will be provided within the Project. The proposed open space would supplement recreational amenities in the vicinity of the project site, such as the new Crane Cove Park in the northwestern part of Pier 70, and would include extension of the Blue Greenway and Bay Trail through the southern half of Pier 70 within the Project area.

These open spaces are anticipated to accommodate everyday passive uses as well as public outdoor events, including art exhibitions, theater performances, cultural events, outdoor fairs, festivals and markets, outdoor film screenings, evening/night markets, food events, street fairs, and lecture services. Fewer than 100 events per year are anticipated, including approximately 25 mid-size events attracting attendance between 500-750 people, and four larger-size events attracting up to 5,000 people.

Improvements in the Park and Open Space parcels will be subject to a site specific storm water management plan, which may include the presence of storm water features as part of a comprehensive storm water management approach for the Project. Some parks and open spaces will be subject to utility easements that may impact proposed improvements.

In addition to these publicly accessible open space areas, the Project could potentially include private open space areas such as balconies, rooftops, and courtyards that would be accessible only to building occupants.

Since the Project will install or modify 500 square feet or more of landscape area, compliance with San Francisco's Water Efficient Irrigation Ordinance, adopted as Chapter 63 of the San Francisco Administrative Code and the SFPUC Rules & Regulations Regarding Water Service to Customers. Compliance will be documented with improvement plans to be reviewed and approved by SFPUC prior to construction.

9.2 Proposed Open Space and Parks to be Built by Developer – Developer Obligation Area

The Developer's Infrastructure obligations include the design and construction of the open space and park improvements within the Developer Obligation Area as summarized below in Table 4. A brief description of the new parks, open space facilities, and the Bay Trail is provided further below. Figure 9.0 illustrates the location of the proposed parks and open space.

Table 9.0: Proposed Parks and Open Space – Developer Obligation Area

Park	ID	Suggested Programming
Waterfront Promenade	WP-1	Multi-use Bay Trail, café dining terraces, furnished picnic and seating, shoreline pathway to craneway piers, viewing pavilions, large-scale public art and artifact pieces, public program uses
Waterfront Promenade	WP-2	
Waterfront Terrace	WTP	Multi-use Bay Trail, viewing pavilion, a social lawn, and eating/drinking area with picnicking, seating, and food and beverage operations.
Slipways Commons	SC-1	Connect interior to the waterfront, multipurpose uses including community gatherings, festivals, performances, art installations, nighttime and cultural events, café terrace, an event plaza and a viewing pavilion.
Slipways Commons	SC-2	
Market Square	OS-1	Outdoor market space, social centerpiece, pedestrian hub, informal and formal events, flexible space for open-air markets, market stalls, and small performances and gatherings
Building 12 Plaza	OS-2	Small plazas along edges of Building 12, display of artwork, seating, and ground-floor uses within building to extend outside, including café terrace, metal-frame remnant of Building 15
Parcel C2 Plaza	OS-3	Plaza located along the southern frontage of C2 with direct views of Building 12 at the core of the Project
Mid-Block Passages	-	Pedestrian amenities including seating, landscaping, pedestrian lighting, public art, retail displays, café access, temporary kiosks and/or food and retail trucks, as feasible

9.2.1 Waterfront Promenade (WP-1, WP-2)

The Waterfront Promenade would encompass a minimum 100-foot-wide portion of an approximately 5-acre waterfront park area (which includes the Waterfront Terrace and Slipways Commons open space areas, described below) located along

the central and southern shoreline of the project site. The Waterfront Promenade would include a north-south running pedestrian and bicycle promenade as part of the 20-foot-wide Blue Greenway and Bay Trail system that extends from Mission Creek to the southern San Francisco County line at Candlestick Point. Anticipated features include a café terrace outdoor dining terraces east of Parcel E3 and H2, and furnished picnic and seating terraces east of Parcels E3 and H2, which would provide park users with opportunities for waterfront viewing and passive recreation. A six-foot-wide informal shoreline pathway would run parallel to the rip-rap along the water's edge and would connect the various features at the Bay edge. The Pier 70 craneway piers along the water's edge would also be made accessible to the public and would offer opportunities for fishing and Bayfront viewing, as well as views back to the Pier 70 historic buildings. The Waterfront Promenade installation would include two of four possible viewing pavilions, large-scale public art and artifact pieces, within the project site, which would be designed to emphasize the view of the horizon as well as accommodate a variety of public program uses such as cultural events and gatherings.

9.2.2 Waterfront Terrace (WTP)

The Waterfront Terrace would be constructed along the northern half of the project site's shoreline, just to the north of the Waterfront Promenade, and orient views towards the active and historic shipbuilding activities north of the project site. The Waterfront Terrace includes three primary spaces: a third possible viewing pavilion to the north, a social lawn along the central portion, and an eating/drinking area along the southern portion, which would include picnicking, seating, and food and beverage operations. The Waterfront Terrace would also include the northern portion of the 20-foot-wide Blue Greenway and Bay Trail system within the project site.

There are no alterations planned for the existing dilapidated pier extending from the project site into San Francisco Bay which would remain in place under the Project. The Port through its historic resource consultant has determined that the existing building on the pier has lost its integrity as a contributing resource and the pier is collapsing into the Bay due to damage from winter storms. The dilapidated pier is not part of the Project.

9.2.3 Slipways Commons (SC-1, SC-2)

Slipways Commons open space would connect existing Buildings 2, 12, and 21 to the waterfront. This area would be designed as the most flexible, multipurpose of the open spaces, intended to accommodate community gatherings, festivals, performances, art installations, and nighttime and cultural events, as well as passive recreation during quieter times. Anticipated features include a café terrace and multifunction commons, an event plaza and a viewing pavilion. No streets are planned between Parcels E1, E2, E3 and E4 and Building 21 and the park, in order to maximize recreational use of the park and encourage pedestrian travel. As shown in Figure 2.6.1 of the SSMP, emergency vehicle access will be provided east of Maryland Street within a portion of SC-1 for access to Building 21.

9.2.4 Market Square (OS-1)

The Market Square is an outdoor market space framing the social centerpiece of Project. Market Square would be located directly north of historic Building 12 and east of Building 2 with four pedestrian access points. The approximately 1.5-acre plaza and square would provide the opportunity for informal and formal events, supporting flexible space for open-air markets, market stalls, and small performances and gatherings.

9.2.5 Building 12 Plaza (OS-2)

The Building 12 Plaza are small plazas along the east and southern edges of Building 12 (approximately 23 to 28 feet wide). The plazas will provide opportunities for display of artwork, seating, and ground-floor uses within building to extend outside. The southern plaza would also host a café terrace. The Project would potentially retain a metal-frame remnant of Building 15 above the new 22nd Street, directly south of Building 12.

9.2.6 Parcel C2 Plaza

The Parcel C2 open space includes a small park fronting 22nd Street that will feature enhanced landscaping and potentially limited seating.

9.2.7 Mid-Block Passages

Mid-block passages are publicly accessible pedestrian routes underneath a building or between two adjacent parcels. These paths are designed to connect between various amenities and pedestrian-oriented spaces. They include public staircases and narrow pedestrian paths, as well as alleys that connect between two streets. Some, but not all, mid-block passages are pedestrian-only private ROW that are closed to motorized vehicles. Mid-block passages will not be considered public open space on commercial blocks if building connector is constructed overhead.

9.3 Proposed Open Space and Parks to be Built by Other – Illinois Parcels

The Developer's Infrastructure obligations specifically exclude the design and construction of the open space and park improvements within the Illinois Parcels, as summarized herein.

9.3.1 Irish Hill Playground (IHP)

The Irish Hill Playground installation would be south and east of the existing remnant of Irish Hill. The Irish Hill Playground would include children's play areas (play slope and play pad) and other recreation opportunities, a picnic grove, a lounging terrace, and planted slopes and pathways. The non-native multi-trunk trees located on the remnant of Irish Hill would remain.

9.3.2 20th Street Plaza (PLZ)

The 20th Street Plaza open space area would be located at the southeast corner of the 20th Street and Illinois Street intersection, directly north of Parcel PKN. This gateway space would allow for direct views from Illinois Street and 20th Street to Building 113, on the Historic Core site. Potential features within the 20th Street Plaza include terraced seating areas, and stormwater management facilities.

9.4 Phasing, Operation and Maintenance

New open space and parks system will be constructed in phases to match the Phases of the Project. The Phase will connect to the existing open space and parks as close to the edge of the Phase area as possible where a logical transition line can be established within the open space improvement features.

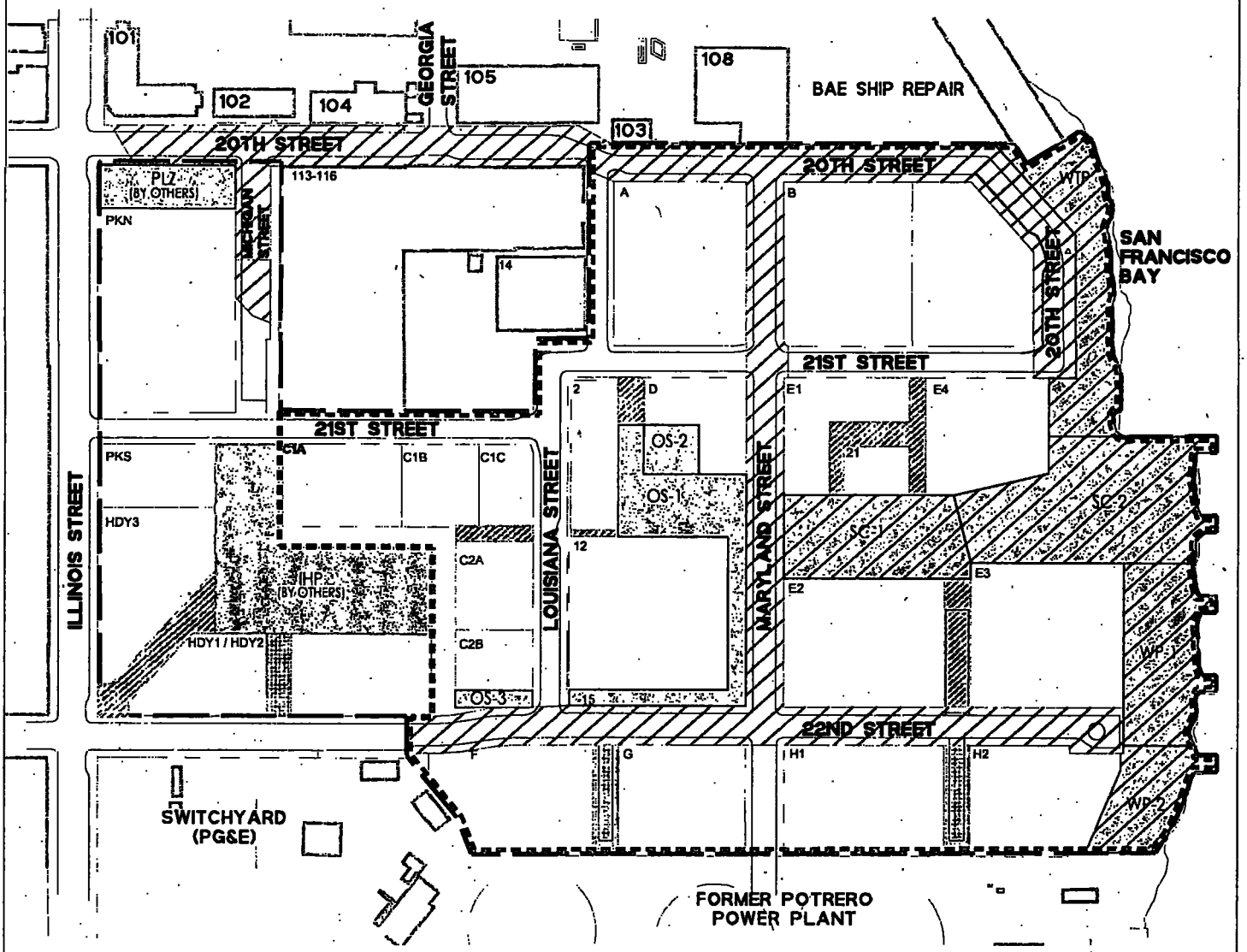

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FIGURE 9.0: OPEN SPACE EXHIBIT

10. Utility Layout and Separation

10.1 Utility Systems

The Project proposes to install public utility systems, including the combined sewer system, low pressure water (LPW) system, non-potable water (unless building by building graywater is implemented), auxiliary water supply system (AWSS), and dry utility systems. See Figure 10.0 Typical Utility Plan and Section.

10.2 Utility Layout and Separation Criteria

Utility main layout and separations will be designed in accordance with the City of San Francisco Subdivision Regulations (Subdivision Regulations) and SFPUC Utility Standards. Utility main separation requirements are presented in Table 10.0 Horizontal Utility Main Separation Matrix. Subdivision Regulations shall prevail unless a design modification is granted by SFPUC.

Table 10.0: Minimum Horizontal Utility Main Separation Matrix

Utility Separation	Combined Sewer	Combined Sewer Force Main	Potable Water (LPW)	Auxiliary Water Supply System (AWSS)	Non-Potable Water
Face of Curb	5' clear to OD (Ref 1, copied LPW)	5' clear to OD (Ref 1, copied LPW)	5' clear to OD (Ref 1)	5' clear to OD (Ref 1, copied LPW)	5' clear to OD (Ref 1, copied LPW)
Combined Sewer	---	3.5' min clear OD to OD (Ref 1)	10' clear OD to OD (Ref 2)	3.5' min clear OD to OD (Ref 1)	3.5' min clear OD to OD (Ref 1)
Combined Sewer Force Main	---	---	10' clear OD to OD (Ref 2)	3.5' min clear OD to OD (Ref 1)	3.5' min clear OD to OD (Ref 1)
Potable Water (LPW)	---	---	---	4' clear OD to OD (Ref 1 & 2)	4' clear OD to OD (Ref 1 & 2)
Auxiliary Water Supply System	---	---	---	---	3' clear to OD pipe (Ref 1)

Ref 1: San Francisco Subdivision Regulations, Diagram No. 1 Minimum Utilities Separation for Wastewater and Water – Combined Sewer System, dated October, 2014

Ref 2: CA Code of Regulations Title 22 Section 64572

10.3 Conceptual Utility Layout

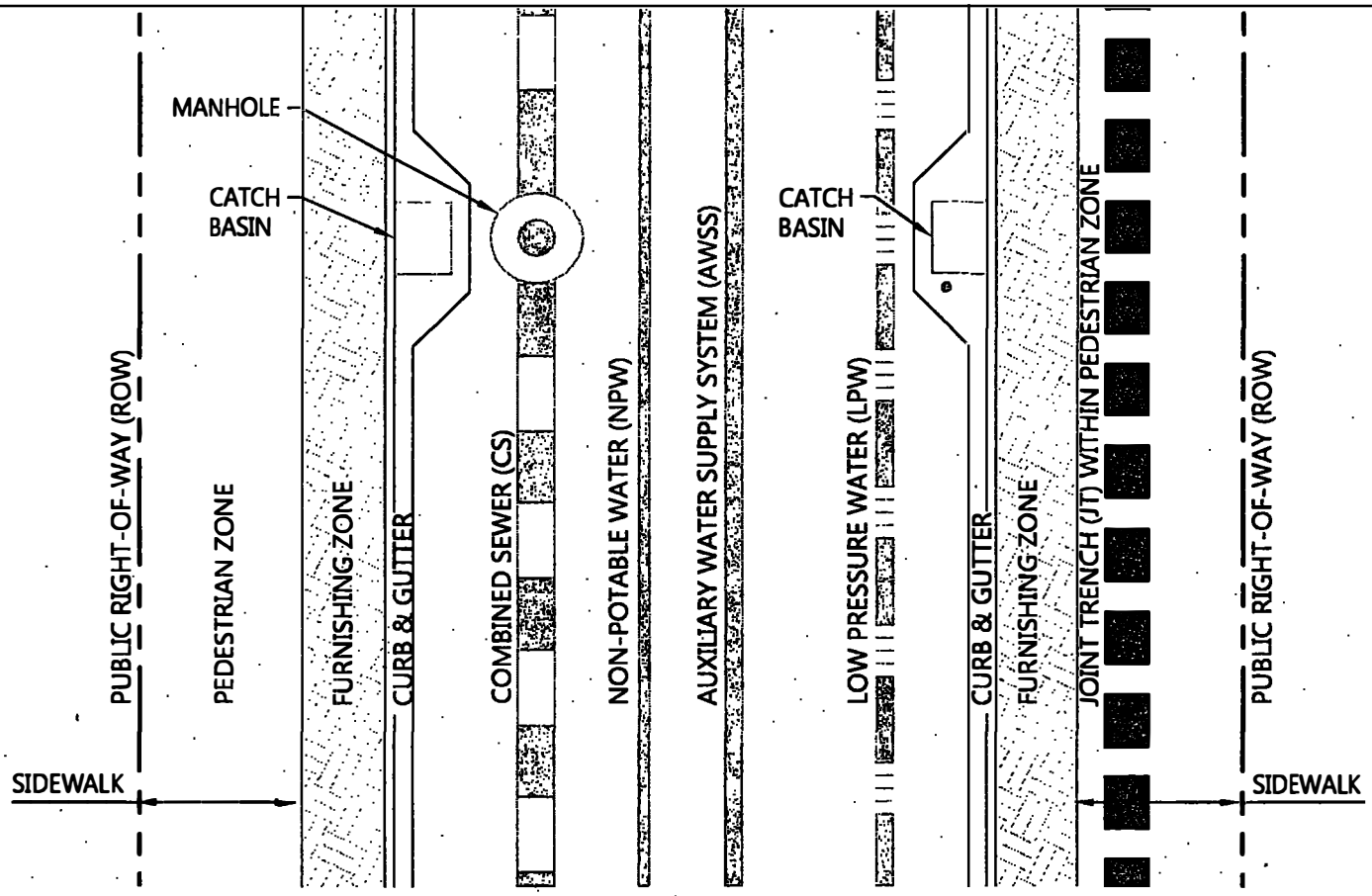
The Project utility layout is designed to connect the proposed Project utility infrastructure to the existing adjacent public utility infrastructure facilities. Individual utility systems are further described and shown in Sections 11 through 16. Specific sections for each roadway are included in the Pier 70 SUD Roadway and Utility Section Supplement to be approved separately as part of the Master Utility Plans.

10.4 Utility Layout Requirements Exception or Design Modifications

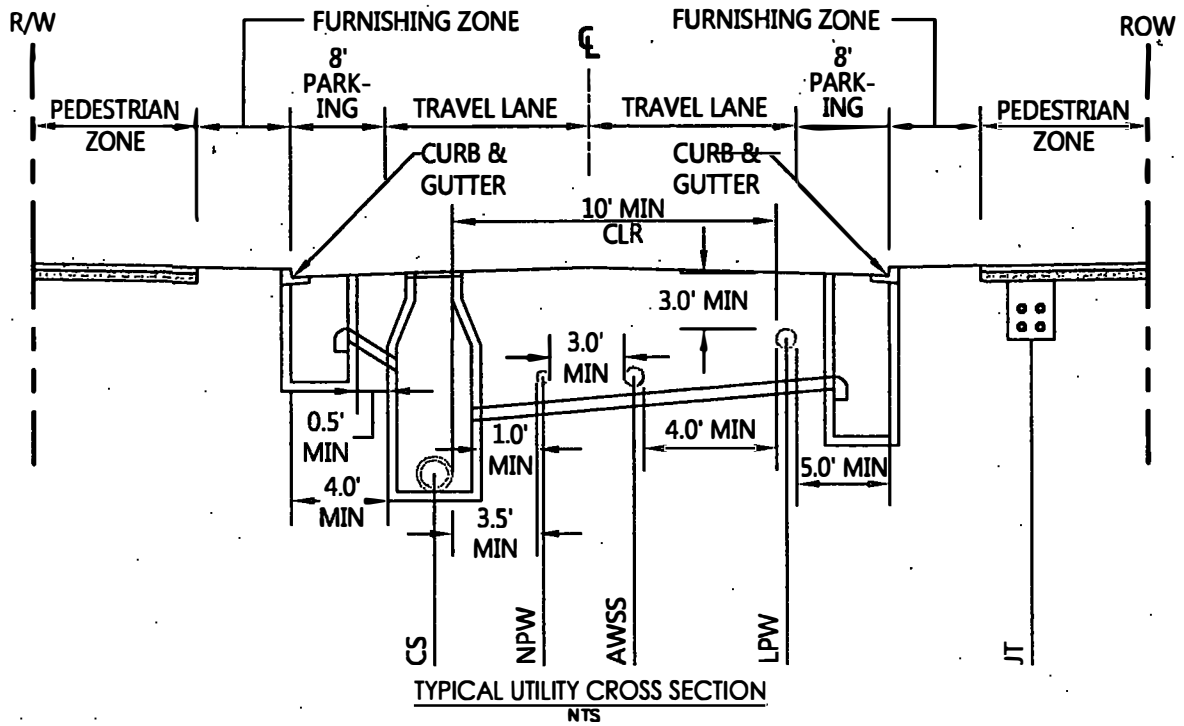
Based on the utility sizing and roadway sections included in the Pier 70 SUD Roadway and Utility Section Supplement, proposed exceptions or design modifications may be required, subject to approval, for the following conditions

- Combined Sewer Force Main under multi-use path at 20th Street
- Low Pressure Water Main within 5.0 feet of face of curb at bulbout on 20th Street at Louisiana Street intersection

In accordance with the SSMP, an Independent Maintenance Entity will accept additional maintenance responsibilities caused by deviations from standards listed above, including restoration of the areas listed above where maintenance of utilities may impact improvements, subject to approval. SFPUC would be responsible only for temporary restoration with asphalt curbs or paving as is typical in standard roadways. The Independent Maintenance Entity would be responsible for final restoration as defined in a Maintenance Agreement to be executed with the Acquiring Agency for the street. A formal exception or design modification will be requested with the Project construction documents submittal, as needed.



TYPICAL STREETS
NTS



TYPICAL UTILITY CROSS SECTION
NTS

NOTE: MANHOLE SHALL NOT BE LOCATED WITHIN THE PARKING SPACES.

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11. Low Pressure Potable Water System

11.1 Existing Low Pressure Water System

Existing potable water service to the Project site is provided by a water supply, storage and distribution system owned and operated by SFPUC. The system provides domestic water supply and low pressure fire hydrants. The existing Low Pressure Water (LPW) system includes a 16-inch diameter transmission main on 3rd Street and local 8-inch and 12-inch distribution mains in the surrounding street network. The existing water mains in the vicinity of the Project are shown on Figure 11.0.

The Project site also includes a network of water service piping that will be removed or abandoned with Project development.

Hydrant flow tests were performed on the hydrants in the vicinity of the Project to establish pressure and flow of the existing system, and create a model for the Project. Results of the 6 hydrant flow tests are included in Table 11.1. For additional information on the flow tests performed by the SFFD, including a map of hydrant locations, see Appendix F of the Low Pressure Water Master Plan (LPWMP).

Table 11.1: Existing Fire Hydrant Flow Data

Hydrant	Observed Flow (gpm)	Static Pressure at Gauge (psi)	Observed Pressure During Flow Test (psi)	Pressure Drop During Flow Test (psi)
1	924	72	69	3
2	809	72	70	2
3	1,093	72	66	6
4	1,067	72	71	1
5	1,144	72	71	1
6	791	62	57	5

11.2 Proposed Low Pressure Water System

11.2.1 Proposed Water Demands

The Project water demands are identified in Table 11.2.

Table 11.2: Project Domestic Water Demands

Scenario	Maximum Residential Scenario Demand (gpm)	Maximum Commercial Scenario Demand (gpm)
Average Day Demand (ADD)	299	246
Max Day Demand (MDD) (Peaking Factor 1.2)	358	295
Peak Hour Demand (PHD) (Peaking Factor 2.6)	792	652
Required Fire Flow	2000	2000
Maximum Demand (MDD + Fire Flow)	2,358	2,295

For additional information on the Project's methods used for calculating domestic water demands, including specific unit water demands used, see the LPWMP.

11.2.2 Project Water Supply

As required by the California Water Code, SFPUC prepared and approved a Water Supply Assessment for the Project, dated May 4, 2016. SFPUC concluded that there are adequate water supplies to serve the Project and cumulative retail water demands during normal years, single dry years, and multiple dry years over a 20-year planning horizon.

11.2.3 Proposed Water Distribution System

The Developer's infrastructure obligation includes the design and construction of the proposed LPW distribution system within the Developer Obligation Area identified in Figure 1.0, except on 20th street between Illinois and Louisiana Street where there is an existing 12-inch main LPW line. The Developer will prepare a work plan to assess the condition of this LPW line to determine if it is suitable to support the project based on criteria provided by SFPUC and retain the LPW line as appropriate. Should the existing 12-inch main LPW line not meet the SFPUC criteria, the Developer will replace the line on 20th Street between Illinois and Louisiana Street. The proposed water distribution system is shown in Figure 11.0. The LPW system consists of the backbone improvements – such as 8-inch and 12-inch low pressure mains, fittings, valves, and hydrants, service laterals, meters and appurtenant installations.

Developer will strive to install laterals at the time the main is constructed in accordance with the Subdivision Regulations. However in cases where the adjacent vertical development lags too far behind the infrastructure construction to install the lateral with certainty, Developer may request to defer installation of laterals, subject to case by case approval as an exception to the Subdivision Regulations in accordance with Subdivision Code Section 1312. The deferral will be subject to certain pavement restoration requirements within the moratorium area to be identified as a condition to the exception. Connection details will be provided with the Improvement Plans for review and approval by SFPUC.

The LPW distribution system will connect to the existing low pressure water system at Louisiana Street and 20th Street, Illinois Street and 21st Street, and Illinois and 22nd Street. The LPW infrastructure will be located within the paved area of the street and provide a minimum clearance from the outside of the pipe of 5.0 feet to

face of curb, except for a small section of pipe on 20th Street at Louisiana Street (if exception/design modification is approved by SFPUC and SFDPW) due to a bulbout at this location.

Vertical and horizontal separation distances between adjacent combined sewer system, non-potable water and dry utilities will conform to the requirements outlined in Title 22 of the California Code of Regulations and the State of California Department of Health Services Guidance Memorandum 2003-02 and the Subdivision Regulations. Figure 10.0 shows typical utility alignment and roadway sections.

Required disinfection of new mains and connections to existing mains must be performed by SFPUC at Developer's cost.

11.2.4 Low Pressure Water Design Criteria

The proposed LPW system is required to maintain 20 psi minimum residual pressure and 14 fps maximum velocity during MDD plus Fire Flow. The system will also maintain 40 psi minimum residual pressure and 8 fps maximum velocity during PHD. The Project water system is modeled in the LPWMP to confirm the on-site LPW system will meet pressure and flow requirements.

11.3 Potable Water Fire Protection

The potable water system will be the primary fire water supply for the Project site. The potable water system will be designed to provide the maximum daily demand plus a design fire flow of 2,000 gpm. The 2,000 gpm fire flow will provide adequate fire protection for the new construction. The existing historical structures to remain will be retrofitted with appropriate fire protection systems when they are remodeled for commercial use and will be designed based on the 2,000 gpm flow available.

The project will coordinate with the SFFD for the final location of potable water fire hydrants around the Project.

11.4 Low Pressure Water System Phasing

The new LPW system will be installed based on the principle of adjacency, and as-needed to facilitate a specific proposed Development Phase consistent with the Project Phasing Plan to be approved with the Basis of Design. . The amount and location of the proposed LPW system installed will be the minimum necessary to support the Development Phase. The new Development Phase will connect to the existing systems as close to the edge of the Development Phase area as possible while maintaining the integrity of the existing system. Repairs and/or replacement of the existing facilities will be made as necessary to support the proposed Development Phase. Temporary LPW systems may be constructed by Developer and maintained by SFPUC at Developer's expense as necessary to support existing LPW facilities impacted by proposed Development Phases.

Impacts to improvements installed with previously constructed portions of the development due to the designs of subsequent phases will be the responsibility of the Developer and addressed prior to approval of the construction documents for the subsequent Phase.

For each Development Phase, the Developer will provide a Low Pressure Water Utility Report describing and depicting the existing LPW infrastructure and the proposed phased improvements and demonstrate that the Development Phase will provide the required pressure and flow.

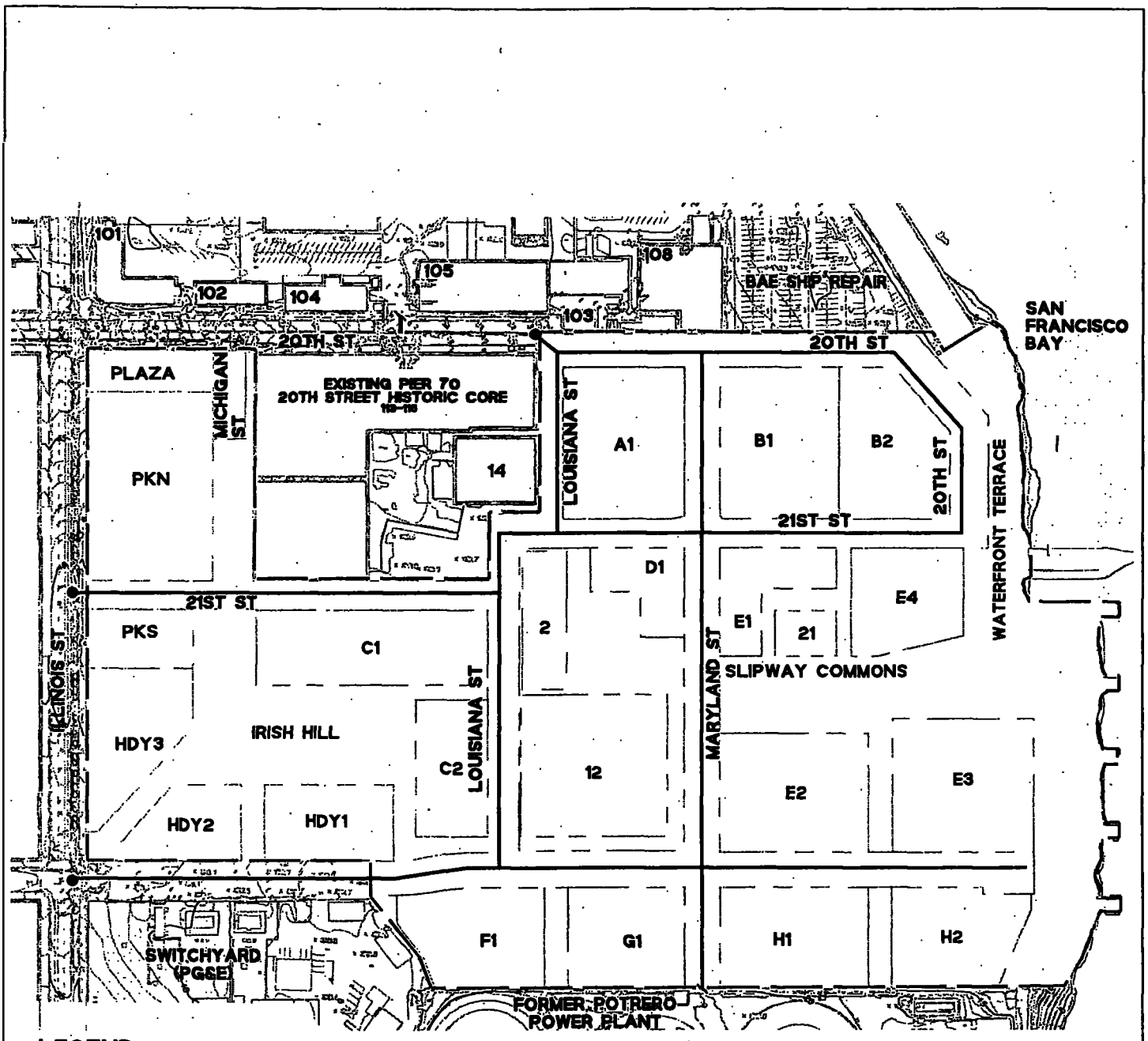

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FIGURE 11.0: LOW PRESSURE WATER LOCATION

12. Non-Potable Water System

In September 2012, the City and County of San Francisco adopted the Non-Potable Water Ordinance allowing the collection, treatment, and use of alternative water sources for non-potable applications. In October 2013, the ordinance was amended to allow district-scale water systems consisting of two or more building sharing a non-potable water system. The ordinance was further amended in July 2015 to mandate the installation of onsite non-potable water systems in new developments 250,000 sf or more (the "Non-Potable Water Ordinance", Ordinance 109-15 – Mandatory Use of Alternate Water Supplies in New Construction). The project will comply with local ordinances by either supplying non-potable water demands through a network of non-potable water pipes supplied from a district wide Water Treatment and Recycling System (WTRS) located just outside of the Developer Obligation Area in Building 108 or by implementing graywater reuse on a building by building basis through the site. Should the project proceed with the parcel by parcel graywater reuse systems, the project will apply for an exemption from requirements for recycled water in the proposed roadway network and if granted will not install NPW mains in roadways.

12.1 Existing Recycled Water System

The Project is located within the City's designated recycled water use area, however a City recycled water system is not currently available within or near the Project. The Project may be served by the City's recycled water supply in the future as a back-up in the event a district-wide WTRS is implementable.

12.2 Proposed Non-Potable Water System

The Project will either implement parcel-based graywater reuse systems or a district wide WTRS to comply with the City's Non-Potable Water Program. The Developer's Infrastructure obligations include the design and construction of either proposed Non-Potable Water (NPW) system variants within the Developer Obligation Area identified in Figure 1.0 and further described in 12.2.1 and 12.2.2. The decision between parcel-based or district-wide WTRS will be made prior to construction of Phase 1 based on market viability and the SFPUC Non Potable Water application procedures.

The project Non-Potable Water (NPW) demands are identified in Table 12.0 and in the Non-Potable Water Master Plan (NPWMP). The NPWMP outlines the Project's methods used for calculating non-potable water demands, including specific unit water demands used.

Table 12.0: Project Non-Potable Domestic Water Demands

Scenario	Maximum Residential Scenario Demand (gpm)	Maximum Commercial Scenario Demand (gpm)
Average Day Demand (ADD)	95	113
Max Day Demand (MDD) (Peaking Factor 1.4)	134	158
Peak Hour Demand (PHD) (Peaking Factor 3.0)	286	339

12.2.1 Parcel Based Graywater Variant

A City source of RW is not available at the site. Should the project proceed with Parcel based Graywater to address NPW demands, each parcel will implement graywater reuse to supply NPW demands within the building. In the event that irrigation of parks and open space can be provided with pipes from adjacent

buildings, the project would file an application for an exemption from requirements for RW in the proposed roadway network, and a RW distribution network would not be installed if the exemption is approved. In the event an exemption is not granted, a RW distribution system would be installed with cross-connections to the LPW system within the Developer Obligation Area, but not extending to off-site users.

12.2.2 District WTRS Variant

As described and shown in the Updated District-Scale Wastewater Treatment and Reuse Project Summary for the Pier 70 SUD Project, dated September 27, 2016 by AECOM, if implemented, the WTRS will be located north of 20th Street, in Building 108 or in the parking lot east of Building 108 adjacent to the BAE Ship Repair Facility. The WTRS may collect blackwater, graywater, and/or rainwater from the project, and will include the following in one centralized location: feed tank, trash trap, bioreactor, disinfection and storage tank, and possibly heat recovery. Wastewater flows in excess of the non-potable demand will be discharged to the municipal sewer. Liquid waste from the reactor is assumed to be discharged to municipal sewer or be hauled away by truck to a location permitted to accept liquid waste, in compliance with the Hazardous Materials Business Plans for Wastewater Treatment and Reuse Systems. Trash trap waste is assumed to be disposed of with other landfill waste. The WTRS will be enclosed and odor control unit(s) will be installed and vented to the atmosphere. The footprint of the facility will be approximately 10,000 to 20,000 square feet and will be sized for a total capacity up to 150,000 gallons per day (depending on final project demands) and designed to allow expansion of the treatment capacity by phase.

Should the project proceed with the District WTRS Variant, the following would apply:

12.2.2.1 Proposed Non-Potable Water Supply

Under the district wide WTRS scenario, NPW will be supplied by a WTRS that will divert flows from the combined sewer system, treat these flows, and generate NPW for use on site. Excess combined sewer flow would be pumped in the 20th Street force main to the combined sewer system to Illinois Street, which would require agreement with SFPUC.

12.2.2.2 Proposed Distribution System

Under the district wide WTRS scenario, the Developer's Infrastructure obligations include the design and construction of the proposed non-potable water distribution system within the Developer Obligation Area identified in Figure 1.0. A private entity may own and operate the NPW system once complete within a Major Encroachment Permit, or alternatively, the Developer may explore the possibility that the SFPUC would own and operate the NPW distribution system. The proposed NPW distribution system is shown in Figure 12.0 for the WTRS scenario. The NPW system consists of the backbone improvements - such as 8-inch low pressure mains, fittings, and valves, service laterals, meters and appurtenant installations. Developer may choose to request to defer installation of laterals in certain cases where the adjacent vertical development will lag the infrastructure construction, subject to case by case approval as an exception. See Section 11.2.3 for full explanation. If operated by a private entity, an encroachment permit will be required for the NPW system located in public rights of way.

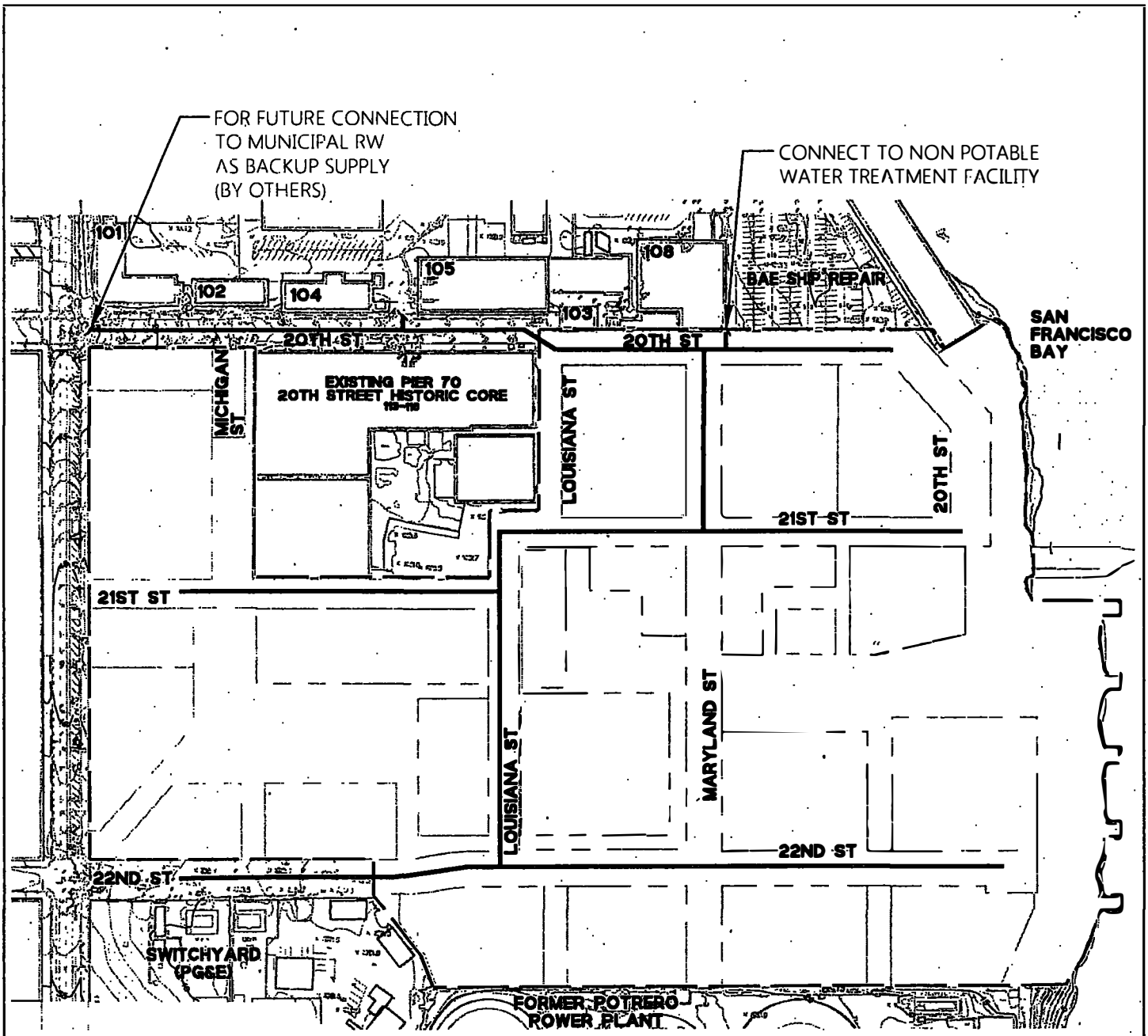
12.3 Non-Potable Water System Phasing

The new NPW system will be installed based on the principle of adjacency, and as-needed to facilitate a specific proposed Development Phase the Project Phasing Plan to be approved with the Basis of Design. . The amount and location of the proposed NPW

system installed will be the minimum necessary to support the Development Phase. The new Development Phase will connect to the existing systems as close to the edge of the Development Phase area as possible while maintaining the integrity of the existing system. Each phase will be operational prior to occupancy of proposed buildings to be constructed as a part of that phase.

The Operator of the NPW distribution system will be responsible for the new, phased NPW facilities once construction of the improvements is complete. In the event that the Operator is a private entity, a major encroachment will be needed for the NPW distribution system. Alternatively, the Developer may explore the possibility that the SFPUC would operate the NPW distribution system. Impacts to improvements installed with previously constructed portions of the development due to the designs of subsequent phases will be the responsibility of the Developer and addressed prior to approval of the construction documents for the subsequent Phase.

For each Development Phase, the Developer will provide the City a Non-Potable Water Utility Report describing and depicting the existing NPW infrastructure and the proposed phased improvements and demonstrate that the Development Phase will provide the required pressure and flow.



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PIER 70 SUD INFRASTRUCTURE PLAN

FIGURE 12.0: NON-POTABLE WATER LOCATION

13. Auxiliary Water Supply System (AWSS)

13.1 Existing AWSS Infrastructure

The SFPUC, in cooperation with the San Francisco Fire Department (SFFD), owns and operates the Auxiliary Water Supply System (AWSS), a high-pressure, non-potable water distribution system dedicated to fire suppression that is particularly designed for reliability after a major seismic event. Currently, a 14-inch AWSS main exists in 3rd Street.

13.2 AWSS Regulations and Requirements

New developments within the City must meet the fire suppression objectives that were developed by SFPUC and SFFD. Developer will prepare a design study that is equivalent to a Master Utility Plan for AWSS and submit with the Basis of Design as part of each Phase. The SFPUC and SFFD will work with the Developer to determine post-seismic event fire suppression requirements during the planning phases of the Project. Requirements will be determined based on building density, fire flow, pressure requirements, City-side objectives for fire suppression following a seismic event, and proximity of new facilities to existing AWSS facilities. AWSS improvements will be located in public right-of-way, or on Port of San Francisco property within a public easement, as approved by SFPUC on a case-by-case basis.

13.3 Proposed AWSS Infrastructure

To meet the SFPUC and SFFD AWSS requirements, the Project will be required to incorporate new AWSS infrastructure. The Developer's Infrastructure obligations include the design and construction of the proposed AWSS within the Developer Obligation Area identified in Figure 1.0 as well as the offsite AWSS extension in 20th Street between 3rd Street and Illinois Street, including the tie-in to the existing AWSS in 3rd Street. In addition, the system includes an AWSS extension in 22nd Street between 3rd Street and Illinois

Street, including the tie-in to the existing AWSS in 3rd Street, to be designed and constructed by other Developers to serve the Hoedown Yard development.

The potable water system will be the primary fire water supply for the Project site. The AWSS is a redundant system that will be designed for enhanced post-seismic reliability achieved through geotechnical stabilization and use of more robust materials such as Earthquake Resistant Ductile Iron Pipe (ERDIP).

The AWSS consists of the backbone improvements - such as high pressure ERDIP mains, fittings, valves, and hydrants. Pipe diameter will be determined based on modeling of the system to be performed by SFPUC and their consultants and presented in the Basis of Design for each Phase. SFPUC shall work in good faith with Developer to provide reasonable criteria for the proposed interim condition prior to connection through PPP with the goal of not oversizing the piping beyond what will be required in the ultimate looped condition. The AWSS generally does not include service laterals that connect to buildings. The proposed AWSS layout consists of the following, as depicted on Figure 13.0, that would create a new reliable auxiliary system to complement the potable water fire protection system with multiple points of connection to the existing City AWSS.:

1. Developer Obligation: An L-shaped segment of high-pressure mains connecting to the existing AWSS distribution system in 3rd Street at 20th Street, extending through 20th Street and Maryland Street, and connecting through the future development area in former Potrero Power Plant. The Developers of former Potrero Power Plant will construct a mirror L-shaped segment that will connect back to the existing AWSS distribution system in 3rd Street at 23rd Street, creating a loop between the two sites. There will be new hydrants every 500 feet (or as approved by SFFD) within the Project as part of this L-shaped segment. In the event that the former Potrero Power Plant development project has not commenced construction of AWSS

infrastructure within their site prior to completion of Phase 3 at Pier 70, Developer will be required to install AWSS pipe in 22nd Street between Maryland Street and the existing City AWSS to complete a second point of connection as a condition of acceptance of Phase 3 streets. Developer must include this possible AWSS in the affected utility sections of 22nd Street for future planning purposes.

2. By Others: A straight extension of high-pressure main connecting to the existing AWSS distribution system in 3rd Street at 22nd Street to Illinois Street, where a fire hydrant will be located at the northeast corner.

A typical utility section identifying clearances to other infrastructure within the roadway network is identified in Figure 10. Final design of the AWSS for the project will be determined by the SFPUC and SFFD in consultation with the Developer.

13.4 Proposed System Wide Improvements

Based on a recent study commissioned by SFPUC, additional improvements are being considered to enhance AWSS service to the project vicinity, including Mission Bay. In addition to the Proposed AWSS Infrastructure listed in Section 13.3, Developer will provide a one-time capital contribution not to exceed $1,500,000 current dollars to the City, subject to a 4.5% escalation calculated from the time of project approval, to pay for a share of the system-wide improvements proposed in the vicinity of the project. This payment amount will be provided based on an actual fair share calculation up to the specified amount and must be utilized to pay for improvements that benefit the project. Unless the parties mutually agree to a different payment trigger, payment will be due at the earlier of either SFPUC's Notice to Proceed for the system-wide improvements or acceptance of the final City street in Phase 3.

13.5 AWSS Phasing

The new AWSS will be installed based on the principle of adjacency and as-needed to facilitate a specific proposed Development Phase the Project Phasing Plan to be approved with the Basis of Design. . The amount and location of the proposed AWSS installed will be the minimum necessary to support the Development Phase. The new Development Phase will connect to the existing systems as close to the edge of the Development Phase area as possible while maintaining the integrity of the existing system.

The SFPUC will be responsible for maintenance of SFPUC-owned AWSS facilities. . Impacts to improvements installed with previously constructed portions of the development due to the designs of subsequent phases will be the responsibility of the Developer and addressed prior to approval of the construction documents for the subsequent Phase.

For each Development Phase, the SFPUC will provide flow and pressure capacity of the existing AWSS that project system is connecting to at the Developer's Expense. The developer, in conjunction with its consultants, will provide an AWSS Report describing the pressure and flow the AWSS provides with each phase. The construction documents will be completed by the Developer in conjunction with the SFPUC.

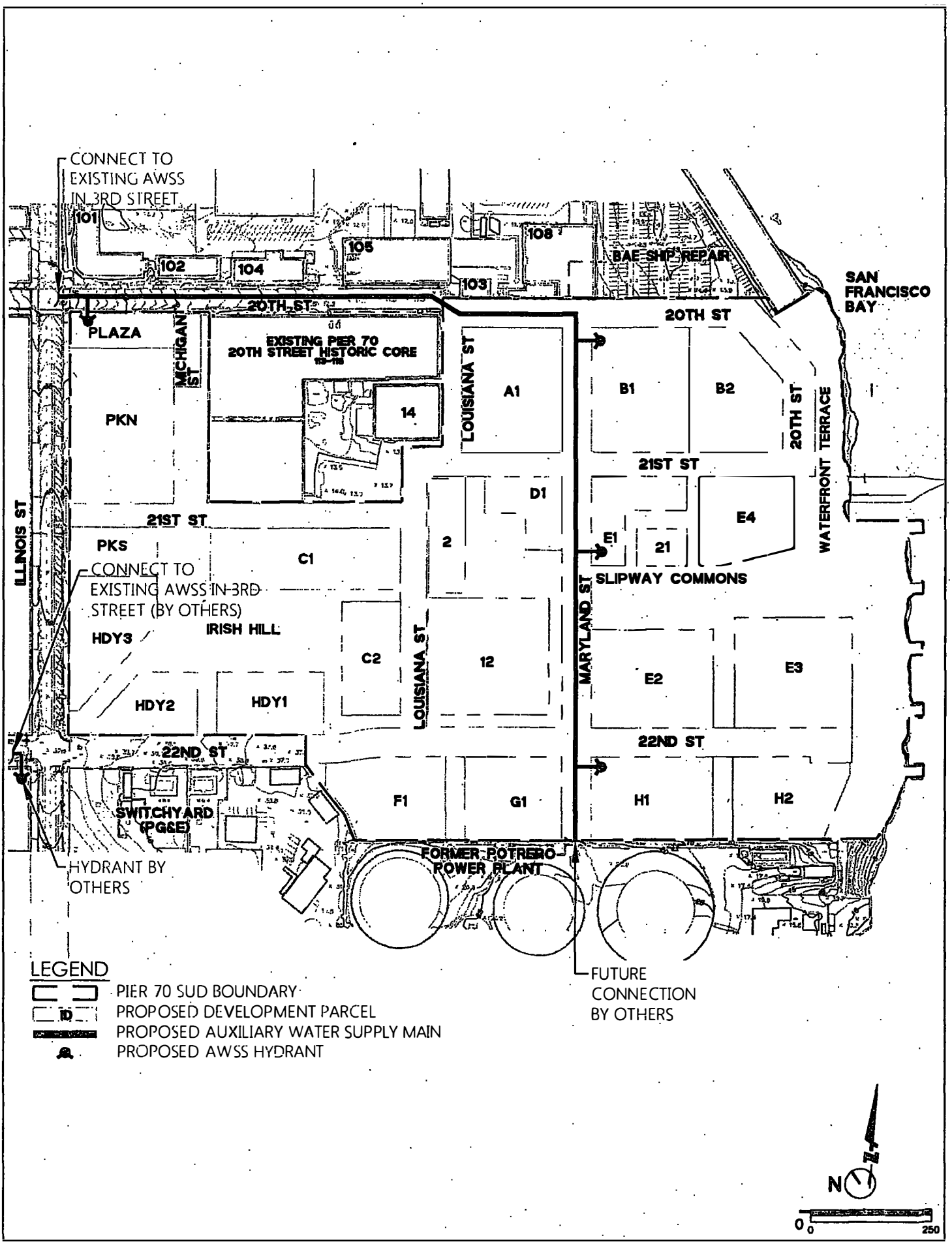

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FIGURE 13.0: AUXILIARY WATER SUPPLY LOCATION

14. Combined Sewer System

14.1 Existing Combined Sewer

The project is located in the City's Central Basin Combined Sewer System (CSS) district where sanitary sewer and storm water are collected and conveyed in the same system.

14.1.1 Existing Drainage Areas

The Project site is part of a larger 51.0 acre drainage area identified in the March 13, 2014 SFPUC memorandum, "Pier 70 Development – 20th Street Pump Station Hydraulic Assessment."

14.1.2 Existing Sewer Demands

Based on the March 13, 2014 SFPUC memorandum, "Pier 70 Development – 20th Street Pump Station Hydraulic Assessment," existing Average Dry Weather Flow (ADWF) is 100 gpm and the existing Peak Dry Weather Flow (PDWF) is 200 gpm.

14.1.3 Existing Combined Sewer System

The drainage basin is served by an existing CSS that includes a gravity collection system, pump station, force main, storage and CS control structures and CS outfall structures.

The CS gravity collection system includes 8-inch and 18-inch CS mains (to remain) in 20th Street between Illinois Street and the future Georgia Street at the BAE shipyard entrance. A 42-inch storage pipe then conveys flow along 20th Street from Georgia Street to the CS pump station near the Bay at the east end of 20th Street, is also known as the SFPUC 20th Street Pump Station. A 54-inch storage pipe extends approximately 950-feet south. The 42-inch storage pipe, 54-inch storage pipe, and 20th Street Pump Station will be replaced as part of the Project.

There are other Port owned sanitary sewer mains on the site that will be removed or abandoned as part of the Project.

The pump station pumps sanitary sewer and storm events consistent with the applicable NPDES Permit to the 27-inch gravity CS main in Illinois Street via a 10-inch diameter force main in 20th Street and a portion of Illinois Street. This pump station has the capacity to pump sanitary sewer flows and minor storm events. The pump station works in conjunction with 42-inch and 54-inch on site storage pipes and control structures for existing outfall structures 30 and 30A to manage stormwater and limit the number of CS outfall events as identified in the City's NPDES permit.

14.2 Proposed Combined Sewer

The project will continue to use a CSS for conveyance of sanitary sewer and storm water flows from the Project site. Because the project is over 250,000 gross square feet it will be subject to Article 12C of the San Francisco Health Code, Onsite Water Reuse Ordinance. To comply with this ordinance the Project will either implement gray water reuse on a parcel by parcel basis or implement a District Wide Water Treatment and Recycling System. The CSS is conservatively analyzed without assuming any reduction from wastewater treatment and reuse of non-potable water.

The Developer's infrastructure obligation includes the design and construction of the new combined sewer force main (CSFM) in 20th Street between Louisiana Street and the combined sewer pump station. The Developer will prepare a work plan to assess the condition and appropriate sizing of the remainder of the existing offsite CSFM that connects to the City CSS in Illinois Street to determine if it is suitable to support the project based on criteria provided by SFPUC and retain the CSFM appropriate. Should the existing 10-inch CSFM not meet the SFPUC review and criteria, the Developer will replace

the line on 20th Street between Illinois Street and Louisiana Street as well as the line in Illinois Street between 20th Street and the manhole near 21st Street. The replacement of this infrastructure is at the sole discretion of the SFPUC.

14.2.1 Drainage Area

A portion of the drainage area previously directed to the existing CS Pump Station will be connected directly to the gravity main located in Illinois Street, to which the pump station ultimately drains. This reduced area is the western and southern half of Buildings PKS, HDY2 and HDY3 and totals approximately 1.2 acres. Additionally, sewer contributions from these structures will also be directed to the gravity main in Illinois Street. The remainder of the drainage area previously draining to the pump station totals approximately 49.8 acres and will continue to follow this drainage pattern.

14.2.2 Proposed Sanitary Sewer Demands

Project sanitary sewer demands conservatively assume 95% return on potable water and 100% return on non-potable water (indicative of implementation of WTRS which results in higher CS conveyance demand than building by building graywater reuse) resulting in an ADWF of 365,955 gpd for the maximum residential scenario. Applying a peaking factor of 3.0 to the ADWF, the Project is anticipated to generate a PDWF of 1,097,865 gpd or 762 gpm. The project Grading and Combined Sewer System Master Plan (GCSMP) outlines the Project's method for calculating the sanitary sewer demand is being submitted concurrently with this Infrastructure Plan.

14.2.3 Proposed Combined Sewer Capacity and Design Criteria

Preliminary hydrology and hydraulic models for the site have been developed and are included in the Combined Sewer Master Plan. The proposed CSS will be

designed with tidal elevation of POCD 96.5 or SFVD13 7.9 and will generally provide 4 feet of freeboard in conformance with the Subdivision Regulations, and include allowance for SLR of 24 inches. The Reconstructed 20th Street Pump Station will be protected from 66 inches of SLR to elevation 103.5 POCD or 14.9 SFVD13. In addition, the rim elevation of the Pump Station will designed to protect from flooding related to the potential for overland flows.

14.2.4 Proposed Combined Sewer System

The proposed CSS is shown schematically in Figure 14.0. The CSS consists of the backbone improvements - such as gravity mains, manholes, catch basins, culverts, pump station, force main, and storage pipe, service laterals and appurtenant installations. . Developer may choose to request to defer installation of laterals (e.g., where the adjacent vertical development will lag the infrastructure construction), subject to case by case approval by SFPUC as an exception to the San Francisco Subdivision Code..

The CSS will be designed and constructed by the Developer with review and approval by SFPUC. The proposed CSS includes the gravity collection system, pump station, force main, storage and CS control structures and CS outfall structures. The CS outfall will require a flap gate, which will be installed at the time of outfall repair. The offsite existing upstream gravity CSS in 20th street between Illinois Street and Louisiana Street will remain in place. The existing offsite force main between the point of connection at 20th Street and Louisiana Street to the connection to the gravity sewer system on Illinois Street in the vicinity of 21st Street, may be retained subject to SFPUC approval of pending condition and sizing assessment. The proposed CSS system will be owned and maintained by the City upon construction completion and improvement acceptance by the City.

The proposed gravity CSS within the Developer Obligation Area will include a system of 12-inch to 54-inch mains. In raised streets, (if approved by the City), manholes will be offset from the valley gutter to prevent inundation during flood events. The gravity mains will connect to a new, relocated CS pump station located in the BAE parking area just north of 20th Street in the vicinity of Building 108. The pump station will pump sanitary sewer flows and the design stormwater flow to the 27-inch CS main in Illinois Street. The pump station control panel is proposed to be located within or on the side of existing Building 108 with substructures such as the wet well located outside, directly adjacent to the building.

The pump station will work in conjunction with proposed on-site storage pipe and control structures for outfall structures 30 and 30A to manage stormwater and limit the number of CS outfall events as identified in the City's NPDES permit.

14.2.5 Water Treatment and Recycling System (WTRS)

The Project may choose to implement a WTRS instead of implementing a parcel based graywater system to comply with the City's Non-Potable Water Ordinance, subject to market viability and the SFPUC Non Potable Water application approval. With WTRS some of the flow from the CSS would be diverted to an on-site, modular wastewater treatment plant that would treat collected wastewater to meet the water quality criteria defined in Title 22, Division 4, Chapter 3: Water Recycling Criteria of the California Code of Regulations. The resulting, treated, non-potable water would then be distributed to development parcels for reuse in toilet flushing, irrigation, cooling towers and other allowable uses as discussed further in the Non-Potable Water section of this Infrastructure Plan. The WTRS would be modular and installed and expanded in increments to accommodate the Phase Development Plan. The first module would have to be operational prior to first occupancy in

accordance with the Non-Potable Water Ordinance, unless otherwise waived by the SFPUC.

14.2.6 Existing Condition on 20th Street

The vicinity of the Historic Core fronting 20th Street, Louisiana Street, and 21st Street is a low-lying area that cannot be raised as part of this project. There are a number of existing historic buildings fronting 20th Street and future grades must generally conform to existing due to this constraining factor. The new CSS will contain the hydraulic grade below the street elevation for the 5-year storm. While the new CSS must maintain or reduce the freeboard and will improve the existing condition, it potentially may not achieve the City's recommended 4 feet and required 2 feet of freeboard as identified in the 2015 San Francisco Subdivision Regulations; after review in detailed design, the Developer may submit a request an exception from the freeboard requirement in these site boundary-constrained areas. Additionally, in the event of SLR, flooding in this low-lying area will need to be addressed as part of the Port's adaptive management strategy for the BAE Shipyard to the north. As previously discussed, the Project will fund a Shoreline Adaptation CFD through special taxes.

14.2.7 SLR Adaptation

The CSS has been designed to accommodate the required tide elevation plus a 24-inch allowance for SLR. As part of the Project's Adaptive Management Strategy, SLR will be monitored to determine when the adaptation strategy needs to be implemented. Adaptation strategy may include raising shoreline grades and addition of SLR pump stations to reduce the CSS hydraulic grade. Ownership and operation of pump stations will be determined in the development of adaptive management strategy (see Section 5.2).

14.2.8 100-Year Storm Design and Overland Release

A storm drain system model for the site has been developed as part of the Combined Sewer Master Plan. The model confirms that the storm drain system, street sections and street grading are able to convey the 100-year storm event and overland release without overtopping the street curb or impacting buildings. Modeling will be reviewed by the SFPUC as part of the MUP review and approval process. For the raised streets, this street was modeled to confirm that a 4-foot wide accessible path is maintained within the pedestrian zone while overland release from the 100-year storm event occurs without flooding subgrade structures such as basements. A draft memorandum outlining performance of drainage for raised streets is included as Appendix F to the GCSMP. Grading must conform to the street and building finish floors of existing Port buildings to remain along 20th Street and Louisiana Street, which affects overland release. At a minimum, the new CSS must maintain the freeboard in these areas for the 100-year storm.

14.2.9 Combined Sewer Phasing

The new CSS will be installed based on the principle of adjacency and as-needed to facilitate a specific proposed Development Phase consistent with the Project Phasing Plan to be approved with the Basis of Design, while also maintaining existing combined sewer function and applicable NPDES permit compliance status. The amount and location of the proposed CSS installed will be the minimum necessary to support the Development Phase, while maintaining service to existing non-project users of the sewer system and system permit compliance. The new Development Phase will connect to the existing systems as close to the edge of the Development Phase area as possible while maintaining the integrity of the existing system for the remainder of the Project. Utilities in previously built phases shall be inspected before and after construction of new phase to monitor any damages

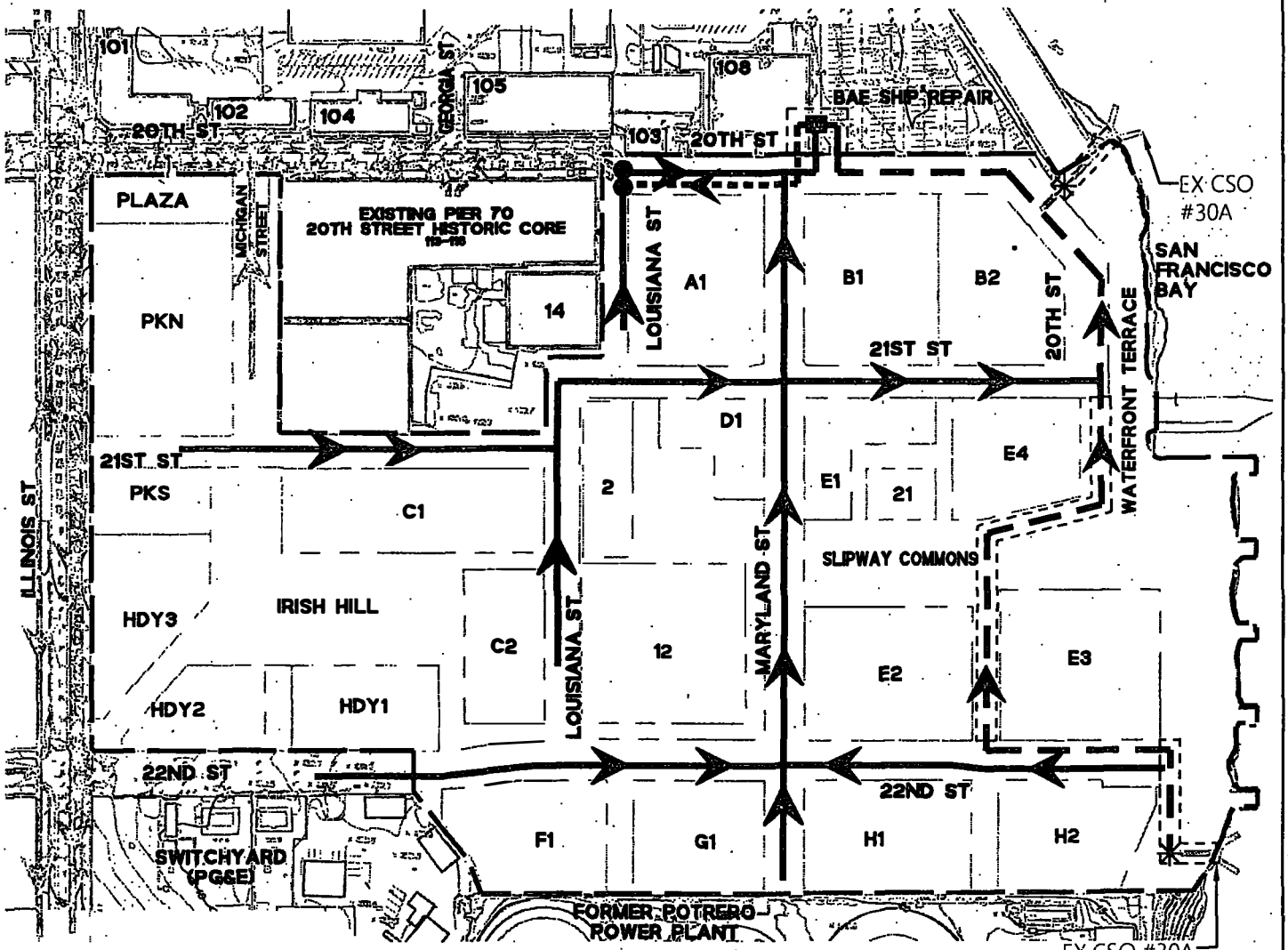
caused during construction. Repairs and/or replacement of the existing facilities will be made as necessary to support the proposed Development Phase.

Temporary CS may be constructed by Developer and maintained by SFPUC at Developer's expense as necessary to support service to permanent infrastructure upstream. Temporary infrastructure will be avoided to the extent possible and are subject to SFPUC for approval.

A combined Alternatives Analysis/Conceptual Engineering Report (AA/CER) for the CS Pump Station, sewer storage facilities, and associated force main will be prepared by the Developer for SFPUC review and approval. The AA/CER will be scheduled in a manner so as to secure SFPUC approval prior to issuance of the Phase 1 Improvement Plan permit. The AA/CER will reference applicable design criteria (e.g., NPDES permit requirements, SLR performance objectives; construction phasing, etc.); identify applicable alternative designs (including capacities of sump, pumps, and storage); evaluate those alternatives, including applicable modeling, and secure SFPUC approval on the preferred alternative. The report will identify construction timing for the Developer's replacement of PS, sewer storage facilities, and outfall repair and flap gate installation. Any needed system-wide modeling will be conducted by the Developer team via access to the SFPUC system model or, at the Developer's request, by the SFPUC (subject to reimbursement).

The existing CS pump station and 54-inch storage pipe will remain until they either a) need to be upgraded because of capacity limitations that would result in Combined Sewer Discharges exceeding those allowed by SFPUC's NPDES Permit, or b) are impacted by the Phase development footprint. Additionally, a Basis of Design Report and supporting analysis will be submitted by the Developer at the

start of each subsequent project Phase in order to reconfirm sewer system performance, including Phase demands. The pump station shall be replaced as part of the Phase improvements if the estimated frequency of Combined Sewer Discharges exceeds the allowable limit by the time of Phase completion. As the existing pump station is in conflict with the development footprint in Phase 3, it must be replaced within Phase 3 at a minimum, if not earlier due to capacity limitations. The amount of storage will be managed to meet the Phase demands until all storage is replaced by Phase 3. Initial calculations of Combined Sewer Discharge frequency by phase have been provided in the Technical Memorandum included as Appendix E to the GCSMP.



LEGEND

- PIER 70 SUD BOUNDARY
- PROPOSED DEVELOPMENT PARCEL
- PROPOSED COMBINED SEWER MAIN
- PROPOSED COMBINED SEWER FORCE MAIN
- PROPOSED COMBINED SEWER STORAGE
- EXISTING COMBINED SEWER FORCE MAIN
- EXISTING COMBINED SEWER GRAVITY MAIN
- PROPOSED PUMP STATION
- POINT OF CONNECTION
- WEIR STRUCTURE/FUTURE PUMP STATION
- OUTSIDE OF RIGHT OF WAY

NOTES

1. HALF OF PKS, HDY3, & HDY2 STORM DRAIN RUNOFF FLOWS DIRECTLY TO 27" GRAVITY MAIN IN ILLINOIS STREET.
2. PKS, HDY2, & HDY3 SEWER FLOWS TO 27" GRAVITY MAIN IN ILLINOIS STREET

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PIER 70 SUD INFRASTRUCTURE PLAN

FIGURE 14.0: COMBINED SEWER LOCATION

15.Stormwater Management

15.1 Existing Stormwater Management System

The site was developed prior to recent implementation of stormwater management systems and does not currently employ any best management practices to manage stormwater runoff. Currently, the site is 87% covered in impervious pavement.

15.2 Proposed Stormwater Management System

The Project is located in a combined sewer area and is subject to the Combined Sewer Area Performance Requirements of the San Francisco Stormwater Management Requirements (SMRs). A Stormwater Master Plan will be provided as part of the Basis of Design submitted with the Improvement Plans. This will be updated with each Phase.

Since the site was previously more than 50% impervious, the Project must reduce the runoff rate and volume of stormwater going into the combined system relative to the 2-year, 24-hour design storm. The Developer's Infrastructure obligations include the design and construction of the proposed stormwater management system within the Developer Obligation Area identified in Figure 1.0. Typically, the SMRs require projects reduce runoff rate and volume of stormwater by 25% each respectively. The SMRs acknowledge that some projects have more challenging site conditions than others, and with this in mind, SFPUC has developed the Modified Compliance Program to allow development projects with proven site challenges and limitations to modify the standard stormwater performance measures set by the SMR. The Modified Compliance Program:

- Applies only to projects in the Combine Sewer System
- Evaluates site limitation including: high groundwater, shallow depth to bedrock, poorly infiltrating soils, contamination, and zero lot line projects
- Assesses project potential for non-potable demand

- Modifies volume and peak runoff rate reduction requirements based on site-specific constraints. Modification allows for increase in peak runoff rate reduction while simultaneously decreasing volume reduction at a 1:1 ratio, to a maximum of 40% peak runoff rate and 10% volume reduction.

15.2.1 Roadways and Open Space

Three percolation tests have been performed at the site, with infiltration results between 0.3 inches per hour in bedrock areas and 2.4 inches per hour in existing fill areas. Additional testing will be performed in the future to confirm infiltration rates site wide in the vicinity of proposed features that will require infiltration for stormwater management. Provided that these tests yield similar results, the Roadways and Open Space will comply with SMRs through infiltration of stormwater runoff into underlying soils in landscape areas and pervious paving. The roadways and open space will achieve 25% peak rate and volume reductions in comparison to the existing condition for the 2 year, 24 hour event.

As discussed in Section 15.2.2 for Development Parcels, within the Developer Obligation Area, the project may increase perviousness in the Roadways and Open Space to provide additional rate and volume reductions for the Development Parcels. As approved by SFPUC based on proposed design, the project would still include equivalent reductions achieved by non-potable reuse as a part of this site wide compliance strategy, and provide the equivalence of 25% rate and volume reductions site wide.

Actual location of permeable paving to be approved during the City projects Street Improvement Permit (SIP) and Stormwater Control Plan (SCP) review and approvals process.

15.2.2 Development Parcels

The Development Parcels are generally zero lot line and directly adjacent to public parks and streets with limited options to reduce the volume of runoff. The Project intends to submit a master application for vertical parcels within the Developer Obligation Area requesting Modified Compliance Approval from SFPUC consisting of a 40 percent reduction in peak runoff rate and a 10 percent reduction in runoff volume for the Development Parcels. The Project's Modified Compliance Application will be submitted to the SMR Review Team prior to submittal of the Preliminary Stormwater Control Plan (SCP) for SFPUC Approval. Additionally, the project will be pursuing a master credit for stormwater volume reduction associated with non-potable reuse at the site through implementation of the district-wide WTRS. Alternatively, as approved by SFPUC, a stormwater volume reduction equivalency credit may be sought parcel by parcel based on graywater reuse within the buildings when subject to the NPO. Additional runoff volume and rate reductions, if required, may be addressed at each development parcel with implementation of Best Management Practices (BMPs), such as green roofs, flow through planters, or detention. Developer is not directly responsible for SMR compliance on Development Parcels.

Additionally, as discussed in 15.2.1 for Roadway and Open Space, the project may elect to increase perviousness within the streets and open space to further achieve a master-credit to be applied to Development Parcels; however, this would require the project to provide the equivalence of full compliance for Development Parcels.

15.2.3 Exempt Areas

Several Areas with the Developer Obligation Area are exempted from SMRs, including the existing portion of 20th Street and 22nd Street which are being

repaved in their current alignment, and Historic Buildings 2, 12 and 21, which are to remain.

15.2.4 SLR Adaptation

Stormwater Management features will be connected to the CSS. Initial design allows both CSS and Stormwater Management features to accommodate 24-inches SLR while maintaining freeboard within the respective systems. Modifications to the CSS required for SLR beyond 24-inches will also mitigate SLR impacts to the Stormwater Management features, future adaptation is not anticipated.

16. Dry Utility Systems

16.1 Existing Dry Utility Systems

16.1.1 Electric

Existing 12kV distribution systems within the project limits are served by Pacific Gas and Electric (PG&E) Company via Port electrical facilities managed and operated by the San Francisco Public Utilities Commission (SFPUC). The PG&E systems emanate from the adjacent PG&E Substation 'A' on Illinois and 22nd Street. PG&E 12kV systems occupy existing rights of way or franchised areas in 22nd Street and Illinois Street, and within the project limits. Port electrical facilities emanate from several PG&E wholesale distribution tariff WDT 12kV service locations within the project site and on the periphery. Specific WDT locations are as follows; Building 21, Building 102 and Michigan Street at 20th Street. These distribution points are wholesale energy transfer locations serving Port owned distribution facilities within the project site managed by the SFPUC PE. PG&E and Port facilities currently provide electric utility service at voltages of 12kV to below 600V with the project site.

16.1.2 Natural Gas

The site is currently served from an existing 16-inch PG&E gas main on Illinois Street through a 4-inch gas main on 20th Street.

16.1.3 Communications

Existing AT&T, Comcast, and other internet providers' facilities existing on Illinois street are in underground duct banks. Existing City of San Francisco Communication Department of Technology Information Services (DTIS) facilities consist of overhead lines and cables in underground conduits.

16.2 Proposed Dry Utility Systems

The Developer's Infrastructure obligations include the design and construction of the proposed dry utility systems per a utility service agreement to be executed during project implementation,

within the Developer Obligation Area identified in Figure 1.0. The proposed Joint Trench Layout is shown on Figure 16.0.

16.2.1 Electric

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 project. SFPUC is the exclusive electric service provider for Pier 70 subject to the conditions of the DA. Based on the Draft June 15, 2015 Master Electric Infrastructure Plan (MEIP), the total cumulative electric load requirement for the project is about 22 MVA megavolt-amperes (MVA).

Developer will design and construct a joint trench with substructures including conduits, pull boxes, concrete pads and enclosures to complete a fully operational distribution system required by the SFPUC in accordance with their Rules and Regulations. The joint trench and associated substructures may be subject to refund. Distribution elements such as switches, transformers, and cables will be provided by the SFPUC and located underground.

SFPUC is responsible for planning, design and construction of all Wholesale Distribution Tariff (WDT) intervening facilities necessary to provide a source of SFPUC power to the project. Developer is responsible for all temporary and permanent distribution facilities starting at the load side of the WDT; including but not limited to the removal and relocation of any existing utility infrastructure, required for this project in accordance with SFPUC Rules and Regulations for Electric Service, local, state, and federal requirements.

SFPUC requires adequate space for the WDT interconnections to the PG&E power grid. Based on the required load of 22 MVA from the MEIP, SFPUC projects that there may be up to three 12kV circuits required to serve the load; that would consequently require additional space to install a switchgear with metering and necessary intervening facilities for respective WDT service location. While the WDT space can be indoor or outdoor, the project anticipates the WDT facilities to be installed indoors

located within specific buildings. SFPUC will be responsible for the design and coordination with the architect, electrical and civil/structural engineers of each building. Each WDT space will require a minimum area of 24 feet by 30 feet and at least 2 feet of unobstructed clearance from the top of the equipment to the bottom of a structural ceiling (if installed indoors). The walls and door around an indoor WDT space shall have a 3-hour fire rating. The door shall open outward and meet the same Uniform Building Code and NEC requirements for the installation and access of the building's electrical main service equipment. The switchgear shall be accessible 24 hours a day, 7 days a week. In the event that the WDT space is no longer needed in the future, SFPUC will remove all equipment including substructures, and restore the slab to a condition consistent with the adjacent building slab. The WDT spaces will not be on any of the development parcels except PKN, PKS, C1B or C1A, and C2A. Vertical Developer shall grant and SFPUC shall document and procure all necessary land rights for the WDT installation, and SFPUC provide a timely quitclaim of those land rights upon vacating the WDT facility.

16.2.2 Natural Gas

The gas distribution system is planned to be an element of a joint trench (JT) system which would include electric, phone, cable TV and streetlight facilities. The joint trench distribution system is shown on Figure 16.0. On some streets, in order to provide 10 feet between proposed building structures and gas piping systems, gas mains may be required to be separated from the joint trench into a gas only trench. The Developer will be responsible for construction of gas mains within the proposed roadway network.

16.2.3 Communications

The communications systems are planned to be an element of a JT which would include electric, gas and streetlight facilities.

Internet providers such as AT&T, Comcast or other third parties will provide new service for proposed improvements as participants in the JT system. Facilities will be placed in franchised areas. The Developer will be responsible for designs and construction of the JT

to accommodate AT&T, Comcast, or other third party facilities within Developer Obligation Area.

The Developer will be responsible for a DTIS substructure system within the Developer Obligation Area, including conduits, boxes and fire alarm pull stations; these will be provided as an element of the JT. Design and specification will be in accordance with DTIS standard requirements.

16.2.4 District Microgrid and Renewable Energy Variants

Solar photovoltaic arrays could be located on various project rooftops and interconnected with a proposed Project district scale microgrid system to serve as a site-side (demand side) distribution system capable of balancing captive supply and demand resources. The Project microgrid would reduce energy losses in transmission and distribution, increasing efficiency of the electric delivery system. The Project microgrid can be backed up by the project's electrical distribution system and would not necessarily supply all project demand.

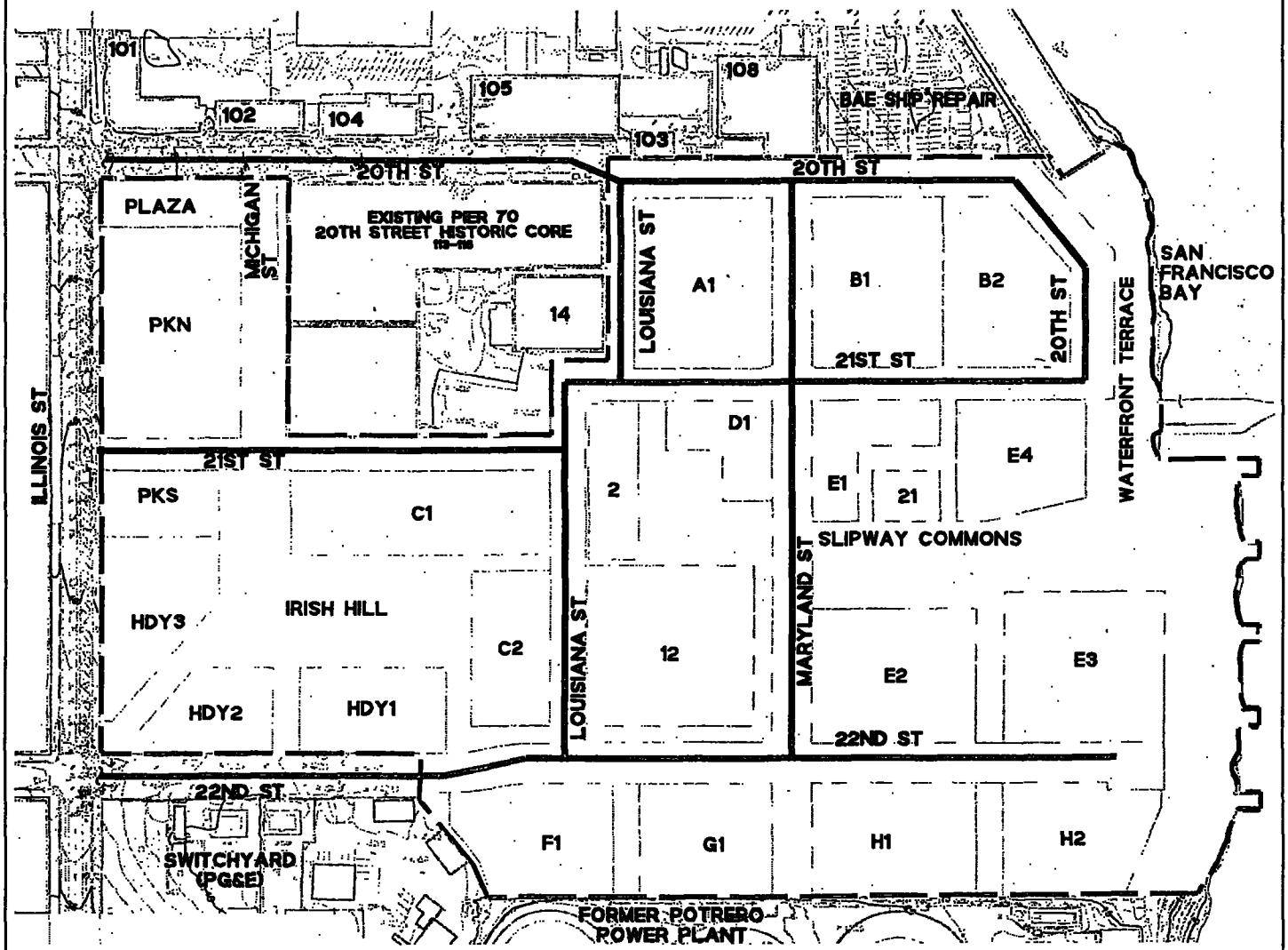
16.2.5 Streetlight Systems

Proposed public streetlighting systems will consist of conduits, boxes, conductors and streetlighting units (foundation, pole, and luminaire). Lighting unit locations, and spacing will be in compliance with San Francisco Public Utilities Commission Streelighting Standard Requirements, and Subdivision Regulations. LED or light emitting diode technology will be employed in conformance with the latest industry standards, IES recommended practice and subject to SFPUC approval. Electric distribution systems will be in compliance with the National Electrical or California electrical Code, and all local requirements. Streetlighting units shall comply with City of San Francisco standards. The SSMP identifies a set of lamp fixtures and fixture types that will be specified, and surplus stock will be provided for repair and replacement of street lights by SFPUC. Project may submit street lights/poles to the City for approval, and if not acceptable, street lights/poles will be maintained by the project through an Independent Maintenance

Entity. The City, at its discretion, may choose to maintain approved fixtures and related electrical wiring on private poles through an agreement with the Independent Maintenance Entity.

16.3 Proposed Dry Utility System Phasing

The new JT system will be installed based on the principle of adjacency and as-needed to facilitate a specific proposed Development Phase the Project Phasing Plan to be approved with the Basis of Design. . The amount and location of the proposed JT installed will be the minimum necessary to support the Development Phase. The new Development Phase will connect to the existing systems as close to the edge of the Development Phase area as possible while maintaining the integrity of the existing system for the remainder of the Project. Repairs and/or replacement of the existing facilities will be made as necessary to support the proposed Development Phase. Temporary JT may be constructed by Developer and maintained by the Project Electrical Utility at Developer's expense as necessary to support service to existing buildings.



DRAWING NAME: K:\Eng13\130182\Exhibits\Infrastructure Plan\Utilities\16.0-JT Location.dwg
PLOT DATE: 09-01-17 PLOTTED BY: rols

PIER 70 SUD INFRASTRUCTURE PLAN

FIGURE 16.0 JOINT TRENCH LOCATION

DDA EXHIBIT B9

REQUIRED SUBMITTALS FOR SOP COMPLIANCE REQUEST

The following items must be submitted to the Port as part of the SOP Compliance Request in accordance with DDA § 15.7(c)(i).

- ❑ Complete all work described in the permit including instructional bulletins (IBs) and notice of correction report (NCRs).
- ❑ Complete corrective work described in field observation reports produced by Developer's consultants.
- ❑ Complete as-built record drawings in the required format.
- ❑ Confirm infrastructure built within the limits of easements and no additional rights are needed.
- ❑ Obtain sign-off from the Engineer of Record
- ❑ Obtain sign-off from the Landscape Architect of Record.
- ❑ Obtain sign-off from third party utility companies.
- ❑ Provide evidence of SFDBI or Port permit completion, including punch list.
- ❑ Prepare a binder with the following:
    - o Evidence of SFPW Americans with Disabilities Act sign-off
    - o Bonds for (or reduced bonds to) 10% for a one year period
    - o Conditional assignment of warranties to Port
    - o Evidence of a recorded Notice of Completion by the Developer
    - o Evidence that the Notice of Completion has been given to all direct contractors and claimants per California Civil Code section 8190.
    - o Preliminary Title Report
    - o Offer of Dedication for Improvements
    - o Offer of Dedication for Public Easements (if not already obtained)
    - o Provision of appropriate rights granted to Port for safe access for pedestrians and vehicles to Port facilities via Developer's improvements in unaccepted streets.

DDA EXHIBIT B9-1

Form of SOP Compliance Determination

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Recorder's Stamp

SOP COMPLIANCE DETERMINATION
(28-Acre Site SOP Compliance)

This SOP Compliance Determination (this "**Determination**") relates to the Disposition and Development Agreement (28-Acre Site Project) (the "**DDA**") between the City and County of San Francisco, acting by and through the San Francisco Port Commission (the "**Port**") and FC Pier 70, LLC (including its successors, "**Developer**"), which was recorded in the Official Records of the City and County of San Francisco as Document No. _____. All capitalized terms used in this Memorandum are defined in the DDA or its Appendix.

Developer submitted an SOP Compliance Request for the following Schedule of Performance Obligations in accordance with *DDA § 15.7 (SOP Compliance)*:

_____
_____
_____
_____
_____
_____.

This Determination establishes that the Port has determined that Developer has completed the Schedule of Performance Obligations in compliance with the Schedule of Performance. This Determination has no precedential effect for the purpose of public ownership of Horizontal Improvements.

PORT:

City and County of San Francisco, acting by
and through the San Francisco Port Commission

By:_____
Name:_____
Title: Chief Harbor Engineer

[***add acknowledgement***]

DDA EXHIBIT B9-2

Form of Memorandum of Deemed Approval

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Recorder's Stamp

MEMORANDUM OF DEEMED APPROVAL
(28-Acre Site SOP Compliance)

This Memorandum of Deemed Approval (this "**Memorandum**") relates to the Disposition and Development Agreement (28-Acre Site Project) (the "**DDA**") between the City and County of San Francisco, acting by and through the San Francisco Port Commission (the "**Port**") and FC Pier 70, LLC (including its successors, "**Developer**"), which was recorded in the Official Records of the City and County of San Francisco as Document No. _____. All capitalized terms used in this Memorandum are defined in the DDA or its Appendix.

Developer submitted an SOP Compliance Request for the following Schedule of Performance Obligations in accordance with *DDA § 15.7 (SOP Compliance)*:

_____
_____
_____
_____
_____
_____.

After the Port failed to respond within the time required under the DDA, Developer delivered a notice to the Chief Harbor Engineer marked: "*Action Required for Determination of SOP Compliance or Deemed Approval.*" The Port did not timely respond, authorizing Developer to record this Memorandum.

This Memorandum provides notice that Developer's SOP Compliance Request for the Schedule of Performance Obligations listed above is deemed approved for the purpose of establishing Developer's compliance with the DDA Schedule of Performance.

DEVELOPER:

[Developer's name]

By: _____
Name: _____
Title: _____

[***Add acknowledgement***]

CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR

[MASTER LEASE FORM]

LEASE NO. L-16390

BETWEEN THE

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AS LANDLORD

AND

FC PIER 70, LLC

AS TENANT

DATED AS OF MAY __, 2018

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

Exhibits and Schedules:

BASIC LEASE INFORMATION

Lease Date:	May ____, 2018
Lease Number:	**L-16390**
Landlord or Port:	**CITY AND COUNTY OF SAN FRANCISCO,** a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Landlord's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Tenant:	FC Pier 70, LLC, a Delaware limited liability company
Tenant's Contact Person:	Jack Sylvan, Senior Vice-President
Tenant's Address:	c/o Forest City 875 Howard St. Ste. 330 San Francisco, CA 94103
Tenant's Billing Address:	c/o Forest City 875 Howard St. Ste. 330 San Francisco, CA 94103 Attn: Jack Sylvan, Senior Vice-President
Premises:	As of the Commencement Date, the Premises consists of: A portion of that certain real property known as Pier 70, consisting of approximately 28 acres bounded by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east in the City and County of San Francisco, State of California, together with any and all Improvements and Subsequent Construction thereto as further described on ***Exhibit A-1*** (the "**Property**"), together with all rights and privileges appurtenant to the Property and owned by Port, and the Improvements hereafter constructed on the Property (the "***Premises***") generally shown on the Site Plan attached hereto as ***Exhibit A-2***. The Property and Premises will initially exclude the following areas (each an "**Annexation Site**"): (1) the building commonly known as the Noonan Building or Building 11, along with certain

	areas adjacent to Building 11, as further described as Parcel 3 (Building 11 Site) on ***Exhibit A-1*** attached hereto (the "**Building 11 Site**"), (2) the area currently leased by Port to Affordable Self Storage, Inc. ("**Affordable Self Storage**") pursuant to that certain Lease No. L15690 and L-15691 between Port and Affordable Self Storage, as further described as Parcel 1 (Affordable Self Storage Lease Area) on ***Exhibit A-1*** attached hereto ("**Affordable Self Storage Site**"), (3) a portion of the building commonly known as Building 21, along with certain areas adjacent to Building 21, as further described as Parcel 2 on ***Exhibit A-1*** attached hereto ("**Building 21 Site**"), (4) a portion of the Affordable Self Storage Site to be used by PG&E pursuant to that certain License L-14749 between Port and PG&E (as amended) ("**PG&E Remediation Site**"), and (5) an SFPUC pump station, along with certain areas adjacent to the SFPUC pump station, as further described as Parcel 4 (Pump Station) on ***Exhibit A-1*** (the "**Pump Station Site**"). In addition, the area adjacent to, and north of, the Premises within and near Louisiana Street, currently leased by Historic Pier 70, LLC pursuant to that certain Lease No. L-15814, as further depicted on ***Exhibit B*** attached hereto ("**Louisiana Site**") may be added to the Property after the Effective Date in accordance with the terms of ***Section 1.1(b)(iii)***. The Property also excludes any utility infrastructure owned or operated by a City Agency or private utility (i.e., PG&E) located within the Premises unless and until any utility infrastructure owned or operated by a City Agency is repaired, relocated, or replaced by the Master Developer in connection with the construction of the Horizontal Improvements in which event, such utility infrastructure will become a part of the Premises as of the date the Master Developer commences such work until such work is accepted by the applicable City Agency or otherwise acquired by a private utility and released from the Premises in accordance with ***Section 1.1(b)(ii)***. The Premises are subject to adjustment as provided in ***Section 1.1(b)*** (Adjustment of Premises for Development) of this Lease.
Length of Term:	Twenty-five (25) years unless earlier terminated or otherwise extended in accordance with the DDA.
Commencement Date:	May _____, 2018.
Expiration Date:	May [_____], 2043, unless earlier terminated or otherwise extended in accordance with the DDA.
Permitted Use:	The Premises will be used solely for the Primary Permitted Use and Ancillary Permitted Uses described below: Tenant will primarily use the Premises for the following three (3) uses (collectively, the "**Primary Permitted Uses**"):

	(i) development of the Horizontal Improvements (ii) construction of temporary streets for the benefit of the Horizontal Improvements, Vertical Improvements and Annexation Sites; and (iii) one or more surface parking lots in accordance with ***Section 10.4*** (Parking Operations). So long as the Primary Permitted Uses are not materially and adversely affected, the Premises may also be used for the following ancillary uses (collectively, the "**Ancillary Permitted Uses**"): (i) construction staging in connection with the development of Horizontal Improvements or Vertical Improvements, subject to ***Section 4.3*** (Construction Staging); (ii) Special Events, subject to Port's right to terminate Tenant's ability to hold Special Events, as further described in ***Section 24.1(b)*** subject to the procedures attached hereto as ***Exhibit H***; (iii) model units and sales/leasing offices relating to Vertical Improvements; and (iv) any other uses authorized by the Port in writing, which authorization may be withheld in Port's sole discretion.
Base Rent:	$1.00/year.
Other Rent:	As further described in ***Exhibit D*** (Rent) attached hereto, Tenant will pay Percentage Rent to Port from and after the Commencement Date and throughout the Term. Port will apply one hundred percent (100%) of the Percentage Rent as Land Proceeds as provided under Section 7.3 of the Financing Plan.
Security Deposit and Bonds:	Twenty-Five Thousand Dollars ($25,000.00) on or before the Commencement Date. Before commencing any site grading, Tenant will have obtained a grading permit for such work from the Port's Building Department and will have delivered to Port for such work a (i) payment bond, in a principal amount no less than fifty percent (50%) of the cost to grade that portion of the Premises that is the subject of the grading permit, and (ii) performance bond, in a principal amount no less than one hundred percent (100%) of the cost to grade that portion of the Premises that is subject to the grading permit. If Tenant obtains multiple grading permits at different times throughout the Term, then Tenant may elect to provide separate payment and performance bonds for each applicable each grading permit. Tenant will deliver any performance or payment bonds required in the DDA within the time period described therein.

	Promptly following issuance of an SOP Compliance Determination (as defined in the DDA) for any Horizontal Improvements that has not been Accepted, if and only if (i) as of such date CFD Proceeds (as defined in the DDA) are not accessible for purposes of maintenance thereof and (ii) a bond therefore has not previously been delivered in accordance with the terms of a public improvement agreement. Tenant will also deliver a bond in an amount equal to 5% of the hard costs of the applicable Phase Improvements as additional security for the maintenance and repair of the Horizontal Improvements ("**Maintenance and Repair Bond**"). Any Maintenance and Repair Bond delivered hereunder shall be promptly released upon Acceptance of the applicable Horizontal Improvements. Bonds provided under this provision must be issued by a responsible surety company licensed to do business in the State of California and in form acceptable to Port naming Port as co-obligee.

MASTER LEASE

THIS MASTER LEASE (this "**Lease**" or "**Master Lease**") dated for reference purposes as of the Lease Date set forth in the Basic Lease Information, is by and between **THE CITY AND COUNTY OF SAN FRANCISCO** (the "**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as landlord, and **FC PIER 70, LLC**, a Delaware limited liability company ("**Tenant**"). The Basic Lease Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this Lease and will be construed as a single instrument and referred to herein as this "**Lease**." In the event of any conflict or inconsistency between the Basic Lease Information and the Lease provisions, the Basic Lease Information will control. All initially capitalized terms used herein are defined in ***Article 43*** (Definition of Certain Terms), or have the meanings given them when first defined.

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City's Charter. The Waterfront Plan is Port's adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Port and FC Pier 70, LLC, a Delaware limited liability company ("**Master Developer**"), are parties to that certain Disposition and Development Agreement dated as of [ ], 2018 (the "**DDA**") that governs the mixed-use development of an approximately 28-acre site (the "**28-Acre Site**"), as more particularly described in the DDA (the "**Project**"). The 28-Acre Site is located within an area commonly known as "**Pier 70.**" Following certification of the Final Environmental Impact Report for the Pier 70 Mixed-Use Project (Case No. 2014-001272ENV) in compliance with the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code by Motion No. 19976 on August 24, 2017, Port and the City took a number of actions approving the Project, including the project approvals list on ***Schedule B*** attached hereto (collectively, the "**Project Approvals**").

C. The DDA sets forth a parcel disposition process under which Port will deliver quitclaim deeds or enter into ground leases for each of the Development Parcels within the 28-Acre Site with a Vertical Developer. The Vertical Developer may be Master Developer, on behalf of itself or through its Affiliates, or, if Master Developer elects not to exercise its option to acquire or lease such Development Parcel, to third parties selected in accordance with the requirements of the DDA.

D. Master Developer has an obligation under the DDA to construct new and upgraded Horizontal Improvements on the Premises in accordance with the Project Approvals, and to create Development Parcels that will be served by the necessary infrastructure for their intended use. In order to provide Master Developer with access to and possession of the 28-Acre Site through the completion of the Horizontal Improvements, the Parties wish to enter into this Master Lease, setting for the terms and conditions under which Master Developer will lease the Premises. As provided hereunder, upon conveyance of a Development Parcel (either by fee transfer or ground lease) or Acceptance of Horizontal Improvement Parcels, the description of the Premises hereunder will be adjusted to remove the applicable Development Parcel or Horizontal Improvement Parcel from this Master Lease. As further provided hereunder, the description of the Premises hereunder will be adjusted to include the Building 11 Site, the Affordable Site, the Building 21 Site and the PG&E Remediation Site upon satisfaction of certain conditions.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. PREMISES; DEMISE.

1.1. *Premises.*

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the "**Premises**" described in the Basic Lease Information as of the Commencement Date.

(b) Adjustment of Premises for Development. From time to time during the Term, the legal description of the Premises will be modified in accordance with this ***Section 1.1(b)***, and the term "**Premises**" refers to the property that is subject to this Lease at the time.

(i) *Development Parcels.*

(1) As provided under each Vertical DDA, Port will convey a Development Parcel to the Vertical Developer. Prior to conveyance of a Development Parcel to a Vertical Developer, Port and Tenant must execute, acknowledge, and record a Partial Release of Master Lease in the form attached hereto as ***Exhibit C*** ("**Partial Release of Master Lease**") for such Development Parcel.

(2) Port will provide Tenant at least ten (10) business days' prior notice of the anticipated conveyance date for each Development Parcel ("**Anticipated Conveyance Date**") and where Tenant should deposit the executed and acknowledged Partial Release of Master Lease. Tenant will deposit into escrow the executed and acknowledged Partial Release of Master Lease at least five (5) business days before the Anticipated Conveyance Date. Tenant's failure to timely execute, acknowledge and deliver the Partial Release of Master Lease into escrow will constitute a default under this Lease and the DDA.

(3) Once the Partial Release of Master Lease for the applicable Development Parcel is recorded in the Official Records, then Tenant's leasehold interest in such applicable Development Parcel will be terminated and other than the obligations that survive the expiration or termination of this Lease, this Lease will be terminated as it applies to such Development Parcel.

(ii) *Horizontal Improvement Parcels.*

(1) Partial Release as to Horizontal Improvements. Port and Master Developer will execute and record a Partial Release of Master Lease for constructed Horizontal Improvements that are accepted by Port or other applicable City Agencies in accordance with the procedures set forth in ***DDA Sections 15.8*** (Acceptance of Park Parcels and Phase Improvements) and ***DDA Section 15.9*** (Acceptance of Other Horizontal Improvements), a copy of which is attached hereto as ***Schedule 1.1.***

(2) Generally. Once the Partial Release of Master Lease for the applicable Horizontal Improvement Parcel is recorded in the Official Records, then Tenant's leasehold interest in such applicable Horizontal Improvement Parcel will be terminated and other than the obligations that survive the expiration or termination of the Master Lease, this Master Lease will be terminated as it applies to such applicable Horizontal Improvement Parcel.

(iii) *Annexation Sites.*

(1) The Building 11 Site, the Affordable Storage Site, the Building 21 Site, the PG&E Remediation Site, the Pump Station Site and the Louisiana Site (each, an "**Annexation Site**") are each initially excluded from the "**Premises**" given that Annexation Sites are not needed by Master Developer during the Project's earlier construction phases but each is needed by Master Developer during the Project's later construction phases.

(2) Port will notify Tenant in writing thirty (30) days prior to the estimated date upon which (1) all Noonan Building tenants and artists will have vacated Building 11 or Building 11 will be relocated in accordance with DDA Sections 7.13 and 7.23 respectively, (ii) in the case of the Affordable Storage Site, Affordable Storage will have permanently vacated the Affordable Storage Site, (iii) in the case of the Building 21 Site, SFPUC and other users will have permanently vacated the Building 21 Site, (iv) in the case of the PG&E Remediation Site, each of the following will have occurred; PG&E will have received written confirmation from each Regulatory Agency that Remediation of the PG&E Remediation Site is complete PG&E will have completed all off-shore work for which staging or related activities are being performed on the PG&E Remediation Site, PG&E will have vacated the PG&E Remediation Site, and License L-14749 will have been terminated with respect to the PG&E Remediation Site, (v) in the case of the Louisiana Site, such area is removed from Historic Pier 70, LLC's premises and a memorandum of technical corrections is recorded in the Official Records memorializing such removal.

(3) Following the occurrence of the applicable foregoing events with respect to an applicable Annexation Site described in ***Section 1.1(b)(iii)(2)***, Port will notify Tenant of the occurrence of such events and that such Annexation Site is ready to be added to the Premises (an "**Annexation Notice**"). Except for the PG&E Remediation Site and Affordable Storage Site, as further described in ***Section 1.1(b)(iii)(4)***, the Pump Station Site, as further described in ***Section 1.1(b)(iii)(6)***, and the Louisiana Site as further described in ***Section 1.1(b)(iii)(5)***, the applicable Annexation Site will be added to the Premises effective on the date that is three (3) business day after receipt of the Annexation Notice or earlier if agreed to by both Parties.

(4) Because the PG&E Remediation Site is located within the Affordable Storage Site, if:

(A) an Annexation Notice is delivered with respect to the Affordable Storage Site but an Annexation Notice has not been delivered with respect to the PG&E Site, then the only area to be added to the Premises will be the portion of the Affordable Storage Site located outside of the PG&E Remediation Site; and

(B) an Annexation Notice is delivered with respect to the PG&E Site but an Annexation Notice has not been delivered with respect to the Affordable Storage Site, then the PG&E Site will not be added to the Premises until such time as the entire Affordable Storage Site is so added.

(5) The Louisiana Site will not be added to the Premises unless the Louisiana Site is simultaneously added to the DDA by recordation of a memorandum of technical corrections as more particularly described therein (and such three (3) business day period shall be extended as needed to allow for the occurrence of the same).

(6) With respect to the Pump Station Site only, Tenant shall notify Port in writing at least thirty (30) days prior to the estimated date upon which Tenant desires to add the Pump Station Site to the Premises, and the Pump Station Site will be added to the Premises on the date specified in such written notice.

(7) Within a reasonable time following the addition of an Annexation Site, the Parties will revise ***Exhibit A*** so that it reflects the inclusion of the Annexation Site into the Premises, provided, that the Parties' failure to do so will not impact the inclusion of the same into the Premises.

(iv) *Right of Access Prior to Annexation.* Prior the annexation of each Annexation Site, to the extent that the same is not accessible from a public street, the tenants of the Building 11 Site, the Affordable Storage Site, the tenants of the Building 21 Site and PG&E, as applicable, will have a reasonable right of access through the Premises to the applicable Annexation Site. Tenant will have the right to designate a reasonable route of access and may

impose reasonable restrictions on such access as reasonably necessary to ensure the safety and security of the Premises, including any construction activity thereon.

(c) Accessibility Inspection Disclosure. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and Port will have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

(d) San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in ***Article 8*** (Compliance with Laws), Tenant further understands and agrees that it is Tenant's obligation, at no cost to Port, to cause the Premises and Tenant's use thereof to be conducted in compliance with the Disabled Access Laws and any other federal or state disability access Laws. Tenant will notify Port if it is making any alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

(e) No Right to Encroach.

(i) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant will immediately vacate such Encroachment Area and if such Encroachment Area is controlled by Port, pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period will be prorated based on a thirty (30) day month. In no event will acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease.

(ii) In addition, Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300.00), which amount will be increased by One Hundred Dollars ($100.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter, upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant will pay to Port, as Additional Rent, an amount equaling Four Hundred Dollars ($400.00), which amount will be increased by One

Hundred Dollars ($100.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter, for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges will be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. **[NOTE: Amounts to increase by $50 every 5 years after DDA execution]**

(iii) In addition to Port's rights and remedies under this ***Section 1.1(e)***, the terms and conditions of the Indemnity and waiver provision set forth in ***Article 19*** (Indemnification of Port) will also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant will additionally Indemnify Port from and against any and all Losses resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any Losses resulting from any claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and Losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant.

(iv) All amounts set forth in this ***Section 1.1(e)*** will be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this Lease, each Party specifically confirms the accuracy of the statements made in this ***Section 1.1(e)*** and the reasonableness of the amount of the charges described in this ***Section 1.1(e)***.

1.2. ***Limitations.***

(a) **Permitted Encumbrances.** The interests granted by Port to Tenant pursuant to ***Section 1.1(a)*** are subject to (i) the matters reflected in ***Exhibit E*** (the "**Permitted Title Exceptions**"), (ii) CFD Matters, (iii) the rights, if any, of the owner and/or operator of any utility (whether or not such rights are memorialized in any written and/or recorded agreement with the applicable utility owner/operator) located within the Premises, to access, maintain, repair or replace, as applicable, the utility infrastructure including that certain Memorandum of Understanding dated sometime in 1990 between Port and the Department of Public Works, an agency of the City, and (iv) such other matters (including the existence of known and unknown operational and/or non-operational utility infrastructure within the Premises that may interfere with the development of the Project) as Tenant will cause or suffer to arise subject to the terms and conditions of this Lease (collectively, the "**Permitted Encumbrances**").

(b) **Subsurface Mineral Rights.** Under the terms and conditions of Article 2 of the Burton Act, the State has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Premises, provided that such right will not be exercised so as to disturb or otherwise interfere with the Leasehold Estate or the use of the Premises, including the ability of the Premises to support the Improvements, but provided further that, without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises will be governed by ***Article 15*** (Damage or Destruction). Port will have no liability under this Lease arising out of any exercise by the State of such mineral rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability).

(c) **"AS IS WITH ALL FAULTS".** TENANT AGREES THAT PORT IS LEASING THE PREMISES TO TENANT, AND THE PREMISES ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, **"AS IS, WITH ALL FAULTS,"** SUBJECT TO THE TERMS OF THIS LEASE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF THE OTHER INDEMNIFIED PARTIES HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION IN, ON, UNDER, ABOVE, OR ABOUT THE PREMISES, TITLE TO THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE, OR OPERATION OF THE IMPROVEMENTS, THE COMPLIANCE OF THE PREMISES WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR ANY OTHER MATTER PERTAINING TO THE PREMISES, ANY APPURTENANCES THERETO OR THE IMPROVEMENTS, AND AS FURTHER DESCRIBED HEREIN.

Tenant further acknowledges and agrees that it has been afforded a full opportunity to inspect Port's records relating to conditions in, on, around, under, and pertaining to the Premises. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Tenant is not relying on any such information. All information contained in such records is subject to the limitations set forth in this ***Section 1.2(c)***. Tenant represents and warrants to Port that Tenant has performed a diligent and thorough inspection and investigation in, on, around, under, and pertaining to the Premises, either independently or through its own experts including (i) the quality, nature, adequacy and physical condition in, on, around, under, and pertaining to the Premises including the structural elements, foundation, and all other physical and functional aspects in, on, around, under, and pertaining to the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition in, on, around, under, and pertaining to the Premises, including the soil and any groundwater (including Hazardous Materials Conditions (including the presence of asbestos or lead) with regard to the building, soils and any groundwater); (iii) the suitability in, on, around, under, and pertaining to the Premises for the Improvements and Tenant's planned use of the Premises; (iv) title matters, the zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction in, on, around, under, and pertaining to on the Premises; and (v) all other matters of material significance affecting in, on, around, under, and pertaining to the Premises and its development and use under this Lease.

As part of its agreement to accept the Premises in their **"As Is With All Faults"** condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port, the City, and their respective Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the development of the Improvements, the Permitted Uses, value, occupancy or enjoyment of the Premises, (iii) title matters, (iv) the zoning land use regulations, historic preservation laws, and other any Laws applicable thereto, including Environmental Laws or any other matter pertaining to the Premises, any appurtenances thereto or the Improvements; provided, however, the foregoing waiver will not apply to Losses arising from or relating to the sole negligence or willful misconduct of the Indemnified Parties.

In connection with the foregoing release, Tenant acknowledges that it is familiar with California Civil Code Section 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant agrees that the release contemplated by this ***Section 1.2(c)*** includes unknown claims pertaining to the subject matter of this release. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the release contained in this ***Section 1.2(c)***.

Tenant Initials: _____

The provisions of this ***Section 1.2(c)*** will survive the expiration or earlier termination of this Lease.

(d) Title Defect. Port will have no liability to Tenant in the event any defect exists in Port's title to the Premises as of the Commencement Date and no such defect will be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect will be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

(e) No Light, Air or View Easement. This Lease does not include an air, light, or view easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands near or adjacent to the Premises or by any vessels berthed near the Premises will in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Rent, or affect this Lease in any way or Tenant's obligations hereunder.

(f) Unique Nature of Premises. Tenant acknowledges that: (i) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (ii) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; and (iii) there is a risk that sea level rise will increase the cost of operations, maintenance, and repair of the Premises.

1.3. ***Memorandum of Technical Corrections.*** The Parties reserve the right, upon mutual agreement of Port's Executive Director and Tenant, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Premises, and upon full execution thereof, such memoranda will be deemed to become a part of this Lease.

2. TERM.

The effectiveness of this Lease will commence on the Commencement Date as shown in the Basic Lease Information. The Lease will expire at 11:59 p.m. on the Expiration Date set forth in the Basic Lease Information, unless earlier terminated or extended in accordance with the terms of this Lease. The period from the Commencement Date until the final expiration of the Lease is referred to as the "**Term**."

3. RENT

During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in ***Exhibit D*** (Rent) attached hereto and incorporated herein by this reference.

4. USES.

4.1. ***Uses within Premises.*** The Premises will be used and occupied only for the Permitted Uses specified in the Basic Lease Information and for no other purpose.

4.2. ***Advertising and Signs.*** Subject to the prohibition on tobacco and alcohol advertising provided in ***Article 41*** (Special Provisions), Tenant has the right to install signs on the Premises in accordance with this ***Section 4.2***. All signs must comply with all Laws relating thereto and the requirements of the SUD and Design for Development. Tenant must obtain all

Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain required Regulatory Approval. All rents, fees, or other charges from all signs will be included as part of Gross Income and applied in accordance with ***Exhibit D*** (Rent). Tenant, at its sole cost and expense, must remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease. So long as Tenant may enter into agreements with other parties for purposes of placing Promotional Signage, and provided such use complies with all the terms and conditions of this Lease, such use will not be a Transfer for purposes of this Lease, but any and all rent, fees, or other charges Promotional Signage will be included as part of Gross

4.3. ***Construction Staging.***

(a) **Construction Staging for Horizontal Development.** Tenant has the right to use (and to allow its Agents and Invitees to use) portions of the Premises for construction staging, including, without limitation, storage of soil stockpiles, construction materials and equipment, fencing, and temporary construction offices as may be reasonably necessary or convenient in connection with the development of Horizontal Improvements. It is expressly acknowledged and agreed that no Rent will be payable on account of construction staging activities in connection with the development of Horizontal Improvements, and that the provisions of ***Exhibit D*** (Rent), which require payment of Percentage Rent in conjunction with the lease or license of construction staging areas to Vertical Developers, are not applicable to construction staging activities in connection with the development of Horizontal Improvements.

(b) **Construction Staging for Vertical Development.** Subject to the provisions of ***Exhibit D*** (Rent) regarding payment of Percentage Rent, Tenant has the right to Sublease to Vertical Developers (so long as the Primary Permitted Uses are not adversely impacted by the applicable Sublease), portions of the Premises for construction staging, including, without limitation, storage of soil stockpiles, construction materials and equipment, fencing, and temporary construction offices in connection with the development of the applicable Vertical Improvements.

(c) **Comply with Laws.** All construction staging must be performed in accordance with applicable Laws, including any operations plan approved by Port and applicable provisions of the MMRP.

4.4. ***Limitations on Uses by Tenant.***

(a) **Prohibited Uses.** Tenant will not conduct or permit on the Premises any of the following activities (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"):

(i) any activity, or the maintaining of any object, which is not within the Permitted Use or not previously approved by Port in writing, in its sole discretion;

(ii) any activity which constitutes waste or nuisance to owners or occupants of adjacent properties, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any unusually objectionable odors, noises or lights onto adjacent properties, the use of light apparatus which can be seen outside the Premises, or the use of loudspeakers or sound apparatus which can be heard outside the Premises in violation of applicable Law, provided, that the Construction Impacts reasonably expected for the construction of the Horizontal Improvements will not be considered or deemed a nuisance;

(iii) prior to annexation of the Building 11 Site or the Affordable Storage Site into the Premises, any activity which will in any way unreasonably (as determined by Port) injure, obstruct or interfere with the rights of ingress and egress of, or access to or use of electricity by, Affordable Storage and its customers or any of the artists in the Noonan Building or Affordable Storage, as applicable;

(iv) any activity which will in any way unreasonably (as determined by Port) injure, obstruct or interfere with the rights of ingress and egress of other owners, tenants, or occupants of adjacent properties;

(v) use of the Premises for residential, sleeping or personal living quarters and/or so-called "**Live/Work**" space;

(vi) the placement of any sign on or near the Premises related to any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

(vii) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids; provided, however, the foregoing prohibition does not apply to standard equipment maintenance for pay stations used for collecting parking fees or to the charging of electric vehicles and equipment, all located within the portion of the Premises used for parking operations;

(viii) except in connection with the construction of the Horizontal Improvements and the Vertical Improvements, the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;

(ix) except in connection with the construction of the Horizontal Improvements and the Vertical Improvements, the storage of any and all aggregate material, or bulk storage, such as wood or other loose materials; or

(x) the washing of any vehicles or equipment (unless such use is reasonably required on a temporary basis to comply with the Mitigation Monitoring and Reporting Program or the Pier 70 Risk Management Plan during construction of the Horizontal Improvements.

(b) **Restrictions on Encumbering Port's Reversionary Interest.** Tenant may not enter into agreements granting licenses, easements or access rights over the Premises (collectively, "**Access Rights**") if the same would be binding on Port's reversionary interest in the Premises without Port's prior written consent, which consent may be withheld in Port's sole discretion. Notwithstanding the foregoing, the Parties acknowledge that Master Developer's obligations to deliver the Horizontal Improvements under the DDA (including the Infrastructure Plan), and the requirements of the Master Utilities Plan, Master Tentative Map and associated conditions of approval will require the dedication or granting of certain Access Rights that may be binding on Port's reversionary interest in the Premises. Port will not withhold its consent to any Access Rights that are consistent with matters previously approved by Port (including the DDA, Infrastructure Plan and Master Tentative Map) or in the Master Utilities Plan; and will not unreasonably withhold its consent to Access Rights to private parties that are reasonably required for the functioning of the Horizontal Improvements or Vertical Improvements (e.g., private gas easements and private telecommunications easements).

4.5. ***Liquidated Damages for Repeat Prohibited Uses.*** In addition to the other remedies available to Port under this Lease for an Event of Default under ***Section 23.1(g)***, if Tenant uses the Premises for the same type of Prohibited Use more than two (2) times within any twenty-four (24) month period, then Tenant will pay Port an amount equal to Twenty-Five Thousand Dollars ($25,000.00) (as adjusted periodically, the "**Prohibited Use Charge**") for the third such Prohibited Use and for each such Prohibited Use thereafter as liquidated damages, which Twenty-Five Thousand Dollars ($25,000.00) will be increased by fifteen percent (15%) on the fifth (5th) anniversary of the Commencement Date and every five (5) years thereafter. **[Note: $25K will increase annually by 3% from and after the date of DDA execution until execution of this Lease.]**

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES, IN THE EVENT TENANT USES THE PREMISES FOR THE SAME TYPE OF PROHIBITED USE MORE THAN TWO (2) TIMES WITHIN A TWENTY-FOUR (24) MONTH PERIOD, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS LEASE, THE AMOUNT OF THE PROHIBITED USE CHARGE IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Port Initials: _____	Tenant Initials: _____

5. DEVELOPMENT PROJECTS.

5.1. ***Generally***. Tenant acknowledges that during the Term, other development projects will be developed or constructed in the immediate vicinity of the Premises (as generally described in ***Section 5.2*** (Pier 70) and other development projects in the vicinity of or near the Premises, such as the development projects at Seawall Lot 337, Pier 48, Pier 80, SFPUC's Bay Corridor Transmission and Distribution Project along Illinois Street from 16th Street to 23rd Street, and the proposed development of over 5 million square feet on the 29-acre Central Waterfront site at or around 1201 Illinois Street (bounded by Illinois, the Bay, 22nd and 23rd Streets) (collectively, "**Development Projects**"). Tenant is aware that construction of the Development Projects and other construction projects of Port tenants, licensees or occupants or projects of third parties in the vicinity of the Premises and the activities associated with such construction may generate adverse impacts on construction of the Horizontal Improvements, use and/or operation of the Premises after construction, or may result in inconvenience to or disturbance of Tenant and its Agents and Invitees. Said impacts may include increased vehicle and truck traffic, closure of traffic lanes, re-routing of traffic, traffic delays, loss of street and public parking, dust, dirt, construction noise, and visual obstructions (collectively, "**Construction Impacts**").

Tenant hereby waives any and all Losses against the Indemnified Parties arising out of any inconvenience or disturbance to Tenant, its Agents or Invitees, from Construction Impacts. The Parties will each use reasonable efforts to coordinate its construction efforts with each other and with others engaged in construction on such other projects in a manner that will seek, to the extent reasonably possible, to reduce construction conflicts.

5.2. ***Pier 70.***

(a) **Generally.** Tenant acknowledges that the Port Commission endorsed the vision, goals, objectives, and design criteria of the Pier 70 Master Plan. A brief description of some of the existing and planned development in Pier 70 is as follows, all of which will create Construction Impacts:

(i) *Michigan Street.* Reconfiguration of Michigan Street, which is currently an approximately eighty (80) foot right of way. Port is exploring alternate permanent configurations, redesign, or path of travel, of or on Michigan Street, including narrowing the width of Michigan Street to no less than sixty-eight (68) feet and the City's potential vacation all or a portion of Michigan Street. Tenant has no objections to narrowing the width of Michigan Street to no less than sixty-eight (68) feet nor does Tenant object to the City's vacation of all or any portion of Michigan Street.

(ii) *New 19th Street.* Proposed extension of 19th Street east from Illinois Street that will accommodate heavy truck traffic for the ship repair facility and connect to the reopened Georgia Street.

(iii) *Crane Cove Park.* North of the planned 19th Street extension, Port anticipates commencing and completing construction of Crane Cove Park during the Term. The project includes construction of a new, approximately 9.8-acre shoreline park; creation of Georgia Street, which would connect 20th Street to the 19th Street extension; creation of a new primary entrance access to the Pier 70 Shipyard entrance from 20th Street to the terminus of the 19th Street extension and rerouting primary Pier 70 Shipyard truck traffic from 20th Street to the 19th Street extension; street improvements along the eastern side of Illinois Street; and may include rehabilitation of Building 109, a contributing historic building, for uses to be determined.

(iv) *19th Street Parking Lot and Future Development Site.* Located between the Historic Core on the north side of 20th Street and the new 19th and Georgia Streets, the Port will construct an interim, approximately 180 car parking lot, including associated access points from 19th Street and Georgia Street. The parking lot will include storm water collection and treatment, landscaping and lighting. Eventually, the parcel will become a mixed-use development site, which may include the demolition of Building 36.

(v) *Building 6, Building 111, and Parking Lot West of Building 6.* Located north of 20th Street at the Bay's edge, Building 6 and Building 11 are contributing historic buildings that Port will ultimately redevelop for a use to be determined. Pedestrian and service deliveries access to Building 6 may occur on the south side of the building. Port may develop the triangle parking lot to the west of Building 6 and north of 20th Street for a use to be determined.

(vi) *28-Acre Site.* Port and Master Developer entered into a DDA, the Master Lease, the Development Agreement, and other agreements for the 28-Acre Site (collectively, the "**Forest City Agreements**"). The Forest City Agreements will, among other things, permit the construction and/or reconfiguration of streets, construction of new public open space and parks, construction of new buildings, and historic rehabilitation, which construction will take place throughout the Term. The Premises is located within the 28-Acre Site.

(vii) *Historic Core.* Port and Historic Pier 70, LLC entered into a Lease Disposition and Development Agreement dated September 16, 2014 and Lease No. L-15814 dated as of July 29, 2015 for the area referred to as the "**Historic Core**" in the Pier 70 Master Plan, located along 20th Street, East of Illinois Street. The Historic Core Project includes repair and rehabilitation of eight buildings in the Pier 70 Historic Core (Buildings 101, 102, 104, 113, 114, 115, 116, and 14) to satisfy current seismic, structural, and code requirements; reuse of the buildings as primarily light industrial and commercial uses, and addition of approximately 69,000 gross square feet of new building space primarily through the construction of mezzanines within existing buildings. The project also includes an outdoor publicly accessible plaza and indoor atrium, plus minor roadway and sidewalk, improvements for site accessibility. In total, the project will include approximately 334,000 gross square feet of existing and new building space.

(viii) *Parcel K.* Parcel K, located at the southeast corner of Illinois and 20th Streets, will be subdivided into two parcels: Parcel K North and Parcel K South. Both are subject to the SUD. Under the SUD, Parcel K North will include approximately 300 residential units, 6,600 square feet of commercial uses, and 6,600 square feet of retail uses. Parcel K South will include up to 240 units of affordable housing, and 11,000 square feet of retail uses.

(ix) *Hoe Down Yard.* The Hoedown Yard is a 3.6-acre parcel at the northeast corner of Illinois and 22nd Streets. The City has an option to purchase the site from its current owner, Pacific Gas and Electric. The site is also subject to the SUD. Under the SUD, the Hoedown Yard is zoned as commercial or residential. Under the residential scenario, it will

include up to 335 residential units and 17,200 square feet of retail uses. Under the commercial scenario, it will include up to 231,700 square feet of commercial uses and 28,135 square feet of retail uses.

(x) *Pier 70 Shipyard.* The Parties acknowledge that the Premises is located in proximity to the Pier 70 shipyard (the "**Pier 70 Shipyard**"), a working industrial facility that contains approximately 14.7 acres of improved land and 17.4 acres of submerged lands, including floating Dry Dock#2, floating Dry Dock Eureka, and an 8k ampere Shoreside Power System. Existing and future operations at the Pier 70 Shipyard may generate certain impacts such as noise, parking congestion, truck traffic, auto traffic, odors, dust, dirt, view and visual obstructions. In order to avoid interference with the Pier 70 Shipyard without being subject to suits by adjacent property owners, tenants, subtenants or other nearby users against the Port for nuisance, inverse condemnation or similar causes of action, Tenant will include in all of its leases at the Premises, an acknowledgment of the foregoing impacts, and a waiver of rights relating to commencing or maintaining a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard.

(b) **Cooperation.** Tenant acknowledges and agrees that it will reasonably cooperate with Port, the tenant or operator of the Pier 70 Shipyard, Historic Pier 70 LLC, Vertical Developers, and any future tenants or occupants of Pier 70 (collectively, the "**Pier 70 Parties**") in the implementation of the Pier 70 Master Plan, which includes the development and/or rehabilitation of the Historic Core, the 28-Acre Site, and Crane Cove Park, and continued operation of the Pier 70 Shipyard; provided, however, that any such cooperation that exceeds Tenant's or Master Developer's obligations under the DDA will be at no material out-of-pocket cost to Tenant. In furtherance of the development of the 28-Acre Site, Tenant will enter into licenses with Vertical Developers that provide Vertical Developers access to (i) applicable Development Parcels under the control of Tenant if the applicable Vertical Developer desires to conduct due diligence on such parcel before close of escrow on such parcel, or (ii) portions of the Premises that are outside the applicable Development Parcel in order for Vertical Developer to construct any Deferred Infrastructure.

6. TAXES AND ASSESSMENTS.

6.1. *Payment of Taxes and Other Impositions.*

(a) **Payment of Taxes.** Tenant will pay or cause to be paid to the proper authority prior to delinquency, all Impositions assessed, levied, confirmed or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or on its Leasehold Estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), or on any use or occupancy of the Premises hereunder, to the full extent of installments or amounts payable or arising during the Term, whether in effect at the Commencement Date or which become effective thereafter. Tenant further recognizes and agrees that the Leasehold Estate may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant will not permit any such Impositions to become a defaulted lien on the Premises or the Improvements thereon; provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Subject to ***Section 6.2*** (CFD Matters and Shortfall Provisions), Tenant will have the right to contest the validity, applicability or amount of any taxes in accordance with ***Article 7*** (Contests). In the event of any dispute, Tenant will Indemnify and hold the Indemnified Parties harmless from and against all Losses resulting therefrom.

(i) *Acknowledgment of Possessory Interest.* Tenant specifically recognizes and agrees that this Lease creates a possessory interest that is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's Leasehold Estate pursuant to an assessment lawfully made by the County Assessor. Tenant further acknowledges that any Sublease, Transfer or any exercise of any option to renew or extend this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(ii) *Reporting Requirements.* San Francisco Administrative Code Sections 23.38 and 23.39 (or any successive or replacement ordinance) requires that Port report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days of request by Port following the date of any transaction that is subject to such reporting requirements, Tenant will provide such information as may reasonably be requested by Port to enable Port to comply with such requirements.

(b) Other Impositions. Without limiting the provisions of ***Section 6.1(a)*** (Payment of Taxes), and except as otherwise provided in this ***Section 6.1(b)*** (Other Impositions), Tenant will pay or cause to be paid all Impositions, to the full extent of installments or amounts payable or arising during the Term, which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Horizontal Improvements or other Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the Leasehold Estate, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of ***Article 7*** (Contests), Tenant will pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. As used herein, "Impositions" means all taxes (including possessory interest, real, personal and special taxes), assessments, liens, levies, fees, charges, or expenses of every description, levied, assessed, confirmed, or imposed by a governmental or quasi-governmental entity on the Premises, any of the Horizontal Improvements, Improvements or Personal Property located on the Premises, the Leasehold Estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions includes all such taxes, assessments, liens, levies, fees charged or expenses of every description, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, including, without limitation, special taxes under the CFD. The foregoing or subsequent provisions notwithstanding, Tenant will not be responsible for any Impositions arising from or related to, Port's fee ownership interest in the Premises, Port's interest as landlord under this Lease, or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Port's fee interest or transfer thereof.

(c) **Proof of Compliance.** Within a reasonable time following Port's written request, which Port may give at any time and from time to time, Tenant will deliver to Port copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

6.2. ***CFD Matters and Shortfall Provisions.***

(a) Notice of Special Tax. After the CFD Formation Proceedings are final, Tenant will deliver to Port an acknowledgment (the "**Notice of Special Tax**") in a form reasonably approved by Port confirming that Tenant has been advised of the terms and conditions of the CFD, including that the Premises is subject to the applicable special taxes.

(b) As material consideration for the Port entering into this Lease, Tenant will comply with all of the covenants and acknowledgements set forth in ***Exhibit F*** (CFD Matters) attached hereto, which covenants and acknowledgements will be recorded against title to the Premises and survive the expiration or earlier termination of this Lease.

(c) Shortfall Provisions.

(i) *Tenant Waiver and Covenant.* Tenant agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Premises until the IFD Termination Date. In addition, Tenant covenants that should Tenant initiate a Reassessment on a Taxable Parcel in the SUD in violation of the waiver in this ***Section 6.2(c)***, and subject to ***Section 6.2(c)(iii)*** (Circumstances Causing Shortfall), Tenant and Port will take the following measures to avoid shortfalls.

(1) Tenant will pay Port the Assessment Shortfall within 20 days after Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(2) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates:

(A) the applicable IFD Termination Date; and

(B) when the Assessment Shortfall is reduced to zero.

(ii) *Vertical Developer Waiver and Covenant.* The Parties have agreed on forms of Vertical DDAs and Parcel Leases for Vertical Developers that include the following provisions.

(1) A waiver in which Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of any Taxable Parcel in the SUD until the IFD Termination Date.

(2) A covenant by Vertical Developer that should Vertical Developer initiate a Reassessment on a Taxable Parcel in the SUD in violation of the waiver, and subject to ***Section 6.2(c)(iii)*** (Circumstances Causing Shortfall), Vertical Developer and Port will take the following measures to avoid shortfalls:

(A) Vertical Developer will pay Port the Assessment Shortfall within 20 days after Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(B) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

(iii) *Circumstances Causing Shortfall.* This Section will apply if Tenant or any Vertical Developer initiates a Reassessment on a Taxable Parcel in the SUD in violation of ***Section 6.2(c)(i)*** (Tenant Waiver and Covenant) or ***Section 6.2(c)(ii)*** (Vertical Developer Waiver and Covenant).

(iv) *Tax Exemption.* Tenant and Port do not intend for this Section to affect the tax-exempt status of any bonds. Should the Tax Code change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt bonds to be deemed taxable due to the requirements under this ***Section 6.2(c)***, Port will release the obligations under this ***Section 6.2(c)*** and it will be deemed severed from this Lease.

(v) *Mutual Expectations as to Shortfall Measures.* Neither Tenant nor Port expects Port to make demand for payment under this Section. In light of the Parties' mutual expectations, Tenant has agreed to the waiver in ***Section 6.2(c)(i)*** (Tenant Waiver and Covenant) and to include waiver and covenant language in documents with Vertical Developers as described in ***Section 6.2(c)(ii)*** (Vertical Developer Waiver and Covenant).

(vi) *No Negotiation.* Tenant understands that Port would not be willing to enter into this Lease without this ***Section 6.2(c)***.

6.3. ***Port's Right to Pay***.Unless Tenant is exercising its right to contest in accordance with the provisions of ***Article 7*** (Contests), if Tenant fails to pay and discharge any Imposition (including fines, penalties and interest) that it is obligated hereunder to pay prior to delinquency, Port, at its sole option, may (but is not obligated to) pay or discharge the same; provided that prior to paying any such delinquent Imposition, Port will give Tenant written notice specifying a date that is at least ten (10) days following the date such notice is given after which Port intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, to pay the delinquent Imposition and the same may become a lien on the Premises, then Port may thereafter pay such Imposition, and the amount so paid by Port (including any interest and penalties thereon paid by Port), together with interest at the Default Rate computed from the date Port makes such payment, will be payable by Tenant as Additional Rent.

7. CONTESTS.

Subject to ***Section 6.2*** (CFD Matters and Shortfall Provisions), Tenant has the right to contest the amount, validity or applicability, in whole or in part, of any Impositions, mechanics' lien or encumbrance (including any arising from work performed or materials provided to Tenant or any Subtenant to improve all or a portion of the Premises) by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, prior to commencement of such contest, Tenant notifies Port of such contest. Tenant must notify Port of the final determination of such contest within fifteen (15) days after such determination. Subject to ***Section 6.2*** (CFD Matters and Shortfall Provisions), nothing in this Lease requires Tenant to pay any Impositions, mechanics' lien, or encumbrance so long as Tenant contests the validity, applicability or amount of such Impositions, mechanics' lien or encumbrance in good faith, and so long as it does not allow the portion of the Premises affected by such Impositions, mechanics' lien or encumbrance to be forfeited to the entity levying such Impositions, mechanics' lien or encumbrance as a result of its nonpayment. If any Law requires as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant must comply with such condition as a condition to its right to contest. Tenant is responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Tenant must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Premises may be subjected to such lien or claim. Tenant is not required to pay any Impositions, mechanics' lien or encumbrance being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Premises. Port will not be subjected to any liability for the payment of any fines or penalties, and except as provided in the preceding sentence, costs, expenses, or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. Without limiting ***Article 28*** (Tenant's Recourse Against Port), Tenant will

Indemnify the Indemnified Parties for all Losses resulting from Tenant's contest of any Imposition, mechanics' lien or encumbrance.

8. COMPLIANCE WITH LAWS.

8.1. ***Tenant's Obligation to Comply.*** Subject to ***Section 8.2*** (Unforeseen Requirements) hereof and without limiting tenants obligation to comply with the other terms and conditions of this Lease during the Term, Tenant will comply with, at no cost to Port, (i) all applicable Laws (taking into account any variances or other deviations properly approved), (ii) the Pier 70 Risk Management Plan, (iii) the DDA, (iv) the Mitigation Monitoring and Reporting Program, and (v) the Transportation Demand Management Plan. The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses do not limit Tenant's responsibility to obtain Regulatory Approvals for such Permitted Uses, nor do such Permitted Uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Tenant's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws relating to or affecting the Premises.

8.2. ***Unforeseen Requirements.*** The Parties acknowledge and agree that Tenant's obligation under this ***Section 8.2*** (Unforeseen Requirements) to comply with all Laws and the other requirements set forth in ***Section 8.1*** (Tenant's Obligation to Comply) is a material part of the bargained-for consideration under this Lease. Notwithstanding the foregoing, the Parties acknowledge that the primary purpose of this Lease is for the implementation of the Project under the DDA, including construction of Horizontal Improvements, not for the occupancy, use, repair or maintenance of buildings existing as of the Commencement Date, except as expressly required under the DDA or required or permitted hereunder. Therefore, except as set forth in this ***Section 8.2*** (Unforeseen Requirements) no occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease or the DDA, or gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease; provided, however, until the time Master Developer is required under the DDA to rehabilitate existing buildings in the Premises, Tenant will have no obligation to comply with Laws and the other requirements set forth in ***Section 8.1*** (Tenant's Obligation to Comply) that might require substantial improvements to buildings or facilities existing within the Premises as of the Commencement Date if, as an alternative, Tenant can take reasonable measures to obviate the applicability of such Laws or cease use of the affected area for purposes other than preparation for or construction of the Horizontal Improvements. For example, Tenant will have no obligation to undertake any improvements to the buildings existing on the Premises as of the Commencement Date that would otherwise be required by applicable Laws for occupancy (e.g., disability access or seismic upgrades) if the applicable buildings are vacated and secured from occupancy.

9. REGULATORY APPROVALS.

9.1. ***Port Acting as Owner of Property.*** Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity as the holder of fee title to the Premises and not as a Regulatory Agency with certain police powers. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals. Tenant acknowledges and agrees that Port

has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Horizontal Improvements or other Improvements can be obtained. Tenant further acknowledges and agrees that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Horizontal Improvements or other Improvements will be issued by the appropriate Regulatory Agencies, and Tenant understands and agrees that neither entry by Port into this Lease nor any approvals given by Port under this Lease will be deemed to imply that Tenant will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Horizontal Improvements, other Improvements and/or the Premises, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Tenant, at Tenant's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Horizontal Improvements or other Improvements. By entering into this Lease, Port is in no way modifying or limiting Tenant's obligations to cause the Premises to be developed, Restored, used and occupied in accordance with all Laws. Tenant further acknowledges and agrees that any time limitations on Port review or approval within this Lease applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Tenant understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Horizontal Improvements or other Improvements or other matters related to this Lease, and any such advocacy, promotion or lobbying will be done by Tenant at Tenant's sole cost and expense. Tenant hereby waives any claims against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any Losses relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Horizontal Improvements or other Improvements.

9.2. ***Regulatory Approval; Conditions.*** The provisions of this ***Section 9.2*** (Regulatory Approval; Conditions) do not apply to Regulatory Approvals required for development of the Horizontal Improvements pursuant to the DDA, which is governed by the DDA. Tenant understands that Tenant's use and operations on the Premises for the Ancillary Permitted Uses may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, and other Regulatory Agencies. Tenant is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

Port, at no cost to Port, will cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with applicable Laws and to further terms and conditions of this Lease, including without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (a) encumber, restrict or adversely change the use of any Port property other than the Premises, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Tenant has assumed all obligations and liabilities related to such conditions and/or restrictions; or (b) restrict or change the use of the Premises in a manner not otherwise permitted under this Lease; or (c) subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Tenant has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees to which Port may be subject).

Port will provide Tenant with its approval or disapproval thereof in writing to Tenant within ten (10) business days after receipt of Tenant's written request, or if Port's Executive

Director reasonably determines that Port Commission or Board action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Tenant's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Tenant for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve of the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above in this ***Section 9.2***. Tenant further acknowledges and agrees that any time limitations on Port review or approval within this Lease apply only to Port in its proprietary capacity, not in its regulatory capacity.

Tenant will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-Premises or require off-Premises improvements, removal, or other measures. Tenant in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval; provided, however, if Port is a co-permittee, then Tenant will have first obtained Port's prior consent, not to be unreasonably withheld, prior to commencing any such appeal or contest. Tenant will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Tenant will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Tenant's obligation to pay all the costs of complying with any conditions or restrictions.

Without limiting any other Indemnification provisions of this Lease, Tenant will Indemnify the Indemnified Parties from and against any and all Losses which may arise in connection with Tenant's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to operate the Premises in accordance with the terms hereof except to the extent that such Losses arise from the gross negligence or willful acts or omissions of an Indemnified Party acting in its proprietary (and not its regulatory) capacity.

10. TENANT'S MANAGEMENT AND OPERATING COVENANTS.

10.1. ***Construction of the Horizontal Improvements***. Tenant will construct the Horizontal Improvements in accordance with the DDA.

10.2. ***Mitigation Monitoring and Reporting Program***. In order to mitigate any potential significant environmental impacts of the Project and operation of the Premises, Tenant agrees that the development and operation of the Project will be in accordance with mitigation measures set forth in the Mitigation Monitoring and Reporting Program attached as ***Exhibit G***. As appropriate, Tenant will incorporate the Mitigation Monitoring and Reporting Program into any contract for the development of the Horizontal Improvements and/or operation of the Horizontal Improvements and the Premises.

10.3. ***Special Events***. All Special Events must be conducted in accordance with all the conditions set forth in ***Exhibit H***.

10.4. ***Parking Operations***. Tenant will have the right, but not the obligation, to operate surface parking spaces and lots within the Premises until no more surface areas within the Premises are available for surface parking use due to the need for such areas for the construction of the Horizontal Improvements, including staging for the same.

(a) Generally. Subject to this ***Section 10.4***, all surface parking spaces will be available to the artist tenants of the Noonan Building, and otherwise to the general public on a non-exclusive basis only, and offered at fair market rates on either a daily basis or a monthly basis (provided Tenant will not offer discounted rates for monthly parking, as more particularly set forth in the Transportation Demand Management Plan) and available at least 8 consecutive hours daily.

(b) Parking Revenues. All parking revenues will be applied in accordance with ***Exhibit D*** (Rent).

(c) Prevailing Rate of Wages and Displaced Work Protection Required for Workers. Tenant will comply fully and be bound by all the requirements of Sections 21C.3 and 21C.7 of the City's Administrative Code. In general, the ordinance requires operators of public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by Port to pay employees working in such facilities not less than the Prevailing Rate of Wages, as defined by ordinance, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work. The ordinance also requires the operator of such facilities to retain for a 90-day transition employment period, the Employees, as defined by the ordinance, who have worked at least 15 hours per week and have been employed by the immediately preceding operator or its subcontractors, if any, for the preceding twelve months or longer at the facility or facilities covered by the agreement with the Port, provided that just cause does not exist to terminate any Employee. The predecessor operator's Employees who worked at least 15 hours per week will be employed in order of their seniority with the predecessor. In the event of a conflict between the terms of this ***Section 10.4(c)*** and Sections 21C.3 and 21C.7 of the City's Administrative Code, the terms of the Administrative Code shall prevail.

(d) Revenue Control Equipment. Tenant will comply with ***Article 22*** (Port's Right to Pay Sums Owed by Tenant) of the San Francisco Business and Tax Regulations Code, including, without limitation the requirement to install, maintain and use Revenue Control Equipment at the Premises. Tenant will immediately notify Port in writing of any audit, inspection, alleged violation, violation or penalty action taken under such Article by any Enforcing Agency, as defined by ***Article 22*** (Port's Right to Pay Sums Owed by Tenant). In addition to any other requirements under this Lease, upon Port's request, Tenant will provide Port a copy of all information submitted to the Tax Collector and any other City department or official to demonstrate Tenant's compliance with ***Article 22-*** (Port's Right to Pay Sums Owed by Tenant).

10.5. ***Transportation Demand Management Plan***. Tenant will comply with the Transportation Demand Management Plan throughout the Term.

10.6. ***Pier 70 Risk Management Plan***. Tenant will comply, and will cause its Agents to comply, with all applicable provisions of the Pier 70 Risk Management Plan, a copy of which has been provided to Tenant, including requirements to notify all site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually. Any and all Subleases will require Subtenants (including its Agents) to comply with all applicable provisions of the Pier 70 Risk Management Plan.

11. REPAIR AND MAINTENANCE.

11.1. ***Covenants to Repair and Maintain the Premises***.

(a) Except as set forth in ***Sections 11.1(b) and 11.1(c)***, Tenant is obligated at its sole cost and expense (but without limitation on Master Developer's right to reimbursement under the DDA or Acquisition Agreement) to maintain, repair and replace the Historic Buildings in the condition existing as of the Effective Date and any Improvements constructed or rehabilitated by Tenant on the Premises, reasonable wear and tear excepted and subject further to all Regulatory Approvals.

(b) Tenant is obligated at its sole cost and expense (but without limitation on Master Developer's right to reimbursement under the DDA or Acquisition Agreement) to maintain, repair and replace the Horizontal Improvements to a condition required by the DDA for the City's Acceptance of the same until the applicable Horizontal Improvements are Accepted by the City and the applicable Horizontal Improvement Parcel is released from the Premises in accordance with ***Section 1.1(b)(ii)*** (Horizontal Improvement Parcels). Tenant will make such repairs and replacements with materials and quality of workmanship at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Horizontal Improvements installed at the time of issuance of the final certificate of occupancy for the applicable Horizontal Improvements.

(c) Prior to the annexation of the Building 11 Site into the Premises, Tenant is obligated at its sole cost and expense (but without limitation on Master Developer's right to reimbursement under the DDA or Acquisition Agreement), to repair and replace any damage caused by Tenant, its Subtenants, Agents or Invitees to the utilities serving the Noonan Building tenants and artists. Prior to the annexation of the Building 11 Site into the Premises, if Port determines that the utilities serving the Noonan Building tenants and artists require maintenance, repair or replacement for any other reason, then Tenant will grant Port a right of access to the Building 11 Site and such other areas within the Premises as reasonably necessary to perform such maintenance, repair or replacement, provided Port does not unreasonably interfere with the construction of the Horizontal Improvements.

(d) For purposes of this Lease, the term **"reasonable wear and tear"** will not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease. Port is not obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Horizontal Improvements, other Improvements or Subsequent Construction. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

11.2. ***Port's Right to Inspect.*** Port or the City may make periodic inspections of the Premises to inspect the construction and development of the Horizontal Improvements or as otherwise required or reasonably necessary to determine Tenant's compliance with this Lease, in all cases upon reasonable prior notice to Tenant during regular business hours. During an inspection, Port will comply with Master Developer's onsite safety measures and act reasonably to minimize any interference with Master Developer's construction activities. Port will provide a copy of any inspection reports prepared by Port or its Agents promptly following Master Developer's request, subject to Port's right to withhold documents otherwise privileged or confidential. Port disclaims any warranties, representations, and statements made in any reports, will have no liability or responsibility with respect to any warranties, representations, and statements, and will not be estopped from taking any action (including later claiming that the construction of the Horizontal Improvements is defective, unauthorized, or incomplete) or be required to take any action as a result of any inspection.

11.3. ***Right to Repair.*** In the event Tenant fails to maintain, repair, and replace the Premises, the Historic Buildings, Horizontal Improvements, damages to utilities serving the Noonan Building tenants and artists or the other Improvements, as applicable, in accordance with ***Section 11.1*** (Repair and Maintenance) and such failure is likely to cause imminent physical harm to any Person or constitutes a violation of applicable Law, or with respect to Historic Buildings only, such failure is likely to result in deterioration to or damage of the Historic Buildings below the condition existing on the Commencement Date (reasonable wear and tear excepted), Port or the City may repair the same at Tenant's cost and expense and Tenant will reimburse Port or the City, as applicable, as provided in this ***Section 11.3***; provided, however, with respect to Tenant's failure to maintain and repair the Horizontal Improvements only, Port may call on the Maintenance and Repair Bond, if any, in lieu of expending its own funds for

such repairs. Except in the event of an emergency, Port or the City, as applicable, will first provide no less than fifteen (15) days prior notice to Tenant before commencing any maintenance to or repair of any of the foregoing. If Tenant does not commence maintenance or repair of the affected Horizontal Improvements or provide assurances reasonably satisfactory to Port or the City, as applicable, that Tenant will commence maintenance or repair of the same within such fifteen (15) day period, then Port or the City, as applicable, may proceed to take the required action. If Port or the City, as applicable, elects to proceed with such repair or maintenance, then promptly following completion of any work taken by Port or the City, as applicable, pursuant to this ***Section 11.3***, Port or the City, as applicable, will deliver a detailed invoice of the work completed, the materials used and the costs relating thereto. Tenant also will pay to Port or the City, as applicable, an administrative fee equal to ten percent (10%) of the total "hard costs" of the work. "**Hard costs**" include the cost of materials and installation, but exclude any costs associated with design, such as architectural fees. Tenant will pay to Port or the City, as applicable, the amount set forth in the invoice within thirty (30) days after delivery of the invoice.

11.4. ***Maintenance Notice.*** In the event Port notifies Tenant of a failure to maintain and repair in accordance with ***Section 11.1*** (Covenants to Repair and Maintain the Premises) ("**Maintenance Notice**"), Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300), which amount will be increased by one hundred dollars on the tenth (10th) Anniversary Date and every ten (10) years thereafter, upon delivery of the Maintenance Notice. In the event Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance with this ***Article 11***, then Tenant will pay to Port, as Additional Rent, an amount equaling Four Hundred Dollars ($400), which amount will be increased by One Hundred Dollars ($100.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter, for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges is in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. The amounts set forth in this ***Section 11.4*** are due within five (5) days following delivery of the applicable Maintenance Notice.

Tenant's Initials: _____

12. HORIZONTAL IMPROVEMENTS.

12.1. ***Tenant's Obligation to Construct the Horizontal Improvements.*** Tenant is obligated to construct, the Horizontal Improvements during the Term in accordance with the DDA, including Articles 13-17 thereof. Tenant's and Master Developer's construction of the Horizontal Improvements in accordance with the DDA is a material part of the bargained for consideration under this Lease and failure to do so in accordance with this Lease and the DDA may result in, among other things, termination of this Lease. Port has no obligation to construct any of the Horizontal Improvements.

12.2. ***Tenant's Obligation to Make Horizontal Improvements Available for Use Prior to Acceptance.*** Before Acceptance of the applicable Horizontal Improvements, subject to the immediately following sentence, Tenant will have the right, but not the obligation, to make the Horizontal Improvements that (a) will be operated by the SFPUC, available for SFPUC's use without charge or any fee, and (b) would generally be available for the public's use, such as streets, sidewalks, parks and open space, available for use by all parties, including Vertical Developers, the general public, the City and Port, without charge or any fee. Notwithstanding the foregoing, Tenant will make available for use without charge, all Horizontal Improvements

necessary for any Vertical Developer to obtain a temporary certificate of occupancy for its Vertical Improvements.

12.3. ***Title to Improvements.*** Tenant will own all Horizontal Improvements until they are Accepted. Tenant will own during the Term all Subsequent Construction located on the Premises and all appurtenant fixtures, machinery and equipment installed therein (except for subtenant improvements to the extent owned by any subtenant pursuant to such sublease, trade fixtures and other personal property of Subtenants). Upon release of the applicable Park/Phase Improvement Parcel, title to the Improvements within such Park/Phase Improvement Parcel including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants), will vest in Port without further action of any Party, and without compensation or payment to Tenant (but without limitation on Master Developer's right to reimbursement under the DDA or Acquisition Agreement). Tenant and its Subtenants have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant will promptly cause the repair of such damage at no cost to Port.

13. SUBSEQUENT CONSTRUCTION.

13.1. ***Port Approval.***

(a) **Generally.** Tenant will have the right, from time to time during the Term, to construct Subsequent Construction in accordance with the provisions of this ***Article 13***.

(b) **Subsequent Construction Requiring Port's Approval in Port's Sole Discretion.** Tenant has the right during the Term to perform Subsequent Construction in accordance with the provisions of this ***Article 13***, provided that Tenant cannot do any of the following without Port's prior approval, which approval may be withheld by Port in its sole discretion:

(i) Construct additional buildings or other additional above ground structures on Development Parcels prior to the applicable parcel's release from the Premises, other than temporary buildings, and structures necessary to advance the Permitted Uses that are Demolished and Removed by Tenant prior to the earlier of (A) five (5) years from completion of such temporary buildings or structures, or (B) the applicable parcel's release from the Premises;

(ii) Decrease the bulk or height of the exterior of any Historic Building beyond the bulk or height existing as of the Commencement Date;

(iii) Materially alter the Historic Fabric of any Historic Building unless pursuant to the requirements of an approved Regulatory Approval or the DDA;

(iv) Perform Subsequent Construction on any Historic Building that would cause a decertification of all or a portion of the Historic Building for Historic Preservation Tax Credits, or that does not comply with the Secretary's Standards; or

(v) Perform Subsequent Construction to Public Access Areas or other areas of the Premises that Master Developer has agreed to open to the general public prior to Acceptance (such as streets and parks), if the Subsequent Construction would adversely affect (other than temporarily during the period of such Subsequent Construction) the public's access to, or the use or appearance of, such areas.

13.2. ***Construction Schedule.***

(a) **Performance.** Once commenced, Tenant will prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.

(b) **Reports and Information.** During periods of construction, Tenant will submit to Port written progress reports when and as reasonably requested by Port.

13.3. *Construction*.

(a) **Commencement of Construction**. Tenant will not commence any Subsequent Construction until Tenant has obtained all building permits, other Regulatory Approvals and Port approvals to the extent required.

(b) **Construction Standards**. All Subsequent Construction must be performed by duly licensed and bonded contractors or mechanics and must be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws, and, in the case of Subsequent Construction on Historic Buildings only, will be consistent with the Secretary's Standards and the historic register status of the Union Iron Works Historic District.

(c) **Reports and Information**. During periods of Construction, Tenant will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by the County Assessor.

(d) **Costs of Construction**. Port will have no responsibility for costs of any Construction and Tenant will pay (or cause to be paid) all such costs.

(e) **Construction Rights of Access**. During any period of Subsequent Construction, Port and its Agents have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior written notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work; provided, however, that Port and its Agents will conduct their activities in such a way to minimize interference with Tenant and its operations to the extent feasible. Nothing in this Lease, however, will be interpreted to impose an obligation upon Port to conduct such inspections or any liability in connection therewith.

(f) **Prevailing Wages**. Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Premises comprise a public work if paid for in whole or part out of public funds. The terms "**public work**" and "**paid for in whole or part out of public funds**" as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Tenant agrees that any person performing labor for Tenant on any public work at the Premises will be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant will include in any contract for such labor a requirement that all persons performing labor under such contract will be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant will require any contractor to provide, and will deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

(g) **Compliance with Workforce Development Plan**. Tenant agrees that it will comply with the Workforce Development Plan attached hereto as ***Exhibit I***.

13.4. ***Safety Matters***. Tenant, while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises, the Horizontal Improvements, and Improvements and the surrounding property, or the risk of injury to persons or members of the public, caused by or resulting from the performance of its Work. Tenant will erect appropriate construction barricades to enclose the areas of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

13.5. ***Record Drawings.***

(a) With respect to any Subsequent Construction requiring a building permit (but excluding temporary structures), Tenant will furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to such Subsequent Construction within ninety (90) days following completion of the applicable Subsequent Construction and Port's written notice to Tenant requesting same. Record Drawings must be in the form of full-size, hard paper copies and converted into electronic format as (1) full-size scanned TIF files, and (2) AutoCad files of the completed and updated Final Construction Documents, as further described below, and in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "**Record Drawings**" means drawings, plans and surveys showing the Subsequent Construction as built on the Premises and prepared during the course of construction (including all requests for information, responses, field orders, change orders, and other corrections to the documents made during the course of construction). If Tenant fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following an additional written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Subsequent Construction, and the actual, third-party cost of preparing such Record Drawings must be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section limits Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity. Tenant is permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Tenant's request, Port will provide Tenant with a release from liability for future use of the applicable materials, in a form acceptable to Tenant and Port.

(b) **Record Drawing Requirements.** Record Drawings must be no less than (24" x 36"), with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing will have a Port-assigned number placed onto the title block prior to scanning. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings will be scanned as a test, prior to execution of this requirement in full.

(c) **AutoCad Requirements.** The AutoCad files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s) or DVD(s), as requested by Port. All X-REF, block and other referenced files must be coherently addressed within the environment of the compact disc or DVD, at Port's election. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting. A minimum of ten (10) complete drawing files, including all referenced files, is required to be transmitted to Port as a test, prior to execution of this requirement in full.

(d) **Changes in Technology.** Port reserves the right to revise the format of the required submittals set forth in this ***Section 13.5*** as technology changes and new engineering/architectural software is developed.

14. **UTILITY SERVICES.**

14.1. ***Utility Services.*** Tenant acknowledges and agrees that Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, will not provide any utility services to the Premises or any portion of the Premises. Additionally, Tenant's construction of the various utilities infrastructure as part of the Horizontal Improvements required under the DDA is a material bargained for consideration of this Lease. Tenant, at its sole expense, must (i) arrange for the provision and construction of all on-site and off-site utilities necessary to construct, operate and use the Horizontal Improvements, all of the buildings to be constructed and any other portion of the Premises for their intended use, (ii) be responsible for contracting

with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which all of the Improvements and the Premises are put, and (iii) maintain and repair all utilities serving the Premises to the point provided by the respective utility service provider (whether on or off the Premises). Tenant also must coordinate with the respective utility service provider with respect to the installation of utilities, including providing advance notice to appropriate parties of trenching requirements.

Tenant will pay or cause to be paid as the same become due, all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance, repair, replacement, and continuance of all such services. Except as otherwise set forth in the Development Agreement and DDA, Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, abrogates, diminishes, or otherwise affects the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent to preserve its rights hereunder that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing does not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

14.2. ***Electricity***. Except as otherwise set forth in the Development Agreement, Tenant will procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the San Francisco Public Utilities Commission. If the San Francisco Public Utilities Commission determines that it cannot feasibly provide service to Tenant or as otherwise set forth in the Development Agreement, Tenant may seek another provider. Nothing herein limits any remedy Tenant may have at law or in equity to recover damages for City utility's failure to deliver utility services hereunder.

14.3. ***Energy Consumption***. Tenant acknowledges and agrees that Port has delivered a Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Premises no less than 24 hours prior to Tenant's execution of this Lease. The Disclosure Summary Sheet is attached as ***Schedule 14.3***.

14.4. ***Waiver***. Tenant hereby waives any benefits of any applicable Law, including the provisions of California Civil Code Section 1932(1) permitting the termination of this Lease due to any interruption or failure of utility services. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

15. DAMAGE OR DESTRUCTION.

15.1. ***Damage or Destruction***.

(a) **Tenant to Give Notice.** If at any time during the Term, any damage or destruction occurs to all or any portion of the Premises from fire or other casualty (each a "**Casualty**"), Tenant will promptly give telephonic or written notice (including via electronic mail) thereof to Port generally describing the nature and extent of such Casualty.

(b) **No Effect on Lease.** This Lease will not terminate or be forfeited or be affected in any manner by reason of Casualty, and Tenant, notwithstanding any law or statute present or future (including without limitation, California Civil Code Sections 1932(2) and 1933(4)), waives any and all rights to quit or surrender the Premises or any part thereof,

Tenant acknowledging and agreeing that the provisions of this ***Article 15*** will govern the rights and remedies of the Parties in the event of a Casualty. Tenant expressly agrees that its obligations hereunder, including the payment of any and all Rent and any other sums due hereunder, will continue as though said Premises, the Horizontal Improvements, and/or other Improvements had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind; provided, however, Tenant's obligations to construct, or cause Master Developer to construct, the Horizontal Improvements within any specified period may be revised in accordance with Section 9.2 (Damage and Destruction) of the DDA.

(c) **Tenant's Restoration.** In the event of a Casualty, Tenant has no obligation to Restore the Historic Buildings until such Historic Buildings are required to be Rehabilitated in accordance with the procedures set forth in the DDA relating to construction and must be at Tenant's or Master Developer's sole expense; provided, however Tenant will promptly alleviate any conditions caused by such Casualty that could cause an immediate or imminent threat to the public safety and welfare or damage to the environment, including any demolition or hauling of rubble or debris. Tenant must Restore or cause to be Restored, all Horizontal Improvements damages or affected by the Casualty. All work Tenant is required to perform under this Section must be performed without regard to the amount or availability of insurance proceeds.

(d) Port acknowledges and agrees that, in light of Tenant's obligations under Sections 15.1(b) and 15.1(c), Port has no claim to receive any portion of insurance proceeds received by Tenant from insurance policies required to be carried by Tenant under this Lease on account of any Casualty unless such portion of insurance proceeds relates to Horizontal Improvements that have been Accepted.

16. CONDEMNATION.

16.1. *General; Notice; Waiver.*

(a) **General.** If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties will be determined pursuant to this ***Article 16***.

(b) **Notice.** In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings will promptly give written notice of such proceedings or negotiations to the other Party. Such notice will describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

(c) **Waiver.** Except as otherwise provided in this ***Article 16***, the Parties intend that the provisions of this Lease will govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this ***Article 16***, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under California Code of Civil Procedure Sections 1265.120 and 1265.130, as such section may from time to time be amended, replaced or restated.

16.2. ***Total Condemnation***. If there is a Condemnation of the entire Premises or the Leasehold Estate (a "**Total Condemnation**"), this Lease will terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties will be released without further obligations to the other Party as of the Condemnation Date, subject to the payment to Port of accrued and unpaid Rent, up to the Condemnation Date and the provisions that expressly survive the expiration or earlier termination of this Lease. Port and Tenant will

execute and deliver a termination of Lease or such other document as is reasonably necessary to evidence such termination.

16.3. ***Substantial Condemnation, Partial Condemnation.*** If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties will be as follows:

(a) **Substantial Condemnation.** If there is a Substantial Condemnation of a portion of the Premises or the Leasehold Estate, this Lease will terminate, at Tenant's option (which will be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port) as of the Condemnation Date. "**Substantial Condemnation**" means where Tenant reasonably determines that, because of the Condemnation, it will be infeasible for Master Developer under the DDA to develop all or any remaining Phase (as defined in the DDA) of the Project substantially in conformance with the Project Approvals, due to either economic or physical construction reasons unless Port and Master Developer amend the DDA, each in their sole discretion.

(b) **Partial Condemnation.** If there is a Condemnation of any portion of the Premises or the Leasehold Estate which does not result in a termination of this Lease under ***Section 16.2*** (Total Condemnation) or ***Section 16.3(a)*** (Substantial Condemnation) (a "**Partial Condemnation**"), this Lease will terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, this Lease will remain in full force and effect as to the portion of the Premises (or of the Leasehold Estate) remaining immediately after such Condemnation. Port and Tenant will execute and deliver a partial termination of Lease or such other document as is reasonably necessary to evidence such termination.

16.4. ***Awards.*** Except as provided in ***Sections 16.5*** (Temporary Condemnation) and ***16.6*** (Personal Property) Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including, without limitation, reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") will be allocated between Port and Tenant as follows:

(a) First, to Port for the payment of all unpaid Rent.

(b) Second, in the event of a Partial Condemnation, to pay costs of Restoration incurred by Tenant;

(c) Third, to Port for the value of the condemned land only, subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and without reference to, or inclusion of, Port's reversionary interest in the value of the Improvements;

(d) Fourth, to any non-affiliate Mortgagee pursuant to a non-affiliate Mortgage as and to the extent provided therein, for payment of all sums secured by its Mortgage that remain outstanding, together with its reasonable out of pocket expenses and charges in collecting the Net Award and Payment, including without limitation, its reasonable attorneys' fees incurred in the Condemnation;

(e) Fifth, to Tenant to the extent that the Net Awards and Payments are attributable to Tenant's Leasehold Estate not including the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date;

(f) Sixth, the balance of the Net Awards and Payment will be divided proportionately between Port, for the value of Port's reversionary interest in the land and Improvements (based on the date the Term would have expired but for the event of Condemnation) and Tenant, for the value of the Horizontal Improvements constructed by Tenant for the remaining unexpired portion of the Term to the original scheduled Expiration Date. Any Net Awards and Payment paid to Tenant in accordance with this Section will be applied as "**Land**

Proceeds" that Port can contribute as an "Advance of Land Proceeds" under Section 7 of the Financing Plan.

(g) Notwithstanding anything to the contrary set forth above, any portion of the Net Awards and Payments which has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the value of Port's reversionary interest in the land and Improvements, the Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term of this Lease, will be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment. If less than all of the Premises is condemned, and this Lease is terminated, the fair market value of the remaining Premises and Improvements thereon which become the property of Port upon such termination shall be treated for purposes of this Section as received by Port on account of its share of the Award and the cash payment payable to Port shall be reduced by a like amount and instead paid to Tenant.

16.5. ***Temporary Condemnation***. If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease will remain in full force and effect, and the entire Award will be payable to Tenant.

16.6. ***Personal Property***. Notwithstanding ***Section 16.4*** (Awards), Port will not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants.

17. LIENS.

17.1. ***Liens***. Tenant will not create or permit the attachment of, and will promptly discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or the Leasehold Estate, other than (i) this Lease, permitted Subleases, and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants or are being contested in accordance with ***Article 7*** (Contests)), and (iii) Mortgages in accordance with ***Article 37*** (Mortgages).

17.2. ***Mechanics' Liens***. Tenant will keep the Premises and the Leasehold Estate free from any liens arising out of any work performed, materials or services furnished, or obligations incurred by Tenant or any of its Agents. Tenant will provide thirty (30) days' advance written notice to Port of any Construction to allow Port to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such Lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to Port, it will constitute an Event of Default, and Port will have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by Port (including interest at the Default Rate computed from the date of payment) for such purpose and all expenses incurred by Port in connection therewith must be reimbursed to Port by Tenant within ten (10) days following demand by Port. Port will include with its demand, supporting documentation.

18. ASSIGNMENT AND SUBLETTING.

18.1. ***Transfers***. Tenant will have the right to Transfer without obtaining Port's consent its entire interest in this Lease to the proposed Transferee in connection with a Transfer of the Master Developer's rights under the DDA pursuant to ***Article 6*** of the DDA. Except in connection with a Transfer under the DDA, no other Transfer of Tenant's interest is permitted.

18.2. ***No Release of Tenant's Existing Liability or Waiver by Virtue of Consent***. The effectiveness of a Transfer hereunder is not in any way to be construed to relieve Tenant of any

liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder before the date of such Transfer. From and after a Transfer, the transferor will be released from all obligations and liability under this Lease only to the extent that the transferor, as Master Developer, is released from its obligations under the DDA.

18.3. ***Sublease.*** Tenant has the right to Sublease portions of the Premises for parking and the Ancillary Permitted Uses without Port's prior consent so long all of the following conditions are satisfied (each a "**Pre-Approved Sublease**"):

(a) The Sublease will not adversely and materially impact construction of the Horizontal Improvements or the Vertical Improvements; and

(b) The Sublease (and any further sub-subleases of the Sublease space) are all subject to the terms and conditions of this Lease, provided that the Subtenant need not be obligated to undertake any obligations with respect to the Subleased Space that is Tenant's obligation under such Sublease; and

(c) The term of the Sublease does not extend beyond the Term of this Lease;

(d) The Sublease contains an Indemnification and waiver of claims provision benefitting Port that is substantially and materially the same as ***Article 19*** (Indemnification of Port) except that the term "**Tenant**" in such provision means "**Subtenant**;" and

(e) The Sublease requires that under all liability and other insurance policies, "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES**" are additional insureds by written endorsement and acknowledging Port's rights to demand increased coverage to normal amounts consistent with the Subtenant's business activities on the Premises; and

(f) Subject to the rights of any Mortgagee, the Sublease requires Subtenant to pay the Sublease rent and other sums due under the Sublease directly to Port upon receiving written notice from Port that an Event of Default has occurred; and

(g) The Sublease requires the Subtenant to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease; and

(h) The Sublease contains a provision similar to ***Article 36*** (Inspection of Premises by Port) requiring Subtenant to permit Port to enter its Subleased space for the purposes specified in ***Article 36***; and

(i) The Sublease contains a provision similar to ***Section 30.1*** (Tenant Estoppel)) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as ***Exhibit J***; and

(j) The Sublease requires Subtenant to comply with the Special Provisions set forth in ***Article 41*** (Special Provisions); and

(k) The Sublease contains a provision that if for any reason whatsoever this Lease is terminated, the Sublease will be automatically terminated

18.4. ***Acknowledgements.*** Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any claims arising from Port's actions under this ***Article 18.***

18.5. ***Mortgaging of Leasehold.*** Notwithstanding anything herein to the contrary, at any time during the Term, Tenant has the right, without Port's consent, to sell, assign, encumber, or transfer its interest in this Lease to a Mortgagee in connection with the exercise of remedies under the provisions of a Mortgage subject to the limitations, rights and conditions set forth in ***Article 37*** (Mortgages), and, in the event so assigned, the Lease may be further assigned with notice to, but without the consent of, Port.

18.6. ***Assignment of Rents***. Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant's obligations hereunder prior to actual receipt thereof by Tenant; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under ***Article 37*** (Mortgages) until such time as Port has terminated this Lease (subject to the Port's agreement to enter into a new lease with Mortgagee and all other provisions of this Lease protecting Mortgagee's interests in this Lease), at which time the rights of Port in all rents and other payments assigned pursuant to this ***Section 18.6*** will become prior and superior in right; provided, further, any rents collected by any Mortgagee from any Subtenants pursuant to any assignment of rents or subleases made in its favor will promptly remit to Port the rents so collected (less the actual cost of collection) to the extent necessary to pay Port any Rent, including any and all Additional Rent, through the date of termination of this Lease.

18.7. ***No Release of Tenant***. The acceptance by Port of Rent or other payment from any other person will not be deemed to be a waiver by Port of any provision of this Lease or to be a release of Tenant from any obligation under this Lease. No Transfer or Sublease will in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease except as otherwise provided in ***Section 18.2*** (Limitation on Liability).

19. INDEMNIFICATION OF PORT.

19.1. ***General Indemnification of the Indemnified Parties***. Subject to ***Section 19.4*** (Exclusions from Indemnifications, Waivers and Releases), Tenant agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the Premises or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the Premises, or any acts or omissions of Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

(b) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises or any part thereof by Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

(c) any latent, design, construction or structural defect relating to the Improvements, any other Subsequent Construction, or any other matters relating to the condition of the Premises caused directly or indirectly by Tenant or any of its Agents, Invitees, or Subtenants;

(d) any failure on the part of Tenant or its Agents, Invitees, or Subtenants, as applicable, to perform or comply with any of the terms, covenants, or conditions of this Lease or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents or Subtenants;

(f) any acts, omissions, or negligence of Tenant, its Agents, Invitees, or Subtenants; and

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use or occupancy.

19.2. ***Hazardous Materials Indemnification.***

(a) In addition to its obligations under ***Section 19.1*** (General Indemnification of the Indemnified Parties) and subject to ***Section 19.4*** (Exclusions from Indemnifications, Waivers and Releases), Tenant, for itself and on behalf of its Subtenants, Agents, or any of their respective Agents (individually "**Related Third Party**" and collectively "**Related Third Parties**") or their respective Invitees agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition existing or occurring during the Term;

(ii) any Handling or Release of Hazardous Materials in, on, under, around or about the Premises during the Term;

(iii) any Exacerbation of any Hazardous Material Condition in, on, under, around or about the Premises during the Term; or

(iv) failure by Tenant or any Related Third Party to comply with the Pier 70 Risk Management Plan, or failure by their respective Invitees to comply with the Pier 70 Risk Management Plan within the Premises during the Term; or

(v) claims by Tenant or any Related Third Party for exposure during the Term from and after the Commencement Date to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(b) Losses under ***Section 19.2(a)*** includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises or the Property; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Default Rate from the date of demand until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(c) Tenant understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this ***Section 19.2,*** subject to ***Section 19.4*** (Exclusions from Indemnifications, Waivers and Releases), arises upon the earlier to occur of:

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises;

(ii) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises;

(iii) the Exacerbation of any Hazardous Material Condition; or

(iv) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

19.3. ***Scope of Indemnities; Obligation to Defend.*** Except as otherwise provided in ***Section 19.4*** (Exclusions from Indemnifications; Waivers and Releases), Tenant's Indemnification obligations under this Lease are enforceable regardless of the active or passive

negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Tenant, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Tenant and continues at all times thereafter until finally resolved. Tenant's Indemnification obligations under this Lease are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Tenant constitute Additional Rent owing from Tenant to Port hereunder and are due and payable from time to time immediately upon Port's request, as incurred.

19.4. ***Exclusions from Indemnifications; Waivers and Releases.***

(a) Nothing in this ***Article 19*** (Indemnification of Port) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in ***Sections 19.1*** (General Indemnification of Indemnified Parties), ***19.2*** (Hazardous Materials Indemnification),), or the defense obligations set forth in ***Sections 19.3*** (Scope of Indemnities) and ***19.6*** (Defense) extend to Losses:

(i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, or

(ii) from third parties' claims for exposure to Hazardous Materials in, on or under any portion of the Premises prior to the earlier of the (1) commencement of the License, if any, executed under the DDA for access to such portion of the Premises prior to the effective date of this Lease where Tenant has exclusive control of the Premises; or (2) effective date of this Lease with respect to such portion of the Premises; or

(iii) without limiting Tenant's Indemnification obligations under ***Sections 19.2(a)(ii), 19.2(a)(iv), or 19.2(a)(v)***, and to the extent the applicable Loss was not caused by the failure of Tenant or a Related Third Party to comply with the Pier 70 Risk Management Plan, or the failure of their respective Invitees to comply with the Pier 70 Risk Management Plan while on the Premises, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Horizontal Improvement Parcels after the Acceptance Date for such parcel (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Horizontal Improvement Parcel and is not also present in, on or around the Premises); provided, however, the foregoing limitation on Tenant's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Tenant or any of its Related Third Parties.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under ***Section 19.2*** (Hazardous Materials Indemnification) is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Tenant in asserting a claim or claims under such insurance policy but without waiving any of its rights under ***Section 19.2*** (Hazardous Materials Indemnification). Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Tenant, the Indemnification from Tenant under ***Section 19.2*** (Hazardous Materials Indemnification) will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Tenant pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified

Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Tenant.

19.5. ***Survival.*** Tenant's Indemnification obligations under this Lease and the provisions of this ***Article 19*** (Indemnification of Port) survive the expiration or earlier termination of this Lease (or, the partial termination of this Lease with respect to any portion of the Premises released in accordance with ***Section 1.1(b)*** Adjustment of Premises for Development)).

19.6. ***Defense.*** Tenant will, at its option but subject to reasonable approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Tenant's choice; provided, that in all cases Port will be entitled to participate in such defense, compromise or settlement at its own expense. If Tenant fails, however. in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port will have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole cost, to carry out such defense, compromise or settlement which expense is due and payable to the Port within fifteen (15) days after receipt by Tenant of a detailed invoice for such expense.

19.7. ***Waiver.*** As a material part of the consideration of this Lease, Tenant hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from any Losses, including (i) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (ii) goodwill, (iii) business opportunities, (iv) any act or omission of Persons occupying adjoining premises, (v) theft, (vi) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination, (vii) Building defects, (viii) inability to use all or any portion of the Premises due to sea level rise or flooding or seismic events, (ix) arising from the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard, and (x) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the Premises or the 28-Acre Site, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of the Indemnified Parties or State Lands Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties or State Lands Indemnified Parties, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Tenant or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties or State Lands Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue, or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties or State Lands Indemnified Parties arising out of this Lease or the uses authorized hereunder, including, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the waivers and releases in this Lease will remain effective. Therefore, with respect to the claims released in this Lease, Tenant waives any rights or benefits provided by California Civil Code Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE WAIVERS AND RELEASES MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE WAIVERS AND RELEASES AT THE TIME THIS LEASE WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Tenant's Initials: _____

Tenant acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

20. INSURANCE.

20.1. ***Required Insurance Coverage***. In addition to the Additional Insurance Requirements to be provided by Tenant or Tenant's Subtenants or Agents that conduct any Special Event under ***Exhibit H*** (Procedures for Special Events), Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) **General Liability Insurance.** Comprehensive or commercial general liability insurance, with limits not less than Twenty Million Dollars ($20,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, liquor liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars ($250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Subsequent Construction or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) **Automobile Liability Insurance.** Comprehensive or business automobile liability insurance with limits not less than Five Million Dollars ($5,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation Tenant's Agents and Invitees.

(c) **Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance.** Worker's Compensation in statutory amounts, with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury, or illness. In the event Tenant is self-insured for the insurance required pursuant to this ***Section 20.1(c)***, it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance,

Sacramento, California. In addition, Tenant will be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively as applicable with Employer's Liability limit not less than Five Million Dollars ($5,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Subsequent Construction, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's personal property or contractors' equipment as applicable.

(c) Flood Insurance.

(i) During construction of the improvements, for any parcel located within a flood zone on the City's flood maps, flood insurance will be in an amount equal to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates.

(ii) During construction of the improvements, for any parcel not located within a flood zone on the City's flood maps, flood insurance will be in an amount to the extent available at commercially reasonable rates from recognized insurance carriers or through the NFIP equal to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates

(f) Pollution Legal Liability. Tenant, at its sole cost and expense, will procure Pollution Legal Liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim, for a period of not less than five (5) years, and a subsequent policy for an additional five (5) years, for a total term of ten (10) years. Each of the State Lands Indemnified Parties will be named as additional insureds under the terms of any such policy. If Tenant procures any such policy for a period that is longer than ten (10) years, Tenant will ensure that each of THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE STATE LANDS INDEMNIFIED PARTIES are named as additional insureds for such longer period of time.

(g) Construction Activities. Insurance required in connection with construction of Horizontal Improvements is as set forth below:

(i) *Contractor Requirements.* Tenant must require its contractors and subcontractors to maintain the following coverages:

(1) Commercial general liability insurance with limits of not less than $5 million each occurrence on a policy form that is at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01);

(2) Comprehensive automobile liability insurance with a policy limit of not less than $5 million each occurrence on a policy form that is at least as broad as ISO Form Number CA 0001 covering automobile liability, Code 1 (any auto);

(3) Worker's compensation insurance with statutory limits and employer's liability insurance with limits of not less than $1 million each accident, injury, or illness;

(4) Watercraft liability insurance (if operating watercraft) protection and indemnity insurance with limits not less than $1 million each occurrence, or with

Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, wreck removal, and damages "In Rem" (the vessel); and

(5) Marine general liability (MGL) (if operating watercraft) with limits not less than $10 million each occurrence and aggregate basis;

(6) Vessel pollution liability insurance (if operating watercraft with engines or fuel usage) with limits not less than $5 million per occurrence and $5 million in the aggregate with a deductible not to exceed $50,000 with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost; insurance should cover liability imposed under laws for any loss, damage, cost, liability or expense arising out of the sudden, accidental, and unintentional discharge, spillage, leakage, emission, or release of any substance of any kind into or on the navigable waters of the United States or the adjoining shorelines.

(7) Contractor's pollution liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim.

(ii) *Builder's Risk Requirements.* In addition, Tenant or General Contractor must carry "Builder's All Risk" insurance on a "Special Form" ("All Risk") Builder's Risk meeting the following requirements.

(1) The amount of coverage must be equal to the full replacement cost of any existing structures affected by the work and full replacement cost of all new construction, including all materials and equipment intended to become part of the permanent structures. The policy must provide coverage for "soft costs," such as design and engineering fees, code updates, permits, bonds, insurance, and inspection costs caused by an insured peril. The Builder's Risk insurance may have a deductible clause not to exceed $100,000.

(2) The Builder's Risk policy must identify the City and County of San Francisco and the San Francisco Port Commission as loss payees, subordinate to any lender requirements.

(3) The Builder's Risk policy must include the following coverages: (A) all damages of loss to the work and to appurtenances, to materials and equipment to be incorporated into the project while the same are in transit, stored on or off the site, to construction plant and temporary structures; (B) the costs of debris removal, including demolition as may be made reasonably necessary by covered perils, resulting damage, and any applicable law; and (C) start up and testing and machinery breakdown including electrical arcing.

(iii) *Professional Services Requirements.* Tenant must require all providers of engineering and geotechnical professional services under contract with Tenant to provide professional liability coverage with limits not less than Five Million Dollars ($5,000,000.00) each claim. With respect to all other professional services provided to for the Horizontal Improvements, Tenant must require all providers of such professional under contract with Tenant to provide professional liability coverage with limits not less Two Million Dollars ($2,000,000.00) each claim. Such insurance will provide coverage the period when such professional services are performed and for a period of 3 years issuance of a Certificate of Occupancy for the Horizontal Improvements. This requirement be met by the use of an extended reporting period. Notwithstanding anything to the contrary, coverage required in this clause (iii) may be provided with a lower limit for subcontractors are local business enterprises (LBEs) or are performing work under subcontracts of $100,000 less only. Tenant shall have the right to request a waiver of the requirements of this clause by delivering written request to Port, and Port shall respond within a reasonable period of time any such request; provided, with respect to waiver requests for LBEs and subcontracts only, long as the waiver request was sent by electronic mail, addressed to one or more line staff responsible for administration of this Lease stating in the subject line "**Immediate Action**

to Avoid Deemed Consent" or words to the same effect, Port will be deemed to have approved such waiver if Port does not respond to the waiver request within five (5) business days.

(h) Other Coverage. Such other insurance or different coverage amounts may change from time to time as required by the City's Risk Manager, if in the reasonable judgement of the City's Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the Premises, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Tenant determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Tenant will provide to Port evidence supporting Tenant's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(i) Substitution. Notwithstanding the foregoing, Tenant shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in this ***Article 20*** (Insurance) with insurance coverage maintained by one or more of Tenant's Agents, Invitees or transferees as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of this ***Article 20*** as determined by Port.

20.2. *General Requirements*.

(a) Insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance required hereunder, such insurance shall name the Tenant as the first named insured. As to liability insurance Tenant shall ensure that Port and the City of San Francisco are named as additional insureds under all general liability, automobile liability, vessel pollution, pollution, Public Boat Dock liability coverages. Any umbrella and/or excess liability insurance will include an endorsement through a blanket additional endorsement or equivalent naming as additional insureds the following: **"THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."**

(iii) As to Commercial General Liability and automobile liability insurance, shall provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought;

(iv) Will provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by ***Sections 20.1(a)*** (General Liability Insurance), ***20.1(b)*** (Automobile Liability Insurance), ***20.1(c)*** (Worker's Compensation),, and ***20.1(f)*** (Pollution Legal Liability);

(v) Will be subject to the reasonable approval of Port, which approval shall not be unreasonably withheld.

(b) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant shall furnish Port certificates with respect to the policies required under this Section within thirty (30) days after the Commencement Date and, with respect to renewal

policies, within thirty (30) days after the policy renewal date of each such policy, and, within sixty (60) days after Port's request, shall also provide Port with copies of each such policy, or shall otherwise make such policy available to Port for its review. If at any time Tenant fails to maintain the insurance required pursuant to ***Section 20.1***, (Required Insurance Coverage), or fails to deliver certificates as required pursuant to this Section, then, upon thirty (30) business days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Tenant shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(c) Insurance of Others. To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies be endorsed to include the "**CITY AND COUNTY OF SAN FRANCISCO AND THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES**" as additional insureds under the terms of any such policy. Unless otherwise specified in this agreement, Tenant will ensure that all contractors and sub-contractors performing work on the Premises and all operators and subtenants of any portion of the Premises carry adequate insurance coverages.

(d) Excess Coverage. All requirements may be satisfied by any combination of umbrella and excess liability policies (including blanket policies).

20.3. ***Release and Waiver.*** Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by ***Sections 20.1(d)*** (Personal Property Insurance) to the extent that such loss is reimbursed by an insurer.

21. HAZARDOUS MATERIALS.

21.1. ***Compliance with Environmental Laws.*** Tenant will comply and cause its Agents, Invitees, and all Persons under any Sublease, to comply with all Environmental Laws, operations plans (if any), the Pier 70 Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials on, under or about the Premises, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable Laws and any reasonable conditions or limitations required by Port, (c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

21.2. ***Tenant Responsibility.*** Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the Premises except as permitted under ***Section 21.1*** (Compliance with Environmental Laws);

(b) Will not cause or permit any Hazardous Material Condition; and

(c) Will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the Premises, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles used in connection with the Premises in violation of any Environmental Laws;

(d) Tenant will be the "**Generator**" of any waste, including hazardous waste , resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the Premises;

(e) Will comply with all provisions of the Pier 70 Risk Management Plan with respect to the Premises, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually and

(f) Will comply, and will cause all of its Subtenants that are subject to an operations plan, to comply with the operations plan applicable to Tenant or such Subtenant, if any.

21.3. ***Tenant's Environmental Condition Notification Requirements***. The following requirements are in addition to the notification requirements specified in the (i) operations plan(s), if any, (ii) the Pier 70 Risk Management Plan, and (iii) Environmental Laws:

(a) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under ***Section 21.1*** (Compliance with Environmental Laws), Handled, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Tenant's notice to Port by oral or other means, Tenant must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Tenant's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Tenant's receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or Tenant's occupancy of the Premises;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or

from any vehicles Tenant, or its Agents and Invitees use in, on, under or about the Premises during the Term or Tenant's occupancy of the Premises; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises. Tenant must provide Port with copies of any of the documents within the scope of this ***Section 21.3(d)*** upon Port's request.

(e) Tenant must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. At Tenant's request, in lieu of providing Port with copies of non-privileged communications with other persons that are not Environmental Regulatory Agencies, Tenant will (1) make available for Port's review, such non-privileged communications at Tenant's San Francisco office or at Port's office, and (2) reimburse Port for additional costs related to Port's review of such non-privileged communications at Tenant's San Francisco office (including but not limited to additional time related to travel to and from Tenant's office).

(f) Port may from time to time request, and Tenant will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

21.4. ***Remediation Requirement.***

(a) After notifying Port in accordance with ***Section 21.3*** (Tenant's Environmental Condition Notification Requirements) and subject to ***Section 21.4(d)***, Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises; provided Tenant must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with ***Section 21.3***. Except as provided in the previous sentence, Tenant must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under ***Section 21.4(a)***, before this Lease terminates for any reason, Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease: (i) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Tenant's occupancy that is required to be

Remediated by any Regulatory Agency if Remediation would not have been required but for Tenant's use of the Premises, or due to Subsequent Construction or construction of the Horizontal Improvements.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take actions that are reasonably necessary in Port's reasonable judgment to protect the value of the Premises, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises.

(d) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, under, around or about the Premises, Tenant will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

21.5. ***Pesticide Prohibition***. Tenant will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage as further described in ***Section 9*** of ***Exhibit N*** (Port and City Special Provisions) .

21.6. ***Additional Definitions***.

"**Environmental Laws**" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees, and all permits, licenses, approvals, or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety, or community right-to-know requirements related to the work being performed under this Lease. "**Environmental Laws**" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016,by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials 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, including both administrative and judicial proceedings.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"**Environmental Regulatory Approval**" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"**Exacerbate**" or "**Exacerbating**" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure 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, it being understood that the mere discovery of Hazardous Materials does not cause "Exacerbation". Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, construction of Improvements and Alterations under this Lease. "**Exacerbate**" also means failure to comply with the Pier 70 Risk Management Plan. "**Exacerbation**" has a correlative meaning.

"**Handle**" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "**Handling**" and "**Handled**" have correlative meanings.

"**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 substance**", "**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 reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), PCB-containing materials, and any 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 Materials**" also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"**Hazardous Material Claim**" means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties, the State Lands Indemnified Parties, or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"**Hazardous Material Condition**" means the Release or Exacerbation, or threatened Release or Exacerbation, of Hazardous Materials in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, under, or about the Premises during the Term or Tenant's occupancy of the Premises.

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"**New Hazardous Material**" means a Hazardous Material that is not a Pre-Existing Hazardous Material.

"**Pier 70 Risk Management Plan**" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"**Pre-Existing Hazardous Materials**" means any Hazardous Material existing on, in, about or around the Premises as of the Effective Date and identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"**Release**" means when used with respect to Hazardous Materials any accidental, actual, imminent or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"**Remediate**" or "**Remediation**" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "**remedy**" or "**remedial action**" in California Health and Safety Code Section 25322 and "**remove**" or "**removal**" in California Health and Safety Code Section 25323.

"**State Lands Indemnified Parties**" means the State of California, the California State Lands Commission, and all of their respective heirs, legal representatives, successors and assigns, and all other Persons acting on their behalf.

22. PORT'S RIGHT TO PAY SUMS OWED BY TENANT.

22.1. ***Port May Pay Sums Owed by Tenant Following Tenant's Failure to Pay.*** Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any Event of Default, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Port (other than any Imposition, mechanics' lien or encumbrance with respect to which the provisions of ***Articles 6*** (Taxes and Assessments) and ***7*** (Contests) apply, or any other sum required to be paid by Tenant which Tenant is contesting in good faith and with due diligence and which would not become a lien on the Property), Port may, at its sole option, but will not be obligated to, upon ten (10) days prior notice to Tenant, pay such sum for and on behalf of Tenant.

22.2. ***Tenant's Obligation to Reimburse Port.*** If pursuant to ***Section 22.1***, (Port May Pay Sums Owed by Tenant Following Tenant's Failure to Pay), Port pays any sum required to be paid by Tenant hereunder, Tenant will reimburse Port as Additional Rent, the sum so paid. All such sums paid by Port are due from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date, will bear interest at the lesser of the Default Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed in full by Tenant. Port's rights under this ***Article 22*** are in addition to its rights under any other provision of this Lease or under applicable Laws. The provisions of this ***Section 22.2*** will survive the expiration or earlier termination of this Lease.

23. EVENTS OF DEFAULT.

23.1. ***Events of Default.*** Subject to the provisions of ***Section 23.2*** (Special Provisions Concerning Mortgagees and Events of Default) the occurrence of any one or more of the following events which remain uncured after the passage of time set forth pursuant to this ***Article 23*** shall constitute an "**Event of Default**" under the terms of this Lease:

(a) Tenant fails to pay any Rent or Imposition when due, which failure continues for five (5) business days following written notice from Port; provided, however, Port will not be required to give such notice on more than two (2) occasions during any calendar year, and failure to pay any Rent or Imposition thereafter when due will be deemed an Event of Default without need for further notice;

(b) Tenant fails to deliver into escrow the duly executed and acknowledged Partial Release and Termination for an applicable Development Parcel within the time period set forth in ***Section 1.1(b)(i)*** (Development Parcels), and such failure continues for one (1) business day following written notice from Port;

(c) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Port;

(d) Tenant fails to comply with the requirements set forth in ***Exhibit H*** for each Special Event and such failure continues for one (1) business day following written notice from Port; provided, however, if Tenant commits the same default with respect to consecutive, related Special Events more than two (2) times within a twelve (12) month period (by way of example only, holding a prohibited Special Event during non-business hours on more than two (2) occasions), then Tenant will not be entitled to any cure period under this ***Section 23.1(d)*** after notice of such second default;

(e) A Material Breach (as such terms is defined in the DDA) by Master Developer occurs under the DDA and remains uncured but such Event of Default under this Lease will be deemed cured if the Material Breach by Master Developer is cured pursuant thereto;

(f) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.3, which abandonment is not cured within thirty (30) days after notice from Port of Port's belief of abandonment;

(g) The Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion, and such Prohibited Use(s) continues for a period of one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such period and diligently and in good faith continues to cure the default; provided, further, without limitation of the foregoing, the Parties agree that Tenant's internal deliberations to determine the path to cure such default will be deemed to be a commencement of cure;

(h) Tenant fails to comply with the provisions of ***Section 11.1*** (Covenant to Repair and Maintain the Premises) within five (5) days following written notice from Port; provided, however, if such default cannot reasonably be cured within such five (5) day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such five (5) day period and diligently and in good faith continues to cure the default; provided, however, without limitation of the foregoing, the Parties agree that Tenant's internal deliberations to determine the path to cure such default will be deemed to be a commencement of cure;

(i) Tenant fails to comply with the provisions of ***Article 21*** (Hazardous Materials) and such failure continues for a period of one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such one (1) business day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such one (1) business day period and diligently and in good faith continues to cure the default; provided, further that the Parties agree that Tenant's internal deliberations to determine the path to cure such default will be deemed to be a commencement of cure;

(j) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred eighty (180) days;

(k) A writ of execution is levied on the Leasehold Estate which is not released within one hundred eighty (180) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred eighty (180) days; provided, however, that the exercise by a Mortgagee of any of its remedies under its Mortgage will not, in and of itself, constitute a default under this ***Section 23.1(k)***;

(l) Tenant makes a general assignment for the benefit of its creditors; or

(m) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation and Improvement Measures that Tenant is required to comply with) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Port specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Tenant does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

23.2. ***Special Provisions Concerning Mortgagees and Events of Default.*** Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage will not, in and of itself, constitute a default under this Lease. Port will also accept a cure of an Event of Default by any Tenant investor or mezzanine lender; provided, however, such parties will not have any additional time to cure any Event of Default.

24. REMEDIES.

24.1. ***Port's Remedies Generally.***

(a) Upon the occurrence and during the continuance of an Event of Default under this Lease, except as expressly limited herein, Port has all rights and remedies provided in this Lease or available at Law or in equity (including the right to seek injunctive relief or an order for specific performance, where appropriate), including the right to self-help to the extent provided for herein; provided, however, notwithstanding anything to the contrary in this Lease, any right to cure and any remedy available to Port regarding any Event of Default under the Workforce Development Plan, is limited to those rights and remedies provided in the applicable Law for such Workforce Development Plan; provided, further, Port's right to terminate this Lease for an Event of Default will be limited to Events of Default described in ***Sections 23.1(a)*** (but only with respect to Tenant's failure to pay any Impositions), ***23.1(e), 23.1(g) and 23.1(i)***.

(b) In addition to the foregoing remedies, (i) Port will have the right to prohibit Tenant's use of the Premises for Special Events if more than two (2) Events of Default under ***Section 23.1(d)*** occur during any given twelve (12)-month period, and (ii) with respect to an Event of Default due to Tenant's failure to pay Rent, Port will have the remedies set forth in the Financing Plan.

(c) Except as expressly provided herein, all of Port's rights and remedies are cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights will not preclude the exercise of any other.

24.2. ***Right to Keep Lease in Effect.***

(a) **Continuation of Lease.** Port has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations) under which Port may continue this Lease in full force and effect following the occurrence of an Event of Default. In the event Port elects this remedy, Port has the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Port's rights, including the right to collect Rent when due. Upon the occurrence of an Event of Default, following written notice to Tenant, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant will be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including Attorneys' Fees and Costs, brokers' fees or commissions, expenses of remodeling the Premises required by the reletting and similar costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port determines in its sole discretion.

(b) **No Termination Without Notice.** No act by Port allowed by this ***Section 24.2***, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to a Transfer or termination of a Transfer in accordance herewith, will terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) **Application of Proceeds of Reletting.** If Port elects to relet the Premises as provided in ***Section 24.2(a)***, the rent that Port receives from reletting will be applied to the payment of:

(i) First, to reimburse a Special Tax Payment Request under ***Section 24.2(e)(ii)***, if applicable;

(ii) Second, all costs incurred by Port in enforcing this Lease, whether or not any action or proceeding is commenced, including Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing Personal Property, costs in connection with reletting the Premises, or any portion thereof, altering, installing, modifying and constructing tenant improvements required for a new tenant, and costs of repairing, securing and maintaining the Premises to the standards set forth in this Lease or any portion thereof;

(iii) Third, the payments of any indebtedness other than Rent due and unpaid hereunder from Tenant to Port;

(iv) Fourth, Rent due and unpaid under this Lease; and

(v) Fifth, after deducting the payments referred to in ***Sections 24.2(c)(i)--24.2(c)(iv)***, any sum remaining from the rent Port receives from reletting will be held by Port and applied to monthly installments of future Rent as such amounts become due under this Lease. In no event will Tenant be entitled to any excess rent received by Port. If on a date Rent or other amount is due under the Lease, the rent received by Port as of such date from any reletting is less than the Rent or other amount due on that date, or if any costs incurred by Port in reletting, remain after applying the rent received from such reletting, Tenant will pay to Port such deficiency. Such deficiency will be calculated and paid monthly.

(d) **Payment of Rent.** Tenant will pay to Port Rent on the dates the Rent is due, less the rent Port has received from any reletting which exceeds all costs and expenses of Port incurred in connection with a Tenant Event of Default and the reletting of all or any portion of the Premises.

(e) Termination of the DDA.

(i) *Rights and Obligations After Termination.* Upon the termination of the DDA ("**DDA Termination Date**"), all rights, obligations and liabilities of Tenant under this Lease will continue in full force and effect for a period of ninety (90) days after the DDA Termination Date. From and after the ninetieth (90th) day following DDA Termination Date, Tenant will have no right, title, interest, obligation or liability under this Lease, other than the payment of the Impositions if any bonded indebtedness or other debt payable from all or a portion of the Impositions is outstanding subject to the right of reimbursement as provided in ***Section 24.2(e)(ii)***. The foregoing will not in any way be construed to relieve Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant before the ninetieth (90th) day following DDA Termination Date. Port's sole remedy against Tenant under this Lease with respect to Tenant's failure to comply with its obligation to pay Impositions that are due and payable after the ninetieth (90th) day following DDA Termination Date will be to terminate this Lease; provided, however, the foregoing will not limit Port from paying such Impositions. The foregoing is not a limitation on the City's rights and obligations to collect Impositions and Tenant acknowledges that, independent of Port's rights and remedies under this Lease, the City may utilize procedures under applicable law to collect the Impositions.

(ii) *Right to Reimbursement.* Until such time as Port terminates the Lease, Tenant will provide Port with written notice of any payments it has made of Special Taxes due and payable after the date that is 90-days after the DDA Termination Date ("**Special Tax Payments**") to the extent such payments occur through the execution of levies, liens or other involuntary collection actions by applicable taxing agencies against Tenant's current or future revenues, including collection actions against Tenant's right to reimbursement from Project Payment Sources to the extent permitted under DDA Section 12.9. Each such notice will be accompanied by evidence of payment and a request for reimbursement (each a "**Special Tax Payment Request**"). In addition to reimbursing Tenant for Special Tax Payments from reletting proceeds in accordance with ***Section 24.2(c)(i)***, if Tenant makes Special Tax Payments in accordance with this ***Section 24.2(e)(ii)***, then Tenant will be entitled to reimbursement for such amounts paid as follows:

(1) Before Phase 1 Completion. If Port terminates the DDA as to Phase 1 following a Material Breach by Master Developer before the Port has issued an SOP Compliance Determination for all Phase 1 Improvements, Tenant will be entitled to reimbursement of the Special Tax Payments made by Tenant, without any Developer Return, from Land Proceeds generated by Parcel K North and Phase 1 Option Parcels on which Master Developer has Closed Escrow before the DDA Termination Date and after Port has satisfied any repayment obligations to Master Developer under Section 12.9(a) of the DDA; or

(2) After Phase 1 Completion. If Port terminates the DDA after Port has issued an SOP Compliance Determination for all Phase 1 Improvements, Tenant will be entitled to reimbursement of the Special Tax Payments made by Tenant, without any Developer Return, from Land Proceeds generated by the Option Parcels in the Phase on which Master Developer has Closed Escrow before the DDA Termination Date and after Port has satisfied any repayment obligations to Master Developer under Sections 12.9(b), 12.9(d), and 12.9(e) of the DDA.

(iii) *Approvals.* In addition to the reimbursements described in ***Sections 24.2(c)(i) and 24.2(e)(ii)***, Port and Tenant agree to seek resolutions from the Port Commission and the Board of Supervisors for the following:

(1) Authorize Port to include a provision in the DDA that will require Port in any subsequent third-party agreement for the development of the 28-Acre Site to require the new master developer as a condition to the first leasehold or fee conveyance to pay

the amount of any unreimbursed Special Tax Payments previously made by Tenant directly to Tenant, or to pay such amount to Port to remit to Tenant; and

(2) Authorize Port to reimburse Tenant for Special Tax Payments (and any fees, interest and penalties accruing thereon) from any land revenues that Port receives from agreements between Port and any private or public third parties for the use of the 28-Acre Site executed after the expiration of the 90-day period, and expressly including any payments of Special Tax Payments required to be made directly to Tenant as a condition of the applicable third-party agreement as described in ***Section 24.2(e)(iii)(1)***. If reimbursement is so authorized, except in the case of a direct payment to Tenant required under the applicable third-party agreement, Port will make reimbursement payments to Tenant within thirty (30) days after each third party payment of land revenues until the amount of each Special Tax Payment Request is paid in full.

24.3. ***Port's Right to Cure Tenant's Default***. Port, at any time after Tenant commits an Event of Default, may, at Port's sole option, cure the default at Tenant's sole cost. If Port at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, Attorneys' Fees and Costs), all such sums, costs, damages, or liabilities paid by Port will be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date, shall bear interest at the lesser of the Default Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

24.4. ***Termination of Tenant's Right to Possession***. Upon an Event of Default that allows for termination:

(a) Before exercising any right to terminate this Lease and Tenant's right to possession of the Premises under ***Sections 23.1(a)*** (but only with respect to Tenant's failure to pay any Imposition), ***23.1(e)***, ***23.1(g)***, and ***23.1(i)***, Port will provide Tenant with a second written notice ("**Second Default Notice**") and the additional cure period set forth below:

(i) For an Event of Default under ***Section 23.1(a),*** Tenant will have five (5) business days following delivery of the Second Default Notice to cure;

(ii) For an Event of Default under ***Sections 23.1(e)*** or ***23.1(g),*** Tenant will have one (1) business day following delivery of the Second Default Notice to cure; provided, however, if such default cannot reasonably be cured within such one (1) business day period, then Port will not exercise its termination right if Tenant is diligently and in good faith continues to cure the default to completion;

(b) Port may terminate this Lease and Tenant's right to possession of the Premises for the Events of Default described in ***Section 24.4(a)*** at any time following expiration of the cure periods set forth in ***Section 24.4(a)*** for the applicable Event of Default by providing Tenant with a written notice of termination.

(c) Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease will not constitute a termination of Tenant's right to possession.

(d) If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following:

(i) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(ii) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could be reasonably avoided; plus

(iv) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result therefrom. Efforts by Port to mitigate the damages caused by Tenant's breach of this Lease do not waive Port's rights to recover damages upon termination.

The "**worth at the time of award**" of the amounts referred to in ***Sections 24.4(d)(i) and 24.4(d)(ii)*** above will be computed by allowing interest at an annual rate equal to the lesser of the Default Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "**worth at the time of award**" of the amount referred to in ***Section 24.4*** will be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

24.5. ***Continuation of Subleases and Other Agreements***. Port has the right, at its sole option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises (to the extent assignable) following an Event of Default and termination of Tenant's interest in this Lease). Tenant hereby further covenants that, upon request of Port following an Event of Default and termination of Tenant's interest in this Lease, Tenant will execute, acknowledge and deliver to Port such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Port the then existing Subleases and other agreements then in force, as above specified.

24.6. ***Appointment of Receiver***. During the continuance of an Event of Default, Port has the right to have a receiver appointed to collect Rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself will constitute an election by Port to terminate this Lease.

24.7. ***Waiver of Redemption***. Tenant hereby waives, for itself and all Persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any Event of Default.

24.8. ***Remedies Not Exclusive***. The remedies set forth in this ***Article 24*** are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by other terms and provisions of this Lease, Law or in equity. Tenant's obligations hereunder will survive any termination of this Lease.

25. EQUITABLE RELIEF.

In addition to the other remedies provided in this Lease, either Party is entitled at any time after a default or threatened default by the other Party to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an event of default by the other Party, the non-defaulting Party is entitled to any other equitable relief which may be appropriate to the circumstances of such event of default.

26. NO WAIVER.

26.1. ***No Waiver by Port or Tenant***. No failure by Port or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, will be deemed to imply any waiver of any such

breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach will affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Port or Tenant with respect to any other then existing or subsequent breach.

26.2. ***No Accord or Satisfaction.*** No submission by Tenant or acceptance by Port of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder will waive any of Port's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Port had knowledge of any such failure except with respect to the Rent so paid. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment will operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Port. Port may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Port to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) will be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments will be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

27. DEFAULT BY PORT; TENANT'S REMEDIES.

27.1. ***Default by Port.*** Port will be deemed to be in default hereunder only if Port fails to perform or comply with any obligation on its part hereunder, and (i) such failure continues for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than sixty (60) days after written notice thereof from Tenant (provided that Port will use reasonable efforts to cure such default within a thirty (30) day period after receipt of such written notice from Tenant), or, (iii) if such default cannot reasonably be cured within such sixty (60) day period, Port does not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter fails or neglects to prosecute or complete with diligence and dispatch the curing of such default.

27.2. ***Tenant's Exclusive Remedies.*** Upon the occurrence of default by Port described above, which default substantially and materially interferes with the ability of Tenant to construct the Horizontal Improvements, Tenant will have the exclusive right (a) to seek equitable relief, including specific performance, in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Port or its Agents, or (b) if and only if Master Developer has a right to terminate the DDA on account of the applicable default, and Master Developer elects to terminate the DDA, to terminate this Lease. Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder constitutes Tenant's sole and absolute right and remedy for a default by Port hereunder, and Tenant has no remedy of self-help.

28. TENANT'S RECOURSE AGAINST PORT.

28.1. ***No Recourse Beyond Value of Property Except as Specified.*** Tenant agrees that notwithstanding any other term or provision of this Lease, (a) Tenant will have no recourse with respect to, and Port will not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease) and (b) neither Port nor the Indemnified Parties will be liable under any circumstances for injury or damage to, or interference with Tenant's business, including loss or profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring. By Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder, Tenant expressly waives all such liability.

28.2. ***No Recourse Against Specified Persons.*** No commissioner, officer, or employee of the Indemnified Parties will be personally liable to Tenant, or any successor in interest, for any event of default by Port, and Tenant agrees that it will have no recourse with respect to any obligation of Port under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

28.3. ***Nonliability of Tenant's Members, Partners, Shareholders, Directors, Officers and Employees.*** No member, officer, partner, shareholder, director, board member, agent, or employee of Tenant will be personally liable to Port, and Port will have no recourse against any of the foregoing. in an Event of Default by Tenant or for any amount which may become due to Port or on any obligations under the terms of this Lease or any claim based upon this Lease.

29. LIMITATIONS ON LIABILITY.

29.1. ***Waiver of Indirect or Consequential, Incidental, Punitive and Special Damages.*** As a material part of the consideration for this Lease, neither Party (including the Indemnified Parties) will be liable for, and each Party (including the Indemnified Parties) hereby waives any claims against the other Party for any indirect, consequential, incidental, special or punitive damages.

29.2. ***Limitation on Parties' Liability Upon Transfer.*** In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port (or such transferor, as the case may be), but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer; provided, however, that Port (or such subsequent transferor) has transferred to the transferee any funds in Port's possession (or in the possession of such subsequent transferor) in which Port (or such subsequent transferor) has an interest, in trust, for application pursuant to the provisions hereof, and such transferee has assumed all liability for all such funds so received by such transferee from Port (or such subsequent transferor).

30. ESTOPPEL CERTIFICATES.

30.1. ***Estoppel Certificate by Tenant.*** Tenant will execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser or mortgagee of Port's interest in the Premises), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as ***Exhibit K*** stating to Tenant's knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Port. In addition, if requested, Tenant will attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by any Port, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Port's interest therein. Tenant will also insert a provision similar to this Section into each Sublease requiring Subtenants under Subleases to execute, acknowledge and deliver to Port, within twenty (20) business days after request, an estoppel certificate substantially in the form attached hereto as ***Exhibit J*** covering the matters described in clauses (a), (b), (c) and (d) above with respect to such Sublease, along with a true and correct copy of the applicable Sublease and all amendments thereto.

30.2. ***Estoppel Certificate by Port.***

Port will execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Mortgagee, prospective Mortgagee, prospective purchaser, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as ***Exhibit L*** stating to Port's actual knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, whether or not, to the knowledge of Port, there are then existing any defaults under this Lease (and if so, specifying the same) and (c) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Port will attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that, to its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any Mortgagee, prospective Mortgagee, prospective purchaser, or other prospective transferee of Tenant's interest under this Lease.

31. APPROVALS BY PORT; STANDARD OF REVIEW; FEES FOR REVIEW.

31.1. ***Approvals by Port.*** The Port's Executive Director or his or her designee, is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda, or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Port hereunder, if the Executive Director reasonably determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Port's best interests. The Port Executive Director's signature of any such documents will conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Port of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Port, the Executive Director, or his or her designee, is authorized to execute such instrument on behalf of Port, except as otherwise provided by applicable Law, including the City's Charter and approval by the City's Attorney's Office to the extent applicable, or if the Executive Director determines, in his or her sole discretion, that Port Commission action is necessary prior to execution of such instrument.

31.2. ***Standard of Review.*** Except as expressly provided otherwise or when Port is acting in its regulatory capacity, the following standards will apply to the Parties' conduct under this Lease.

(a) **Advance Writings Required.** Whenever a Party's approval or waiver is required: (i) the approval or waiver must be obtained in advance and in writing; and (ii) the Party whose approval or waiver is sought may not unreasonably withhold, condition, or delay its approval or waiver, as applicable.

(b) **Commercial Reasonableness.** Whenever a Party is permitted to make a judgment, form an opinion, judge the sufficiency of the other Party's performance, or exercise discretion in taking (or refraining from taking) any action or making any determination, or grant or withhold its approval or consent, unless otherwise stated in this Lease, that Party must employ commercially reasonable standards in doing so. In general, the Parties' conduct in implementing this Lease, including construction of Improvements, disapprovals, demands for performance, requests for additional information, and any exercise of an election or option, must be commercially reasonable.

31.3. ***Fees for Review.*** Unless a different time period is required in this Lease, within thirty (30) days after Port's written request, Tenant will pay Port, as Additional Rent, Port's

reasonable costs, including, without limitation, Attorneys' Fees and Costs and costs of Port staff time incurred in connection with the review, investigation, processing, documentation, and/or approval of any proposed Transfer, Mortgage, estoppel certificate, or any other matter under this Lease requiring Port's approval or review excluding any such costs incurred by Port in its regulatory capacity, which costs will be paid separately by Tenant to the extent required by the applicable regulatory requirements. Tenant will pay such reasonable costs regardless of whether or not Port consents to such proposal.

32. NO MERGER OF TITLE.

There will be no merger of the Leasehold Estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the Leasehold Estate or any interest in such Leasehold Estate, and (b) any interest in such fee estate. No such merger will occur unless and until all Persons having any interest in the Leasehold Estate and the fee estate in the Premises join in and record a written instrument effecting such merger.

33. QUIET ENJOYMENT.

Subject to the Permitted Encumbrances, the Premises being in and around construction throughout the Term, Construction Impacts from the adjacent and nearby Development Projects, the terms and conditions of this Lease and applicable Laws, Port agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, will lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by Port. Notwithstanding the foregoing, Port has no liability to Tenant in the event any defect exists in the title of Port as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment. Tenant's sole remedy with respect to any such existing title defect is to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

34. SURRENDER OF PREMISES.

34.1. ***Conditions of Premises.*** Except with respect to those portions of the Premises for which this Lease terminates upon conveyance of Development Parcels to Vertical Developers or the City upon Acceptance of Horizontal Improvements, as applicable, (either case of which will also be governed by the DDA and other Project Approvals), upon the expiration or other termination of the Term, Tenant will quit and surrender to Port the Premises (i) in good order and condition, (ii) clean, free of debris, waste, and Hazardous Materials (other than any Pre-Existing Hazardous Materials that have not been Handled, Released, or Exacerbated by Tenant, its Agents, or Invitees), and (iii) free and clear of all liens and encumbrances other than the Permitted Encumbrances. If it is determined by Port that the condition of all or any portion of the Premises is not in compliance with the provisions of this Lease with respect to Hazardous Materials at the expiration or earlier termination of this Lease, then at Port's sole option, Port may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Port in the condition required herein. Except as set forth in ***Section 34.2*** (Demolition of Improvements), the Premises will be surrendered with all Horizontal Improvements, other Improvements, repairs, alterations, additions, substitutions and replacements thereto. Tenant hereby agrees to execute all documents as Port or the City may deem necessary to evidence or confirm any such other termination.

34.2. ***Demolition of Improvements.***

(a) At the expiration or earlier termination of this Lease, at Port's sole election ("**Demolition Option**"), Port may require Tenant, at Tenant's sole cost, to Demolish and Remove the Improvements, including Horizontal Improvements that have not been Accepted by the City that Port or the City reasonably believe are defective, and surrender the Premises as a vacant parcel of real property. Port will notify Tenant of Port's election to exercise the Demolition Option (i) no later than twenty-four (24) months prior to the expiration of this Lease, or (ii) within ninety (90) days following termination of this Lease due to an Event of Default.

(b) If Port exercises the Demolition Option in accordance with *Section 34.2(a)*, then if Port agrees that Tenant will complete the Demolition and Removal after the expiration or earlier termination of this Lease (or promptly thereafter if the Lease is terminated due to an Event of Default), Port and Tenant will enter into Port's standard license granting Tenant non-possessory access to the Premises in order for Tenant to perform the Demolition and Removal following the expiration or earlier termination of this Lease; provided, however, Tenant will perform the Demolition and Removal in compliance with *Article 13* (Subsequent Construction) and Port may require insurance, bond, guaranty, Indemnification, and other requirements that exceed the coverage amounts or licensee obligations set forth in Port's standard license, that Port determines are reasonably appropriate to protect its interest in light of the risks and liabilities associated with the Demolition and Removal.

(c) Tenant must commence and complete the Demolition and Removal in a timely manner and with due diligence and care, and complete the same within the time period agreed to between the Parties.

34.3. ***Subleases***. Upon any termination of this Lease, all Subleases hereunder will automatically terminate.

34.4. ***Personal Property***. On or before expiration or earlier termination of this Lease, Tenant will remove and will cause all Subtenants to remove, all of their respective trade fixtures, signs and other Personal Property. If the removal of such Personal Property causes damage to the Premises, Tenant will promptly repair such damage, at no cost to Port. Any items not removed by Tenant as required herein will be deemed abandoned and may be stored, removed, and disposed of by Port at Tenant's sole cost and expense, and Tenant waives all claims against Port for any Losses resulting from Port's retention, removal or disposition of such Personal Property; provided, however, that Tenant will be liable to Port for all costs incurred in storing, removing and disposing of such abandoned property or repairing any damage to the Premises resulting from such removal.

34.5. ***Quitclaim***. Upon the expiration or earlier termination of this Lease, the Premises will automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and will be surrendered to Port upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by Port, Tenant will promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effectuate the termination of the Leasehold Estate and to effectuate such transfer or vesting of title to the Premises, the Improvements and Personal Property that Port agrees are to remain within the Premises.

34.6. ***Survival***. The provisions of this *Article 34* will survive the expiration or earlier termination of this Lease.

35. NOTICES.

35.1. ***Notices.***

All notices, demands, consents, and requests which may or are to be given by any Party to the other will be in writing, except as otherwise provided herein. All notices, demands, consents, and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is two (2) days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Port:	Port of San Francisco Pier 1

	San Francisco, CA 94111 Attn: Deputy Director of Real Estate and Development Re: Pier 70 Waterfront Site
With a copy to:	Port of San Francisco Pier 1 San Francisco, CA 94111 Attn: Deputy Director of Real Estate and Development Re: Pier 70 Waterfront Site *and* Port of San Francisco Pier 1 San Francisco, CA 94111 Attn: General Counsel
Master Developer:	c/o Forest City 875 Howard St. Ste. 330 San Francisco, CA 94103 Attn: Jack Sylvan, Senior Vice President
With a copy to:	Forest City Realty Trust, Inc. Key Tower, Suite 3200 127 Public Square Cleveland, OH 44114 Attn: General Counsel and Gibson Dunn & Crutcher LLP 555 Mission Street San Francisco, CA Attn: Neil Sekhri

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by electronic-mail to the electronic-mail address set forth above (or such other address as may be provided from time to time by notice given in the manner required hereunder); however, neither Party may give official or binding notice by electronic-mail.

35.2. ***Form and Effect of Notice.***

Every notice given to a Party or other Person under this Section must state (or will be accompanied by a cover letter that states):

(a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any; and

(b) if applicable, the period of time within which the recipient of the notice must respond thereto.

In no event will a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this ***Section 35.2***.

36. INSPECTION OF PREMISES BY PORT.

36.1. ***Entry for Inspection***. Subject to the rights of any Subtenants, Port and its authorized Agents have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that Tenant or Tenant's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease.

36.2. ***Entry for Horizontal Improvements***. With respect to the development of Horizontal Improvements, Port and its Agents have the right of entry onto Premises in accordance with Section 14.7(c) (Port Right of Entry) of the DDA to the extent reasonably necessary to carry out the purposes of the DDA.

36.3. ***General Entry***. In addition to its rights pursuant to ***Section 36.1*** (Entry for Inspection), subject to the rights of any Subtenants, Port and its authorized Agents will have the right to enter the Premises at all reasonable times and upon reasonable notice as stated below for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises or to perform any services which Port has the right or obligation to perform in accordance with ***Sections 11.2*** (Port's Right to Inspect) or ***24.2*** (Right to Keep Lease in Effect);

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

(c) To obtain environmental samples and perform equipment and facility testing.

Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises except in an emergency for the purposes set forth above. Such notice will be not less than one (1) days' prior notice. Tenant will have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice will be required for Port's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in ***Section 36.3(a)***.

36.4. ***Emergency Entry***. Port may enter the Premises at any time, without notice, in the event of an emergency. Port will have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these means, or otherwise, will not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion of the Premises.

36.5. ***No Liability***. Port will not be liable in any manner, and Tenant hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in ***Article 36*** (Inspection Of Premises By Port) or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

36.6. ***Nondisturbance***. Port will use its commercially reasonable efforts to conduct its activities on the Premises as allowed in this ***Article 36*** (Inspection Of Premises By Port) in a

manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

36.7. ***Subtenant Agreement.*** Tenant will require each Subtenant to permit Port to enter its premises for the purposes specified in ***Section 36.1*** (Entry for Inspection) through ***Section 36.4*** (Emergency Entry).

37. MORTGAGES.

Tenant will have the right to Mortgage the Leasehold Estate in accordance with the attached ***Exhibit M***.

38. NO JOINT VENTURE.

Nothing contained in this Lease will be deemed or construed as creating a partnership or joint venture between Port and Tenant or between Port and any other Person, or cause Port to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

39. ECONOMIC ACCESS.

Tenant will comply with the Workforce Development Plan attached hereto as ***Exhibit I*** (the "**Workforce Development Plan**"). The Workforce Development Plan is designed to afford opportunities for San Francisco residents to participate in the construction and operation of the Horizontal Improvements. Tenant will comply with the Workforce Development Plan with respect to the operation and leasing of the Premises, and will include in its Subleases, applicable provisions of the Workforce Development Plan in accordance with the same.

40. REPRESENTATIONS AND WARRANTIES OF TENANT.

Tenant represents, warrants and covenants to Port as follows, as of the date hereof and as of the Commencement Date:

(a) **Valid Existence; Good Standing.** Tenant is a limited liability company duly organized and validly existing under the laws of the State of Delaware. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of Delaware.

(b) **Authority.** Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant and upon execution, are legal, valid and binding obligations of Tenant, enforceable against Tenant in accordance with its terms; and do not violate any provision of any agreement or judicial order to which Tenant is a party or to which Tenant is subject.

(c) **No Suspension.** That Tenant has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Tenant has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it will immediately notify the Port of same and the reasons therefore together with any relevant facts or information requested by Port. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(d) **No Limitation on Ability to Perform.** Neither Tenant's operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been

given and filings which have already been made. Except as may otherwise have been disclosed to Port in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(e) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Port and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(f) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(g) Financial Matters. Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code, (v) no federal or state tax liens have been filed against Tenant, and (vi) there is no material adverse change in Tenant's financial condition and Tenant is meeting its financial obligations as they mature.

The representations and warranties herein survive any termination of this Lease.

41. SPECIAL PROVISIONS.

Tenant will comply with the Port and City Special Provisions attached hereto as ***Exhibit N***.

42. GENERAL.

42.1. *Time of Performance.*

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days will be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to Force Majeure.

42.2. *Interpretation of Agreement.*

(a) Exhibits and Schedule. Whenever an "**Exhibit**" or "**Schedule**" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such exhibits and schedules are incorporated herein by reference.

(b) **Captions.** Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of this Lease.

(c) **Words of Inclusion.** The use of the term "**include**", "**including**", "**such as**", or words of similar import, when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) **No Presumption Against Drafter.** This Lease has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Lease will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including California Civil Code Section 1654).

(e) **Fees and Costs.** The Party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) **Lease References.** Wherever reference is made to any provision, term or matter "**in this Lease,**" "**herein**" or "**hereof,**" or words of similar import, the reference will be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered article, section or paragraph of this Lease or any specific subdivision thereof.

(g) **Approvals.** Unless otherwise specifically stated in this Lease, wherever a Party hereto has a right of approval or consent, such approval or consent will not be unreasonably withheld, conditioned or delayed and such approval or consent will be given in writing.

(h) **Legal References.** Wherever reference is made to a specific code or section of a specific Law, the reference will be deemed to include any amendment, restatement or replacement.

42.3. ***Successors and Assigns***. This Lease is binding upon and will inure to the benefit of the successors and assigns of Port, Tenant, and any Mortgagee. Where the term "**Tenant,**" "**Port,**" "**Mortgagee**" is used in this Lease, it means and includes their respective successors and assigns, or including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or the entity which has succeeded to Port's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Port for purposes of this Lease.

42.4. ***No Third-Party Beneficiaries***. This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and will not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in ***Article 37*** (Mortgages) with regard to Mortgagees.

42.5. ***Real Estate Commissions***. Port is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease or any Sublease. Tenant and Port each represents that neither has engaged any broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, through either Party, the

Party through whom such claim is made agrees to Indemnify the other Party (including the Indemnified Parties) from any Losses arising out of such claim.

42.6. ***Counterparts***. This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

42.7. ***Entire Agreement***. This Lease (including the Exhibits) constitutes the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior of other agreement will be permitted to contradict or vary the terms of this

42.8. ***Amendment***. Neither this Lease nor any of the terms hereof may be amended or modified except by a written instrument executed by the Parties. If Developer seeks an amendment to the DDA pursuant to Section 3.4 (Changes to Project Phase 1) thereof, and such amendment requires a corresponding amendment to this Lease, this Lease will be amended to conform to such DDA

42.9. ***Governing Law; Selection of Forum***. This Lease will be governed by, interpreted in accordance with, the laws of the State of California. As part of the for Port's entering into this Lease, Tenant agrees that all actions or proceedings arising dir or indirectly under this Lease may, at the sole option of Port, be litigated in courts having within the State of California, and Tenant consents to the jurisdiction of any such local, state federal court, and consents that any service of process in such action or proceeding may be by personal service upon Tenant wherever Tenant may then be located, or by certified registered mail directed to Tenant at the address set forth herein for the delivery of

42.10. ***Recordation***. This Lease will not be recorded by either Party. The Parties to execute and record in the Official Records a Memorandum of Lease in the form attache hereto as ***Exhibit O***. Promptly upon Port's request following the expiration of the Term or other termination of this Lease, Tenant will deliver to Port a duly executed and quitclaim deed suitable for recordation in the Official Records and in form and satisfactory to Port and the City Attorney, for the purpose of evidencing in the public records termination of Tenant's interest under this Lease. Port may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of

42.11. ***Attorneys' Fees***. The Prevailing Party in any action or proceeding (including cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of claimed default, or otherwise arising out of a party's performance or alleged under this Lease, will be entitled to recover from the other party its costs and expenses of suit including but not limited to reasonable Attorneys' Fees and Costs, which will be whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning this Section includes, without limitation, a party who substantially obtains or defeats, as the may be, the relief sought in the action, whether by compromise, settlement, judgment or abandonment by the other party of its claim or defense. Attorneys' Fees and Costs under Section includes attorneys' fees and all other reasonable costs and expenses incurred connection with any

For purposes of this Lease, reasonable fees of attorneys of the City's Office of the Attorney will be based on the fees regularly charged by private attorneys with an number of years of professional experience (calculated by reference to earliest year of to the Bar of any State) who practice in San Francisco in law firms with approximately the number of attorneys as employed by the Office of the City

42.12. ***Severability***. If any provision of this Lease, or its application to any Person circumstance, is held invalid by any court, the invalidity or inapplicability of such provision not affect any other provision of this Lease or the application of such provision to any

Person or circumstance, and the remaining portions of this Lease will continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

42.13. ***Tenant's Cost.*** No provision of this Lease requiring Tenant to perform work at its sole cost and expense (or words or phrases of similar effect) will, in and of itself, limit Master Developer's right to reimbursement under the DDA or Acquisition Agreement, if any.

43. DEFINITION OF CERTAIN TERMS.

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"28-Acre Site" is defined in ***Recital B.***

"Access Rights" as defined in ***Section 4.4(b).***

"Acceptance" means, with respect to any Horizontal Improvement, the acceptance by the Port or City of such Horizontal Improvement in accordance with the applicable procedures set forth in the DDA. **"Accept"** and **"Accepted"** have correlative meanings.

"Acquisition Agreement" means that certain Reimbursement and Acquisition Agreement between Port and Horizontal Developer, as further defined in the DDA.

"Additional Rent" means any and all sums (other than Base Rent and Percentage Rent) that may become due or be payable by Tenant under this Lease.

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

"Affordable Self Storage" is defined in the Basic Lease Information.

"Affordable Self Storage Site" is defined in the Basic Lease Information.

"Agents" means, when used with reference to either Party to this Lease, the officers, directors, employees, legal or authorize representatives, attorney, or contractor of such Party, and any of their respective Agents.

"Ancillary Permitted Uses" as described in the Basic Lease Information.

"Anniversary Date" means each anniversary of the Commencement Date during the Term, unless the actual Commencement Date is not the first day of a month, in which case, each Anniversary Date will be determined as if the Commencement Date were the first day of the first full month after the actual Commencement Date.

"Anticipated Conveyance Date" as defined in ***Section 1.1(b)(i)(2)***

"As Is With All Faults" as defined in ***Section 1.2(c).***

"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.

"Attorneys' Fees and Costs" means reasonable attorneys' fees and related costs incurred in an action or otherwise indicated in the Lease, 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.

"**Award**" means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

"**Baseline Assessed Value**" means the assessed value of a Taxable Parcel in the SUD in the City Fiscal Year in which the Chief Harbor Engineer issues the related Final Certificate of Occupancy.

"**Base Rent**" is defined in the Basic Lease Information.

"**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.

"**Building 11**" is defined in the Basic Lease Information.

"**Building 11 Site**" is defined in the Basic Lease Information.

"**Building 21 Site**" is defined in the Basic Lease Information.

"**CASp**" is defined in ***Section 1.1(c).***

"**Casualty**" is defined in ***Section 15.1(a).***

"**City**" means the City and County of San Francisco, a municipal corporation.

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

"**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.

"**Commencement Date**" as defined in the Basic Lease Information.

"**Condemnation**" means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

"**Condemnation Date**" means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

"**Construction Impacts**" as described in ***Section 5.1.***

"**Control**" means the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person. "**Controlled**" and "**Controlling**" have correlative meanings. "**Common Control**" means that two Persons are both Controlled by the same other Person.

"**Current Assessed Value**" means a Taxable Parcel's Baseline Assessed Value as escalated or reassessed on the date of determination.

"**DDA**" is defined in ***Recital E.***

"**Default Rate**" is defined in ***Section 3.8*** of ***Exhibit D*** (Rent).

"**Demolish and Remove**" means the demolition of the Improvements and the removal and disposal of all debris in accordance with all Laws. "**Demolition and Removal**" have a correlative meaning.

"**Demolition Option**" is defined in ***Section 34.2(a).***

"**Design for Development**" means the Pier 70 Design for Development approved by the Port Commission and the Planning Commission, as amended from time to time.

"**Development Parcel**" means a buildable parcel in the SUD.

"**Development Projects**" is defined in ***Section 5.1***.

"**Encroachment Area**" is defined in ***Section 1.1(e)***.

"**Encroachment Area Charge**" is defined in ***Section 1.1(e).***

"**Environmental Laws**" as defined in ***Section 21.6***.

"**Environmental Regulatory Action**" is defined in ***Section 21.6***.

"**Environmental Regulatory Agency**" is defined in ***Section 21.6***.

"**Environmental Regulatory Approval**" is defined in ***Section 21.6***.

"**Event of Default**" as defined in ***Section 23.1***.

"**Exacerbate**" is defined in ***Section 21.6***.

"**Executive Director**" means the Executive Director of the Port or his or her designee.

"**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.

"**Final Construction Documents**" means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws and the Interagency Cooperation Agreement.

"**FOG Ordinance**" means Sections 140-140.7 of Article 4.1 of the San Francisco Public Works Code, or any subsequent amendment or replacement of the same that sets forth prohibitions, limitations and requirements for the discharge of fats, oils and grease into the City's sewer system by food service establishments.

"**Force Majeure**" means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to: (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 Premises; (v) so long as Port has not delivered to Tenant or Master Developer, as applicable a notice of default under the Lease or the DDA, as applicable, that remains uncured, litigation that enjoins construction or other work on any portion of the Premises; (vi) Administrative Delay, Environmental Delay, or Down Market Delay (in each case as defined in the DDA); and (vii) in the case of Tenant, any delay resulting from a defect in Port's title to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is

hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act.

"Foreclosure" means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

"Generator" as described in ***Section 21.2(d).***

"Handle" is defined in ***Section 21.6.***

"Hard costs" is defined in ***Section 11.3***

"Hazardous Material" as defined in ***Section 21.6.***

"Hazardous Material Claim" is defined in ***Section 21.6.***

"Hazardous Material Condition" is defined in ***Section 21.6.***

"Historic Building" means any of buildings 2, 12, 21 to the extent the same has been added to the Premises in accordance with ***Section 1.1(b)(iii)*** and the frame of Building 15. **"Historic Buildings"** mean more than one Historic Building.

"Historic Core" is defined in ***Section 5.2(a)(vii).***

"Historic Core Project" is defined in ***Section 5.2(a)(vii).***

"Horizontal Improvements" means any improvements constructed or to be constructed by the Master Developer pursuant to the DDA.

"Horizontal Improvement Parcel" is defined in ***Section 1.1(b)(ii).***

"IFD" is an acronym for Infrastructure Financing District No. 2 (Port of San Francisco), formed by Ordinance No. 27-16.

"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.

"Impositions" is defined in ***Section 6.1(b).***

"Improvements" means all buildings, structures, fixtures and other improvements erected, built, placed, installed, constructed, renovated, or rehabilitated, located upon or within the Premises on or after the Commencement Date.

"Indemnified Party" and **"Indemnified Parties"** means the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Port, the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, all other Person acting on their behalf, and each of them.

"Indemnify" means indemnify, protect and hold harmless. **"Indemnification"** has a correlative meaning.

"Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San-Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is modified during the Term hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, Port shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

"Infrastructure Plan" means the Infrastructure Plan attached to the DDA.

"Investigate" or "Investigation" are defined in ***Section 21.6***.

"Invitees" when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees, and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

"Land Proceeds" is defined in the DDA.

"Law" or **"Laws"** means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon. **"Laws"** include the Mitigation and Monitoring Program and the Pier 70 Risk Management Plan.

"Lease" means this lease, as it may be amended from time to time.

"Leasehold" or **"Leasehold Estate"** means Tenant's leasehold estate created by this Lease.

"Lender" means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Lender for purposes of this Lease.

"Loss" or **"Losses"** when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

"Louisiana Site" is defined in the Basic Lease Information.

"Maintenance and Repair Bond" is defined in the Basic Lease Information.

"Maintenance Notice" is defined in ***Section 11.3.***

"Master Developer" is defined in ***Recital B***.

"Master Tentative Map" is defined in the DDA.

"Master Utilities Plan" is defined in the DDA.

"Memorandum of Lease" means the Memorandum of this Lease, between Port and Tenant, recorded in the Official Records, in the form of ***Exhibit P*** attached hereto.

"Mid-Block Passages" means publicly accessible pedestrian and vehicular routes that create a connection between public streets and/or open spaces.

"Mitigation Monitoring and Reporting Program" means the Mitigation Monitoring and Reporting Program that the Port Commission adopted by Resolution No. 17-43 and attached hereto as ***Exhibit I***.

"**Mortgage**" means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant's leasehold interest under this Lease recorded in the Official Records.

"**Net Awards and Payments**" is defined in ***Section 16.4***.

"**New Hazardous Materials**" is defined in ***Section 21.6***.

"**Non-Park/Phase Improvement Parcel**" is defined in ***Section 1.1(b)(ii)***.

"**Noonan Building**" means the Improvements located on the Building 11 Site as of the Commencement Date.

"**Notice of Special Tax**" is defined in ***Section 6.2(a)***.

"**Notice to Vacate**" is defined in ***Section 1.1(e).***

"**Official Records**" means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the City and County of San Francisco.

"**Park/Phase Improvement Parcel**" is defined in ***Section 1.1(b)(ii)***.

"**Partial Condemnation**" is defined in ***Section 16.3(b).***

"**Partial Release of Master Lease**" as defined in ***Section 1.1(b)(i)(1).***

"**Party**" means Port or Tenant, as a party to this Lease; "**Parties**" means both Port and Tenant, as Parties to this Lease.

"**Percentage Rent**" is defined in ***Exhibit D*** (Rent).

"**Permitted Encumbrances**" is described in ***Section 1.2(a).***

"**Permitted Title Exceptions**" is defined in ***Section 1.2(a).***

"**Permitted Uses**" is defined in ***Section 4.1***.

"**Person**" means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

"**Personal Property**" means all fixtures, furniture, furnishings, equipment, machinery, supplies, software, and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

"**Pesticide Ordinance**" is defined in ***Section 21.5.***

"**PG&E Remediation Site**" is described in the Basic Lease Information.

"**Pier 70**" is defined in ***Recital B***.

"**Pier 70 Parties**" is defined in ***Section 5.2(a)(vii).***

"**Pier 70 Risk Management Plan**" is defined in ***Section 21.6.***

"**Port**" means the San Francisco Port Commission.

"**Port Acceptance Item**" means the completed Horizontal Improvements listed in DDA Section 15.7 (B) (Acceptance of Park Parcels and Components of Phase Infrastructure) that Port will accept.

"**Pre-Existing Hazardous Materials**" is defined in ***Section 21.6.***

"**Premises**" is defined in the Basic Lease Information and ***Section 1.1***.

"**Prevailing party**" is defined in ***Section 42.11***.

"**Primary Permitted Use**" is defined in the Basic Lease Information.

"**Prime Rate**" means the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks, as published by the Wall Street Journal, or if the Wall Street Journal has ceased to publish the Prime Rate, then such other equivalent recognized source.

"**Prohibited Use**" or "**Prohibited Uses**" as defined in ***Section 4.4(a).***

"**Project**" is defined in ***Recital B***.

"**Project Approvals**" is defined in ***Recital B***.

"**Promotional Signage**" means signage containing advertising or promotional messages relating to events, subtenants or otherwise relating to the Premises, which signage is intended to be visible primarily to persons on the Premises.

"**public work**" is defined in ***Section 13.3(f)*** (Prevailing Wage).

"**reasonable wear and tear**" is defined in ***Section 11.1(d).***

"**Reassessment**" means a reduction in ad valorem taxes assessed against a Taxable Parcel through a proceeding under the California Revenue & Taxation Code.

"**Record Drawings**" is defined in ***Section 13.5(a)***."**Regulatory Agency**" means any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, RWQCB, and the Army Corps of Engineers.

"**Regulatory Approval**" means any authorization, approval or permit required by any Regulatory Agency.

"**Rehabilitation**" means the repair or alteration of an historic building that does not damage or destroy materials, features, or finishes considered important in defining the building's historic character.

"**Related Third Party**" is defined in ***Section 19.2(a)***.

"**Release**" is defined in ***Section 21.6.***

"**Remediate**" or "**Remediation**" is defined in ***Section 21.6***.

"**Rent**" means the sum of Base Rent, Percentage Rent (including all adjustments) and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accrue for payment at a later time in accordance with the provisions of this Lease.

"**Restoration**" means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable. ("**Restore**" and "**Restored**" shall have correlative meanings.)

"**RWQCB**" shall mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

"**Security Deposit**" is defined in the Basic Lease Information.

"**Special Event**" means temporary or short term exhibitions, private and public gatherings, recreation, athletic events, filming, commemorations, market places, sporting events, musical and theatrical performances and other forms of live entertainment and includes setup/load in and demobilization/load out; parking for Special Events; temporary improvements; installation of tents and structures; administrative and security functions and other amenities and facilities to accommodate such Special Events.

"**Special Taxes**" when used with a modifier means Mello-Roos Taxes levied in the designated CFD.

"**Special Tax Payment Request**" is defined in ***Section 24.2(e)(ii)***.

"**Special Tax Payments**" is defined in ***Section 24.2(e)(ii)***.

"**State**" means the State of California.

"**State Lands Indemnified Parties**" means the State of California, the California State Lands Commission, all of its heirs, legal representatives, successor and assigns, and all other Persons acting on its behalf.

"**Sublease**" means any lease, sublease, license, concession, or other agreement (including, without limitation, a Sublease to Port) by which Tenant leases, subleases, demises, licenses, or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

"**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-3.

"**Sub-Project Area G 4**" means the sub-project area of IFD Project Area G described in Appendix G-4.

"**Subsequent Construction**" means all repairs to and reconstruction, replacement, addition, expansion, Restoration, Rehabilitation, alteration, or modification of any Improvements, or any construction of additional Improvements. "**Subsequent Construction**" does not include any Horizontal Improvements.

"**Substantial Condemnation**" is defined in ***Section 16.3(a).***

"**Subtenant**" means any Person leasing, using, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

"**SUD**" means Planning Code Section 249.79 establishing the Pier 70 Special Use District, as it may be amended from time to time.

"**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 (as such terms are defined in the Appendix to the DDA).

"**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.

"**Tenant**" is identified in the Basic Lease Information, and its permitted successors and assigns.

"**Term**" is defined in ***Section 2***.

"Total Condemnation" is defined in ***Section 16.2***.

"Transfer" is defined in the DDA; provided, however, notwithstanding the foregoing, as used herein, the term **"Transfer"** does not include (i) Special Events; (ii) permitted Subleases; (iii) the granting of a Mortgage in accordance with ***Article 37*** (Mortgages), nor the exercise of remedies thereunder or (iv) a pledge of equity interest in connection with a mezzanine loan.

"Transportation Demand Management Plan" has the meaning ascribed to **"Transportation Program"** in the DDA.

"Vertical DDA" is defined in the DDA.

"Vertical Developer" is defined in the DDA.

"Vertical Improvements" is defined in the DDA.

"Work" is defined in ***Section 13.4***.

"worth at the time of award" is defined in ***Section 24.4.***

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

Tenant FC PIER 70, LLC, a Delaware limited liability company,

By: _____
Name: _____
Title: _____

Port **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Title: _____

Lease authorized by:

-Port Board of Directors Resolution No. 17-43
-Board of Supervisors Resolution No. 401-17

EXHIBIT A-1

LEGAL DESCRIPTION

for

PIER 70 MASTER LEASE

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

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, MORE PARTICULARLY 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.

EXCEPTING THEREFROM, THE FOLLOWING PARCELS:

PARCEL 1 (AFFORDABLE SELF STORAGE):

BEGINNING AT THE POINT ON THE SOUTHERLY LINE 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, FROM WHICH THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL BEARS SOUTH 85°38'01" WEST 491.1 FEET, SAID POINT OF BEGINNING ALSO BEING ON A LINE WHICH BEARS SOUTH 04°21'59" EAST FROM THE SOUTHEAST CORNER OF A METAL BUILDING KNOWN AS BUILDING NO. 66; THENCE FROM SAID POINT OF BEGINNING, NORTH 04°21'59" WEST 220.0 FEET; THENCE NORTH 85°38'01" EAST 40.0 FEET; THENCE NORTH 04°21'59" WEST 178.0 FEET; THENCE NORTH 85°38'01" EAST 641 FEET, MORE OR LESS TO THE TO THE EASTERLY EDGE OF A CONCRETE DOCK WALL; THENCE ALONG A MEANDERING CONTOUR LINE AT AN ELEVATION OF 5.8 FEET (NAVD88 DATUM), BEING THE MEAN HIGH WATER LINE (MHW) 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, SOUTHERLY AND WESTERLY ALONG SAID DOCK TO THE SHORELINE AND CONTINUING ALONG THE SHORELINE, EDGES OF CONCRETE WALLS OF DOCKS AND SEAWALLS ALONG SAID MHW LINE, IN A GENERAL SOUTHERLY DIRECTION, 596 FEET, PLUS OR MINUS, TO A POINT ON EASTERLY PROJECTION OF THE SOUTHERLY LINE OF SAID B192 O.R. 384 PARCEL; THENCE ALONG SAID EASTERLY PROJECTION AND THE LINE OF B192 O.R. 384 PARCEL, SOUTH 85°38'01" WEST 594 FEET, MORE OR LESS, TO SAID POINT OF BEGINNING, CONTAINING 5.71 ACRES, MORE OR LESS.

PARCEL 2 (PORTION OF BUILDING NO. 21):

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 424.8 FEET; THENCE SOUTH 85°38'01" WEST

1.2 FEET TO SOUTHWESTERLY EXTERIOR CORNER OF A 2-STORY METAL BUILDING, KNOWN AS BUILDING NO. 21, ALSO BEING THE **TRUE POINT OF BEGINNING**; THENCE ALONG THE EXTERIOR WESTERLY WALL OF SAID BUILDING, MORE OR LESS, NORTH 04°21'59" WEST 45.0 FEET, MORE OR LESS, TO THE NORTHERLY FACE OF A 6 INCH WIDE CONCRETE PARTITION WALL; THENCE ALONG SAID WALL, NORTH 85°38'01" EAST 54.5 FEET, MORE OR LESS, TO NORTHEAST CORNER OF SAID WALL; THENCE ALONG THE EASTERLY FACE OF SAID WALL, SOUTH 04°21'59" EAST 45.0 FEET, MORE OR LESS, TO THE EXTERIOR SOUTHERLY WALL OF SAID BUILDING NO. 21; THENCE ALONG SAID BUILDING WALL, MORE OR LESS, SOUTH 85°38'01" WEST 54.5 FEET TO SAID TRUE POINT OF BEGINNING, CONTAINING 2,452.5 SQUARE FEET, MORE OR LESS.

PARCEL 3 (NOONAN BUILDING PLUS):

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 327.0 FEET; THENCE NORTH 85°38'01" EAST 100.9 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 85°38'01" EAST 77.5 FEET; THENCE SOUTH 76°21'39" EAST 57.5 FEET; THENCE SOUTH 04°21'59" EAST 145.0 FEET; THENCE SOUTH 85°38'01" WEST 49.5 FEET; THENCE SOUTH 04°21'59" EAST 4.0 FEET; THENCE SOUTH 85°38'01" WEST 82.7 FEET TO A POINT ON A LINE BEARING SOUTH 04°21'59" EAST FROM SAID TRUE POINT OF BEGINNING; THENCE NORTH 04°21'59" WEST 166.8 FEET TO SAID TRUE POINT OF BEGINNING, CONTAINING 21,361 SQUARE FEET, MORE OR LESS.

PARCEL 4 (PUMP STATION):

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,400.00 FEET TO THE EASTERLY LINE OF FORMER DELAWARE STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER DELAWARE STREET, SOUTH 04°21'59" EAST 76.9 FEET; THENCE NORTH 85°38'01" EAST 37.0 FEET TO THE **TRUE POINT OF BEGINNING**, BEING A POINT ON THE EASTERLY FACE OF AN 18 INCH WIDE CONCRETE WALL; THENCE ALONG SAID FACE OF WALL, NORTH 33°06'32" WEST 38.4 FEET AND NORTH 13°01'17" WEST 57.6 FEET TO A POINT ON A CHAIN-LINK FENCE; THENCE ALONG SAID FENCE, NORTH 79°33'35" EAST 19.8 FEET TO THE WESTERLY EDGE OF A CONCRETE LOADING DOCK; THENCE ALONG SAID EDGE OF LOADING DOCK, SOUTH 36°29'34" EAST 24.7 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOADING DOCK; THENCE ALONG THE SOUTHERLY EDGE OF SAID DOCK AND ALONG THE SOUTHERLY LINE OF A 1-STORY METAL BUILDING KNOWN AS BUILDING NO. 6, NORTH 53°30'26" EAST 40.5 FEET; THENCE SOUTH 02°02'49" EAST 95.1 FEET TO A POINT ON THE NORTHERLY FACE OF SAID 18 INCH WIDE CONCRETE WALL; THENCE ALONG THE FACE OF SAID WALL, SOUTH 88°20'10" WEST 36.2 FEET TO SAID TRUE POINT OF BEGINNING, CONTAINING 4,726 SQUARE FEET, MORE OR LESS.

THE BASIS OF BEARING FOR THE ABOVE PARCELS 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).

ALSO 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.

Assessor's Parcel Nos. : Portions of 4052-001 and 4111-004 .

EXHIBIT A-1 (Continued)

LEGAL DESCRIPTION
for
PARCELS EXCEPTED FROM THE MASTER LEASE

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1 (AFFORDABLE SELF STORAGE):
BEGINNING AT THE POINT ON THE SOUTHERLY LINE 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, FROM WHICH THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL BEARS SOUTH 85°38'01" WEST 491.1 FEET, SAID POINT OF BEGINNING ALSO BEING ON A LINE WHICH BEARS SOUTH 04°21'59" EAST FROM THE SOUTHEAST CORNER OF A METAL BUILDING KNOWN AS BUILDING NO. 66; THENCE FROM SAID POINT OF BEGINNING, NORTH 04°21'59" WEST 220.0 FEET; THENCE NORTH 85°38'01" EAST 40.0 FEET; THENCE NORTH 04°21'59" WEST 178.0 FEET; THENCE NORTH 85°38'01" EAST 641 FEET, MORE OR LESS TO THE TO THE EASTERLY EDGE OF A CONCRETE DOCK WALL; THENCE ALONG A MEANDERING CONTOUR LINE AT AN ELEVATION OF 5.8 FEET (NAVD88 DATUM), BEING THE MEAN HIGH WATER LINE (MHW) 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, SOUTHERLY AND WESTERLY ALONG SAID DOCK TO THE SHORELINE AND CONTINUING ALONG THE SHORELINE, EDGES OF CONCRETE WALLS OF DOCKS AND SEAWALLS ALONG SAID MHW LINE, IN A GENERAL SOUTHERLY DIRECTION, 596 FEET, PLUS OR MINUS, TO A POINT ON EASTERLY PROJECTION OF THE SOUTHERLY LINE OF SAID B192 O.R. 384 PARCEL; THENCE ALONG SAID EASTERLY PROJECTION AND THE LINE OF B192 O.R. 384 PARCEL, SOUTH 85°38'01" WEST 594 FEET, MORE OR LESS, TO SAID POINT OF BEGINNING, CONTAINING 5.71 ACRES, MORE OR LESS.

PARCEL 2 (PORTION OF BUILDING NO. 21):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 424.8 FEET; THENCE SOUTH 85°38'01" WEST 1.2 FEET TO SOUTHWESTERLY EXTERIOR CORNER OF A 2-STORY METAL BUILDING, KNOWN AS BUILDING NO. 21, ALSO BEING THE **TRUE POINT OF BEGINNING**; THENCE ALONG THE EXTERIOR WESTERLY WALL OF SAID BUILDING, MORE OR LESS, NORTH 04°21'59" WEST 45.0 FEET, MORE OR LESS, TO THE NORTHERLY FACE OF A 6 INCH WIDE CONCRETE PARTITION WALL; THENCE ALONG SAID WALL, NORTH 85°38'01" EAST 54.5 FEET, MORE OR LESS, TO NORTHEAST CORNER OF SAID WALL; THENCE ALONG THE EASTERLY FACE OF SAID WALL, SOUTH 04°21'59" EAST 45.0 FEET, MORE OR LESS, TO THE EXTERIOR SOUTHERLY WALL OF SAID BUILDING NO. 21; THENCE ALONG SAID BUILDING WALL, MORE OR LESS, SOUTH 85°38'01" WEST 54.5 FEET TO SAID TRUE POINT OF BEGINNING, CONTAINING 2,452.5 SQUARE FEET, MORE OR LESS.

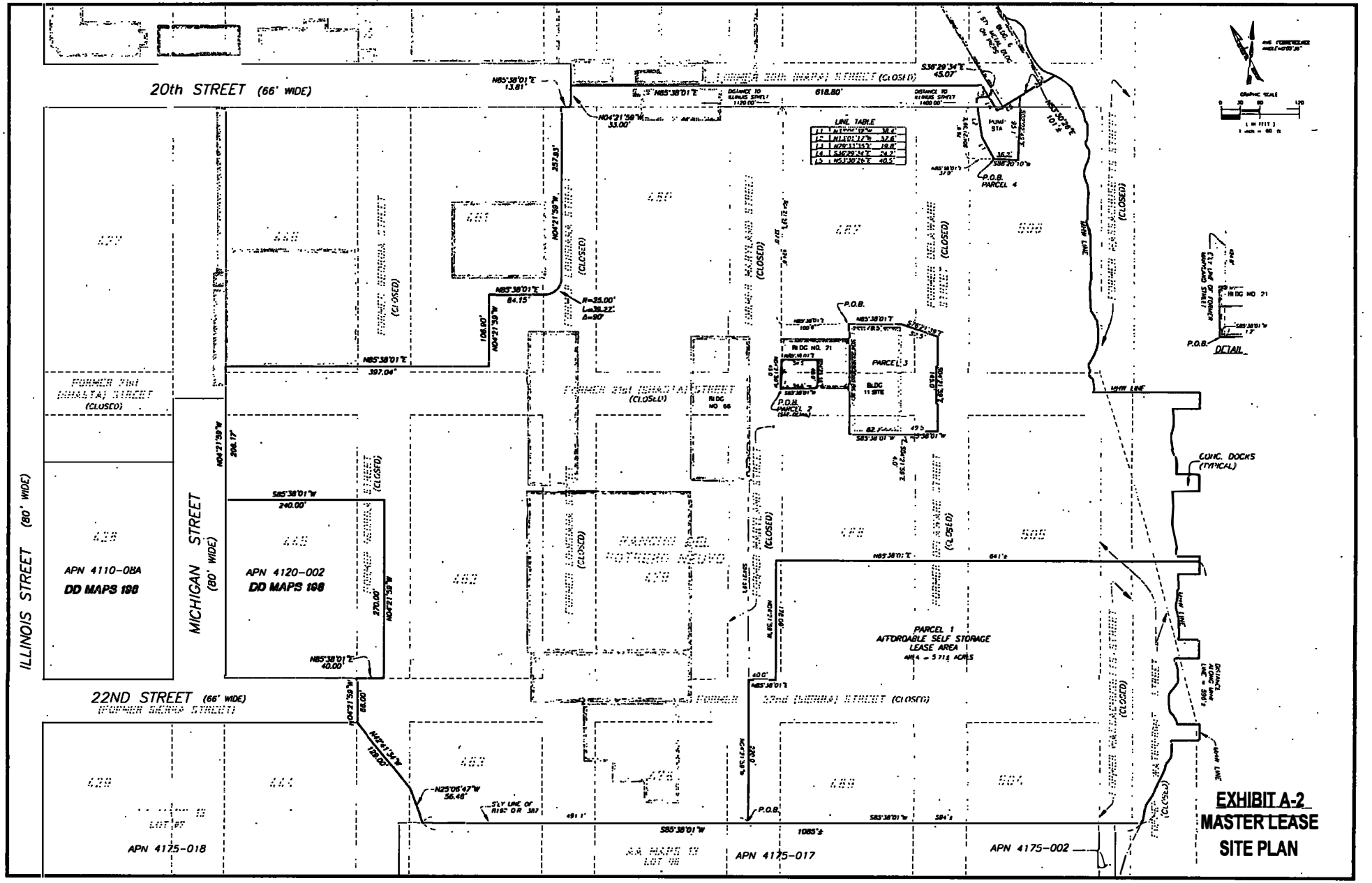
PARCEL 3 (NOONAN BUILDING PLUS):

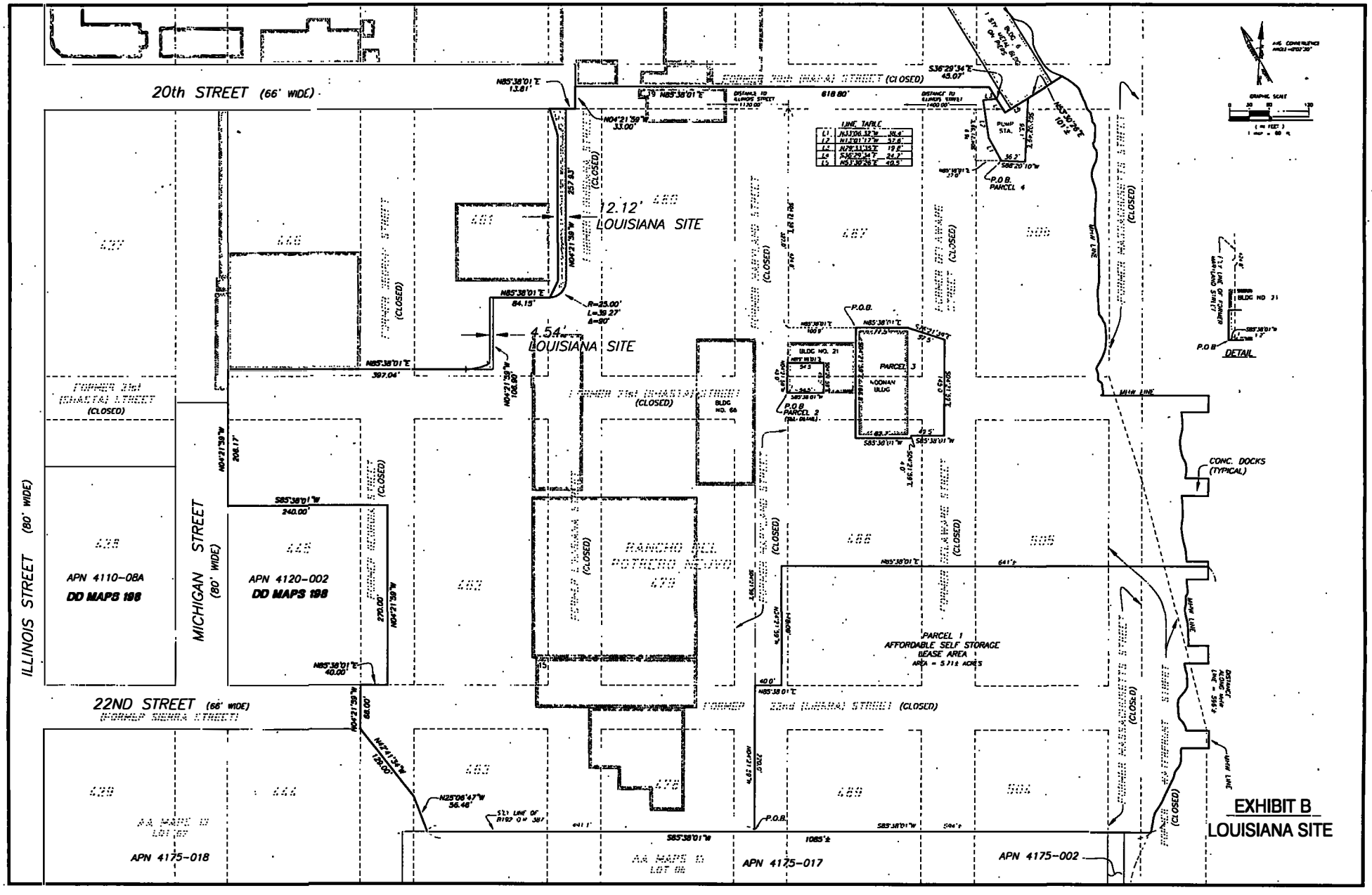
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 327.0 FEET; THENCE NORTH 85°38'01" EAST 100.9 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 85°38'01" EAST 77.5 FEET; THENCE SOUTH 76°21'39" EAST 57.5 FEET; THENCE SOUTH 04°21'59" EAST 145.0 FEET; THENCE SOUTH 85°38'01" WEST 49.5 FEET; THENCE SOUTH 04°21'59" EAST 4.0 FEET; THENCE SOUTH 85°38'01" WEST 82.7 FEET TO A POINT ON A LINE BEARING SOUTH 04°21'59" EAST FROM SAID TRUE POINT OF BEGINNING; THENCE NORTH 04°21'59" WEST 166.8 FEET TO SAID TRUE POINT OF BEGINNING, CONTAINING 21,361 SQUARE FEET, MORE OR LESS.

PARCEL 4 (PUMP STATION):

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,400.00 FEET TO THE EASTERLY LINE OF FORMER DELAWARE STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER DELAWARE STREET, SOUTH 04°21'59" EAST 76.9 FEET; THENCE NORTH 85°38'01" EAST 37.0 FEET TO THE **TRUE POINT OF BEGINNING**, BEING A POINT ON THE EASTERLY FACE OF AN 18 INCH WIDE CONCRETE WALL; THENCE ALONG SAID FACE OF WALL, NORTH 33°06'32" WEST 38.4 FEET AND NORTH 13°01'17" WEST 57.6 FEET TO A POINT ON A CHAIN-LINK FENCE; THENCE ALONG SAID FENCE, NORTH 79°33'35" EAST 19.8 FEET TO THE WESTERLY EDGE OF A CONCRETE LOADING DOCK; THENCE ALONG SAID EDGE OF LOADING DOCK, SOUTH 36°29'34" EAST 24.7 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOADING DOCK; THENCE ALONG THE SOUTHERLY EDGE OF SAID DOCK AND ALONG THE SOUTHERLY LINE OF A 1-STORY METAL BUILDING KNOWN AS BUILDING NO. 6, NORTH 53°30'26" EAST 40.5 FEET; THENCE SOUTH 02°02'49" EAST 95.1 FEET TO A POINT ON THE NORTHERLY FACE OF SAID 18 INCH WIDE CONCRETE WALL; THENCE ALONG THE FACE OF SAID WALL, SOUTH 88°20'10" WEST 36.2 FEET TO SAID TRUE POINT OF BEGINNING, CONTAINING 4,726 SQUARE FEET, MORE OR LESS.

THE BASIS OF BEARING FOR THE ABOVE PARCELS 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).


20th STREET (66' WIDE)
ILLINOIS STREET (80' WIDE)
MICHIGAN STREET (80' WIDE)
22ND STREET (66' WIDE)
APN 4110-08A
DD MAPS 198
APN 4120-002
DD MAPS 198
APN 4175-018
APN 4175-017
APN 4175-002
PARCEL 1
AFFORDABLE SELF STORAGE
LEASE AREA
AREA = 5.71± ACRES
PARCEL 3
BLDG 11 SITE
P.O.B.
P.O.B. PARCEL 4
DETAIL
CONC. DOCKS (TYPICAL)
LINE TABLE
618.80'
397.04'
240.00'
270.00'
1085'±
EXHIBIT A-2
MASTER LEASE
SITE PLAN


20th STREET (66' WIDE)
ILLINOIS STREET (80' WIDE)
MICHIGAN STREET (80' WIDE)
22ND STREET (66' WIDE)
12.12' LOUISIANA SITE
4.54' LOUISIANA SITE
APN 4110-08A
DD MAPS 198
APN 4120-002
DD MAPS 198
APN 4175-018
APN 4175-017
APN 4175-002
PARCEL 1
AFFORDABLE SELF STORAGE
LEASE AREA
AREA = 5.71± ACRES
PARCEL 2
PARCEL 3
P.O.B.
DETAIL
CONC. DOCKS (TYPICAL)
EXHIBIT B
LOUISIANA SITE

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Recorder's Stamp

APN:

PARTIAL RELEASE OF MASTER LEASE

This PARTIAL RELEASE OF MASTER LEASE (this "**Partial Release**"), dated for reference purposes only as of _____ _____, 20____ (the "**Reference Date**"), is made by the CITY AND COUNTY OF SAN FRANCISCO (the "**City**"), operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**"), as landlord, and FC PIER 70, LLC, a Delaware limited liability company ("**Tenant**" or "**Master Developer**"), with reference to the following facts and circumstances:

A. Tenant and the Port entered into that certain Master Lease, dated for reference purposes as of [_____] (as amended and as may be further amended from time to time, the "**Master Lease**"). In accordance with [Section 43.10] of the Master Lease, a Memorandum of Lease was recorded in the Official Records of the City and County of San Francisco ("**Official Records**") on [_____] as Document No. [_____]. All capitalized terms used but not defined herein shall have the meanings assigned to them in the Master Lease.

B. Tenant and Port also entered into that certain Development and Disposition Agreement, dated for reference purposes as of [_____] (as amended and as may be further amended from time to time, the "**DDA**") pursuant to which Tenant, as the master developer of the 28-Acre Site, will perform certain obligations, including the construction of Horizontal Improvements. The DDA was recorded in the Official Records on [_____] as Document No. [_____]. Tenant, as master developer of the 28-Acre Site, is sometimes referred to as the Master Developer in the Master Lease.

C. [***add for Development Parcel conveyances only***] Port and [_____], a [_____] ("**Vertical Developer**") entered into that certain Vertical Disposition and Development Agreement dated for reference purposes as of [_____] (as amended from time to time, the "**Vertical DDA**") for the Development Parcel more particularly described in ***Exhibit A-1*** and shown on the map attached hereto as

Exhibit A-2 (the "**Development Parcel**"). Port is obligated to convey the Development Parcel to the Vertical Developer upon satisfaction or waiver of various conditions, all of which have either been satisfied by Vertical Developer or waived by Port as of the date hereof. In order for Port to convey the Development Parcel to the Vertical Developer, the Development Parcel must first be released from the Premises. **Master Lease Section 1.1(b)(i)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises consisting of the Development Parcel in order to effectuate the Vertical DDA applicable to such Development Parcel. The Parties now desire to release the Development Parcel from the Premises (the "**Release Parcel**"). Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.

C. [***use if the Release Parcel is a Park Parcel or contains Phase Improvements or Deferred Infrastructure that has been Accepted by the Port Commission per DDA Section 15.8(a), (b) and (c), where all Horizontal Improvements within the Release Parcel are Accepted***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with **DDA Section 15.8** (Acceptance of Park Parcels and Phase Improvements) and **DDA Section 15.9** (Acceptance of Other Horizontal Improvements). By **[insert Port resolution No. _____**, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, Port Accepted the Park Parcels and Phase Improvements described in Resolution No. ___ that are contained within that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"), and authorized the Port Executive Director or her designee to sign and record this Partial Release after satisfaction of all conditions required by the Port Commission for acceptance. All conditions to Resolution No. ____ have been satisfied. Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.

C. [***use if the Release Parcel is a Park Parcel or contains Phase Improvements or Deferred Infrastructure that has been Accepted by the Port Commission but the Release Parcel also contains other Horizontal Improvements that have not yet been Accepted per DDA 15.8(d)***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with **DDA Section 15.8** (Acceptance of Park Parcels and Phase Improvements) and **DDA Section 15.9** (Acceptance of Other Horizontal Improvements). By **[insert Port resolution No. _____**, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, Port Accepted the Park Parcels and/or Phase Improvements described in Resolution No. ___ (collectively, the "**Port Acceptance Items**"). The Port Acceptance Items affect that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"). The Release Parcel includes sub-surface improvements for which the City has not yet accepted ownership[, as more particularly described in Port Resolution No. ____]. Tenant will continue to own such sub-surface improvements until they are accepted by the City ("**Unreleased Portion**"). The Unreleased Portion is described in ***Exhibit A-3*** and shown on the map attached hereto as ***Exhibit A-2***. As required under ***DDA Section 15.8(d)***, the Port

Commission conditioned its Acceptance of the Port Acceptance Items on the Tenant entering into an agreement under which Port grants to Tenant a right-of-entry upon the Release Parcel for maintenance, repair and inspection purposes and Tenant retains ownership and liability for the sub-surface improvements until such time as the sub-surface improvements are formally accepted by the City. Such condition having been satisfied, the Port Executive Director or her designee is authorized by Resolution No. _____ to sign and record this Partial Release.

C. [***use if all Horizontal Improvements within the Release Parcel have been Accepted by the Board of Supervisors per DDA Section 15.9. There are no other Horizontal Improvements within the Release Parcel that need Acceptance***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with **DDA Section 15.8** (Acceptance of Park Parcels and Phase Improvements) and **DDA Section 15.9** (Acceptance of Other Horizontal Improvements). By [**insert Board of Supervisors Motion No. _____**, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, the City Accepted all Horizontal Improvements [**add if applicable: including Utility Infrastructure**] that are described in Motion No. ___ and contained within that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"). Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.

C. [***use if the Release Parcel contains Horizontal Improvements that have been Accepted by the Board of Supervisors per DDA Section 15.9 but the Release Parcel also contains other Horizontal Improvements that have not yet been Accepted***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with ***DDA Section 15.8*** (Acceptance of Park Parcels and Phase Improvements) and ***DDA Section 15.9*** (Acceptance of Other Horizontal Improvements). By [**insert Board of Supervisors Motion No. _____**, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, the City Accepted certain Horizontal Improvements [**add if applicable: including Utility Infrastructure**] that is described in Motion No. ___ and contained within that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"). The Release Parcel includes Horizontal Improvements for which the City has not yet accepted ownership. Tenant will continue to own such Horizontal Improvements until they are accepted by the City ("**Unreleased Portion**"). The Unreleased Portion is described in ***Exhibit A-3*** and shown on the map attached hereto as ***Exhibit A-2***. As a condition to the Acceptance, Motion No. _____ required Tenant to provide the applicable City Agency with access rights in accordance with the Master Lease, and warranties covering the accepted improvements for a period of time as specified in the conditions to acceptance and thereafter, under the applicable Public Improvement Agreement. The Parties wish to enter into this Partial Release and record the same in the Official Records.

D. By recording this Partial Release, the Parties seek to notify third parties that the Premises described in the Master Lease will be [further] adjusted by the release of the Release Parcel [less the Unreleased Portion].

NOW THEREFORE, in consideration of the foregoing facts, understandings and agreements, the Parties agree as follows:

AGREEMENT

1. In accordance with Section [***1.1(b)(i) (Development Parcels)***] or [***1.1(b)(ii) (Horizontal Improvement Parcels)***] of the Master Lease, Port and Tenant hereby release as of the date hereof, the Release Parcel [less the Unreleased Portion] from the Master Lease and as of the date hereof, the "**Premises**" under and as defined in the Master Lease will be adjusted to exclude the Release Parcel [other than the Unreleased Portion that remains a part of the Premises].

2. Other than the adjustment of the Premises as set forth in this Partial Release, all other terms and conditions of the Master Lease remain unchanged.

[Signature appears on following page]

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

IN WITNESS WHEREOF, Port and Tenant have executed this Release as of the day and year first above written.

Tenant

FC PIER 70, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

Port

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Title: _____

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

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 _____)

On _____ before me, _____, a Notary Public, personally appeared _____, 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 _____ (Seal)

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

EXHIBIT A-1

Legal Description of Release Parcel

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

[_____]

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

EXHIBIT A-2

Site Map of Release Parcel [and Unreleased Portion]

[see attached]

[EXHIBIT A-3]

Legal Description of Unreleased Portion

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

[_____]

EXHIBIT D

RENT

3. **RENT.**

3.1 ***Payment of Percentage Rent.***

(a) Tenant will pay to Port from and after the Commencement Date and throughout the Term, participation rent equal to one hundred percent (100%) of Net Income generated at or from the Premises (**"Percentage Rent"**) in accordance with ***Section 3.1(b)***. Port will apply one hundred percent (100%) of the Percentage Rent as **"Land Proceeds"** as provided under Section 1.6 of the Financing Plan.

(b) Tenant will in good faith estimate the Percentage Rent payable to Port for each calendar quarter and pay such estimate in advance by the first day of each calendar quarter (i.e. January 1, April 1, July 1 and October 1). From and after the Commencement Date, Tenant will determine the actual Percentage Rent payable for each calendar month in each calendar quarter during the Term by the twentieth (20th) day of the immediately following calendar quarter and Port will apply such amounts as "Land Proceeds" as provided under Section 1.6 of the Financing Plan, calculated as if such Percentage Rent for each calendar month had been applied monthly rather than quarterly. In the event this Lease expires or terminates on a day other than the last day of a calendar quarter, Percentage Rent for such fractional part of the calendar quarter preceding such expiration or termination date will be prorated to account for the partial calendar quarter and paid within twenty (20) days after such expiration or termination date, but if this Lease terminates as a result of an Event of Default, any amounts due hereunder will be payable immediately upon termination.

3.2. ***Additional Definitions.***

"Adjustments" mean (without duplication and provided they are not included in any Soft Costs or other costs entitled to a developer return under the DDA or Financing Plan) all reasonable actual out of pocket third party costs associated with the use of the Premises for Ancillary Permitted Uses, such as payment to special events managers and other Permitted Uses.

"Gross Income" means for any reporting period or portion thereof during the Term, the following: all payments, revenues, fees or amounts received by Tenant or by any other party for the account of Tenant from any Person for any Person's use or occupancy of any portion of the Premises (excluding security or other deposits to be returned to such Person upon the termination of such use or occupancy), or from any other sales, advertising, concessions, licensing or programming generated from the Premises, including, without limitation, all base rent, percentage rent, payments made to Tenant from any Subtenant to reimburse Tenant for operating expenses, common area maintenance expenses, insurance expenses, Impositions, or, in the case of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by such Subtenant, license fees, parking charges, advertising revenues, event or promotional fees, charges and permit fees. Without limiting the foregoing, "Gross Income" does not include payments of insurance proceeds to or for the benefit of Tenant, except any and all payments made to Tenant from the Business Interruption or delayed opening insurance proceeds, and insurance proceeds from any Casualty that were not used for the repair or restoration of any Improvements or Horizontal Improvements after a Casualty, which shall be included as **"Gross Income"**.

"Minimum Parking Revenues" means an amount equal to sixty-six percent (66%) of an amount equal to (i) gross parking revenues generated from all parking lot or parking operations within the Premises, less (ii) parking taxes and reasonable actual costs associated with the maintenance and repair of surface parking lots such as re-paving and striping costs.

"**Net Income**" means (i) Gross Income from sources other than gross parking revenues, less Adjustments, plus (ii) Minimum Parking Revenues.

3.3. ***Reporting of Percentage Rent***.

(a) Tenant will deliver to Port a complete statement setting forth in reasonable detail its Net Income for each calendar month in each calendar quarter, including an itemized list of all Adjustments from Gross Income that Tenant claims and which are expressly permitted under this Lease, and a computation of the Percentage Rent for each calendar month in a calendar quarter (the "**Percentage Rent Statement**") by the twentieth (20th) day of the immediately following calendar quarter. A financial officer or other accountant employed by Tenant who is authorized and competent to prepare such Percentage Rent Statement must certify each Percentage Rent Statement as accurate, complete and current.

(b) If Port receives the Percentage Rent payment but does not receive the applicable Percentage Rent Statement by the twentieth (20th) day of the immediately following calendar quarter, such failure, until cured, will be treated as a late payment of Percentage Rent, subject to a Late Charge.

(c) If Tenant fails to deliver any Percentage Rent Statement within the time period set forth in this Section 3.3 (irrespective of whether any Percentage Rent is actually paid or payable by Tenant to Port) and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port will have the right, among its other remedies under this Lease, to have a Port Representative examine Tenant's Books and Records (and, to the extent permitted by the applicable Sublease, the Books and Records of any other occupant or user of the Premises) as may be necessary to determine the amount of Percentage Rent due to Port for the period in question. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant will promptly pay to Port the total cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge and interest at the Default Rate.

3.4 ***Books and Records***. Tenant will keep books and records according to generally accepted accounting principles consistently applied or such other method as is reasonably acceptable to Port. "Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Property, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant will maintain a separate set of accounts, including bank accounts, to allow a determination of expenses incurred and revenues generated directly from the Premises. If Tenant operates all or any portion of the Premises through a Subtenant or Agent (other than Port), Tenant will cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

3.5 ***Audit***. Tenant agrees to make its Books and Records (and, to the extent within Tenant's control, the Books and Records of any other person relating to the calculation of Percentage Rent) available in the City and County of San Francisco to Port, or to any accountant employed or retained by Port or the City who is competent to examine and audit the Books and Records (hereinafter collectively referred to as "**Port Representative**"), for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Gross Income or Net Income, for a period of five (5) years after the applicable Percentage Rent Statement was delivered to Port. Tenant will reasonably cooperate with Port Representative during the course of any audit; provided however, once commenced, such audit will be diligently pursued to completion by Port within a reasonable time after its commencement. If an audit has commenced and Port claims that errors or omissions have occurred, Tenant will retain the Books and Records and make them available until those matters are resolved.

If an audit reveals that Tenant has understated its Gross Income or Net Income for said audit period, Tenant will pay Port, within fifteen (15) days after receipt of such audit results, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Default Rate from and after the date of understatement. If Tenant understates its Gross Income for any audit period by five percent (5%) or more of Tenant's understated amount, Tenant will pay Port's cost of the audit. Any overpayments revealed by an audit will be credited towards Rent payments due subsequent to the audit until credited in full.

3.6 ***Manner of Payment***. Percentage Rent will be applied by Port as a credit toward Land Proceeds in accordance with the Financing Plan. Tenant will pay all other Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other Person or at such other place as Port may from time to time designate by notice to Tenant. Percentage Rent is payable without prior notice or demand. Rent is due and payable at the times provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Additional Rent is due thirty (30) days following the giving by Port and the receipt by Tenant of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

3.8 ***Interest on Delinquent Rent***. Rent not paid when due (or in the case of Percentage Rent, if not reported when due or applied when due) will bear interest from the date due until paid (or, for Percentage Rent, when reported or when applied) at an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date payment is due (the **"Default Rate"**). However, interest will not be payable on Late Charges incurred by Tenant or to the extent such payment would violate any applicable usury or similar law. Payment of interest will not excuse or cure any default by Tenant.

3.9 **Late Charge**. Tenant acknowledges and agrees that late payment by Tenant to Port of Rent, or Tenant's failure to provide the Percentage Rent Statement to Port, will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, without limiting any of Port's rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, Tenant will pay a late charge (the "Late Charge") equal to the higher of (a) five percent (5%) of all Rent or any portion thereof which remains unpaid more than five (5) days following the date it is due (or with respect to a failure by Tenant to deliver the Percentage Rent Statement to Port within five (5) days following the date it is due, five percent (5%) of Percentage Rent due for the subject period of the Percentage Rent Statement), or (b) [**Note: Increase following amount by $500 every 5 years after execution of the DDA**: One Thousand Dollars ($1,000)], which amount will be increased by an additional One Thousand Dollars ($1,000) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter; provided, however, Tenant will not be subject to a Late Charge more than once every calendar year if Tenant pays the unpaid Rent or delivers the Monthly Statement to Port, as applicable, within five (5) days of written notice from Port of such failure. The Parties agree that the Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant.

3.10 ***No Abatement or Setoff***. Tenant will pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, credit, deduction, or counterclaim.

3.11 ***Net Lease***. It is the purpose of this Lease and intent of Port and Tenant that all Rent is absolutely net to Port, so that this Lease yields to Port the full amount of Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties is Port expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises.

Without limiting the foregoing, Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, use or occupancy of the Premises, or any portion thereof. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease, or except as set forth in this Lease, gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease.

3.12 ***Survival***. Tenant's obligation to pay any unpaid Rent due and payable will survive the expiration or earlier termination of this Lease.

Master Lease Exhibit E

Permitted Title Exceptions

In reference to: Chicago Title Company's 9th Amended Proforma attached hereto as ***Attachment 1.***

Schedule B:	**Document Description and Recording Data**	**Overview**	**Master Lease**
3.	Mello Roos Community Facilities District.	Any special taxes/assessments will only affect the Property post-closing. There are no special taxes/assessments currently due on the Property because it is held by the City and County of San Francisco.	Permitted Exception
4.	Supplemental Taxes	Approved, subject to Title Company adding the phrase "*resulting from changes of ownership or completion of new construction occurring after the date of this policy.*"	Permitted Exception
5.	Any adverse claim based upon the assertion that some portion of the land is tide or submerged lands.	To be eliminated after trust exchange.	Permitted Exception
6.	Any adverse claim based upon the assertion that any portion of said land was not tideland that was available for disposition by the State of California.	To be eliminated after trust exchange.	Permitted Exception
7.	Rights and Easements for Commerce, Navigation and Fishery.	To be eliminated after trust exchange.	Permitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease
9.	Easement recorded November 26, 1940 in Book 3689, Page 185.	An easement from the Columbia Steel Company ("Grantor") to the City and County of San Francisco ("Grantee") for the purpose of the construction, maintenance and operation of sewers and all appurtenances.	Permitted Exception
10.	Covenants, Conditions and Restrictions appearing in a Quitclaim Deed recorded November 13, 1967 at 26523 in Book B192, Page 384.	Quitclaim from the United States of America ("Grantor") to the State of California acting through the San Francisco Port Authority ("Grantee"). Said quitclaim deed is subject to the following: Subject to rights of way, restrictions, reservations and easements now existing or of record. Together will all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property possession, claim and demand whatsoever, in law as well as equity, of the Grantor of, in or to the described premises and every part and parcel thereof, with the appurtenances. Together with those items of personal property presently located at the said Department Reserve Plant, DOD #46, 20th and Illinois Streets, San Francisco, CA. [Note: Those items of personal property are listed on Exhibit A attached to the document.] It is the intention of the Grantor to convey to the Grantee all real property, personal property and improvements of whatsoever	Permitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease
		nature owned by the Grantor and located at the facility known as Departmental Reserve Plant, DOD #46, 20th and Illinois Streets, San Francisco, CA. Said property transferred was duly determined to be surplus pursuant to the General Services Administration for disposal pursuant to the Federal Property and Administrative Services Act of 19489 (63 Stat. 377).	
11.	Conditions, restrictions, Easements, Reservations and Limitations and Rights, Powers, Duties and Trust contained in the Legislative Grants and by law as to the land or any portion thereof acquired by the City and County of San Francisco, by Chapter 1333 of the Statues of 1968, as amended by Chapters 1296 and 1400, Statutes of 1969 and by Chapter 670, Statutes of 1970, and Chapter 1253, Statues of 1971, and as may be further amended, and such Reversionary Rights and Interest as may be possessed by the State of California under the terms and provisions of said Legislative Grants, or by law.	To be eliminated after trust exchange.	Permitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease
12.	Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded January 30, 1969 at R40413 in Book B308, Page 686.	Document sets forth the terms and conditions and obligations by and between the City and County of San Francisco (the "City") and the Director of Finance of the State of California acting for and on behalf of the State of California, and assisted by the Secretary for Agriculture and Services of the State of the State of California and the San Francisco Port Authority relating to the Transfer of the Port property to the City from the State of California. To be eliminated upon trust exchange.	Permitted Exception
13.	Judgment Quieting Title, San Francisco Superior Court Case No. 401394, recorded April 16, 1954 at C63570 in Book 6359, Page 235.	The People of the State of California vs. The Bethlehem Pacific Coast Steel Corporation et al.	Permitted Exception
15	Permit recorded July 25, 1967 at Q4404 in Book B162, Page 939.	Revocable permit granted by the Department of Public Works to Bethlehem Steel Corp. for the construction and maintenance of a private force main in 20th Street to serve Blocks 4111 and 4046. Permit is conditioned on a 12,000-gallon per day maximum daily flow rate, and a 150-gallon per minute maximum flow rate.	Permitted Exception
16.	Corporation Grant Deed recorded on December 16, 1982 at D275576	A Grant Deed from Bethlehem Steel Corporation to the City and County of San Francisco.	Permitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease
	in Book D464, Page 628.	Conveyance is subject to liens for general and spccial county and city taxes for the fiscal year July 1, 1982, to June 30, 1983. All subject to all easements, covenants, conditions and restrictions of record. Further subject to any matters that could be ascertained by an up-to-date survey, by making inquiry of persons in possession or by an inspection of the real property. All subject to rights and easements for commerce, navigation, and fishery in favor of the public or federal or state governments. Subject, further, to the effect of the following unrecorded instrument: Grant of Right of Way dated September 30, 1966, from Bethlehem Steel Corporation to the United States of America.	
17.	Street Encroachment Agreement recorded on July 6, 1976 at Z01074 in Book C196, Page 780.	The City and County of San Francisco Department of Public Works granted a Street Encroachment Permit to Bethlehem Steel Company affecting Block 4046, Lot 1; Blk. 4110, Lot 1 & Blk. 4111, Lot 2 located on both sides of 20th Street east of Illinois Street. Encroachment affects a fence and curbside parking area with 35 foot wide unrestricted access on 20th Street.	Permitted Exception
24.	Covenant and Environmental Restriction on Property recorded August 19, 2016 as Inst. No. 2016-K308328-00.	The Covenant and Environmental Restriction on property (the "Covenant") affects the property consisting of Seawall Lot 349, Seawall Lot 345 (portion), Assessors Block 4110 (portion) and Twentieth Street (portion), generally	Permitted Exception to the extent it affects the Property

Schedule B:	Document Description and Recording Data	Overview	Master Lease
		bounded by Mariposa Street, Illinois Street and 22nd Street (the "Property"). The Covenant was made by the City and County of San Francisco ("Covenantor") for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Water Board"). The Property and groundwater underlying the property contains hazardous material as defined in California Health & Safety Code Section 25260. Subdivision (d). Covenantor promises to restrict the use of the Property as follows: a. Use of native soil for growing produce for human consumption shall not be permitted on the Property; b. Uses involving regular exposure to native soil shall not be permitted on the Property; c. No hospital shall be permitted on the Property; d. No Owners or Occupants of the Property or any thereof shall conduct any excavation work on the Property, except in accordance with the July 25, 2013 Risk Management Plan prepared by Treadwell & Rollo, Inc. (the "RMP"). e. All uses, maintenance and development of the Property shall comply with the RMP at all times, including but not limited to: restoring and subsequently maintaining the integrity of any pavement or other surface described in the RMP capable of preventing exposure to the underlying soil (the "Durable Cover")	

Schedule B:	Document Description and Recording Data	Overview	Master Lease
		following any construction, remedial measures taken, or remedial equipment installed on the Property pursuant to the requirements of the Water Board and/or the RMP, unless otherwise expressly permitted in writing by the Water Board's Executive Officer. f. Except for the dewatering during construction activities, no Owners or Occupants of the Property shall drill, bore, otherwise construct, or use a well for the purpose of extracting ground water for any use. g. The Owner shall notify the Water Board of each of the following when not performed in compliance with the RMP or any Water Board approved work plans: (1) The type, cause, location and date of any disturbance to the Durable Cover, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Property pursuant to the requirements of the Water Board, which could affect the ability of the Durable Cover or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. h. The Covenantor, all Owners and Occupants agree that the Water Board shall have reasonable access to the Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code. i. No Owner or Occupant of the Property shall act in any manner	

Schedule B:	Document Description and Recording Data	Overview	Master Lease
		that will aggravate or contribute to the existing environmental conditions of the Property. Unless terminated the covenant shall continue in effect in perpetuity.	
25.	Any right, title or interest by reason of the record title to said Land not having been established and quieted under the provisions of the "Destroyed Land Records Relief Act of 1906, as Amended," commonly known as the "McEnerney Act".	Title Company will require evidence that a McEnerney Judgement was filed on the property. Title may offer an endorsement to the title policy if no McEnerney judgment is found.	Permitted Exception
27.	Easement(s) for the purpose(s) shown below and rights incidental thereto, as set forth in the Master Lease upon the terms and conditions set forth therein.	Granting to the Port ingress and egress to and from Parcel 1 (Affordable Self-Storage), Parcel 2 (Portion of Building 21), Parcel 3 (Building No. 11 Site) and Parcel 4 (Pump Station), as shown on Exhibit B of the Master Lease.	Permitted Exception
28.	Development Agreement, dated May 2, by and between the City and County of San Francisco, a political subdivision and municipal corporation of the State of California, and FC Pier 70, LLC, a Delaware limited liability company	Governing certain rights and obligations of the parties for the development of the 28-acre Site	Permitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease
29.	Disposition and Development Agreement dated as of May 2, 2018, between the City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission, and FC Pier 70, LLC, a Delaware limited liability company	Governing certain rights and obligations of the parties for the disposition and development of the 28-acre Site	Permitted Exception.

CLTA STANDARD COVERAGE POLICY OF TITLE INSURANCE

Issued By:

CHICAGO TITLE INSURANCE COMPANY

Policy Number:

9th AMENDED PROFORMA

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;

and in addition, as to an insured lender only:

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage, said mortgage being shown in Schedule B in the order of its priority;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule B, or the failure of the assignment shown in Schedule B to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Chicago Title Company
2150 John Glenn Drive, Suite 300
Concord, CA 94520

Chicago Title Insurance Company

By:

President

Countersigned By:

Attest:

PROFORMA
Authorized Officer or Agent

Secretary

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

SCHEDULE A

Date of Policy	Amount of Insurance	Premium
PROFORMA	$47,500,000.00	PROFORMA

1. Name of Insured:

   FC Pier 70, LLC, a Delaware limited liability company

2. The estate or interest in the land which is covered by this policy is:

   A Leasehold as created by that certain lease dated _____ ___, 2018 by and between THE CITY AND COUNTY OF SAN FRANCISCO, operating by and through the SAN FRANCISCO PORT COMMISSION, as Lessor, and FC PIER 70, LLC, a Delaware limited liability company, as Lessee, as referenced in the document entitled Memorandum of Lease which was recorded _____ ___, 2018 under Instrument No. _____, of Official Records, for the term, upon and subject to all the provisions contained in said document, and in said lease.

3. Title to the estate or interest in the land is vested in:

   FC Pier 70, LLC, a Delaware limited liability company

4. The land referred to in this policy is described as follows:

   SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED

END OF SCHEDULE A

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

EXHIBIT "A"

Legal Description

For APN/Parcel ID(s): Lot 001, Block 4052 (Portion) and Lot 004, Block 4111 (Portion)

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

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, MORE PARTICULARLY 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"

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

EXHIBIT "A"
Legal Description

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.

EXCEPTING THEREFROM, THE FOLLOWING PARCELS:

PARCEL 1 (AFFORDABLE SELF STORAGE):

BEGINNING AT THE POINT ON THE SOUTHERLY LINE 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, FROM WHICH THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL BEARS SOUTH 85°38'01" WEST 491.1 FEET, SAID POINT OF BEGINNING ALSO BEING ON A LINE WHICH BEARS SOUTH 04°21'59" EAST FROM THE SOUTHEAST CORNER OF A METAL BUILDING KNOWN AS BUILDING NO. 66; THENCE FROM SAID POINT OF BEGINNING, NORTH 04°21'59" WEST 220.0 FEET; THENCE NORTH 85°38'01" EAST 40.0 FEET; THENCE NORTH 04°21'59" WEST 178.0 FEET; THENCE NORTH 85°38'01" EAST 641 FEET, MORE OR LESS TO THE TO THE EASTERLY EDGE OF A CONCRETE DOCK WALL; THENCE ALONG A MEANDERING CONTOUR LINE AT AN ELEVATION OF 5.8 FEET (NAVD88 DATUM), BEING THE MEAN HIGH WATER LINE (MHW) 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, SOUTHERLY AND WESTERLY ALONG SAID DOCK TO THE SHORELINE AND CONTINUING ALONG THE SHORELINE, EDGES OF CONCRETE WALLS OF DOCKS AND SEAWALLS ALONG SAID MHW LINE, IN A GENERAL SOUTHERLY DIRECTION, 596 FEET, PLUS OR MINUS, TO A POINT ON EASTERLY PROJECTION

OF THE SOUTHERLY LINE OF SAID B192 O.R. 384 PARCEL; THENCE ALONG SAID EASTERLY PROJECTION AND THE LINE OF B192 O.R. 384 PARCEL, SOUTH 85°38'01" WEST 594 FEET, MORE OR LESS, TO SAID POINT OF BEGINNING.

PARCEL 2 (PORTION OF BUILDING NO. 21):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 424.8 FEET; THENCE SOUTH 85°38'01" WEST 1.2 FEET TO SOUTHWESTERLY EXTERIOR CORNER OF A 2-STORY METAL BUILDING, KNOWN AS BUILDING NO. 21, ALSO BEING THE **TRUE POINT OF BEGINNING**; THENCE ALONG THE EXTERIOR WESTERLY WALL OF SAID BUILDING, MORE OR LESS, NORTH 04°21'59" WEST 45.0 FEET, MORE OR LESS, TO THE NORTHERLY FACE OF A 6 INCH WIDE CONCRETE PARTITION WALL; THENCE ALONG SAID WALL, NORTH 85°38'01" EAST 54.5 FEET, MORE OR LESS, TO NORTHEAST CORNER OF SAID WALL; THENCE ALONG THE EASTERLY FACE OF SAID WALL, SOUTH 04°21'59" EAST 45.0 FEET, MORE OR LESS, TO THE EXTERIOR SOUTHERLY WALL OF SAID BUILDING NO. 21; THENCE ALONG SAID BUILDING WALL, MORE OR LESS, SOUTH 85°38'01" WEST 54.5 FEET TO SAID TRUE POINT OF BEGINNING.

PARCEL 3 (BUILDING NO. 11 SITE):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 327.0 FEET; THENCE NORTH 85°38'01" EAST 100.9 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 85°38'01" EAST 77.5 FEET; THENCE SOUTH 76°21'39" EAST 57.5 FEET; THENCE SOUTH 04°21'59" EAST 145.0 FEET; THENCE SOUTH 85°38'01" WEST 49.5 FEET; THENCE SOUTH 04°21'59" EAST 4.0 FEET; THENCE SOUTH 85°38'01" WEST 82.7 FEET TO A POINT ON A LINE BEARING SOUTH 04°21'59" EAST FROM SAID TRUE POINT OF BEGINNING; THENCE NORTH 04°21'59" WEST 166.8 FEET TO SAID TRUE POINT OF BEGINNING.

PARCEL 4 (PUMP STATION):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO.

EXHIBIT "A"

Legal Description

10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,400.00 FEET TO THE EASTERLY LINE OF FORMER DELAWARE STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER DELAWARE STREET, SOUTH 04°21'59" EAST 76.9 FEET; THENCE NORTH 85°38'01" EAST 37.0 FEET TO THE **TRUE POINT OF BEGINNING**, BEING A POINT ON THE EASTERLY FACE OF AN 18 INCH WIDE CONCRETE WALL; THENCE ALONG SAID FACE OF WALL, NORTH 33°06'32" WEST 38.4 FEET AND NORTH 13°01'17" WEST 57.6 FEET TO A POINT ON A CHAIN-LINK FENCE; THENCE ALONG SAID FENCE, NORTH 79°33'35" EAST 19.8 FEET TO THE WESTERLY EDGE OF A CONCRETE LOADING DOCK; THENCE ALONG SAID EDGE OF LOADING DOCK, SOUTH 36°29'34" EAST 24.7 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOADING DOCK; THENCE ALONG THE SOUTHERLY EDGE OF SAID DOCK AND ALONG THE SOUTHERLY LINE OF A 1-STORY METAL BUILDING KNOWN AS BUILDING NO. 6, NORTH 53°30'26" EAST 40.5 FEET; THENCE SOUTH 02°02'49" EAST 95.1 FEET TO A POINT ON THE NORTHERLY FACE OF SAID 18 INCH WIDE CONCRETE WALL; THENCE ALONG THE FACE OF SAID WALL, SOUTH 88°20'10" WEST 36.2 FEET TO SAID TRUE POINT OF BEGINNING.

THE BASIS OF BEARING FOR THE ABOVE PARCELS 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).

ALSO 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.

Assessor's Parcel Nos. : Portions of 4052-001 and 4111-004

SCHEDULE B
EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

   Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matter excepted under (a), (b), or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

END OF SCHEDULE B - PART I

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

SCHEDULE B
EXCEPTIONS FROM COVERAGE

PART II

1. Intentionally deleted

2. There were no taxes levied for the fiscal year 2017-2018 as the property was vested in a public entity.

3. The herein described property lies within the boundaries of a Mello Roos Community Facilities District ("CFD"), as follows:

   CFD No: 90 1
   For: School Facility Repair and Maintenance

   This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

   None now due and payable

4. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring on or after the Date of Policy.

   None now due and payable

5. Any adverse claim based upon the assertion that some portion of said Land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.

6. Any adverse claim based upon the assertion that any portion of said Land was not tideland or submerged land which was available for disposition by the State of California, or that any portion thereof has ceased to be tidelands or submerged lands by reason of erosion or by reason of having become upland by accretion.

7. Rights and Easements for Commerce, Navigation, and Fishery.

8. Intentionally deleted

THE FOLLOWING ITEMS AFFECT THOSE PORTIONS OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4052, LOT 1:

9. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	City and County of San Francisco, a municipal corporation
Purpose:	Construction, maintenance and operation of sewers
Recording Date:	November 26, 1940
Recording No.:	Book 3689, Page 185, Official Records
Affects:	Portion lying within the bounds of former 20th Street, now closed, and also property other than premises described herein

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

10. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: November 13, 1967
Recording No.: 26523, Book B192, Page 384, Official Records

11. Conditions, restrictions, Easements, Reservations and Limitations and Rights, Powers, Duties and Trust contained in the Legislative Grants and by law as to the land or any portion thereof acquired by the City and County of San Francisco, by Chapter 1333 of the Statues of 1968, as amended by Chapters 1296 and 1400, Statutes of 1969 and by Chapter 670, Statutes of 1970, and Chapter 1253, Statues of 1971, and as may be further amended, and such Reversionary Rights and Interest as may be possessed by the State of California under the terms and provisions of said Legislative Grants, or by law.

Conditions, Restrictions, Easements, Reservations and Limitations and Rights, Powers, Duties and Trusts contained in the Legislative Grants, and by law as to the land or any portion thereof, acquired by the City and County of San Francisco by Chapter 477 of the Statutes of 2011 (AB 418) and as may be further amended, and such Reversionary Rights and Interests as may be possessed by the State of California under the terms and provisions of said Legislative Grants, or by law.

12. Matters contained in that certain document

Entitled: Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco
Dated: January 24, 1969
Executed by: State of California and City and County of San Francisco
Recording Date: January 30, 1969
Recording No.: R40413, Book B308, Page 686, Official Records

Reference is hereby made to said document for full particulars.

THE FOLLOWING ITEMS AFFECT THOSE PORTION OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4111, LOT 4:

13. Matters as set forth in that certain document entitled "Judgment Quieting Title", San Francisco Superior Court Case No. 401394, recorded April 16, 1954, as instrument no. C63570, Book 6359, Page 235 of Official Records, pertaining to a portion of said land.

Affects: a portion of former Lousiana Street lying within the herein described land.

Reference is made to the record for full particulars.

14. Intentionally deleted

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

15. Matters contained in that certain document

Entitled: Order No. 76214
Dated: June 13, 1967
Recording Date: July 25, 1967
Recording No.: Q4404, Book B162, Page 939, of Official Records

Reference is hereby made to said document for full particulars.

16. Matters contained in that certain document "Corporation Grant Deed"

Grantor: Bethlehem Steel Corporation, a Delaware corporation
Grantee: City and County of San Francisco
Recording Date: December 16, 1982
Recording No.: D275576, in Book D464, Page 628 of Official Records

Reference is hereby made to said document for full particulars.

17. Matters contained in that certain document entitled "Street Encroachment Agreement"

Recording Date: July 6, 1976
Recording No.: Z01074, in Book C196, Page 780 of Official Records

Reference is hereby made to said document for full particulars.

18. Intentionally deleted

19. Intentionally deleted

20. Intentionally deleted

THE FOLLOWING ITEMS AFFECT ALL OF THE HEREIN DESCRIBED LAND:

21. Intentionally deleted

22. Intentionally deleted

23. Intentionally deleted

SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

24. Matters contained in that certain document

Entitled:	Covenant and Environmental Restriction on Property
Dated:	August 11, 2016
Executed by:	The City and County of San Francisco, acting by and through the Port of San Francisco and State of California Regional Water Quality Board, San Francisco Bay Region
Recording Date:	August 19, 2016
Recording No.:	2016-K308328-00, Official Records

Reference is hereby made to said document for full particulars.

25. Any right, title or interest of persons, known or unknown, who claim or may claim adversely to the vested owners herein by reason of the record title to said Land not having been established and quieted under the provisions of the "Destroyed Land Records Relief Act of 1906, as Amended," commonly known as the "McEnerney Act."

Affects: Portion of the property

26. Intentionally deleted

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as set forth in the Master Lease upon the terms and conditions set forth therein

Granted to:	The City and County of San Francisco, operating by and through the San Francisco Port Commission, and their successors and assigns
Purpose:	Ingress and egress to and from Parcel 1 (Affordable Self Storage), Parcel 2 (Portion of Building No. 21), Parcel 3 (Building No. 11 Site) and Parcel 4 (Pump Station), as shown on Exhibit B of the Mater Lease
Recording Date:	_____, 2018
Recording No.:	2018-_____, Official Records

28. Development Agreement

Dated:	May 2, 2018
Executed by and between:	The City and County of San Francisco, a political subdivision and municipal corporation of the State of California and FC Pier 70, a Delaware limited liability company
Recording Date:	_____, 2018
Recording No.:	2018-_____, Official Records

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

29. Disposition and Development Agreement, upon the terms, covenants, conditions and provisions set forth therein

Dated:	May 2, 2018
Executed by and between:	The City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission and FC Pier 70, a Delaware limited liability company
Recording Date:	_____, 2018
Recording No.:	2018-_____, Official Records

END OF SCHEDULE B - PART II

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land, (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:
   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. The term "insured" also includes:

   (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

   (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

   (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

   (iv) Subject to any rights or defenses the Company would have had against the named insured, (A) the spouse of an insured who receives title to the land because of dissolution of marriage, (B) the trustee or successor trustee of a trust or any estate planning entity created for the insured to whom or to which the insured transfers title to the land after the Date of Policy or (C) the beneficiaries of such a trust upon the death of the insured.

(b) "insured claimant": an insured claiming loss or damage.

(c) "insured lender": the owner of an insured mortgage.

(d) "insured mortgage": a mortgage shown in Schedule B, the owner of which is named as an insured in Schedule A.

(e) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(f) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(g) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

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(continued)

(h) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

(i) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

(a) After Acquisition of Title by Insured Lender.

If this policy insures the owner of the indebtedness secured by the insured mortgage, the coverage of this policy shall continue in force as of Date of Policy in favor of (i) such insured lender who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) After Conveyance of Title by an Insured.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from an insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to an insured.

(c) Amount of Insurance.

The amount of insurance after the acquisition or after the conveyance by an insured lender shall in neither event exceed the least of:

(i) The amount of insurance stated in Schedule A;

(ii) The amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) The amount paid by any governmental agency or governmental instrumentality, if the agency or the instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

An insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to that insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by an insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of such insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of such insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

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(continued)

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, an insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for this purpose. Whenever requested by the Company, an insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of an insured to furnish the required cooperation, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by each insured claimant shall be furnished to the Company within ninety (90) days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of an insured claimant to provide the required proof of loss or damage, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, an insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by an insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of an insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that insured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) in case loss or damage is claimed under this policy by the owner of the indebtedness secured by the insured mortgage, to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of the option provided for in paragraph a(i), all liability and obligations to the insured under this policy, other than to make the payment required in that paragraph, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

Upon the exercise by the Company of the option provided for in paragraph a(ii) the Company's obligation to an insured Lender under this policy for the claimed loss or damage, other than the payment required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

(b) To Pay or Otherwise Settle with Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or b(ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

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(continued)

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy to an insured lender shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured lender has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The liability of the Company under this policy to an insured owner of the estate or interest in the land described in Schedule A shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(d) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, or, if applicable, to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable to an insured lender for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of insurance pro tanto. However, as to an insured lender, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of insurance afforded under this policy as to any such insured, except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company to an insured lender except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

The provisions of this Section shall not apply to an insured lender, unless such insured acquires title to said estate or interest in satisfaction of the indebtedness secured by an insured mortgage.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

(continued)

11. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) **The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated (i) as to an insured owner, to all rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss; and (ii) as to an insured lender, to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) **The Insured's Rights and Limitations.**

Notwithstanding the foregoing, the owner of the indebtedness secured by an insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of an insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) **The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of an insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is One Million And No/100 Dollars ($1,000,000) or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of One Million And No/100 Dollars ($1,000,000) shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

(continued)

15. SEVERABILITY

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at:

Chicago Title Insurance Company
P.O. Box 45023
Jacksonville, FL 32232-5023
Attn: Claims Department

END OF CONDITIONS AND STIPULATIONS

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

ENDORSEMENT - ALTA 8.2-06

COMMERCIAL ENVIRONMENTAL PROTECTION LIEN

Issued By:

CHICAGO TITLE INSURANCE COMPANY

Attached to Policy Number:

9th AMENDED PROFORMA

Charge: PROFORMA

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

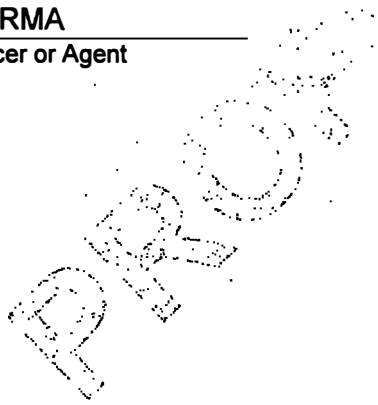
Chicago Title Insurance Company

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent



This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

ENDORSEMENT - SE 91 DELETION OF ARBITRATION

Issued By:

CHICAGO TITLE INSURANCE COMPANY

Attached to Policy Number:

9th AMENDED PROFORMA

Charge: PROFORMA

The policy is hereby amended by deleting Paragraph 14 of the Conditions, relating to Arbitration.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: PROFORMA

Countersigned By:

PROFORMA
Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

ENDORSEMENT - ALTA 13-06 LEASEHOLD

Issued By:

CHICAGO TITLE INSURANCE COMPANY

Attached to Policy Number:

9th AMENDED PROFORMA

Charge: PROFORMA

1. As used in this endorsement, the following terms shall mean:
   a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
   b. "Lease": the lease described in Schedule A.
   c. "Leasehold Estate": the right of possession granted in the Lease for the Lease Term.
   d. "Lease Term": the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
   e. "Personal Property": property, in which and to the extent the Insured has rights, located on or affixed to the Land on or after Date of Policy that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.
   f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted.
   g. "Tenant Leasehold Improvements": Those improvements, in which and to the extent the Insured has rights, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.
2. Valuation of Estate or Interest Insured:

   If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction of the Insured, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.
3. Additional items of loss covered by this endorsement:

   If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(ii) of the Conditions:

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a. The reasonable cost of (i) removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, (ii) transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, (iii) repairing the Personal Property damaged by reason of the removal and relocation, and (iv) restoring the Land to the extent damaged as a result of the removal and relocation of the Personal Property and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.

4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

Master Lease Exhibit F: CFD Matters

All matters addressed in this Exhibit relate to the following actions, all of which the City has undertaken in accordance with the San Francisco Special Tax Financing Law (San Francisco Administration Code ch. 43, art. X), which incorporates the Mello-Roos Community Facilities Act of 1982 (Cal. Gov't Code §§ 53311-53368) (collectively, the "**CFD Law**"), by Board of Supervisors Resolution No. [***TO BE INSERTED***] (the "**Formation Resolution**") to implement the Financing Plan in the DDA between the Master Developer and the Port (collectively, the "**CFD Provisions**"). Unless specified otherwise, all statutory references in this Exhibit are to the California Government Code.

1. Formation of a Special Tax District. The City's actions in relation to the CFD Provisions include:

(a) formation of a community facilities district designated as "*City and County of San Francisco Special Tax District No. 2018-3 (Pier 70 Leased Properties)*" (the "**Special Tax District**") that includes the Premises within its boundaries;

(b) designation of property for potential future annexation to the Special Tax District (the "**Future Annexation Area**");

(c) approval of a rate and method of apportionment (the "**Rate and Method**"), a copy of which is attached to the Formation Resolution, for the calculation and levy of the Facilities Special Tax, the Shoreline Special Tax, the Arts Building Special Tax, and the Services Special Tax (as each term is defined in the Rate and Method) against all taxable property in the Special Tax District (collectively, the "**Special Taxes**");

(d) recordation of the "**Notice of Special Tax Lien**" against the real property in the Special Tax District in the Official Records of the City and County of San Francisco, as document number _____ pursuant to California Government Code Section 53328.3;

(e) authorization to issue bonds secured by one or more of the Special Taxes ("**Bonds**");

(f) authorization to use Bond proceeds and Special Taxes to finance the construction, completion, and acquisition of improvements described in the Formation Resolution (the "**CFD Improvements**"); and

(g) authorization to levy and use Special Taxes in perpetuity to finance services described in the Formation Resolution such as capital maintenance and repair of the CFD Improvements (the "**Services**").

2. Leasehold Subject to CFD Provisions. The Tenant acknowledges and agrees as follows.

(a) Its leasehold interest in the Premises is subject to the levy of Special Taxes and the Tenant will not have any right to amend the CFD Provisions.

(b) It is critical to each of the City, the Port, the Master Developer, and Tenant that the construction and completion of the CFD Improvements required to develop the Premises be coordinated in all respects (including cost, timing, capacity, function, and

type) with the construction and completion of the CFD Improvements for other property in the Special Tax District.

(c) If the Premises were excluded from the Special Tax District, or the Special Taxes to be levied on the Premises were reduced or eliminated, coordination of CFD Improvements required to develop the Premises with CFD Improvements for other property in the Special Tax District would be materially adversely affected.

3. Cooperation with CFD Matters. The Tenant agrees to the following with respect to the Special Tax District, the levy of the Special Taxes, and the issuance of any Bonds, at the Tenant's sole expense.

(a) The Tenant will:

i. if determined necessary by the City, and at the request of the City, cooperate with the City if the City decides to enter into a joint community facilities agreement or any other agreement necessary to finance CFD Improvements and Services (collectively, the "**JCFA**") that will be owned or operated by government agencies other than the City or its agencies.

(b) The Tenant will not, at any time or in any manner, contest, protest, or otherwise challenge any of the following:

i. the formation of the Special Tax District;

ii. the designation of the Future Annexation Area;

iii. the authorization, levy, or amount of the Special Taxes on the Premises;

iv. the authorization to issue the Bonds;

v. the CFD Improvements and Services to be financed by the Special Tax District; and

vi. the establishment of an appropriations limit for the Special Tax District.

(c) If required for the Special Tax District to levy Special Taxes or issue Bonds, the Tenant will acknowledge that the Premises are subject to the lien of the Special Tax District and the levy of Special Taxes and that the Special Tax District is authorized to issue Bonds.

(d) The Tenant will not bring any action, suit, or proceeding against the Special Tax District or the City; provided, however, that after exhausting its appeal rights under the Rate and Method, the Tenant may bring an action, suit, or proceeding against the Special Tax District or the City if it relates solely to an allegation that the Special Taxes have not been levied in accordance with the Rate and Method.

(e) The Tenant will not take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken with respect to the Special Tax District's formation or the issuance of Bonds, including when Special Taxes are first levied, the amount of Special Taxes, the apportionment of Special Taxes, and the use of the Special Taxes collected by the Special Tax District.

4. The following definitions apply to this Exhibit.

(a) "**Actual Knowledge**" means the knowledge that the person signing this Lease has on the date of execution of this Lease or has obtained from:

i. interviews with current officers and responsible employees of the Tenant and its Affiliates that the person has determined are likely, in the ordinary course of their respective duties, to have knowledge of the matters set forth in this Lease;

ii. a review of documents that the person determined were reasonably necessary to obtain knowledge of the matters set forth in this Lease; or

iii. both, in any case without conducting any extraordinary inspection or inquiry except as prudent and customary in connection with the ordinary course of the Tenant's current business and operations or contacting individuals who are no longer employees of the Tenant or its Affiliates.

(b) "**Affiliate**" means any person that directly or indirectly, through one or more intermediaries:

i. exercises managerial control over the Tenant; or

ii. is under managerial control of the Tenant; and

iii. in each case, about whom information could be material to potential investors deciding whether to invest in future Bonds.

(c) "**Related Property**" means any real property interest owned or held by the Tenant or any of its Affiliates.

5. Compliance. The Tenant represents and warrants as follows and agrees that if its representations and warranties are discovered to be untrue after the Effective Date of this Lease, the Port may, in its discretion, elect to terminate this Lease.

(a) With respect to Related Property located within the boundaries of a development project in California, except as set forth in **Attachment 1**, to Tenant's Actual Knowledge, neither Tenant nor Tenant's Affiliates within the last five years have:

i. intentionally failed to pay when due any property taxes, special taxes, or assessments levied or assessed against the Related Property; or

ii. owned any interest in Related Property that became either tax-deeded to California or the subject of foreclosure proceedings for failure to pay property taxes, special taxes, or assessments levied or assessed against the Related Property.

(b) With respect to Related Property located within the boundaries of a development project outside of California, except as set forth in **Attachment 1**, to Tenant's Actual Knowledge, neither Tenant nor Tenant's Affiliates within the last five years have owned any interest in Related Property that became either tax-deeded to a governmental agency or the subject of foreclosure proceedings for failure to pay special taxes or assessments that secure the payment of bonds and that were levied or assessed against the Related Property.

(c) Except as set forth in **Attachment 1**, neither the Tenant nor its Affiliates have failed to comply in the last five years under any continuing disclosure agreement relating to Related Property in projects in California.

6. Acknowledgment of the Rate and Method. The Rate and Method has been provided to the Tenant prior to the Effective Date of this Lease. The Tenant has read and, if deemed necessary, consulted with counsel, regarding the provisions of the Rate and Method.

7. Issuance of Bonds. This Section will apply to the Special Tax District's issuance of Bonds at any time.

(a) The Tenant will provide, at the request of the City or any Financing Participant (as defined in subsection (c) below), certificates or other documents executed by each secured lender that provided funds for the Tenant's development of the Premises signifying the lender's acknowledgment of:

i. the imposition of the Special Taxes on the Premises;

ii. the issuance of Bonds; and

iii. the Special Tax District's foreclosure rights if the Tenant is delinquent in the payment of Special Taxes.

(b) The Tenant acknowledges that Bonds may be issued in one or more series over time, that the issuance of each series of Bonds may require information and documents to be provided by the Tenant, and that the timely provision of that information and documents for each series of Bonds is critical for the Master Developer and the Port to achieve their respective financial goals. The Tenant's obligations will arise with the issuance of each series of Bonds and continue as provided in any related continuing disclosure agreement.

(c) The Tenant will not interfere with or impede the issuance of any series of Bonds issued by or in connection with the Special Tax District and will, at the Tenant's expense, provide information in connection with each series of Bonds as requested by any of the following (collectively, the "**Financing Participants**"):

i. the City, the Port, and any other JCFA Party, or any of their agents, including bond counsel and disclosure counsel;

ii. appraisers engaged to appraise the Leasehold;

iii. market absorption consultants;

iv. underwriters and underwriters' counsel;

v. financial advisors associated with the Bonds or the Special Tax District; and

vi. persons providing credit enhancement for the Bonds or the Special Tax District.

(d) The Tenant will provide, at Tenant's expense, required information, which may include:

i. a description of the Tenant's financing sources to develop the Premises;

ii. a description of the proposed development project and the ownership structure of the Tenant;

iii. the status of the Premises, including the rent roll and vacancy history;

iv. any history of delinquencies and defaults by the Tenant and its Affiliates, including the information disclosed in **Attachment 1**;

v. the Tenant's financial statements, which may be consolidated with its parent company and, for publicly traded companies where the Tenant's financial statements are consolidated with the publicly traded company, may be limited to those financial statements required by SEC Regulations;

vi. other financial and operating information, including a development pro forma, with respect to the Tenant and the Premises;

vii. certificates requested by the Financing Participants, which may include representations on:

1. the due formation of the Tenant;

2. the due execution of documents executed by the Tenant in connection with the Special Tax District or any Bonds;

3. no material litigation or investigation by or against the Tenant or its Affiliates that seeks to prohibit, restrain, or enjoin the development of the Premises, or in which the Tenant or its Affiliates may be adjudicated as bankrupt or discharged from any or all debts or obligations or granted an extension of time to pay or a reorganization or readjustment of its debts, or which, if determined adversely to the Tenant or its Affiliates, could adversely affect the development of the Premises and the payment of the Special Taxes; and

4. the accuracy of the information provided in connection with the issuance of any series of Bonds, including the information in all disclosure documents; and

viii. opinions of counsel to the Tenant requested by any of the Financing Participants, which may include any matter listed in **clause (vii)** of this Subsection and a 10b-5 opinion regarding any disclosure about the Tenant and its Affiliates in the offering statement used to market the Bonds.

(e) The City will decide on the amount and application of any capitalized interest in consultation with the Master Developer, and the Tenant will not contest the amount and application of capitalized interest.

(f) This Subsection will apply if any of the Financing Participants requires a renewable letter of credit, cash, or other form of credit enhancement ("**Special Tax Security**") in connection with the issuance of the Bonds.

i. The Tenant will provide Special Tax Security that is acceptable to the Financing Participants in an amount no greater than two years' levy of Special

Taxes against the Premises by the Special Tax District, as reasonably determined by any of the Financing Participants,

ii. In addition, if the Master Developer (or any current owner of the Premises) posted Special Tax Security with respect to the Premises before the Close of Escrow, the Tenant will provide replacement Special Tax Security with respect to the Premises acceptable to the Financing Participants. The Tenant's posting of replacement Special Tax Security will be a condition precedent to the Effective Date of this Lease.

iii. The Tenant acknowledges that the Special Tax Security is intended to secure the Special Tax payments by the Tenant and its successors and assigns, but not any sub-tenants of less than the whole of the Premises or apartment dwellers.

iv. Any letter of credit must be provided by an issuer acceptable to the Financing Participants and have a minimum "A" long-term debt rating (or the equivalent "A" designation) from both Standard & Poor's and Moody's Investors Service, unless the Financing Participants agree to a lower rating.

(g) Any reimbursements from the proceeds of any Bonds or directly from any Special Taxes (or prepayments of Special Taxes) for the costs of authorized CFD Improvements, returns of deposits, or payments of the costs of issuance will be the property of the Master Developer (as between the Master Developer and the Tenant), regardless of the time of the original payment or the identity of the party that made the payment. Should the Tenant receive any such reimbursements, or should the Tenant receive the return or reimbursement of any deposits with any governmental entity or utility related to authorized CFD Improvements, the Tenant will endorse and tender the payment to the Master Developer immediately.

(h) The Tenant will execute and perform under any continuing disclosure agreement as requested by any of the Financing Participants. In addition, if, prior to the Effective Date, the Master Developer has entered into a continuing disclosure agreement, the Tenant will assume the obligations under the continuing disclosure agreement with respect to the Premises, in the form and manner required by the Financing Participants and the continuing disclosure agreement. The assumption of any continuing disclosure agreement will be a condition precedent to the Effective Date of this Lease.

8. Cooperation to Amend the Special Tax District.

(a) The Tenant acknowledges that the Port, the Master Developer, or the City may request proceedings to amend any CFD Provisions ("**Change Proceedings**"). **Subsection 8(b)** will apply so long as the changes contemplated by the Change Proceedings:

i. do not increase the Special Tax rates to be levied on the Premises above Special Tax rates for the Premises, escalated to the date of calculation, under the Rate and Method;

ii. do not change the Rate and Method so that the Tenant is taxed sooner than under the current version of the Rate and Method; and

iii. do not result in more favorable treatment of one or more other tenants or property owners in the Special Tax District compared to the treatment of the Tenant and the Premises.

(b) Subject to **Subsection 8(a)**, the Tenant shall not contest, protest, or otherwise challenge Change Proceedings to the Special Tax District.

9. Annexation of Property to the Special Tax District.

(a) The Tenant acknowledges that in accordance with the CFD Law:

i. the City has designated certain property as a Future Annexation Area to the Special Tax District;

ii. from time to time, parcels of the Future Annexation Area may be annexed to the Special Tax District by execution of a unanimous written consent of the owners of the parcels of Future Annexation Area to be annexed without a public hearing or election; and

iii. the Master Developer, City, and Port may also request annexation of additional property to the Special Tax District.

(b) The Tenant will not:

i. contest, protest, or otherwise challenge the annexation of any additional property to the Special Tax District as described in **Section 9(a)** above, or the imposition of the levy of Special Taxes on the annexed property; or

ii. take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken by the Master Developer or the owners of property (including the owners of the Future Annexation Area) with respect to the annexation of additional property to the Special Tax District.

10. Activity in Other Special Tax Districts. The Tenant acknowledges that other parcels in the SUD are included in a separate special tax district formed by the City (the "**Other STD**") and agrees not to:

(a) contest, protest, or otherwise challenge the formation, implementation, levy of special taxes in, or issuance of bonds by the Other STD, or the annexation of additional property to, or any Change Proceedings conducted with respect to, the Other STD; or

(b) take any other action that would in any way interfere with the operation of the Other STD or decisions made or actions taken by the City, the Port, and the Master Developer with respect to the Other STD.

11. Shortfall Provisions.

(a) All capitalized terms used in this **Section 11** that are not otherwise defined herein shall have the meaning given such terms in the Appendix to the DDA (the "**Appendix**").

(b) The Tenant agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Premises until the IFD Termination Date.

(c) If the Tenant initiates a Reassessment on the Premises in violation of **Section 11(b)** above, then the following shall occur:

a. Tenant will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

b. The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

12. Acquisition Agreement.

The Tenant acknowledges that the Tenant is not and will not become either a party, a third-party beneficiary, or an assignee to the Acquisition and Reimbursement Agreement between the Master Developer and the Port (the "**Acquisition Agreement**"), and that any reimbursements from the proceeds of Bonds or Special Taxes for the costs of authorized CFD Improvements under the Acquisition Agreement will be the property of the Master Developer, regardless of the time of the original payment or the identity of the party that made the payment. Should the Tenant receive any reimbursements, or should the Tenant receive the return or reimbursement of any deposits that were intended to be financed with Special Taxes or Bonds, the Tenant shall endorse and tender the payment to the Master Developer promptly. The Tenant further agrees not to contest, protest or otherwise challenge the rights or obligations of the Master Developer or the Port under the Acquisition Agreement.

13. General Provisions.

(a) The Tenant will pay prior to delinquency all Special Taxes levied on the Premises while the Tenant or any Affiliate has a leasehold interest in the Premises.

(b) The Tenant will not petition, support, encourage, consent to, or implement any action seeking to reduce or repeal the levying of all or any part of the Special Taxes in the Special Tax District, except at the written request of the Port, the Master Developer, and the City.

(c) The Tenant will disclose the requirements of this Exhibit to any Subtenant of the entirety of the Premises and require each such Subtenant to enter into an agreement with the Tenant, the Port, and the Master Developer assuming the Tenant's obligations under this Exhibit. This paragraph will not apply to any rentals to apartment dwellers or Subtenants of less than all of the Premises. If required, the Tenant will comply with disclosures required by Section 53341.5.

(d) The Master Developer is an express third-party beneficiary of the covenants and agreements of this Exhibit and may enforce each provision against the Tenant as if the Master Developer were a party to this Lease.

(e) The Port is required to provide to the Tenant a notice of special tax pursuant to Section 53341.5 regarding the Special Taxes in the Rate and Method (the

"**Notice of Special Tax**"). The Notice of Special Tax is attached as **Exhibit XXXX** and the Tenant shall execute and return to the Port a copy of the Notice of Special Tax within three business days after executing this Lease.

(f) The covenants and provisions contained in this Exhibit remain in effect for the term of this Lease.

Attachment 1: Certain Representations of Tenant
Exhibit XXXX: Notice of Special Tax

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[1]
MITIGATION MEASURES FOR THE PIER 70 MIXED-USE DISTRICT PROJECT					
Cultural Resources (Archaeological Resources) Mitigation Measures					
M-CR-1a: Archeological Testing, Monitoring, Data Recovery and Reporting Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources. The project sponsors shall retain the services of an archeological consultant from rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsors shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the	Project sponsors[2] to retain qualified professional archaeologist from the pool of archaeological consultants maintained by the Planning Department. The archaeological consultant shall undertake an archaeological testing program as specified herein. Project sponsors,	Prior to the issuance of site permits, submittal of all plans and reports for approval by the ERO.	Archaeological consultant's work shall be conducted in accordance with this measure at the direction of the ERO.	Considered complete when project sponsor retains a qualified professional archaeological consultant and archeological consultant has approved scope by the ERO for the archeological testing program	Planning Department

[1] Both the City and the Port have jurisdiction over portions of the Project Site. This column identifies the agency or agencies with monitoring responsibility for each mitigation and improvement measure. The 28-Acre Site and 20th/Illinois Parcels are located within the Port's building permit jurisdiction. The Hoedown Yard parcel is located within the San Francisco Department of Building Inspection (DBI).

[2] Note: For purposes of this MMRP, unless otherwise indicated, the term "project sponsor" shall mean the party (*i.e.*, the Developer under the DDA, a Vertical Developer (as defined in the DDA) or Port, as applicable, and their respective contractors and agents) that is responsible under the Project documents for construction of the improvements to which the Mitigation Measure applies, or otherwise assuming responsibility for implementation of the mitigation measure.

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
suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in State CEQA Guidelines Section 15064.5 (a) and (c). Consultation with Descendant Communities On discovery of an archeological site associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to consult with the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.	archaeological consultant shall contact the ERO and descendant group representative upon discovery of an archaeological site associated with descendant Native Americans or the Overseas Chinese. The representative of the descendant group shall be given the opportunity to monitor archaeological field investigations on the site and consult with the ERO regarding appropriate archaeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archaeological site.	For the duration of soil-disturbing activities.	Archaeological Consultant shall prepare a Final Archaeological Resources Report in consultation with the ERO (per below). A copy of this report shall be provided to the ERO and the representative of the descendant group.	Considered complete upon submittal of Final Archaeological Resources Report.	
Archeological Testing Program	Development of	Prior to any	Archaeological	Considered	Planning

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
The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the Proposed Project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA. At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.	ATP: Project sponsors and archaeological consultant in consultation with the ERO. Archeological Testing Report: Project sponsors and archaeological consultant in consultation with the ERO.	excavation, site preparation or construction, and prior to testing, an ATP for a defined geographic area and/or specified construction activities is to be submitted to and approved by the ERO. A single ATP or multiple ATPs may be produced to address project phasing. At the completion of each archaeological testing program.	consultant to undertake ATP in consultation with ERO. Archaeological consultant to submit results of testing, and in consultation with ERO, determine whether additional measures are warranted. If significant archaeological	complete with approval of the ATP by the ERO and on finding by the ERO that the ATP is implemented. Considered complete on submittal to ERO of report(s) on ATP findings.	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[1]**
			resources are present and may be adversely affected, project sponsors, at its discretion, may elect to redesign a project, or implement data recovery program, unless ERO determines the archaeological resource is of greater interpretive than research significance and that interpretive use is feasible.		
Archeological Monitoring Program If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented, the AMP would minimally include the following provisions: • The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the AMP prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. A single AMP or multiple AMPs may be produced to address project phasing. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring	Project sponsors and archaeological consultant at the direction of the ERO.	The archaeological consultant, project sponsors, and ERO shall meet prior to the commencement of soil-disturbing activities for a defined geographic area and/or specified construction	If required, archaeological consultant to prepare the AMP in consultation with the ERO.	Considered complete on approval of AMP(s) by ERO; submittal of report regarding findings of AMP(s); and finding by ERO that AMP(s) is implemented.	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[1]
because of the risk these activities pose to potential archeological resources and to their depositional context. The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource: • The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; • The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis; If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, pile driving activity that may affect the archeological resource shall be suspended until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the		activities. The ERO in consultation with the archaeological consultant shall determine what archaeological monitoring is necessary. A single AMP or multiple AMPs may be produced to address project phasing.			

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**
discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible. Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.					
Archeological Data Recovery Program If the ERO, in consultation with the archeological consultant, determines that an archeological data recovery programs shall be implemented based on the presence of a significant resource, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, shall be limited to the portions of the historical property that could be adversely affected by the Proposed Project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.	Project sponsors and archaeological consultant at the direction of the ERO.	Upon determination by the ERO that an ADRP is required. A single ADRP or multiple ADRPs may be produced to address project phasing.	If required, archaeological consultant to prepare an ADRP(s) in consultation with the ERO.	Considered complete on submittal of ADRP(s) to ERO.	

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
The scope of the ADRP shall include the following elements: • *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations. • *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures. • *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies. • *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. • *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. • *Final Report.* Description of proposed report format and distribution of results. • *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.					
Human Remains and Associated or Unassociated Funerary Objects The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the coroner of the City and County of San Francisco and in the event of the coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project	Project sponsors and archaeological consultant, in consultation with the San Francisco Coroner, NAHC, ERO, and MLD.	In the event human remains and/or funerary objects are encountered.	Archaeological consultant/ archaeological monitor/project sponsors or contractor to contact San Francisco County Coroner and ERO.	Ongoing during soils disturbing activity. Considered complete on notification of the San Francisco County Coroner	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**
sponsors, ERO, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (State CEQA Guidelines Section 15064.5(d)). The agreement shall take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such an agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.			Implement regulatory requirements, if applicable, regarding discovery of Native American human remains and associated/unassociated funerary objects. Contact archaeological consultant and ERO.	and NAHC, if necessary.	
Final Archeological Resources Report The archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report. The FARR may be submitted at the conclusion of all construction activities associated with the Proposed Project or on a parcel-by-parcel basis. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high	Project sponsors and archaeological consultant at the direction of the ERO. The ERO shall provide to the archaeological consultant(s) preparing the FARR reports and relevant data obtained through implementation of this Mitigation Measure M-CR-1a.	For Horizontal Developer-prio r to determination of substantial completion of infrastructure at each sub-phase For Vertical Developer-prio r to issuance of Certificate of Temporary or Final Occupancy, whichever occurs first	If applicable, archaeological consultant to submit a Draft and final FARR to ERO based on reports and relevant data provided by the ERO Archaeological consultant to distribute FARR.	Considered complete on submittal of FARR and approval by ERO. Considered complete when archaeological consultant provides written certification to the ERO that the required FARR	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[1]
public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.		If applicable, upon approval of the FARR by the ERO.		distribution has been completed.	
M-CR-1b: Interpretation Based on a reasonable presumption that archeological resources may be present within the project site, and to the extent that the potential significance of some such resources is premised on CRHR Criteria 1 (Events), 2 (Persons), and/or 3 (Design/Construction), the following measure shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources if significant archeological resources are discovered. The project sponsors shall implement an approved program for interpretation of significant archeological resources. The interpretive program may be combined with the program required under Mitigation Measure M-CR-4b: Public Interpretation. The project sponsors shall retain the services of a qualified archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist having expertise in California urban historical and marine archeology. The archeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. The particular program for interpretation of artifacts that are encountered within the project site will depend upon the results of the data recovery program and will be the subject of continued discussion between the ERO, consulting archeologist, and the project sponsors. Such a program may include, but is not limited to, any of the following (as outlined in the ARDTP): surface commemoration of the original location of resources; display of resources and associated artifacts (which may offer an underground view to the public); display of interpretive materials such as graphics, photographs, video, models, and public art; and academic and popular publication of the results of the data recovery. The interpretive program shall include an on-site	Project sponsors and archaeological consultant at the direction of the ERO.	Prior to issuance of final certificate of occupancy	Archaeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. All plans and recommendations for interpretation by the archaeological consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until deemed final by the ERO. The ERO to approve final interpretation program. Project sponsors to implement an approved	Considered complete upon installation of approved interpretation program, if required.	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**
component. The archeological consultant's work shall be conducted at the direction of the ERO, and in consultation with the project sponsors. All plans and recommendations for interpretation by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.			interpretation program.		
Mitigation Measure M-CR-5: Preparation of Historic Resource Evaluation Reports, Review, and Performance Criteria. Prior to Port issuance of building permits associated with Buildings 2, 12 and 21, Port of San Francisco Preservation staff shall review and approve future rehabilitation design proposals for Buildings 2, 12, and 21. Submitted rehabilitation design proposals for Buildings 2 and 12 shall include, in addition to proposed building design, detail on the proposed landscaping treatment within a 20-foot-wide perimeter of each building. The Port's review and analysis would be informed by Historic Resource Evaluation(s) provided by the project sponsors. The Historic Resource Evaluation(s) shall be prepared by a qualified consultant who meets or exceeds the Secretary of the Interior's Professional Qualification Standards in historic architecture or architectural history. The scope of the Historic Resource Evaluation(s) shall be reviewed and approved by Port Preservation staff prior to the start of work. Following review of the completed Historic Resource Evaluation(s), Port preservation staff would prepare one or more Historic Resource Evaluation Response(s) that would contain a determination as to the effects, if any, on historical resources of the proposed renovation. The Port shall not issue buildings permits associated with Buildings 2, 12, and 21 until Port preservation staff conclude that the design (1) conforms with the Secretary of the Interior's Standards for Rehabilitation; (2) is compatible with the UIW Historic District; and (3) preserves the building's historic materials and character-defining features, and repairs instead of replaces deteriorated features, where feasible. Should alternative materials be proposed for replacement of historic materials, they shall be in keeping with the size, scale, color, texture, and general appearance. The performance criteria shall ensure	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Prior to the issuance of building permits associated with Buildings 2, 12 and 21.	Qualified historian to prepare historic resource evaluation documentation and present to Port staff to determine conformance to the Secretary's Standards.	Considered complete upon approval by the Port staff.	Port

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**
retention of the following character-defining features of each historic building: • **Building 2**: (1) board-formed concrete construction: (2) six-story height; (3) flat roof; (4) rectangular plan and north-south orientation; (5) regular pattern of window openings on east and west elevations: (6) steel, multi-pane, fixed sash windows (floors 1-5); (7) wood sash windows (floor 6); (8) elevator/stair tower that rises above roofline and projects slightly from west façade • **Building 12**: (1) steel and wood construction; (2) corrugated steel cladding (except the as-built south elevation which was always open to Building 15); (3) 60-foot height; (4) Aiken roof configuration with five raised, glazed monitors; (5) clerestory multi-lite steel sash awning windows along the north and south sides of the monitors; (6) multi-lite, steel sash awning widows, arranged in three bands (with a double-height bottom band) on the north and west elevations, and in four bands on the east elevation; (7) 12-bay configuration of east and west elevations; (8) north-south roof ridge from which roof slopes gently (1/4 inch per foot) to the east and west • **Building 21:** (1) steel frame construction; (2) corrugated metal cladding; (3) double-gable roof clad in corrugated metal, with wide roof monitor at each gable; (4) multi-lite, double hung wood or horizontal steel sash windows; and (5) two pairs of steel freight loading doors on the north elevation, glazed with 12 lites per door. Port staff shall not approve any proposal for rehabilitation of Buildings 2, 12, and 21 unless they find that such a scheme conforms to the Secretary's Standards as specified for each building.					
Mitigation Measure M-CR-11: Performance Criteria and Review Process for New Construction In addition to the standards and guidelines established as part of the Pier 70	Project sponsors	Prior to issuance of a building permit for new	San Francisco Preservation Planning staff, in consultation with	Considered complete when Planning and Port Preservation	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
SUD and *Design for Development*, new construction and site development within the Pier 70 SUD shall be compatible with the character of the UIW Historic District and shall maintain and support the District's character-defining features through the following performance criteria (terminology used has definition as provided in the *Design for Development*): 1. New construction shall comply with the Secretary of the Interior's Rehabilitation Standard No. 9: "New Addition, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the integrity of the property and its environment." 2. New construction shall comply with the Infill Development Design Criteria in the Port of San Francisco's *Pier 70 Preferred Master Plan* (2010) as found in Chapter 8, pp 57-69 (a policy document endorsed by the Port Commission to guide staff planning at Pier 70). 3. New construction shall be purpose-built structures of varying heights and massing located within close proximity to one another. 4. New construction shall not mimic historic features or architectural details of contributing buildings within the District. New construction may reference, but shall not replicate, historic architectural features or details. 5. New construction shall be contextually appropriate in terms of massing, size, scale, and architectural features, not only with the remaining historic buildings, but with one another. 6. New construction shall reinforce variety through the use of materials, architectural styles, rooflines, building heights, and window types and through a contemporary palette of materials as well as those found within the District.		construction.	the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning and Port staff that confirms compliance of all proposed new construction with these guiding plans and policies. San Francisco	staff note compliance with the Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, outlined in the written memorandum.	

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7. Parcel development shall be limited to the new construction zones identified in *Design for Development* Figure 6.3.1: Allowable New Construction Zones. 8. The maximum height of new construction shall be consistent with the parcel heights identified in *Design for Development* Figure 6.4.2: Building Height Maximum. 9. The use of street trees and landscape materials shall be limited and used judiciously within the Pier 70 SUD. Greater use of trees and landscape materials shall be allowed in designated areas consistent with *Design for Development* Figure 4.8.1: Street Trees and Plantings Plan. 10. New construction shall be permitted adjacent to contributing buildings as identified in *Design for Development* Figure 6.3.2: New Construction Buffers. 11. No substantive exterior additions shall be permitted to contributing Buildings 2, 12, or 21. Building 12 did not historically have a south-facing façade; therefore, rehabilitation will by necessity construct a new south elevation wall. Building 21 shall be relocated approximately 75 feet east of its present placement, to maintain the general historic context of the resource in spatial relationship to other resources. Building 21's orientation shall be maintained. <u>Building Specific Standards</u> Each development parcel within the Pier 70 SUD has a different physical proximity and visual relationship to the contributing buildings within the UIW Historic District. For those façades immediately adjacent to or facing contributing buildings, building design shall be responsive to identified character-defining features in the manner described in the *Design for Development* Buildings chapter. All other façades shall have greater freedom in the expression of scale, color, use of material, and overall appearance, and shall be permitted if consistent with Secretary Standard No. 9 and the *Design*			Preservation Planning staff must make determination in compliance with the timelines outlined in the Pier 70 Special Use District section of the Planning Code for review of vertical design.		

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for Development.

Table M.CR.1 Building-Specific Responsiveness, indicates resources that are located adjacent to, and have the greatest influence on the design of, the noted development parcel façade.

Table M.CR.1: Building-Specific Responsiveness

Façade/Parcel Name-Number	Contributing Building (Building No.)
North and West; A	113
North and Northeast; B	113, 6
North; C1	116
East and South; C2	12
South and West; D	2, 12
East and South; E1	21
West; E2	12
West; E4	21
North; F/G	12
East; PKN	113-116

Source: ESA 2015.

Palette of Materials

In addition to the standards and guidelines pertaining to application of

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materials in the *Design for Development*, the following material performance standards would apply to the building design on the development parcels (terminology used has definition as provided in the *Design for Development*): • Masonry panels that replicate traditional nineteenth or twentieth century brick masonry patterns shall not be allowed on the east façade of Parcel PKN, north and west façades of Parcel A or on the north façade of Parcel C1. • Smooth, flat, minimally detailed glass curtain walls shall not be allowed on the façades listed above. Glass with expressed articulation and visual depth or that expresses underlying structure is an allowable material throughout the entirety of the Pier 70 SUD. • Coarse-sand finished stucco shall not be allowed as a primary material within the entirety of the UIW Historic District. • Bamboo wood siding shall not be allowed on façades listed above or as a primary façade material. • Laminated timber panels shall not be allowed on façades listed above. • When considering material selection immediately adjacent to contributing buildings (e.g., 20th Street Historic Core; Buildings 2, 12, and 21; and Buildings 103, 106, 107, and 108 located within or immediately adjacent to the BAE Systems site), characteristics of compatibility and differentiation shall both be taken into account. Material selection shall not duplicate adjacent building primary materials and treatments, nor shall they establish a false sense of historic development. • Avoid conflict of new materials that appear similar or attempt to replicate historic materials. For example, Building 12 has character-defining corrugated steel cladding. As such, the eastern					

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façade of Parcel C2, the northern façade of Parcels F and G, and the southern façade of Parcel D1 shall not use corrugated steel cladding as a primary material. As another example, Building 113 has character-defining brick-masonry construction. As such, the northern and western façades of Parcel A and the eastern façade of Parcel K North shall not use brick masonry as a primary material. • Use of contemporary materials shall reflect the scale and proportions of historic materials used within the UIW Historic District. • Modern materials shall be designed and detailed in a manner to reflect but not replicate the scale, pattern, and rhythm of adjacent contributing buildings' exterior materials. <u>Review Process</u> Prior to Port issuance of building permits associated with new construction, San Francisco Preservation Planning staff, in consultation with the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning staff that confirms compliance of all proposed new construction with these guiding plans and policies.					
Transportation and Circulation Mitigation Measures					
Mitigation Measure M-TR-5: Monitor and increase capacity on the 48 Quintara/24th Street bus routes as needed. Prior to approval of the Proposed Project's phase applications, project sponsors shall demonstrate that the capacity of the 48 Quintara/24th Street bus route has not exceeded 85 percent capacity utilization, and that future demand associated with build-out and occupancy of the phase will not cause	Developer, TMA, and SFMTA. Documentation of capacity of the 48 Quintara/24th Street	<u>Demonstration of capacity</u>: Prior to approval of the project's phase applications.	Project sponsors to demonstrate to the SFMTA that each building for which temporary certificates of occupancy are	Considered complete upon approval of the project's phase application.	Planning Department, SFMTA

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
the route to exceed its utilization. Forecasts of travel behavior of future phases could be based on trip generation rates forecast in the EIR or based on subsequent surveys of occupants of the project, possibly including surveys conducted as part of ongoing TDM monitoring efforts required as part of Air Quality Mitigation Measure M-AQ-1f: Transportation Demand Management. If trip generation calculations or monitoring surveys demonstrate that a specific phase of the Proposed Project will cause capacity on the 48 Quintara/24th Street route to exceed 85 percent, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA through the following means: • At SFMTA's request, the project sponsors shall pay the capital costs for additional buses (up to a maximum of four in the Maximum Residential Scenario and six in the Maximum Commercial Scenario). If the SFMTA requests the project sponsor to pay the capital costs of the buses, the SFMTA would need to find funding to pay for the added operating cost associated with operating increased service made possible by the increased vehicle fleet. The source of that funding has not been established. Alternatively, if SFMTA determines that other measures to increase capacity along the route would be more desirable than adding buses, the project sponsors shall pay an amount equivalent to the cost of the required number of buses toward completion of one or more of the following, as determined by SFMTA: • Convert to using higher-capacity vehicles on the 48 Quintara/24th Street route. In this case, the project sponsors shall pay a portion of the capital costs to convert the route to articulated buses. Some bus stops along the route may not currently be configured to accommodate the longer articulated buses. Some bus zones could likely be extended by removing one or more parking spaces; in some locations, appropriate space may not be available. The	bus route shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using a methodology approved by SFMTA and Planning. If documentation of capacity is based on monitoring surveys, the transportation consultant shall submit raw data from such surveys concurrently to SFMTA, the Planning Department, and project sponsors.	If project sponsors demonstrate to the SFMTA that the phase would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR, further monitoring is not required during that phase. Capital Costs: Payment required after SFMTA affirms via letter to the project sponsors that mitigation funds will be	requested would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR. If the project demonstrates (using trip generation rates forecasted in the EIR or through surveys of existing travel behavior at the site) that a specific building would cause capacity to exceed 85 percent based on the Baseline scenario in the EIR or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline		

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
project sponsors' contribution may not be adequate to facilitate the full conversion of the route to articulated buses; therefore, a source of funding would need to be established to complete the remainder, including improvements to bus stop capacity at all of the bus stops along the route that do not currently accommodate articulated buses. • SFMTA may determine that instead of adding more buses to a congested route, it would be more desirable to increase travel speeds along the route. In this case, the project sponsors' contribution would be used to fund a study to identify appropriate and feasible improvements and/or implement a portion of the improvements that would increase travel speeds sufficiently to increase capacity along the bus route such that the project's impacts along the route would be determined to be less than significant. Increased speeds could be accomplished by funding a portion of the planned bus rapid transit system along 16th Street for the 22 Fillmore between Church and Third streets. Adding signals on Pennsylvania Street and 22nd Street may serve to provide increased travel speeds on this relatively short segment of the bus routes. The project sponsors' contribution may not be adequate to fully achieve the capacity increases needed to reduce the project's impacts and SFMTA may need to secure additional sources of funding. Another option to increase capacity along the corridor is to add new a Muni service route in this area. If this option is selected, project sponsors shall fund purchase of the same number of new vehicles outlined in the first option (four for the Maximum Residential Alternative and six for the Maximum Commercial Alternative) to be operated along the new route. By providing an additional service route, a percentage of the current transit riders on the 48 Quintara/24th Street would likely shift to the new route, lowering the capacity utilization below the 85 percent utilization threshold. As for the first option, funding would need to be secured to pay for operating the new route.		spent on implementation of M-TR-5 through purchase of additional buses or alternative measure in accordance with M-TR-5. Capital costs for more than four buses, up to a maximum of six buses, shall only be required if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR, and if project sponsors demonstrate that the	scenario without the Proposed Project, and the SFMTA has committed to implement M-TR-5, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA.		

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		huilding would cause capacity to exceed 85 percent or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline scenario without the Proposed Project.			
Mitigation Measure M-TR-10: Improve pedestrian facilities on Illinois Street adjacent to and leading to the project site. As part of construction of the Proposed Project roadway network, the project sponsors shall implement the following improvements: • Install ADA curb ramps on all corners at the intersection of 22nd Street and Illinois Street • Signalize the intersections of Illinois Street with 20th and 22nd Street. • Modify the sidewalk on the east side of Illinois Street between 22nd and 20th streets to a minimum of 10 feet. Relocate	Project sponsors shall implement the improvements.	During construction of street improvements adjacent to pedestrian facilities on Illinois Street identified in Mitigation Measure M-TR-10.	SFMTA reviews signal and site plans and maps for improvements identified in Mitigation Measure M-TR-10.	Considered complete when street improvements have been built.	SFMTA, Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
obstructions, such as fire hydrants and power poles, as feasible, to ensure an accessible path of travel is provided to and from the Proposed Project.					
Mitigation Measure M-TR-12A: Coordinate Deliveries The Project's Transportation Coordinator shall coordinate with building tenants and delivery services to minimize deliveries during a.m. and p.m. peak periods. Although many deliveries cannot be limited to specific hours, the Transportation Coordinator shall work with tenants to find opportunities to consolidate deliveries and reduce the need for peak period deliveries, where possible.	Transportation Management Agency Transportation Coordinator.	On-going.	Transportation Management Agency Transportation Coordinator to coordinate with building tenants and delivery services to consolidate deliveries and reduce the need for peak period deliveries, where possible.	On-going during project operations.	Port
Mitigation Measure M-TR-12B: Monitor loading activity and convert general purpose on-street parking spaces to commercial loading spaces, as needed. After completion of the first phase of the Proposed Project, and prior to approval of each subsequent phase, the project sponsors shall conduct a study of utilization of on- and off-street commercial loading spaces. Prior to completion, the methodology for the study shall be reviewed and approved by either: (a) Port Staff in consultation with SFMTA Staff for areas within Port jurisdiction; or (b) SFMTA Staff in consultation with Port Staff for areas within SFMTA jurisdiction. If the result of the study indicates that fewer than 15 percent of the commercial loading spaces are available during the peak loading period, the project sponsors shall incorporate measures to convert existing or proposed general purpose on-street parking spaces to commercial parking spaces in addition to the required off-street spaces.	Developer, TMA or Port.	Prior to approval of the project's phase applications after completion of the first phase.	Project sponsors or TMA to conduct a commercial loading study for the Port.	Considered complete after the Port Staff reviews and approves the study and the project sponsors. Port or TMA incorporates any additional measures necessary for commercial loading.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
Mitigation Measure M-C-TR-4A: Increase capacity on the 48 Quintara/24th bus route under the Maximum Residential Scenario. The project sponsors shall contribute funds for one additional vehicle (in addition to and separate from the four prescribed under Mitigation Measure M-TR-5 for the Maximum Residential Scenario) to reduce the Proposed Project's contribution to the significant cumulative impact to not cumulatively considerable. This shall be considered the Proposed Project's fair share toward mitigating this significant cumulative impact. If SFMTA adopts a strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA and SFMTA Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	Demonstration of Capacity: If necessary, prior to approval of the project's phase applications. Capital Costs: Payment confirmed prior to issuance of building permit for building that would result in exceedance of 85 percent capacity utilization. Capital costs for more than four buses, up to a maximum of six buses, shall be paid if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial	If the Maximum Residential Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors	SFMTA

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		use, identified in Table 2.3 of the EIR.			
Mitigation Measure M-C-TR-4B: Increase capacity on the 22 Fillmore bus route under the Maximum Commercial Scenario. The project sponsors shall contribute funds for two additional vehicles to reduce the Proposed Project's contribution to the significant cumulative impact to not considerable. This shall be considered the Proposed Project's fair share toward mitigating this cumulative impact. If SFMTA adopts an alternate strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA, and SFMTA. Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	If necessary, prior to approval of the project's final phase application. Funds shall be contributed if the total gsf of commercial use for the Project in the final phase application exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR.	If the Maximum Commercial Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors.	SFMTA
Noise and Vibration Mitigation Measures					
Mitigation Measure M-NO-1: Construction Noise Control Plan. Over the project's approximately 11-year construction duration, project	Project sponsors.	Prior to the start of construction activities;	Project sponsors to submit the Construction Noise	Considered complete upon submittal of the	Port or DBI

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contractors for all construction projects on the Illinois Parcels and 28-Acre Site will be subject to construction-related time-of-day and noise limits specified in Section 2907(a) of the Police Code, as outlined above. Therefore, prior to construction, a Construction Noise Control Plan shall be prepared by the project sponsors and submitted to the Port. The construction noise control plan shall demonstrate compliance with the Noise Ordinance limits. Noise reduction strategies that could be incorporated into this plan to ensure compliance with ordinance limits may include, but are not limited to, the following: • Require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds). • Require the general contractor to locate stationary noise sources (such as the rock/concrete crusher or compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise by as much as 5 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, to the maximum extent practicable. • Require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which would reduce noise levels by as much as 10 dBA.		implementation ongoing during construction.	Control Plan to the Port. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Construction Noise Control Plan to the Port.	

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• Include noise control requirements for construction equipment and tools, including concrete saws, in specifications provided to construction contractors to the maximum extent practicable. Such requirements could include, but are not limited to, erecting temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses; utilizing noise control blankets on a building structure as the building is erected to reduce noise levels emanating from the construction site; the use of blasting mats during controlled blasting periods to reduce noise and dust; performing all work in a manner that minimizes noise; using equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants; and selecting haul routes that avoid residential uses. • Prior to the issuance of each building permit, along with the submission of construction documents, submit to the Port, as appropriate, a plan to track and respond to complaints pertaining to construction noise. The plan shall include the following measures: (1) a procedure and phone numbers for notifying the Port, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing permitted construction days and hours, noise complaint procedures, and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area and the American Industrial Center (AIC) at least 30 days in advance of extreme noise-generating activities (such as pile driving) about the estimated duration of the activity.	Project sponsors	Prior to the issuance of each building permit for duration of the project.	Project sponsors to submit a plan to track and respond to complaints pertaining to construction noise. A single plan or multiple plans may be produced to address project phasing.	Considered complete upon review and approval of the plan by the Port.	
Mitigation Measure M-NO-2: Noise Control Measures During Pile	Project sponsors and construction	Prior to receiving a	Project sponsors to submit to the Port	Considered complete upon	Port or DBI

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Driving. The Construction Noise Control Plan (required under Mitigation Measure M-NO-1) shall also outline a set of site-specific noise and vibration attenuation measures for each construction phase when pile driving is proposed to occur. These attenuation measures shall be included wherever impact equipment is proposed to be used on the Illinois Parcels and/or 28-Acre Site. As many of the following control strategies shall be included in the Noise Control Plan, as feasible: • Implement "quiet" pile-driving technology such as pre-drilling piles where feasible to reduce construction-related noise and vibration. • Use pile-driving equipment with state-of-the-art noise shielding and muffling devices. • Use pre-drilled or sonic or vibratory drivers, rather than impact drivers, wherever feasible (including slipways) and where vibration-induced liquefaction would not occur. • Schedule pile-driving activity for times of the day that minimize disturbance to residents as well as commercial uses located on-site and nearby. • Erect temporary plywood or similar solid noise barriers along the boundaries of each Proposed Project parcel as necessary to shield affected sensitive receptors. • Other equivalent technologies that emerge over time. • If CRF (including rock drills) were to occur at the same time as pile driving activities in the same area and in proximity to noise-sensitive receptors, pile drivers shall be set back at least 100 feet while rock drills shall be set back at least 50 feet (or vice versa)	contractor(s).	building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	submittal of documentation incorporating identified practices.	

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from any given sensitive receptor.					
Mitigation Measure M-NO-3: Vibration Control Measures During Construction. As part of the Construction Noise Control Plan required under Mitigation Measure M-NO-1, appropriate vibration controls (including pre-drilling pile holes and using smaller vibratory equipment) shall be specified to ensure that the vibration limit of 0.5 in/sec PPV can be met at adjacent or nearby existing structures and Proposed Project buildings located on the Illinois Parcels and/or 28-Acre Site, except as noted below: • Where pile driving, CRF, and other construction activities involving the use of heavy equipment would occur in proximity to any contributing building to the Union Iron Works Historic District, the project sponsors shall undertake a monitoring program to minimize damage to such adjacent historic buildings and to ensure that any such damage is documented and repaired. The monitoring program, which shall apply within 160 feet where pile driving would be used, 50 feet of where CRF would be required, and within 25 feet of other heavy equipment operation, shall include the following components: o Prior to the start of any ground-disturbing activity, the project sponsors shall engage a historic architect or qualified historic preservation professional to undertake a pre-construction survey of historical resource(s) identified by the Port within 160 feet of planned construction to document and photograph the buildings' existing conditions. o Based on the construction and condition of the resource(s), a structural engineer or other qualified entity shall establish a maximum vibration level that shall not be exceeded at each building, based on existing conditions, character-defining features, soils conditions and anticipated construction practices in use at the time (a common standard is 0.2 inch per	Project sponsors and construction contractor(s).	Prior to receiving a building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	Project sponsors to submit to Port documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Considered complete upon submittal of documentation incorporating identified practices.	Port or Planning Department

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second, peak particle velocity). o To ensure that vibration levels do not exceed the established standard, a qualified acoustical/vibration consultant shall monitor vibration levels at each structure within 160 feet of planned construction and shall prohibit vibratory construction activities that generate vibration levels in excess of the standard. Should vibration levels be observed in excess of the standard, construction shall be halted and alternative construction techniques put in practice. (For example, pre-drilled piles could be substituted for driven piles, if soil conditions allow; smaller, lighter equipment could possibly also be used in some cases.) The consultant shall conduct regular periodic inspections of each building within 160 feet of planned construction during ground-disturbing activity on the project site. Should damage to a building occur as a result of ground-disturbing activity on the site, the building(s) shall be remediated to its pre-construction condition at the conclusion of ground-disturbing activity on the site. o In areas with a "very high" or "high" susceptibility for vibration-induced liquefaction or differential settlement risks, the project's geotechnical engineer shall specify an appropriate vibration limit based on proposed construction activities and proximity to liquefaction susceptibility zones and modify construction practices to ensure that construction-related vibration does not cause liquefaction hazards at these homes.					
Mitigation Measure M-NO-4a: Stationary Equipment Noise Controls. Noise attenuation measures shall be incorporated into all stationary equipment (including HVAC equipment and emergency generators) installed on buildings constructed on the Illinois Parcels and 28-Acre Site as well as into the below-grade or enclosed wastewater pump station as necessary to meet noise limits specified in Section 2909 of the Police Code.* Interior	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for each building located on the Illinois Parcels	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port	Port or Planning Department/DBI

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noise limits shall be met under both existing and future noise conditions, accounting for foreseeable changes in noise conditions in the future (i.e., changes in on-site building configurations). Noise attenuation measures could include provision of sound enclosures/barriers, addition of roof parapets to block noise, increasing setback distances from sensitive receptors, provision of louvered vent openings, location of vent openings away from adjacent commercial uses, and restriction of generator testing to the daytime hours. * Under Section 2909 of the Police Code, stationary sources are not permitted to result in noise levels that exceed the existing ambient (L90) noise level by more than 5 dBA on residential property, 8 dBA on commercial and industrial property, and 10 dBA on public property. Section 2909(d) states that no fixed noise source may cause the noise level measured inside any sleeping or living room in a dwelling unit on residential property to exceed 45 dBA between 10:00 p.m. and 7:00 a.m. or 55 dBA between 7:00 a.m. and 10:00 p.m. with windows open, except where building ventilation is achieved through mechanical systems that allow windows to remain closed.		or the 28-Acre Site, along with the submission of construction documents, the project sponsors shall submit to the Port and the DBI plans for noise attenuation measures on all stationary equipment.			
Mitigation Measure M-NO-4b: Design of Future Noise-Generating Uses near Residential Uses. Future commercial/office and RALI uses shall be designed to minimize the potential for sleep disturbance at any future adjacent residential uses. Design approaches such as the following could be incorporated into future development plans to minimize the potential for noise conflicts of future uses on the project site: • Design of Future Noise-Generating Commercial/Office and RALI Uses. To reduce potential conflicts between sensitive receptors and new noise-generating commercial or RALI uses located adjacent to these receptors, exterior facilities such as loading areas/docks, trash enclosures, and surface parking lots shall be located on the sides of buildings facing away from existing or planned sensitive receptors (residences or passive open space). If	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for commercial, RALI, and parking uses, along with the submission of construction documents, the project sponsors shall submit to the and DBI plans to minimize	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port.	Port or Planning Department/DBI

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this is not feasible, these types of facilities shall be enclosed or equipped with appropriate noise shielding. • Design of Future Above-Ground Parking Structure. If parking structures are constructed on Parcels C1 or C2, the sides of the parking structures facing adjacent or nearby existing or planned residential uses shall be designed to shield residential receptors from noise associated with parking cars.		noise conflicts with sensitive receivers.			
Mitigation Measure M-NO-6: Design of Future Noise-Sensitive Uses Prior to issuance of a building permit for vertical construction of specific residential building design on each parcel, a noise study shall be conducted by a qualified acoustician, who shall determine the need to incorporate noise attenuation measures into the building design in order to meet Title 24's interior noise limit for residential uses as well as the City's (Article 29, Section 2909(d)) 45-dBA (Ldn) interior noise limit for residential uses. This evaluation shall account for noise shielding by buildings existing at the time of the proposal, potential increases in ambient noise levels resulting from the removal of buildings that are planned to be demolished, all planned commercial or open space uses in adjacent areas, any known variations in project build-out that have or will occur (building heights, location, and phasing), any changes in activities adjacent to or near the Illinois Parcels or 28-Acre Site (given the Proposed Project's long build-out period), any new shielding benefits provided by surrounding buildings that exist at the time of development, future cumulative traffic noise increases on adjacent roadways, existing and planned stationary sources (i.e., emergency generators, HVAC, etc.), and future noise increases from all known cumulative projects located with direct line-of-sight to the project building. To minimize the potential for sleep disturbance effects from tonal noise or nighttime noise events associated with nearby industrial uses, predicted noise levels at each project building shall account for 24/7 operation of the BAE Systems Ship Repair facility, 24/7 transformer noise at Potrero Substation (if it remains an open air facility), and industrial activities at the AIC, to the	Project sponsors and qualified acoustician.	Prior to the issuance of the building permit for vertical construction of any residential building on each parcel, a noise study shall be prepared by a qualified acoustician.	Port Staff to review the noise study. A single noise study or multiple noise studies may be produced to address project phasing.	Considered complete after submittal and approval of the noise study by the Port.	Port or Planning Department/DBI

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
extent such use(s) are in operation at the time the analysis is conducted. Noise reduction strategies such as the following could be incorporated into the project design as necessary to meet Title 24 interior limit and minimize the potential for sleep disturbance from adjacent industrial uses: • Orient bedrooms away from major noise sources (i.e., major streets, open space/recreation areas where special events would occur, and existing adjacent industrial uses, including but not limited to the AIC, PG&E Hoedown Yard (if it is still operating at that time), Potrero Substation, and the BAE site) and/or provide additional enhanced noise insulation features (higher STC ratings) or mechanical ventilation to minimize the effects of maximum instantaneous noise levels generated by these uses even though there is no code requirement to reduce Lmax noise levels. Such measures shall be implemented on Parcels D and E1 (both scenarios), Building 2 (Maximum Residential Scenario only), Parcels PKN (both scenarios), PKS (both scenarios), and HDY (Maximum Residential Scenario only); • Utilize enhanced exterior wall and roof-ceiling assemblies (with higher STC ratings), including increased insulation; • Utilize windows with higher STC / Outdoor/Indoor Transmission Class (OITC) ratings; • Employ architectural sound barriers as part of courtyards or building open space to maximize building shielding effects, and locate living spaces/bedrooms toward courtyards wherever possible; and Locate interior hallways (accessing residential units) adjacent to noisy streets or existing/planned industrial or commercial development.					
Mitigation Measure M-NO-7: Noise Control Plan for Special Event	Developer, Port, parks management	Prior to operation of a	Developer, Port, parks management	Considered complete upon	Port

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Outdoor Amplified Sound. The project sponsors shall develop and implement a Noise Control Plan for operations at the proposed entertainment venues to reduce the potential for noise impacts from public address and/or amplified music. This Noise Control Plan shall contain the following elements: • The project sponsors shall comply with noise controls and restrictions in applicable entertainment permit requirements for outdoor concerts. • Speaker systems shall be directed away from the nearest sensitive receptors to the degree feasible. • Outdoor speaker systems shall be operated consistent with the restrictions of Section 2909 of the San Francisco Police Code, and conform to a performance standard of 8 dBA and dBC over existing ambient L90 noise levels at the nearest residential use.	entity, and/or parks programming entity.	special outdoor amplified sound. the project sponsors, parks management entity, and/or parks programming entity to develop a Noise Control Plan prior to issuance of event permit.	entity, and/or parks programming entity shall submit the Noise Control Plan to the Port.	submission and approval of the NCP by the Port.	
Air Quality Mitigation Measures					
Mitigation Measure M-AQ-1a: Construction Emissions Minimization The following mitigation measure is required during construction of Phases 3, 4, and 5, or after build-out of 1.3 million gross square feet of development, whichever comes first: A. *Construction Emissions Minimization Plan.* Prior to issuance of a site permit, the project sponsors shall submit a Construction Emissions Minimization Plan (Plan) to the Port or Planning Department. The Plan shall detail project compliance with the following requirements: 1. Where access to alternative sources of power is available, portable diesel generators used during construction shall be prohibited. Where portable diesel engines are required because alternative sources of power are not available, the	Project sponsors and construction contractor(s).	Prior to issuance of a site permit, the project sponsors must submit Construction Emissions Minimization Plan Prior to the commencement of construction activities	Project sponsors or contractor to submit a Construction Emissions Minimization Plan. Quarterly reports shall be submitted to Port Staff or Planning Department indicating the construction phase and off-road equipment	Considered complete upon Port or Planning Staff review and approval of Construction Emissions Minimization Plan or alternative measures that achieve the same emissions reduction.	Port or Planning Department

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diesel engine shall meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available, as defined below. 2. All off-road equipment greater than 25 horsepower that operates for more than 20 total hours over the entire duration of construction activities shall have engines that meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available. If engines that comply with Tier 4 off-road emission standards are not commercially available, then the project sponsors shall provide the next cleanest piece of off-road equipment as provided by the step-down schedules in Table M-AQ-1-1.		during Phase 3, 4, and 5, or prior to construction following build-out of 1.3 million gross square feet of development, the project sponsors must certify (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications. The Plan shall be kept on site and available for review. A sign shall be posted at the perimeter of the construction site indicating the basic	information used during each phase. For off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used. Within six months of the completion of construction activities, the project sponsors shall submit to Port Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.		

Table M-AQ-1-1: Off-Road Equipment Compliance Step-Down Schedule

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 3	CARB PM VDECS (85%)[1]
2	Tier 2	CARB PM VDECS (85%)

How to use the table: If the requirements of (A)(2) cannot be met, then the project sponsors would need to meet Compliance Alternative 1. Should the project sponsors not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met.

[1] CARB, Currently Verified Diesel Emission Control Strategies (VDECS).

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Available online at http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm. Accessed January 14, 2016.		requirements of the Plan and where copies of the Plan are available to the public for review.			
i. With respect to Tier 4 equipment, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; and (ii) geographic proximity of equipment to the project site. ii. With respect to renewable diesel, "commercially available" shall mean the availability taking into consideration factors such as. (i) critical path timing of construction; (ii) geographic proximity of fuel source to the project site; and (iii) cost of renewable diesel is within 10 percent of Ultra Low Sulfur Diesel #2 market price. iii. The project sponsors shall maintain records concerning its efforts to comply with this requirement. Should the project sponsor determine either that an off-road vehicle that meets Tier 4 emissions standards or that renewable diesel are not commercially available, the project sponsor shall submit documentation to the satisfaction of Port or Planning Staff and, for the former condition, shall identify the next cleanest piece of equipment that would be use, in compliance with Table M-AQ-1-1. 3. The project sponsors shall ensure that future developers or their contractors require the idling time for off-road and on-road equipment be limited to no more than 2 minutes, except as provided in exceptions to the applicable State regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in					

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multiple languages (English, Spanish, and Chinese) in designated queuing areas and at the construction site to remind operators of the 2-minute idling limit. 4. The project sponsors shall require that each construction contractor mandate that construction operators properly maintain and tune equipment in accordance with manufacturer specifications. 5. The Plan shall include best available estimates of the construction timeline by phase with a description of each piece of off-road equipment required for every construction phase and shall be updated pursuant to the reporting requirements in Section B below. Reporting requirements for off-road equipment descriptions and information shall include as much detail as is available, but are not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For Verified Diesel Emission Control Strategies (VDECS) installed, descriptions and information shall include technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date and hour meter reading on installation date. The Plan shall also indicate whether renewable diesel will be used to power the equipment. The Plan shall also include anticipated fuel usage and hours of operation so that emissions can be estimated. 6. The project sponsors and their construction contractors shall keep the Plan available for public review on site during working hours. Each construction contractor shall post at the perimeter of the project site a legible and visible sign summarizing the requirements of the Plan. The sign shall also state that the public may ask to inspect the Plan at any time					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
during working hours, and shall explain how to request inspection of the Plan. Signs shall be posted on all sides of the construction site that face a public right-of-way. The project sponsors shall provide copies of the Plan to members of the public as requested. B. *Reporting.* Quarterly reports shall be submitted to Port or Planning Staff indicating the construction activities undertaken and information about the off-road equipment used, including the information required in Section A(5). In addition, reporting shall include the approximate amount of renewable diesel fuel used. Within 6 months of the completion of all project construction activities, the project sponsors shall submit to Port or Planning Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. The final report shall include detailed information required in Section A(5). In addition, reporting shall include the actual amount of renewable diesel fuel used. C. *Certification Statement and On-site Requirements.* Prior to the commencement of construction activities, the project sponsors shall certify through submission of city-standardized forms (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.					
Mitigation Measure M-AQ-1b: Diesel Backup Generator Specifications To reduce NOx associated with operation of the Maximum Commercial or Maximum Residential Scenarios, the project sponsors shall implement the following measures. A. All new diesel backup generators shall: 1. have engines that meet or exceed CARB Tier 4 off-road emission standards which have the lowest NOx emissions of commercially	Project sponsors	Prior to approval of a generator permit by Port Staff.	Anticipated location and engine specifications of a proposed diesel backup generator shall be submitted to the Port Staff for review and approval prior to	Considered complete upon review and approval by Port Staff.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
available generators; and 2. be fueled with renewable diesel, if commercially available, which has been demonstrated to reduce NOx emissions by approximately 10 percent. B. All new diesel backup generators shall have an annual maintenance testing limit of 50 hours, subject to any further restrictions as may be imposed by the BAAQMD in its permitting process. C. For each new diesel backup generator permit submitted to BAAQMD for the project, anticipated location, and engine specifications shall be submitted to the Port Staff for review and approval prior to issuance of a permit for the generator from the San Francisco DBI or the Port. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment and any future replacement of the diesel backup generators shall be required to be consistent with these emissions specifications. The operator of the facility at which the generator is located shall maintain records of the testing schedule for each diesel backup generator for the life of that diesel backup generator and provide this information for review to the Port within 3 months of requesting such information.			issuance of a generator permit.		
Mitigation Measure M-AQ-1c: Use Low and Super-compliant VOC Architectural Coatings in Maintaining Buildings through Covenants Conditions and Restrictions (CC&Rs) and Ground Lease The Project sponsors shall require all developed parcels to include within their CC&R's and/or ground leases requirements for all future interior spaces to be repainted only with "Super-Compliant" Architectural Coatings (http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings). "Low-VOC" refers to paints that meet the more stringent regulatory limits in South Coast AQMD Rule 1113; however, many manufacturers have reformulated to levels well below these limits. These are referred to as "Super-Compliant" Architectural Coatings.	Project sponsors and construction contractor(s).	Project sponsors submit to the Port documentation of CC&R's and/or ground lease requirements prior to building occupancy	Project sponsors to include in CC&R's and/or ground lease requirements with buildings tenants prior to building occupancy.	Considered complete upon project sponsor submittal to the Port of documentation of CC&R's and/or ground lease requirements	Port or Planning Department

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		permit.			
Mitigation Measure M-AQ-1d: Promote use of Green Consumer Products The project sponsors shall provide education for residential and commercial tenants concerning green consumer products. Prior to receipt of any certificate of final occupancy and every five years thereafter, the project sponsors shall work with the San Francisco Department of Environment (SF Environment) to develop electronic correspondence to be distributed by email annually to residential and/or commercial tenants of each building on the project site that encourages the purchase of consumer products that generate lower than typical VOC emissions. The correspondence shall encourage environmentally preferable purchasing and shall include contact information and links to SF Approved. The website may also be used as an informational resource by businesses and residents.	Project sponsors.	Prior to occupancy of the building by tenants and every five years thereafter, project sponsors to distribute educational materials to tenants.	Project sponsors to work with SF Environment to develop educational materials.	Considered complete after distribution of educational materials to residential and commercial tenants.	Port or Planning Department
Mitigation Measure M-AQ-1e: Electrification of Loading Docks The project sponsors shall ensure that loading docks for retail, light industrial or warehouse uses that will receive deliveries from refrigerated transport trucks incorporate electrification hook-ups for transportation refrigeration units to avoid emissions generated by idling refrigerated transport trucks.	Project sponsors	Prior to issuance of a building permit for a building containing loading docks for retail, light industrial or warehouse uses.	Project sponsors to provide construction plans to DBI or the Port to ensure compliance.	Considered complete upon approval of construction plans by DBI or the Port.	Port or Planning Department
Mitigation Measure M-AQ-1f: Transportation Demand Management. 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	Developer to prepare and implement the TDM Plan, which will be implemented by the Transportation Management Association and will	Developer to prepare TDM Plan and submit to Planning Staff prior to approval of the project	Project sponsors to submit the TDM Plan to Planning Staff for review. Transportation Demand Management	The TDM Plan is considered complete upon approval by the Planning Staff. Annual monitoring	Planning Department

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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: • 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 memberships for project occupants; • 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	be binding on all development parcels.		Association to submit monitoring report annually to Planning Staff and implement TDM Plan Adjustments (if required).	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.	

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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. 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. 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. *TDM Plan Monitoring and Reporting*: 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. • 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					

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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: o 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					

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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. o 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. o 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. o 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.) o 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. *TDM Plan Adjustments.* The TDM Plan shall be adjusted based on the					

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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.					
Mitigation Measure M-AQ-1g: Additional Mobile Source Control Measures The following Mobile Source Control Measures from the BAAQMD's 2010 Clean Air Plan shall be implemented: • Promote use of clean fuel-efficient vehicles through preferential (designated and proximate to entry) parking and/or installation of charging stations beyond the level required by the City's Green Building code, from 8 to 20 percent. • Promote zero-emission vehicles by requesting that any car share program operator include electric vehicles within its car share	Project sponsors and TMA.	On-going.	Project sponsors and TMA to implement measures	On-going.	Port or Planning Department/DBI

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program to reduce the need to have a vehicle or second vehicle as a part of the TDM program that would be required of all new developments.					
Mitigation Measure M-AQ-1h: Offset of Operational Emissions Prior to issuance of the final certificate of occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, the project sponsors, with the oversight of Port Staff, shall either: **(1) Directly fund or implement a specific offset project within San Francisco** to achieve reductions of 25 tons per year of ozone precursors and 1 ton of PM10. This offset is intended to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3. To qualify under this mitigation measure, the specific emissions offset project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements. A preferred offset project would be one implemented locally within the City and County of San Francisco. Prior to implementation of the offset project, the project sponsors must obtain Port Staff's approval of the proposed offset project by providing documentation of the estimated amount of emissions of ROG, NOx, and PM10 to be reduced (tons per year) within the SFBAAB from the emissions reduction project(s). The project sponsors shall notify Port Staff within 6 months of completion of the offset project for verification; or **(2) Pay a one-time mitigation offset fee** to the BAAQMD's Strategic Incentives Division in an amount no less than $18,030 per weighted ton of ozone precursors and PM10 per year above the significance threshold, calculated as the difference between total annual emissions at build out under mitigated conditions and the	Project sponsors.	Offsets for Phase 3/build-out of 1.3 million square feet: Upon completion of construction, and prior to issuance of a Certificate of Occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, developer shall demonstrate to the satisfaction of Port Staff that offsets have been funded or implemented,	Port Staff to approve the proposed offset project.	If project sponsor directly funds or implements a specific offset project, considered complete when Port Staff approves the proposed offset project prior to individual Certificates of Occupancy. If project sponsor pays a one-time mitigation offset fee, considered complete when documentation of payment is provided to Port Staff.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
significance threshold in the EIR air quality analysis, which is 25 tons per year of ozone precursors and 1 ton of PM10, plus a 5 percent administrative fee, to fund one or more emissions reduction projects within the SFBAAB. This one-time fee is intended to fund emissions reduction projects to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3 or after completion of 1.3 million sf of development, whichever comes first. Documentation of payment shall be provided to Port Staff. Acceptance of this fee by the BAAQMD shall serve as an acknowledgment and commitment by the BAAQMD to implement one or more emissions reduction project(s) within 1 year of receipt of the mitigation fee to achieve the emission reduction objectives specified above, and provide documentation to Port Staff and to the project sponsors describing the project(s) funded by the mitigation fee, including the amount of emissions of ROG, NOx, and PM10 reduced (tons per year) within the SFBAAB from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation offset fee following implementation of the emission reduction project(s), the project sponsors shall be entitled to a refund in that amount from the BAAQMD. To qualify under this mitigation measure, the specific emissions retrofit project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements.		or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date. <u>Offsets for subsequent phases/build-out</u>: Upon completion of construction of each subsequent phase, and prior to issuance of a Certificate of Occupancy for the final building associated with such phase, developer shall demonstrate to the satisfaction of Port Staff that offsets		

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
		have been funded or implemented, or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date and taking into account offsets previously funded, implemented, and/or purchased.			
Wind and Shadow Mitigation Measures					
Mitigation Measure M-WS-1: Identification and Mitigation of Interim Hazardous Wind Impacts When the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted, the requirements described below apply: **Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies**	Project sponsors, qualified wind consultant.	As outlined in Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies, a wind impact analysis shall be	Qualified wind consultant to prepare a scope of work to be approved by Port Staff and following approval of a scope of work submit a wind impact analysis to Port Staff for approval	Considered complete upon approval or issuance of building permit.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL			Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
Subject Parcel Proposed for Construction	Circumstance or Condition	Related Upwind Parcels					
Parcel A	Construction of any new buildings on Parcel A.	NA		prepared for the listed circumstances prior to issuance of a building permit for any proposed building when the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted.	of feasible design changes to minimize interim hazardous wind impacts.		
Parcel B	Construction of any new buildings on Parcel B.	NA					
Parcel E2	Construction of any new buildings on Parcel E2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1 and G					
Parcel E3	Construction of any new buildings on Parcel E3 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building	Parcels E2 and G					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL			Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
	Schematic Design submittal.						
Parcel F	Construction of any new buildings on Parcel F.	NA					
Parcel G	Construction of any new buildings on Parcel G.	NA					
Parcel H1	Construction of any new buildings on Parcel H1 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the coinbined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels E2 and G					
Parcel H2	Construction of any new buildings on Parcel H2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1, E2, and E3 that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1, E2, and E3					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
Source: SWCA. **Requirements** A wind impact analysis shall be required prior to building permit issuance for any proposed new building that is located within the project site and meets the conditions described above. All feasible means (e.g., changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, adding architectural canopies or screens, or street furniture) to eliminate hazardous winds, if predicted, shall be implemented. After such design changes and features have been considered, the additional effectiveness of landscaping may also be considered. 1. Screening-level analysis. A qualified wind consultant approved by Port Staff shall review the proposed building design and conduct a "desktop review" in order to provide a qualitative result determining whether there could be a wind hazard. The screening-level analysis shall have the following steps: For each new building proposed that meets the criteria above, a qualified wind consultant shall review and compare the exposure, massing, and orientation of the proposed building(s) on the subject parcel to the building(s) on the same parcel in the representative massing models of the Proposed Project tested in the wind tunnel as part of this EIR and in any subsequent wind analysis testing required by this mitigation measure. The wind consultant shall identify and compare the potential impacts of the proposed building(s) to those identified in this EIR, subsequent wind testing that may have occurred under this mitigation measure, and to the City's wind hazard criterion. The wind consultant's analysis and evaluation shall consider the proposed building(s) in the context of the "Current Project Baseline," which, at any given time during construction of the Proposed Project, shall be defined as any existing buildings at the site, the as-built designs of all previously-completed structures and the then-current designs of					

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
approved but yet unbuilt structures that would be completed by the time of occupancy of the subject building. (a) If the qualified wind consultant concludes that the building design(s) could not create a new wind hazard and could not contribute to a wind hazard identified by prior wind tunnel testing for the EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If there could be a new wind hazard, then a quantitative assessment shall be conducted using wind tunnel testing or an equivalent quantitative analysis that produces comparable results to the analysis methodology used in this EIR. (b) If the qualified wind consultant concludes that the building design(s) could create a new wind hazard or could contribute to a wind hazard identified by prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, but in the consultant's professional judgment the building(s) can be modified to reduce such impact to a less-than-significant level, the consultant shall notify Port Staff and the building applicant. The consultant's professional judgment may be informed by the use of "desktop" analytical tools, such as computer tools relying on results of prior wind tunnel testing for the Proposed Project and other projects (i.e., "desktop" analysis does not include new wind tunnel testing). The analysis shall include consideration of wind location, duration, and speed of wind. The building applicant may then propose changes or supplements to the design of the proposed building(s) to achieve this result. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting to include podiums and roof terraces, and/or the addition of architectural canopies or screens, or					

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**
street furniture. The effectiveness of landscaping may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design and landscaping for the building(s) could not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. (c) If the consultant is unable to demonstrate to the satisfaction of Port Staff that no increase in wind hazards would occur, wind tunnel testing or an equivalent method of quantitative evaluation producing results that can be compared to those used in the EIR and in any subsequent wind analysis testing required by this mitigation measure is required. The building(s) shall be wind tunnel tested in the context of a model that represents the Current Project Baseline, as described in Item 1, above. The testing shall include all the test points in the vicinity of a proposed building or group of buildings that were tested in this EIR, as well as all additional points deemed appropriate by the consultant to determine the wind performance for the building(s). Testing shall occur in places identified as important, e.g., building entrances, sidewalks, etc., and there may need to be additional test point locations considered. At the direction and approval of the Port, the "vicinity" shall be determined by the wind consultant, as appropriate for the circumstances, e.g., a starting concept for "vicinity" could be approximately 350 feet around the perimeter of the subject parcel(s), subject to the wind consultant's reducing or increasing this radial distance. The wind tunnel testing shall test the proposed building design(s), as well as the Current Project Baseline, in					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
order to clearly identify those differences that would be due to the proposed new building(s). In the event the wind tunnel testing determines that design of the building(s) would increase the hours of wind hazard or extent of area subject to hazardous winds beyond those identified in prior wind testing conducted for this EIR and in subsequent wind tunnel analysis required by this mitigation measure, the wind consultant shall notify Port Staff and the building applicant. The building applicant may then propose changes or supplements to the design of the proposed building(s) to eliminate wind hazards. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting building(s) to include podiums and roof terraces, adding architectural canopies or screens, or street furniture. All feasible means (changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, the addition of architectural canopies or screens, or street furniture) to eliminate wind hazards, if predicted, shall be implemented to the extent necessary to mitigate the impact. After such design changes and features have been considered, the additional effectiveness of landscaping at the size it is proposed to be installed may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design would not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If the proposed building(s) would result in a wind hazard exceedance, and the only way to eliminate the hazard is to redesign a proposed building, then the building shall be redesigned.					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
Mitigation Measure M-WS-2: Wind Reduction for Rooftop Winds If the rooftop of building(s) is proposed as public open space and/or a passive or active public recreational area prior to issuance of a building permit for the subject building(s), a qualified wind consultant shall prepare a wind impact and mitigation analysis in the context of the Current Project Baseline regarding the proposed architectural design. All feasible means (such as changing the proposed building mass or design; raising the height of the parapets to at least 8 feet, using a porous material where such material would be effective in reducing wind speeds; using localized wind screens, canopies, trellises, and/or landscaping around seating areas) to eliminate wind hazards shall be implemented as necessary. A significant wind impact would be an increase in the number of hours that the wind hazard criterion is exceeded or an increase in the area subjected to winds exceeding the hazard criterion as compared to existing conditions at the height of the proposed rooftop. The wind consultant shall demonstrate to the satisfaction of Port Staff that the building design would not create a new wind hazard or contribute to a wind hazard identified in prior wind testing conducted for this EIR.	Project Sponsors and qualified wind consultant.	Prior to issuance of a building permit for a building with a rooftop proposed as public open space and/or passive/active recreational area, the qualified wind consultant shall demonstrate that no new wind hazards or a contribution to a wind hazard identified in the EIR would occur in a wind hazard and mitigation analysis.	Port Staff to review wind hazard and mitigation analysis.	Considered complete upon approval or issuance of building permit	Port
Biological Resources Mitigation Measures					
Mitigation Measure M-BI-1a: Worker Environmental Awareness Program Training Project-specific Worker Environmental Awareness Program (WEAP) training shall be developed and implemented by a qualified biologist* and attended by all project personnel performing demolition or ground-disturbing work prior to beginning demolition or ground-disturbing work on site for	Project sponsors and qualified project biologist.	Prior to demolition or ground-disturbing activities.	Port staff to review and approve WEAP training. Project sponsors and qualified biological consultant to document WEAP	Considered complete after Port staff reviews and approves WEAP training, and confirm	Port or Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
each construction phase. The WEAP training shall include, but not be limited to, education about the following: a. Applicable State and Federal laws, environmental regulations, project permit conditions, and penalties for non-compliance. b. Special-status plant and animal species with the potential to be encountered on or in the vicinity of the project site during construction. c. Avoidance measures and a protocol for encountering special-status species including a communication chain. d. Preconstruction surveys and biological monitoring requirements associated with each phase of work and at specific locations within the project site (e.g., shoreline work) as biological resources and protection measures will vary depending on where work is occurring within the site, time of year, and construction activity. e. Known sensitive resource areas in the project vicinity that are to be avoided and/or protected as well as approved project work areas, access roads, and staging areas. Best management practices (BMPs) (e.g., straw wattles or spill kits) and their location around the project site for erosion control and species exclusion, in addition to general housekeeping requirements. [1] Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.			training and provide documentation during annual mitigation report to the Port.	compliance in annual mitigation report.	
Mitigation Measure M-BI-1b: Nesting Bird Protection Measures The project site's proximity to San Francisco Bay and its current lack of	Project sponsors, qualified biological consultant.	Prior to issuance of demolition or building	If construction will occur during nesting season, qualified biological consultant to	Considered complete upon issuance of demolition or	Port or Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
activity result in a more attractive environment for birds to nest than other San Francisco locations (e.g., the Financial District) that have higher levels of site activity and human presence. Nesting birds and their nests shall be protected during construction by implementation of the following measures for each construction phase: a. To the extent feasible, conduct initial activities including, but not limited to, vegetation removal, tree trimming or removal, ground disturbance, building demolition, site grading, and other construction activities which may compromise breeding birds or the success of their nests (e.g., CRF, rock drilling, rock crushing, or pile driving), outside of the nesting season (January 15–August 15). b. If construction during the bird nesting season cannot be fully avoided, a qualified wildlife biologist* shall conduct pre-construction nesting surveys within 14 days prior to the start of construction or demolition at areas that have not been previously disturbed by project activities or after any construction breaks of 14 days or more. Surveys shall be performed for suitable habitat within 250 feet of the project site in order to locate any active passerine (perching bird) nests and within 500 feet of the project site to locate any active raptor (birds of prey) nests, waterbird nesting pairs, or colonies. c. If active nests are located during the preconstruction bird nesting surveys, a qualified biologist shall evaluate if the schedule of construction activities could affect the active nests and if so, the following measures would apply: i. If construction is not likely to affect the active nest, construction may proceed without restriction; however, a qualified biologist shall regularly monitor the nest at a frequency determined appropriate for the surrounding construction activity to confirm there is no adverse effect. Spot-check monitoring frequency		permits for construction during the nesting season (January 15 to August 15) ~~(August 16–January 14)~~	conduct bat surveys and present results to Port Staff	building permits for construction	

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
would be determined on a nest-by-nest basis considering the particular construction activity, duration, proximity to the nest, and physical barriers which may screen activity from the nest. The qualified biologist may revise his/her determination at any time during the nesting season in coordination with the Port of San Francisco or Planning Department..					
ii. If it is determined that construction may affect the active nest, the qualified biologist shall establish a no-disturbance buffer around the nest(s) and all project work shall halt within the buffer until a qualified biologist determines the nest is no longer in use. Typically, these buffer distances are 250 feet for passerines and 500 feet for raptors; however, the buffers may be adjusted if an obstruction, such as a building, is within line-of-sight between the nest and construction.					
iii. Modifying nest buffer distances, allowing certain construction activities within the buffer, and/or modifying construction methods in proximity to active nests shall be done at the discretion of the qualified biologist and in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Necessary actions to remove or relocate an active nest(s) shall be coordinated with the Port of San Francisco or Planning Department and approved by CDFW.					
iv. Any work that must occur within established no-disturbance buffers around active nests shall be monitored by a qualified biologist. If adverse effects in response to project work within the buffer are					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
observed and could compromise the nest, work within the no-disturbance buffer(s) shall halt until the nest occupants have fledged. v. Any birds that begin nesting within the project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels, so exclusion zones around nests may be reduced or eliminated in these cases as determined by the qualified biologist in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Work may proceed around these active nests as long as the nests and their occupants are not directly impacted. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-2: Avoidance and Minimization Measures for Bats A qualified biologist (as defined by CDFW*) who is experienced with bat surveying techniques (including auditory sampling methods), behavior, roosting habitat, and identification of local bat species shall be consulted prior to demolition or building relocation activities to conduct a pre-construction habitat assessment of the project site (focusing on buildings to be demolished or relocated) to characterize potential bat habitat and identify potentially active roost sites. No further action is required should the pre-construction habitat assessment not identify bat habitat or signs of potentially active bat roosts within the project site (e.g., guano, urine staining, dead bats, etc.).	Project sponsors, qualified biological consultant, and CDFW.	Prior to issuance of demolition or building permits when trees or shrubs would be removed or buildings demolished as part of an individual project.	Qualified biological consultant to conduct bat surveys and present results to Port Staff.	Considered complete upon issuance of demolition or building permits.	Port or Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
The following measures shall be implemented should potential roosting habitat or potentially active bat roosts be identified during the habitat assessment in buildings to be demolished or relocated under the Proposed Project or in trees adjacent to construction activities that could be trimmed or removed under the Proposed Project: a) In areas identified as potential roosting habitat during the habitat assessment, initial building demolition, relocation, and any tree work (trimming or removal) shall occur when bats are active, approximately between the periods of March 1 to April 15 and August 15 to October 15, to the extent feasible. These dates avoid the bat maternity roosting season and period of winter torpor. [Torpor refers to a state of decreased physiological activity with reduced body temperature and metabolic rate.] b) Depending on temporal guidance as defined below, the qualified biologist shall conduct pre-construction surveys of potential bat roost sites identified during the initial habitat assessment no more than 14 days prior to building demolition or relocation, or any tree trimming or removal. c) If active bat roosts or evidence of roosting is identified during pre-construction surveys, the qualified biologist shall determine, if possible, the type of roost and species. A no-disturbance buffer shall be established around roost sites until the qualified biologist determines they are no longer active. The size of the no-disturbance buffer would be determined by the qualified biologist and would depend on the species present, roost type, existing screening around the roost site (such as dense vegetation or a building), as well as the type of construction activity that would occur around the roost site. d) If special-status bat species or maternity or hibernation roosts are detected during these surveys, appropriate species- and roost-specific avoidance and protection measures shall be					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
developed by the qualified biologist in coordination with CDFW. Such measures may include postponing the removal of buildings or structures, establishing exclusionary work buffers while the roost is active (e.g., 100-foot no-disturbance buffer), or other compensatory mitigation. e) The qualified biologist shall be present during building demolition, relocation, or tree work if potential bat roosting habitat or active bat roosts are present. Buildings and trees with active roosts shall be disturbed only under clear weather conditions when precipitation is not forecast for three days and when daytime temperatures are at least 50 degrees Fahrenheit. f) The demolition or relocation of buildings containing or suspected to contain bat roosting habitat or active bat roosts shall be done under the supervision of the qualified biologist. When appropriate, buildings shall be partially dismantled to significantly change the roost conditions, causing bats to abandon and not return to the roost, likely in the evening and after bats have emerged from the roost to forage. Under no circumstances shall active maternity roosts be disturbed until the roost disbands at the completion of the maternity roosting season or otherwise becomes inactive, as determined by the qualified biologist. g) Trimming or removal of existing trees with potential bat roosting habitat or active (non-maternity or hibernation) bat roost sites shall follow a two-step removal process (which shall occur during the time of year when bats are active, according to a) above, and depending on the type of roost and species present, according to c) above). i. On the first day and under supervision of the qualified biologist, tree branches and limbs not containing cavities or fissures in which bats could roost shall be cut using chainsaws.					

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ii. On the following day and under the supervision of the qualified biologist, the remainder of the tree may be trimmed or removed, either using chainsaws or other equipment (e.g., excavator or backhoe). All felled trees shall remain on the ground for at least 24 hours prior to chipping, off-site removal, or other processing to allow any bats to escape, or be inspected once felled by the qualified biologist to ensure no bats remain within the tree and/or branches. iv. * CDFW defines credentials of a "qualified biologist" within permits or authorizations issued for a project. Typical qualifications include a minimum of five years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-3: Pile Driving Noise Reduction for Protection of Fish and Marine Mammals Prior to the start of reconstruction of the bulkhead in Reach II, the project sponsors shall prepare a detailed Construction Plan that outlines the details of the piling installation approach. This Plan shall be reviewed and approved by Port Staff. The information provided in this plan shall include, but not be limited to, the following: • The type of piling to be used (whether sheet pile or H-pile); • The piling size to be used; • The method of pile installation to be used; • Noise levels for the type of piling to be used and the method of pile driving, • Recalculation of potential underwater noise levels that could be generated during pile driving using methodologies outlined in	Project sponsors.	Prior to construction of the bulkhead in Reach II, project sponsors to prepare a Construction Plan.	Project sponsors to prepare a Construction Plan and submit it to the Port for review and approval. If determined necessary, sound attenuation and monitoring plan would then be developed. Results of the vibration monitoring would be provided to NOAA if required. An alternative to the sound	Considered complete upon review and approval of the Construction Plan. If determined necessary, approval of the sound attenuation and monitoring plan would be required by Port Staff, and monitoring results would be provided to	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
CalTrans 2009 [Caltrans, Technical Guidance for Assessment and Mitigation]; and • When pile driving is to occur. If the results of the recalculations provided in the detailed Construction Plan for pile driving discussed above indicate that underwater noise levels are less than 183 dB (SEL) for fish at a distance of 33 feet (less than or equal to 10 meters) and 160 dB (RMS) sound pressure level or 120 dB (RMS) re 1 µPa impulse noise level for marine mammals for a distance 1,640 feet (500 meters), then no further measures are required to mitigate underwater noise. If recalculated noise levels are greater than those identified above, then the project sponsors shall develop a sound attenuation reduction and monitoring plan. This plan shall be reviewed and approved by Port Staff. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile-driving activities, and all BMPs to be taken to reduce impact hammer pile-driving sound in the marine environment to an intensity level of less than 183 and 160/120 dB (as identified above) at distances of 33 feet (less than or equal to 10 meters) for fish and 1,640 feet (500 meters) for marine mammals. The sound-monitoring results shall be made available to NOAA Fisheries. If, in the case of marine mammals, recalculated noise levels are greater than 160 dB (peak) at less than or equal to 1,640 feet (500 meters), then the project sponsors shall consult with NOAA to determine the need to obtain an Incidental Harassment Authorization (IHA) under the MMPA. If an IHA is required by NOAA, an application for an IHA shall be prepared by the project sponsors. The plan shall incorporate as appropriate, but not be limited to, the following BMPs: • Any impact-hammer-installed soldier wall H-pilings or sheet piling shall be conducted in strict accordance with the Long-Term Management Strategy (LTMS) work windows for Pacific herring,* during which the presence of Pacific herring in the project site is			attenuation and monitoring plan is to consult with NOAA and provide evidence to the satisfaction of Port Staff.	NOAA.	

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expected to be minimal unless, where applicable, NOAA Fisheries in their Section 7 consultation with the Corps determines that the potential effect to special-status fish species is less than significant. • If pile installation using impact hammers must occur at times other than the approved LTMS work window for Pacific herring or result in underwater sound levels greater than those identified above, the project sponsors shall consult with both NOAA Fisheries and CDFW on the need to obtain incidental take authorizations to address potential impacts to longfin smelt and green sturgeon associated with reconstruction of the steel sheet pile bulkhead in Reach II, and to implement all requested actions to avoid impacts. • A 1,640-foot (500-meter) safety zone shall be established and maintained around the sound source to the extent such a safety zone is located within in-water areas, for the protection of marine mammals in the event that sound levels are unknown or cannot be adequately predicted. • In-water work activities associated with reconstruction of the steel sheet pile bulkhead in Reach II shall be halted when a marine mammal enters the 1,640-foot (500-meter) safety zone and shall cease until the mammal has been gone from the area for a minimum of 15 minutes. • A "soft start" technique shall be used in all pile driving, giving marine mammals an opportunity to vacate the area. • A NOAA Fisheries-approved biological monitor shall conduct daily surveys before and during impact hammer pile driving to inspect the safety zone and adjacent San Francisco Bay waters for marine mammals. The monitor shall be present as specified by NOAA Fisheries during the impact pile-driving phases of construction.					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
• Other BMPs shall be implemented as necessary, such as using bubble curtains or an air barrier, to reduce underwater noise levels to acceptable levels. Alternatively, the project sponsors may consult with NOAA directly and submit evidence to their satisfaction of Port Staff of NOAA consultation. In such case, the project sponsors shall comply with NOAA recommendations and/or requirements. * U.S. Army Corps of Engineers, Programmatic Essential Fish Habitat (EFH) Assessment for the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region. July 2009.					
Mitigation Measure M-BI-4: Compensation for Fill of Jurisdictional Waters To offset temporary and/or permanent impacts to jurisdictional waters of San Francisco Bay adjacent to the 28-Acre Site, construction associated with repair or replacement of the Reach II bulkhead shall be conducted as required by regulatory permits (i.e., those issued by the Corps, RWQCB, and BCDC) and in coordination with NMFS as appropriate. If required by regulatory permits, compensatory mitigation shall be provided as necessary, at a minimum ratio of 1:1 for fill beyond that required for normal repair and maintenance of existing structures. Compensation may include on-site or off-site shoreline improvements or intertidal/subtidal habitat enhancements along San Francisco's eastern waterfront through removal of chemically treated wood material (e.g., pilings, decking, etc.) by pulling, cutting, or breaking off piles at least 1 foot below mudline or removal of other unengineered debris (e.g., concrete-filled drums or large pieces of concrete). Improvements would be implemented in accordance with NMFS as appropriate. On-site or off-site restoration/enhancement plans, if required, must be prepared by a qualified biologist prior to construction and approved by the permitting agencies prior to beginning construction, repair, or	Project sponsors. In accordance with regulatory permits and coordination with NMFS, compensatory mitigation, if required, shall be provided at a minimum ratio of 1:1.	Prior to any construction at the Reach II bulkhead or in accordance with regulatory	Project sponsors to comply with regulatory permits	Considered complete after issuance of regulatory permits for the fill of jurisdictional waters.	Port

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
replacement of the Reach II bulkhead. Implementation of restoration/enhancement activities by the permittee shall occur prior to project impacts, whenever possible.					
Geology and Soils Mitigation Measures					
Mitigation Measure M-GE-3a: Reduction of Rock Fall Hazards The project sponsors shall prepare a site-specific geotechnical report(s), subject to review and approval by the Port, that evaluates the design and construction methods proposed for Parcels PKS, C-1, and C-2, the Irish Hill playground, and 21st Street. The investigations shall determine the potential for rock fall hazards. If the potential for rock fall hazards is identified, the site-specific geotechnical investigations shall identify measures to minimize such hazards to be implemented by the project sponsors. Possible measures to reduce the impacts of potential rock fall hazards include, but are not limited to, the following: • Limited regrading to adjust slopes to stable gradient; • Rock fall containment measures such as installation of drape nets, rock fall catchment fences, or diversion dams; and • Site design measures such as implementing setbacks to ensure that buildings and public uses are outside areas that could be subject to damage as a result of rock fall.	Project sponsors.	Prior to the start of construction activities at Parcels PKS, C-1, C-2, the Irish Hill playground, and 21st Street.	Project sponsors to submit geotechnical report(s) to the Port for review and approval.	Considered complete upon approval of geotechnical report(s) and any associated measures to minimize rock fall hazards.	Port
Mitigation Measure M-GE-3b: Signage and Restricted Access to Pier 70 Prior to issuance of the first certificate of occupancy under the Proposed Project, the project sponsors shall install a gate or an equivalent measure to prevent access to the existing dilapidated pier at the project site. A sign shall be posted at the potential access point informing the public of potential risks associated with use of the structure and prohibiting public access.	Project sponsors to install signage and gate or equivalent measure to prevent access to the existing dilapidated pier.	Prior to issuance of the first Certificate of Occupancy.	Project sponsors to document installation of signage and gate or equivalent measure	Considered complete upon installation of the signage and gate or equivalent measure. The measure will be documented in the annual	Port

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**
				mitigation and monitoring report.	
Mitigation Measure M-GE-6: Paleontological Resources Monitoring and Mitigation Program Prior to issuance of a building permit for construction activities that would disturb sedimentary rocks of the Franciscan Complex (based on the site-specific geotechnical investigation or other available information), the project sponsors shall retain the services of a qualified paleontological consultant having expertise in California paleontology to design and implement a Paleontological Resources Monitoring and Mitigation Program (PRMMP). The PRMMP shall specify the timing and specific locations where construction monitoring would be required; emergency discovery procedures; sampling and data recovery procedures; procedures for the preparation, identification, analysis, and curation of fossil specimens and data recovered; preconstruction coordination procedures; and procedures for reporting the results of the monitoring program. The PRMMP shall be consistent with the Society for Vertebrate Paleontology (SVP) Standard Guidelines for the mitigation of construction-related adverse impacts to paleontological resources and the requirements of the designated repository for any fossils collected. During construction, earth-moving activities that have the potential to disturb previously undisturbed native sediment or sedimentary rocks shall be monitored by a qualified paleontological consultant having expertise in California paleontology. Monitoring need not be conducted for construction activities in areas where the ground has been previously disturbed or when construction activities would encounter artificial fill, Young Bay Mud, marsh deposits, or non-sedimentary rocks of the Franciscan Complex. If a paleontological resource is discovered, construction activities in an appropriate buffer around the discovery site shall be suspended for a maximum of 4 weeks. At the direction of the Environmental Review Officer	Project sponsors and qualified paleontological consultant.	Prior to issuance of a building permit where construction activities would disturb sedimentary rocks of the Franciscan complex. If earth-moving activities have the potential to disturb previously undisturbed native sediment, a qualified paleontological consultant would monitor the activities.	Qualified paleontological consultant to prepare a PRMMP for review and approval by the ERO A single PRMMP or multiple PRMMPs may be produced to address project phasing. In compliance with the requirements of the PRMMP, a qualified paleontological consultant would monitor construction and provide a monitoring report for inclusion in the annual mitigation and monitoring report.	Considered complete upon documentation to the satisfaction of that building permit construction activities would not disturb sedimentary rocks of the Franciscan Complex, or review and approval of the PRMMP, if required, by the Planning Department. Monitoring activities and compliance would be documented in the annual mitigation and monitoring report.	Port and Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
(ERO). the suspension of construction can be extended beyond 4 weeks if needed to implement appropriate measures in accordance with the PRMMP, but only if such a suspension is the only feasible means to prevent an adverse impact on the paleontological resource. The paleontological consultant's work shall be conducted at the direction of the City's ERO. Plans and reports prepared by the consultant shall be submitted first and directly to the ERO for review and comment. and shall be considered draft reports subject to revision until final approval by the ERO.					
Hydrology and Water Resources Mitigation Measures					
Mitigation Measure M-HY-2a: Design and Construction of Proposed Pump Station for Options 1 and 3 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out. and cumulative project contributions; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline, the Proposed Project at full build-out. and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to	Project sponsors.	Prior to construction of the proposed pump station for Options 1 and 3.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
approval by the SFPUC.					
Mitigation Measure M-HY-2b: Design and Construction of Proposed Pump Station for Option 2 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; • During wet weather, wastewater flows from the project site shall bypass the wet-weather facilities and be conveyed to the combined sewer system in such a manner that they do not contribute to combined sewer discharges within the 20th Street sub-basin; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to approval by the SFPUC.	Project sponsors.	Prior to construction of the proposed pump station for Option 2.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC
Hazards and Hazardous Materials Mitigation Measures					
Mitigation Measure M-HZ-2a: Conduct Transformer Survey and Remove PCB Transformers	Project sponsors and qualified contractor.	Prior to the demolition, renovation, or	Qualified contractor to survey and determine the	Considered complete if no PCBs found or	Port

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**
The project sponsors shall retain a qualified contractor to survey any building and/or structure planned for demolition, renovation, or relocation to identify all electrical transformers in use and in storage. The contractor shall determine the PCB content using name plate information, or through sampling if name-plate data do not provide adequate information regarding the PCB content of the dielectric equipment. The project sponsors shall retain a qualified contractor to remove and dispose of all transformers in accordance with the requirements of Title 40 of the Code of Federal Regulations, Section 761.60 (described under the Regulatory Framework) and the Title 22 of the California Code of Regulations, Section 66261.24. The removal shall be completed in advance of any building or structural demolition, renovation, or relocation.		relocation of any building and/or structure.	PCB content of transformers in use and storage. If necessary, the contractor shall remove and dispose of transformers in accordance with applicable regulations.	upon appropriate disposal and removal of transformers. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	
Mitigation Measure M-HZ-2b: Conduct Sampling and Cleanup if Stained Building Materials Are Observed In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB (determined in accordance with Mitigation Measure M-HZ-2a), or the leakage has resulted in visible staining of the building materials or surrounding surface areas, the project sponsors shall retain a qualified professional to obtain samples of the building materials for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration of 1 part per million, then the project sponsors shall retain a contractor to clean the surface to a concentration of 1 part per million or less in accordance with Title 40 of the Code of Federal Regulations, Section 761.61(a). The sampling and cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB, or the leakage has resulted in visible staining of the building materials or surrounding surface areas. If determined necessary, sampling and	If leakage or spillage occurs, qualified contractor to obtain samples and clean the surface (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	Port

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**
		cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.			
Mitigation Measure M-HZ-2c: Conduct Soil Sampling if Stained Soil is Observed In the event that leakage is observed in the vicinity of a PCB-containing transformer that has resulted in visible staining of the surrounding soil (determined in accordance with Mitigation Measure M-HZ-2a), the project sponsors shall retain a qualified professional to obtain soil samples for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration less than the residential Environmental Screening Level of 0.22 milligrams per kilogram, then no further action shall be required. If PCBs are identified at a concentration greater than or equal to the residential Environmental Screening Level of 0.22 milligrams per kilogram, then the project sponsors shall require the contractor to implement the requirements of the Pier 70 RMP, as required by Mitigation Measure M-HZ-6. The sampling and implementation of the Pier 70 RMP requirements shall be completed in advance of any building or structural demolition, renovation, relocation, or subsequent development.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer, or the leakage has resulted in visible staining of soils. If determined necessary, sampling and removal shall be completed in advance of any building or structural demolition, renovation, or relocation.	If leakage or spillage occurs, qualified contractor to obtain samples and remove any PCBs (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented hazardous materials manifestos and in the annual mitigation and monitoring report.	Port
Mitigation Measure M-HZ-3a: Implement Construction and Maintenance-Related Measures of the Pier 70 Risk Management Plan The project sponsors shall provide notice to the RWQCB, DPH, and Port in accordance with the Pier 70 RMP, in advance of ground-disturbing activities	Project sponsors and construction contractor(s).	Notice shall be provided to the RWQCB, DPH, and Port in accordance	All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB,	Considered complete upon notice to the RWQCB, DPH, and Port.	Port

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
that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover (Pier 70 RMP Sections 4.1, 4.2, and 6.3). The project sponsors shall also (through their contractor) implement the following measures of the Pier 70 RMP during construction to provide for the protection of worker and public health, including nearby schools and other sensitive receptors, and to ensure appropriate disposition of soil and groundwater removed from the site: • A project-specific health and safety plan (Pier 70 RMP Section 6.4); • Access controls (Pier 70 RMP Section 6.1); • Soil management protocols, including those for: o soil movement (Pier 70 RMP Section 6.5.1), o soil stockpile management (Pier 70 RMP Section 6.5.2), and o import of clean soil (including preparation of a project-specific Soil Import Plan) (Pier 70 RMP Section 6.5.3); • A dust control plan in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code and other applicable regulations as well as site-specific measures (Pier 70 RMP Section 6.6); • A project-specific stormwater pollution prevention control plan (Pier 70 RMP Section 6.7); • Off-site soil disposal (Pier 70 RMP Section 6.8);		with the Pier 70 RMP prior to any ground-disturbing activities that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover.	DPH, and Port for review and approval in accordance with the notification requirements of the RMP.		

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**
• A project-specific groundwater management plan for temporary dewatering (Pier 70 RMP Section 6.10.1); • Risk management measures to minimize the potential for new utilities to become conduits for the spread of groundwater contamination (Pier 70 RMP Section 6.10.2); • Appropriate design of underground pipelines to prevent the intrusion of groundwater or degradation of pipeline construction materials by chemicals in the soil or groundwater (Pier 70 RMP Section 6.10.3); and • Protocols for unforeseen conditions (Pier 70 RMP Section 6.9). Following completion of construction activities that disturb any durable cover, the integrity of the previously existing durable cover shall be re-established in accordance with Section 6.2 of the Pier 70 RMP and the protocols described in the Operations and Maintenance Plan of the Pier 70 RMP. All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB, DPH, and/or Port for review and approval in accordance with the notification requirements of the RMP (Pier 70 RMP Section 4.0).					
Mitigation Measure M-HZ-3b: Implement Well Protection Requirements of the Pier 70 Risk Management Plan In accordance with Section 6.11 of the Pier 70 RMP, the project sponsors shall review available information prior to any ground-disturbing activities to identify any monitoring wells within the construction area, including any wells installed by PG&E in support of investigation and remediation of the PG&E Responsibility Area within the 28-Acre Site. The wells shall be appropriately protected during construction. If construction necessitates destruction of an existing well, the destruction shall be conducted in accordance with California and DPH well abandonment regulations, and	Project sponsors	Prior to ground-disturbing activities.	Project sponsors to identify any monitoring wells in the area, and appropriately protect them. If destruction of a well is required, it would be conducted in accordance with	Monitoring complete if no wells or activities would be demonstrated in RWQCB and DPH regulatory applications and documented in the annual mitigation and	Port

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**
must be approved by the RWQCB. The Port shall also be notified of the destruction. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.			applicable regulations and the Port would be notified. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.	monitoring report.	
Mitigation Measure M-HZ-4: Implement Construction-Related Measures of the Hoedown Yard Site Management Plan In accordance with the notification requirements of the Hoedown Yard SMP (Section 4.2), the project sponsors (through their contractor) shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard. During construction, the contractor shall implement the following measures of the Hoedown Yard SMP to provide for the protection of worker and public health, and to ensure appropriate disposition of soil and groundwater. • A project-specific Health and Safety Plan (Hoedown Yard SMP Section 5): o Dust management measures in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code. The specific measures must address	Project sponsors	Prior to ground-disturbing activities at the Hoedown Yard.	The project sponsors shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard.	Considered complete after notification to the RWQCB, DPH, and/or Port.	DPH

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
dust control (SMP Section 6.1) and dust monitoring (SMP Section 6.2). • Soil and water management measures, including: o soil handling (Hoedown Yard SMP Section 7.1.1), o stockpile management (Hoedown Yard SMP Section 7.1.2), o on-site reuse of soil (Hoedown Yard SMP Section 7.1.3), o off-site soil disposal (Hoedown Yard SMP Section 7.1.4). o excavation dewatering (Hoedown Yard SMP Section 7.1.5), o stormwater management (Hoedown Yard SMP Section 7.1.6), o site access and security (Hoedown Yard SMP Section 7.1.7), and o unanticipated subsurface conditions (Hoedown Yard SMP Section 7.2).					
Mitigation Measure M-HZ-5: Delay Development on Proposed Parcels H1, H2, and E3 Until Remediation of the PG&E Responsibility Area is Complete The project sponsors shall not start construction of the proposed development or associated infrastructure on proposed Parcel H1, H2, and E3 until PG&E's remedial activities in the PG&E Responsibility Area within and adjacent to these parcels have been completed to the satisfaction of the RWQCB, consistent with the terms of the remedial action plan prepared by PG&E and approved by RWQCB. During subsequent development, the project sponsors shall implement the requirements of the Pier 70 RMP within the PG&E Responsibility Area, as enforced through the recorded deed restriction on the Pier 70 Master Plan Area.	Project sponsors and PG&E.	Prior to the start of construction on proposed Parcels H1, H2, and E3. During subsequent development, for implementation of Pier 70 RMP Requirements.	PG&E to complete remedial activities in the PG&E Responsibility Area within and adjacent to Parcels H1, H2, and E3 to satisfaction of RWQCB. Project sponsor to implement Pier 70 RMP requirements, enforced by recorded deed	Considered complete upon RWQCB confirmation of satisfaction with PG&E remedial action.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
			restriction.		
Mitigation Measure M-HZ-6: Additional Risk Evaluations and Vapor Control Measures for Residential Land Uses The notification submittals required under Mitigation Measure M-HZ-3a shall describe site conditions at the time of development. If residential land uses are proposed at or near locations where soil vapor or groundwater concentrations exceed residential cleanup standards for vapor intrusion (based on information provided in the Pier 70 RMP), this information shall be included in the notification submittal and the RWQCB and DPH determine whether a risk evaluation is required. If required, the project sponsors or future developer(s) shall conduct a risk evaluation in accordance with the Pier 70 RMP. The risk evaluation shall be based on the soil vapor and groundwater quality presented in the Pier 70 RMP and the proposed building design. The project sponsors shall conduct additional soil vapor or groundwater sampling as needed to support the risk evaluation, subject to the approval of the RWQCB and DPH. If the risk evaluation demonstrates that there would be unacceptable health risks to residential users (i.e., greater than 1×10^{-6} incremental cancer risk or a non-cancer hazard index greater than 1), the project sponsors shall incorporate measures into the building design to minimize or eliminate exposure to soil vapor through the vapor intrusion pathway, subject to review and approval by the RWQCB and DPH. Appropriate vapor intrusion measures include, but are not limited to design of a safe building configuration that would preclude vapor intrusion; installation of a vapor barrier; and/or design and installation of an active vapor monitoring and extraction system. If the risk evaluation demonstrates that vapor intrusion risks would be within acceptable levels (less than 1×10^{-6} incremental cancer risk or a non-cancer hazard index less than 1) under a project-specific development scenario, no additional action shall be required. (For instance, the project sponsors could locate all residential uses above the first floor which, in some cases, could eliminate the potential for residential exposure to organic compounds in soil	Project sponsors	Prior to ground-disturbing activities of residential land uses if near locations where soil vapor or groundwater concentrations exceed residential cleanup standard for vapor intrusion.	Site conditions shall be recorded by the project sponsors and included in the notification submittal to the RWQCB and DPH. If required, the project sponsors shall conduct a risk evaluation in accordance with the Pier 70 RMP and incorporate measures to minimize or eliminate exposure to soil vapor.	Considered complete upon a notification submittal to the RWQCB and DPH. If a risk evaluation and further measures are required, they would be reviewed and approved by the RWQCB and DPH.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
vapors.)					
Mitigation Measure M-HZ-7: Modify Hoedown Yard Site Mitigation Plan The project sponsors shall conduct a risk evaluation to evaluate health risks to future site occupants, visitors, and maintenance workers under the proposed land use within the Hoedown Yard. The risk evaluation shall be based on the soil, soil vapor, and groundwater quality data provided in the existing SMP and supporting documents and the project sponsors shall conduct additional sampling as needed to support the risk evaluation. Based on the results of the risk evaluation, the project sponsors shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals (i.e., an excess cancer risk of 1×10^{-6} and a Hazard Index of 1) applicable to each land use proposed for development within the Hoedown Yard. At a minimum, the modified SMP shall include the following components: • Regulatory-approved cleanup levels for the proposed land uses; • A description of existing conditions, including a comparison of site data to regulatory-approved cleanup levels; • Regulatory oversight responsibilities and notification requirements; • Post-development risk management measures, including management measures for the maintenance of engineering controls (e.g., durable covers, vapor mitigation systems) and site maintenance activities that could encounter contaminated soil; • Monitoring and reporting requirements; and • An operations and maintenance plan, including annual inspection requirements.	Project sponsors shall conduct a risk evaluation, and shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals applicable to each land use proposed for development within the Hoedown Yard.	Prior to ground-disturbing activities at the Hoedown Yard.	Project sponsors shall submit the risk evaluation and proposed risk management plan to the RWQCB, DPH, and Port for review and approval.	Considered complete upon review and approval of the risk evaluation and proposed risk management plan by the RWQCB, DPH, and Port.	Port, DPH

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
The risk evaluation and proposed risk management plan shall be submitted to the RWQCB, DPH, and Port for review and approval prior to the start of ground disturbance.					
Mitigation Measure M-HZ-8a: Prevent Contact with Serpentinite Bedrock and Fill Materials in Irish Hill Playground The project sponsors shall ensure that a minimum 2-foot thick durable cover of asbestos-free clean imported fill with a vegetated cover is emplaced above serpentinite bedrock and fill materials in the level portions of Irish Hill Playground. The fill shall meet the soil criteria for clean fill specified in Table 4 of the Pier 70 RMP and included in Appendix F, Hazards and Hazardous Materials, of this EIR. Barriers shall be constructed to preclude direct climbing on the bedrock of the Irish Hill remnant. The design of the durable cover and barriers shall be submitted to the DPH and Port for review and approval prior to construction of the Irish Hill Playground.	Project sponsors to design and install a 2-foot-thick durable cover over serpentinite bedrock and fill in the level portions of the Irish Hill Playground and barriers to preclude direct climbing on the bedrock of the Irish Hill remnant.	Submittal of design of durable cover and barriers to DPH and Port prior to construction of the Irish Hill Playground.	Project sponsors shall submit design of durable covers and barriers to DPH, Port	Considered complete upon review and approval of the design and installation of the 2-foot-thick durable cover and barriers by the DPH and Port.	Port, DPH
Mitigation Measure M-HZ-8b: Restrictions on the Use of Irish Hill Playground To the extent feasible, the project sponsors shall ensure that the Irish Hill Playground is not operational until ground disturbing activities for construction of the new 21st Street and on the adjacent parcels (PKN, PKS, HDY-1, HDY2, C1, and C2) is completed. If this is not feasible, and Irish Hill Playground is operational prior to construction of the new 21st Street and construction on all adjacent parcels, the playground shall be closed for use when ground-disturbing activities are occurring for the construction of the new 21st Street and on any of the adjacent parcels.	Project sponsors.	Prior to and during construction of the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2.	Project sponsors shall ensure the playground is not operational until ground-disturbing activities at the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2 are complete; or playground shall be closed for use when ground-disturbing activities are occurring	Considered complete when the aforementioned parcels' ground-disturbing activities are finished. Documentation would occur in the annual mitigation and monitoring report.	Port

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
IMPROVEMENT MEASURES FOR THE PIER 70 MIXED-USED DISTRICT PROJECT					
Improvement Measure I-CR-4a: Documentation Before any demolition, rehabilitation, or relocation activities within the UIW Historic District, the project sponsors should retain a professional who meets the Secretary of the Interior's Professional Qualifications Standards for Architectural History to prepare written and photographic documentation of all contributing buildings proposed for demolition within the UIW Historic District. The documentation for the property should be prepared based on the National Park Service's Historic American Building Survey (HABS)/Historic American Engineering Record (HAER) Historical Report Guidelines. This type of documentation is based on a combination of both HABS/HAER standards and National Park Service's policy for photographic documentation, as outlined in the NRHP and National Historic Landmarks Survey Photo Policy Expansion. The written historical data for this documentation should follow HABS/HAER standards. The written data should be accompanied by a sketch plan of the property. Efforts should also be made to locate original construction drawings or plans of the property during the period of significance. If located, these drawings should be photographed, reproduced, and included in the dataset. If construction drawings or plans cannot be located, as-built drawings should be produced. Either HABS/HAER-standard large format or digital photography should be used. If digital photography is used, the ink and paper combinations for printing photographs must be in compliance with NR-NHL Photo Policy Expansion and have a permanency rating of approximately 115 years. Digital photographs should be taken as uncompressed, TIFF file format. The size of each image should be 1,600 by 1,200 pixels at 330 pixels per inch or larger, color format, and printed in black and white. The file name for each electronic image should correspond with the index of photographs and photograph label. Photograph views for the dataset should include (a)	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Project Sponsor Documentation: Before any demolition, rehabilitation, or relocation activities within the UIW Historic District.	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual to complete historic resources documentation, and transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Considered complete when documentation is reviewed and approved by Port Preservation Staff, and the documentation is provided to the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Port

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
contextual views; (b) views of each side of each building and interior views, where possible; (c) oblique views of buildings; and (d) detail views of character-defining features, including features on the interiors of some buildings. All views should be referenced on a photographic key. This photographic key should be on a map of the property and should show the photograph number with an arrow to indicate the direction of the view. Historic photographs should also be collected, reproduced, and included in the dataset. The project sponsors should transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System. The project sponsors should scope the documentation measures with Port Preservation staff..					
Improvement Measure I-CR-4b: Public Interpretation Following any demolition, rehabilitation, or relocation activities within the project site, the project sponsors should provide within publicly accessible areas of the project site a permanent display(s) of interpretive materials concerning the history and architectural features of the District's three historical eras (Nineteenth Century, Early Twentieth Century, and World War II), including World War II-era Slipways 5 through 8 and associated craneways. The display(s) should also document the history of the Irish Hill Remnant, including, for example, the original 70- to 100-foot tall Irish Hill landform and neighborhood of lodging, houses, restaurants, and saloons that occupied the once much larger hill until the earlier twentieth century. The content of the interpretive display(s) should be coordinated and consistent with the sitewide interpretive plan prepared for the 28-Acre Site in coordination with the Port. The specific location, media, and other characteristics of such interpretive display(s) should be presented to Port preservation staff for approval prior to any demolition or removal activities.	Project sponsors should provide a permanent display(s) of interpretive materials concerning the history and architectural features of the District within publicly accessible areas of the project site.	Project sponsors provide permanent display: Following any demolition, rehabilitation, or relocation activities within the project site.	Project sponsors submit documentation of permanent display(s) of interpretive materials	Considered complete when interpretive materials are presented to Port preservation staff for approval. The materials would then be presented in the publically accessible area of the project site.	Port
Improvement Measure I-TR-A: Construction Management Plan Traffic Control Plan for Construction – To reduce potential conflicts between	Project sponsors, TMA, and	Prior to issuance of a	Construction contractor(s) to	Considered complete upon	Port, 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
construction activities and pedestrians, bicyclists, transit, and autos during construction activities, the project sponsors should require construction contractor(s) to prepare a traffic control plan for major phases of construction (e.g., demolition and grading, construction, or renovation of individual buildings). The project sponsors and their construction contractor(s) will meet with relevant City agencies to coordinate feasible measures to reduce traffic congestion, including temporary transit stop relocations and other measures to reduce potential traffic and transit disruption and pedestrian circulation effects during major phases of construction. For any work within the public right-of-way, the contractor would be required to comply with San Francisco's Regulations for Working in San Francisco Streets (i.e., the "Blue Book"), which establish rules and permit requirements so that construction activities can be done safely and with the least possible interference with pedestrians, bicyclists, transit, and vehicular traffic. Additionally, non-construction-related truck movements and deliveries should be restricted as feasible during peak hours (generally 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., or other times, as determined by SFMTA and the Transportation Advisory Staff Committee [TASC]). In the event that the construction timeframes of the major phases and other development projects adjacent to the project site overlap, the project sponsors should coordinate with City Agencies through the TASC and the adjacent developers to minimize the severity of any disruption to adjacent land uses and transportation facilities from overlapping construction transportation impacts. The project sponsors, in conjunction with the adjacent developer(s), should propose a construction traffic control plan that includes measures to reduce potential construction traffic conflicts, such as coordinated material drop offs, collective worker parking, and transit to job site and other measures. <u>Reduce Single Occupant Vehicle Mode Share for Construction Workers</u> – To minimize parking demand and vehicle trips associated with construction workers, the project sponsors should require the construction contractor to include in the Traffic Control Plan for Construction methods to encourage	construction contractor(s).	building permit. Project construction updates for adjacent residents and businesses within 150 feet would occur throughout the construction phase.	prepare a Traffic Control Plan and meet with relevant City agencies (i.e., SFMTA, Port Staff, and Planning Department) to coordinate feasible measures to reduce traffic congestion. A single traffic control plan or multiple traffic control plans may be produced to address project phasing.	suhmittal of the Traffic Control Plan to the SFMTA and the Port. Project construction update materials would be provided in the annual mitigation and monitoring plan.	SFMTA as appropriate

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
walking, bicycling, carpooling, and transit access to the project construction sites and to minimize parking in public rights-of-way by construction workers in the coordinated plan. Project Construction Updates for Adjacent Residents and Businesses – To minimize construction impacts on access for nearby residences, institutions, and businesses, the project sponsors should provide nearby residences and adjacent businesses with regularly-updated information regarding construction, including construction activities, peak construction vehicle activities (e.g., concrete pours), travel lane closures, and lane closures via a newsletter and/or website.					
Improvement Measure I-TR-B: Queue Abatement It should be the responsibility of the owner/operator of any off-street parking facility with more than 20 parking spaces (excluding loading and car-share spaces) to ensure that vehicle queues do not occur regularly on the public right-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of any public street, alley, or sidewalk for a consecutive period of 3 minutes or longer on a daily or weekly basis. If a recurring queue occurs, the owner/operator of the parking facility should employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the parking facility, the street(s) to which the facility connects, and the associated land uses (if applicable). Suggested abatement methods include but are not limited to the following: redesign of facility to improve vehicle circulation and/or on-site queue capacity; employment of parking attendants; installation of LOT FULL signs with active management by parking attendants; use of valet parking or other space-efficient parking techniques; use of off-site parking facilities or shared parking with nearby uses; use of parking occupancy sensors and signage	Project sponsors, owner/operator of any off-street parking facility, and transportation consultant.	On-going during operations of any off-street parking facilities.	The owner/operator of the parking facility should monitor vehicle queues in the public right-of-way, and would employ abatement measures as needed. If the Port Director, or his or her designee, suspects that a recurring queue is present, the Port should notify the property owner in writing. The owner/operator should hire a transportation consultant to	Monitoring of the public right-of-way would be on-going by the owner/operator of off-street parking operations.	Port, 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
directing drivers to available spaces; TDM strategies such as additional bicycle parking, customer shuttles, delivery services; and/or parking demand management strategies such as parking time limits, paid parking, time-of-day parking surcharge, or validated parking. If the Port Director, or his or her designee, suspects that a recurring queue is present, Port Staff should notify the property owner in writing. Upon request, the owner/operator should hire a qualified transportation consultant to evaluate the conditions at the site for no less than 7 days. The consultant should prepare a monitoring report to be submitted to the Port for review. If the Port determines that a recurring queue does exist, the facility owner/operator should have 90 days from the date of the written determination to abate the queue.			prepare a monitoring report and if a recurring queue does exist, the owner/operator would abate the queue.		
Improvement Measure I-TR-C: Strategies to Enhance Transportation Conditions During Events. The project's Transportation Coordinator should participate as a member of the Mission Bay Ballpark Transportation Coordination Committee (MBBTCC) and provide at least 1-month notification to the MBBTCC where feasible prior to the start of any then known event that would overlap with an event at AT&T Park. The City and the project sponsors should meet to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Project sponsors, TMA, parks maintenance entity, parks programming entity, and/or Transportation Coordinator.	Prior to the start of any known event that would overlap with an event at AT&T Park.	Project sponsors and Transportation Coordinator to meet with MBBTCC and City to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Include in MMRP Annual Report; On-going during project lifespan.	Port, Planning Department, SFMTA
Improvement Measure I-WS-3a: Wind Reduction for Public Open Spaces and Pedestrian and Bicycle Areas For each development phase, a qualified wind consultant should prepare a wind impact and mitigation analysis regarding the proposed design of public open spaces and the surrounding proposed buildings. Feasible means should be considered to improve wind comfort conditions for each public open space, particularly for any public seating areas. These feasible means include horizontal and vertical, partially-porous wind screens (including canopies,	Project sponsors and qualified wind consultant.	During the design of public open spaces and pedestrian and bicycle areas for each development phase.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by the Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for public open spaces and pedestrian and	Port or 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
trellises, umbrellas, and walls), street furniture, landscaping, and trees. Specifics for particular public open spaces are set forth in Improvement Measures I-WS-3h to I-WS-3f. Any proposed wind-related improvement measure should be consistent with the design standards and guidelines outlined in the *Pier 70 SUD Design for Development*.				bicycle areas by the Port Staff.	
Improvement Measure I-WS-3h: Wind Reduction for Waterfront Promenade and Waterfront Terrace The Waterfront Promenade and Waterfront Terrace would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing vertical elements, such as wind screens and landscaping. Where necessary and appropriate, wind screens should be strategically placed directly around seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Waterfront Promenade and Waterfront Terrace.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitiganion analysis for the Waterfront Promenade and Waterfront Terrace by Port Staff	Port
Improvement Measure I-WS-3c: Wind Reduction for Slipways Commons The central and western portions of Slipways Commons would be subject to winds exceeding the pedestrian wind comfort criteria. Street trees should be considered along Maryland Street, particularly on the east side of Maryland Street between Buildings E1 and E2. Vertical elements such as wind screens would help for areas where street trees are not feasible. Where necessary and appropriate, wind screens should be strategically placed to the west of any seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of	Project sponsors and qualified wind consultant.	During the design of the Slipway Commons.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Slipway Commons by Port Staff.	Port

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**
any wind screen or landscaping shall be compatible with the Historic District.					
Improvement Measure I-WS-3d: Wind Reduction for Building 12 Market Plaza and Market Square Building 12 Market Plaza and Market Square would be subject to winds exceeding the pedestrian wind comfort criteria. For reducing wind speeds in the public courtyard between Buildings 2 and 12, the inner south and west façades of Building D-1 could be stepped by at least 12 feet to direct downwashing winds above pedestrian level. Alternatively, overhead protection should be used, such as a 12-foot-deep canopy along the inside south and west façades of Building D-1, or localized trellises or umbrellas over seating areas. For reducing wind speeds on the eastern and southern sides of Building 12, street trees should be considered, along Maryland and 22nd streets. Smaller underplantings should be combined with street trees to reduce winds at pedestrian level. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Building 12 Market Plaza and Market Square.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Building 12 Market Plaza and Market Square by Port Staff.	Port

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[1]**
Improvement Measure I-WS-3e: Wind Reduction for Irish Hill Playground The Irish Hill Playground would be subject to winds exceeding the pedestrian wind comfort criteria. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Irish Hill Playground.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Irish Hill Playground by Port Staff.	Port
Improvement Measure I-WS-3f: Wind Reduction for 20th Street Plaza The 20th Street Plaza would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing hardscape elements, such as wind screens, canopies, and umbrellas. Where necessary and appropriate, wind screens should be strategically placed to the northwest of any seating area. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. If there would be seating areas directly adjacent to the north façade of the PKN Building, localized canopies or umbrellas should be used. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the 20th Street Plaza.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the 20th Street Plaza by Port Staff.	Port

MASTER LEASE EXHIBIT H
PROCEDURES FOR SPECIAL EVENTS

Tenant shall be permitted to hold Special Events on the Premises as a Permitted Use hereunder in accordance with the following procedures:

1. WHEN PORT DIRECTOR APPROVAL REQUIRED.

Special Events having a cumulative anticipated attendance of 5,000 or more visitors shall require approval by the Port's Executive Director upon at least sixty (60) days' advance written notice (or such lesser period of time if determined appropriate under the circumstances by the Executive Director), which approval shall not be unreasonably withheld or delayed. All other Special Events shall not require separate approval under this Lease from the Port's Executive Director, subject to compliance with these Special Event procedures.

2. NUMBER OF EVENTS; EVENT TIERS; RECURRING EVENTS.

2.1 ***Number of Events.*** Tenant shall be permitted to hold no more than twenty (20) Special Events per calendar year.

2.2 ***Tiers of Events.***

(a) A Tier 1 Event means a Special Event having a duration of two weeks or more, an anticipated cumulative attendance of 2,000 or more visitors, or both;

(b) A Tier 2 Event means a Special Event having a duration of less than two weeks, an anticipated cumulative attendance of less than 2,000 visitors, or both; and

(c) A Tier 3 Event means a small-scale, short-term and community-oriented event that requires minimal set-up and permitting.

2.3 ***Recurring Special Events.*** Tenant may, from time to time, propose recurring Special Events (such as a weekly farmers market), in which case, the applicable "special event permit" issued by the Port (and any special conditions required by Port to address the recurring nature of the Special Event) will apply to each recurrence of the same Special Event with the same requirements, activities and parameters, without a requirement for Tenant to obtain a new Special Event permit for each occurrence of that particular recurring Special Event. To the extent approved by Port, each recurring Special Event approved under a single "special event permit" will count as a single Special Event for purposes of Section 2.1.

3. EVENT MANAGER.

Tenant shall designate a single event manager to act as its Agent with respect to Special Events under this Lease ("**Event Manager**").

4. PRELIMINARY APPROVAL FROM PORT FIRE MARSHAL; BUILDING FIRE ALARM REQUIREMENTS.

4.1 ***Preliminary Fire Marshal Approval***. Prior to entering into any contract or agreement with any entity or entities sponsoring and or participating in a proposed Special Event, a copy of which is to be submitted to Port pursuant to ***Section 5.2***, Event Manager shall

meet with the Port Fire Marshal or his designee to review preliminary plans for proposed Special Event and receive preliminary approval from Port Fire Marshal or his designee to proceed.

4.2 ***Building Fire Alarm Requirements***. Prior to holding a Special Event in any structure existing on the Premises as of the Effective Date of the Master Lease, Tenant shall, at its sole cost and expense, install a voice evacuation fire alarm system. Tenant shall also, at its sole cost and expense, ensure the Fire Alarm System is maintained, certified, monitored and fully operational.

5. NOTICE; SUBMITTAL REQUIREMENTS.

5.1 ***Notice Requirements***.. Event Manager shall provide advance notice to Port of its intention to use all or any portion of the Premises for a Special Event as soon as reasonably possible, but in no event later than the following dates (or such lesser period of time if determined appropriate under the circumstances by the Executive Director) Event Manager shall meet with Port and submit the information required pursuant to ***Section 5.2***:

(i) Tier 1: ninety (90) days prior to the proposed start date;

(ii) Tier 2: sixty (60) days prior to the start date;

(iii) Tier 3: thirty (30) days prior to the start date.

5.2 ***Submittal Requirements***. As soon as reasonably possible, and no later than the timeframes specified in ***Section 5.1***, Event Manager shall submit to the Port the following information:

(i) a complete Port of San Francisco Special Event Application;

(ii) the names of the entity or entities sponsoring and or participating in the Special Event, including any Subtenant or Agent of Tenant and a copy of the relevant contract(s);

(iii) the location of the Special Event within the Premises (with maps as appropriate);

(iv) duration of the Special Event, including days of load in and load out;

(v) hours of the Special Event for guest attendance and estimated guest attendance;

(vi) configuration for services and amenities including recycling, compost, restrooms,

(vii) pedestrian and vehicle ingress and egress and paths of travel;

(viii) proposed signage;

(ix) proposed entertainment (if any);

(x) a list of required Regulatory Approvals;

(xi) certificates of insurance, in compliance with Section 10 hereof; and

(xii) any other information reasonably requested by Port.

6. REGULATORY APPROVALS.

(a) Events Manager will obtain, at its sole cost and expense, all regulatory approvals necessary for Special Events, including without limitation, any Port building and encroachment

permits necessary for the conduct of Special Events on the Premises ("Regulatory Approvals"). Event Manager is solely responsible for submitting sufficient and timely documentation and plans to obtain any required Regulatory Approvals and Event Manager agrees to work directly with responsible code officials to obtain such approvals.

(b) The parties acknowledge that some or all of the following Regulatory Approvals may be necessary for Special Events:

i) Building Permit from the Port, the requirements of which are attached hereto as ***Exhibit H-1***;

ii) Place of Assembly Permit, Fire Permit and Fire Watch from the San Francisco Fire Department ("SFFD");

iii) Security Plan approved by San Francisco Police Department ("SFPD");

iv) Traffic Plan approved by SFPD;

v) Emergency Medical Service Plan approved by the Department of Public Health ("DPH") and SFFD;

vi) Alcoholic Beverage Control License from the California Alcohol Beverage Commission;

vii) Food Service Permit from DPH;

viii) Amplified Noise or Place of Entertainment Permit from the Entertainment Commission;

ix) ISCOTT (Interdepartmental staff Committee on Transit and Traffic) for anticipated street closure or street events; and

x) Any other permit or approval deemed necessary by the Port of San Francisco and/or any City Agency.

(c) Event Manager will be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property, including, but not limited to musical or other performance rights in connection with Special Events.

7. COMPLIANCE REVIEW.

7.1 ***Initial Compliance Review***. Event Manager, shall certify, in writing in a form acceptable to Port, that it (or the appropriate entity under contract with Tenant or the Event Manager) (i) has submitted complete permit applications and paid all required fees to all required Regulatory Agencies and (ii) has submitted a written request seeking Port Executive Director's approval of the Special Event or aspects thereof where such approval is required under this Lease by the following dates (or such lesser period of time if determined appropriate under the circumstances by the Executive Director):

(i) Tier 1: at least thirty (30) days prior to the proposed start date;

(ii) Tier 2: at least twenty-two (22) days prior to the start date;

(iii) Tier 3: at least ten (10) days prior to the start date.

7.2 ***Final Compliance Review.*** Event Manager shall obtain a final compliance review from the Port's property manager for each Special Event at least ten (10) days prior to the start date of the Special Event by submitting evidence acceptable to Port in its reasonable discretion that Tenant (or the Event Manager) has caused to be obtained all Regulatory Approvals required for the Special Event and has certified in writing that (i) no other Regulatory Approvals are required to the best of Tenant's (or Event Manager's Manager or Subtenant) knowledge after due inquiry.

8. ADDITIONAL CITY SERVICES.

With respect to any Special Event requiring Executive Director approval under ***Section 1*** above, Event Manager and Port will negotiate in good faith with each other and with any affected City departments to determine whether additional street environmental services (litter pick-up, street sweeping) would be reasonably required in connection with such Special Event, and the incremental costs of providing such services. As part of the consideration under this Lease, Tenant shall either (i) pay the actual and reasonable incremental cost of providing street environmental services with respect to such Special Event, in an amount agreed to in advance by Tenant and the Executive Director, or if no agreement is reached, as reasonably determined by the Executive Director; or (ii) subject to the Port's approval in its sole discretion, arrange for some or all of the requested street environmental services itself in lieu of paying for that portion of services. "**Incremental costs**" does not include costs already covered by Regulatory Approvals issued by Port or other City departments including without limitation, permitting and other regulatory fees paid by Event Manager to comply with any condition of a Regulatory Approval.

9. PORT AND CITY POLICIES.

9.1 ***Good Neighbor/Zero Waste.*** All Special Events must comply with the applicable provisions of the Good Neighbor Policy attached hereto as ***Exhibit H-2*** and the Port's Zero Waste Events and Activities Policy attached hereto as ***Exhibit H-3***.

9.2 ***Prevailing Wages.*** All Special Events must comply with the SF Administrative Code Requirements for Special Events Workers attached hereto as ***Exhibit H-4***.

9.3 ***Water Bottle Ordinance.*** Tenant is subject to all applicable provisions of Environment Code Chapter 24 which are hereby incorporated. Accordingly, the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less is prohibited at any Special Event with an attendance of more than 100 persons. A violation of this provision is subject to administrative fines as set forth in SF Environment Code Chapter 24.

10. ADDITIONAL INSURANCE REQUIREMENTS.

In addition to the insurance requirements in Article 20 of this Lease, Tenant will provide, or cause to be provided, the following as applicable:

(i) Host Liquor Liability Insurance in the amount of Two Million Dollars ($2,000,000.00) for any events where liquor, including beer and wine, is being served.

(ii) Liquor Liability Insurance in the amount of Five Million Dollars ($5,000,000.00) for any events where the primary intent is the selling or serving of alcoholic beverage including but not limited to beer festivals and wine tastings.

(iii) Garage Keepers Liability Insurance in the amount of One Million Dollars ($1,000,000) for any special event involving parking and/or valet operations.

(iv) Participant, Volunteer (if any) and Attendee Insurance in the amount of Two Million Dollars ($2,000,000.00) - comprehensive or commercial general liability insurance to include coverage for participants, volunteers (if any) and attendees and the certificate of insurance must so reference or Tenant must provide a separate policy satisfactory to the Port which provides equivalent coverage.

Notwithstanding the foregoing, Tenant shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute insurance coverage required herein with insurance coverage maintained by one or more of Tenant's agents, vendors, contractors or subcontractors as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of Section 20.2 of the Master Lease.

11. CONSEQUENCES OF DEFAULT.

If Tenant, or Event Manager, fails to comply with the requirements herein more than two times in any given twelve (12) month period, Port may, in its sole and absolute discretion, revoke the permission provided under this Lease to hold Special Events on the Premises, including permission for ongoing or pending Special Events previously approved by the Port.

Exhibit H-1

Building Permit Requirements:

1. Application – Submittal of an application with two (2) sets of plans is required for construction and erection of temporary buildings or structures. Plans must include Engineer signed and stamped drawings/documents. Additionally, Engineer shall provide a signed written statement with seal stating the design is in conformance with all pertinent California Building Codes.

2. On Site Inspection and Observation/Completion Letter – A Civil/Structural Engineer licensed to practice in the State of California shall be on site to perform a visual observation of the structural system to ensure that the work was performed in general conformance with the approved construction documents. The same Civil/Structural Engineer shall provide a stamped written statement with a seal that a site visit has been made and that, to the best of the Engineer's knowledge, the structural system was built in general conformance with the approved construction documents, and that deficiencies, if any, have been resolved.

3. Final Inspection – Prior to occupancy, an inspection is required by a Port Building Inspector. The signed Observation/Completion Letter with seal shall be provided to the Port Building Inspector.

Exhibit H-2

SAN FRANCISCO ENTERTAINMENT COMMISSION
Good Neighbor Policy

GOOD NEIGHBOR POLICIES FOR NIGHTTIME ENTERTAINMENT ACTIVITIES. Where nighttime entertainment activities, as defined by this permit are conducted, there shall be procedures in place that are reasonable calculated to insure that the quiet, safety and cleanliness of the premises and vicinity are maintained. Such conditions shall include, but not limited to, the following:

1 Notices shall be well-lit and prominently displayed at all entrances to and exits from the establishment urging patrons to leave the establishment and neighborhood in a quiet, peaceful and orderly fashion and to please not litter or block driveways in the neighborhood.

2 Employees of the establishment shall be posted at all entrances and exits to the establishment during the period from 10:00 pm to such time past closing that all patrons have left the premises. These employees shall insure that patrons waiting to enter the establishment and those exiting the premises are urged to respect the quiet and cleanliness of the neighborhood as they walk to their parked vehicle or otherwise leave the area.

3 Employees of the establishment shall walk a 100-foot radius from the premises some time between 30 minutes after closing time and 8:00 am the following morning, and shall pick up and dispose of any discarded beverage containers and other trash left by area nighttime entertainment patrons.

4 Sufficient toilet facilities shall be made accessible to patrons within the premises, and toilet facilities shall be made accessible to prospective patrons who may be lined up waiting to enter the establishment.

5 The establishment shall provide outside lighting in a manner that would illuminate outside street and sidewalk areas and adjacent parking, as appropriate.

6 The establishment shall provide adequate parking for patrons that would encourage use of parking by establishment patrons. Adequate signage shall be well-lit and prominently displayed to advertise the availability and location of such parking resources for establishment patrons.

7 The establishment shall provide adequate ventilation within the structures such that doors and/or windows are not left open for such purposes resulting in noise emission from the premises.

8 There shall be no noise audible outside the establishment during the daytime or nighttime hours that violates the San Francisco Municipal Code Section 49 or 2900 et. seq. Further, absolutely no sound from the establishment shall be audible inside any surrounding residences or businesses that violates San Francisco Police code section 2900.

9 The establishment shall implement other conditions and/or management practices necessary to insure that management and/or patrons of the establishments maintain the quiet, safety and cleanliness of the premises and the vicinity of the use, and do not block driveways of neighboring residents or businesses.

10 Permit holder shall take all reasonable measures to insure the sidewalks adjacent to the premises are not blocked or unnecessarily affected by patrons or employees due to the operations of the premises and shall provide security whenever patrons gather outdoors.

11 Permit holder shall provide a cell phone number to all interested neighbors that will be answered at all times by a manager or other responsible person who has the authority to adjust volume and respond to other complaints whenever entertainment is provided.

12 Permit holder agrees to be responsible for all operation under which the permit is granted including but not limited to a security plan as required.

13 In addition, a manager or other responsible person shall answer a cell phone for at least two hours after the close of business to allow for police and emergency personnel or other City personnel to contact that person concerning incidents.

PORT OF SAN FRANCISCO
ZERO WASTE EVENTS AND ACTIVITIES POLICY

February 2012

The Port of San Francisco is proud to host numerous events on Port property each year. These include fundraising walks and runs, "tailgate parties" at athletic events, Christmas tree sales, 4th of July Celebration, Oktoberfest, Fleet Week, and the proposed 34th America's Cup events (subject to pending environmental review). Some events can generate public participation of 5,000 or more people during the period of the event. Large outdoor events of this size typically generate a variety of plastic wastes from the sale of water in single-use bottles, the use of non-compostable plastic food ware, and the distribution of plastic bags to customers for food, merchandise and souvenirs. Along the Port's facilities, the inherent challenges of waste management at a large event are compounded by a windy environment and proximity to the San Francisco Bay.

Plastics

Several plastic waste items have significant environmental impacts. Single use plastic bags are difficult to recycle and can contaminate existing recycling and composting streams. These products are easily scattered by the wind and can create significant litter problems on shore and in water. Single-use plastic water bottles are resource intensive to produce, fill and transport, and contribute to waste management challenges at events. Non-food product plastic packaging is also difficult to recycle, may create a significant litter problem and harm the marine environment. The National Oceanic and Atmospheric Administration (NOAA) has recognized burst latex and Mylar balloons as a commonly reported source of marine debris. Balloons drift onto the surface of water and mimic the appearance of jellyfish and other floating organisms that are a natural food source for turtles, fish, dolphins, and shorebirds.

Plastic wastes are of increasing concern in marine environments and are a focus of volunteer and non-profit clean-up activities along the waterfront and bay shoreline. Plastics from litter, stormwater and maritime sources enter the marine environment where they degrade into microscopic bits and damage the ecology of our oceans. They can entangle wildlife and disrupt their internal organs and, when digested by marine life plastics can function as a pathway of exposure to several pollutants such as polychlorinated biphenyls (PCBs), dichlorodiphenyltrichloroethane (DDTs) and polycyclic aromatic hydrocarbons (PAHs). These pollutants can bio-accumulate and bio-magnify in the food chain, eventually making their way into human food sources. There are five ocean gyres, or large bodies of water that contain massive accumulations of degraded plastics around the globe.

Food-Related Wastes and Packaging

Large events produce large volumes of food-related wastes and packaging. San Francisco Special Events Ordinance No. 73-89 requires any applicant seeking permission for the temporary use or occupancy of a public street, a street fair or an athletic event within the City and County that includes the dispensing of beverages or which generates large amounts of other materials to submit a recycling plan to the department issuing the permit for the event or activity. Recycling plans shall include arrangements for collection and disposition of source separated recyclables and/or compostables by a service provider of the event organizer. San Francisco offers one of the most successful and comprehensive large municipal food scrap collection programs in the nation.

Events at the Port of San Francisco attract tourists who may be less familiar with the City's recycling and composting programs than residents and local business owners. In the experience of the Department of the Environment, the best way to manage food waste streams at large events is to require the use of either compostable or durable, reusable food service ware.

Exclusive use of compostable food service ware facilitates source separation and the diversion of organic materials from landfill, mitigates contamination in the City's recycling programs, and streamlines composting and related waste diversion activities during large events. A wide variety of compostable food service ware and bags are available in the marketplace. These are made from renewable resources such as paper, corn starch and sugarcane.

Reusable Water Bottles and Refilling Stations

The City's water delivery system consistently provides among the purest, safest drinking water in the nation from spring snowmelt stored in the Hetch Hetchy Reservoir and flowing down the Tuolumne River. Re-usable water bottles are easy to refill and use of Hetch Hetchy water guarantees a high quality of water for the public. Durable or compostable service ware can be combined with water filling stations to further reduce the need for single-use plastic packaging.

The Port Commission adopts the following measures to address the concerns outlined above and to 1) ensure that food waste streams from large outdoor events can be easily composted, and 2) marine life in the Bay is protected from plastics and litter through elimination or reduction of plastics at these events.

1. The provisions of this Policy are mandatory for all events or activities ("Events") on Port property that the Port expects will attract 5,000 or more people aggregated over the number of days the event is held. Examples of these Events include but are not limited to: exhibitions or presentations of sporting events, tournaments, concerts, musical and theatrical performances and other forms of live entertainment, public ceremonies, fairs, carnivals, markets, shows, fundraising events, races or other public or private exhibitions and activities related thereto. This Policy shall apply to all persons or entities organizing, sponsoring or hosting an Event, including all vendors, subcontractors and agents ("Event Organizers") for

an Event. Event Organizers of Events with an expected attendance of less than 5,000 people are strongly encouraged to comply with this Policy.

2. The sale, use and distribution of single-use plastic water bottles are prohibited. The Event Organizer must provide "water filling stations" supplied either by the San Francisco Public Utilities Commission or a vendor approved by the Port's Executive Director or her or his designee for use by individuals with reusable water bottles. This prohibition applies only to single-use plastic bottles that are used for non-carbonated or non-flavored water.

3. The sale, use and distribution of single-use disposable plastic bags are prohibited. The Event Organizer must use alternatives to single-use plastic bags such as recyclable paper, compostable plastic (preferably marine degradable) and/or reusable bags as those terms are defined by the City's Plastic Bag Reduction Ordinance.

4. The sale, use and distribution of single-use non-compostable plastic food ware are prohibited. The Event Organizer may only sell, use and distribute food service ware that is either labeled "compostable" and meets American Society for Testing and Materials (ASTM) standards for compostability or that is durable, washable, and reusable.

5. All compostable plastic food service ware must meet ASTM D-6400 standards for compostable plastics, have BPI certification (www.BPIworld.org), and be clearly labeled with a color-coded (green) identifying marker, such as a green sticker, stripe or band on all pieces of the product (for example the cup and lid must both be labeled), or other certification standards (such as marine degradability) as may be recommended from time to time by the San Francisco Department of the Environment and approved by the Port Executive Director.

6. The intentional release of balloons on Port property in connection with an Event subject to this Policy is prohibited.

7. Event Organizers are encouraged to minimize packaging and avoid the use of disposable plastic packaging.

8. The Port reserves the right at any time and from time to time to revise this Policy or to make such other and further Rules and Regulations as the Port shall determine are in the best interest of the Port, the San Francisco Bay, and the community, or that comply with City law.

9. For Events that the Port expects will attract 5,000 or more people in the aggregate, all licenses, leases, or other real property agreements with Event Organizers entered into after the date of adoption of this Policy by the Port Commission ("the adoption date"), and all amendments to licenses, leases, or other real property agreements with Event Organizers made beginning in 2012 shall require the Event Organizer to comply with this Policy. Such Event Organizer's failure to comply with this Policy shall be deemed a material breach of the agreement and the Port may

pursue remedies, including liquidated damages and termination of the agreement.

10. The Port Commission may grant a waiver of any of the provisions of this Policy, in its sole discretion, if the provision that is waived is replaced by an action that (i) protects the Port's and Bay's natural habitat, (ii) is compliant with law, and (iii) is in keeping with the environmental spirit of the Port's goals herein.

This Policy for Zero Waste Events and Activities shall apply to all events on Port property with a total expected attendance of 5,000 or more people aggregated over the number of days the event is held. This Policy for Zero Waste Events and Activities also serves as non-mandatory goals for events with an expected attendance of less than 5,000 people.

Exhibit H-4

SF Administrative Code Requirements for Special Events Workers

SEC. 21C.8. PREVAILING RATE OF WAGES REQUIRED FOR TRADE SHOW AND SPECIAL EVENT WORK.

(a) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or Agreement awarded, let, issued, or granted by the City for the use of property owned by the City must require that any Individual engaged in Exhibit, Display, or Trade Show Work at a Special Event be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the Contract, Lease, Franchise, Permit or Agreement is being performed. All Contracts, Leases, Franchises, Permits or Agreements subject to this Section 21C.8 shall include a provision in which the Contractor agrees to comply with, and to require Subcontractors to comply with, the obligations imposed by this Section.

(b) **Definitions.** For purposes of this Section 21C.8, the following definitions shall apply:

"City" shall mean the City and County of San Francisco.

"Contract, Lease, Franchise, Permit, or Agreement" shall mean an agreement with the City for the use of property owned by the City, but shall not include any contract, lease, franchise, permit, or agreement for:

A. Celebration of a marriage, domestic partnership, or similar civil union;

B. The presentation of a Special Event to which the public has free access when the Special Event is in a public park, on a public street, or on property under the jurisdiction of the Port Commission, and the advertising and promotion for the Special Event is less than $10,000;

C. Any permit or agreement to engage in film production pursuant to Chapter 57 of this Code or under the circumstances set forth in Section 57.7 of this Code;

D. In any circumstance where application of this Section 21C.8 would be preempted by federal or state law;

E. Any Special Event for which the time required for the set-up is three hours or less and the number of individuals working on the set-up is no more than two.

F. Any Special Event where the Special Event itself takes five hours or less.

G. Any Special Event that requires the payment of prevailing wage rates applicable to public works projects.

H. A street fair organized by and for which a permit has been issued to a nonprofit entity, where the street fair is free and open to the public and does not have as a primary purpose the advertising or promotion of a product or service.

"Convention" shall mean an organized association of persons with a common interest, including but not limited to a professional, commercial, political, social, cultural, vocational, recreational, or fraternal interest, who meet in a hotel, convention center, or other building to discuss or act on matters affecting their common interest or to participate in activities related to their common interest. Attendees at a "Convention" come mainly from places other than San Francisco.

"Exhibit, Display, or Trade Show Work" shall mean the on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, or decorative materials in connection with or related to a Special Event.

"Exposition" shall mean a large-scale public exhibition with a primary though not necessarily exclusive purpose of promoting one or more products, services, or businesses.

"On-site" shall mean the site of the Special Event, which may occur in enclosed space or open space or both. If the primary site of the Special Event is enclosed space, "On-site" shall include open space within 150 feet of the enclosed space that is the primary site of the Special Event. "On-site" shall also include public rights of way, including but not limited to a street or sidewalk, as to which a City permit, including but not limited to an ISCOTT (Interdepartmental Staff Committee on Traffic and Transportation) permit, has been issued in connection with the Special Event.

"Prevailing Rate of Wages" shall mean that rate of compensation as determined in Section 21C.7.

"Special Event" shall mean any Trade Show, Convention, Exposition, or other Temporary Event with the characteristics of a Trade Show, Convention, or Exposition, that involves Exhibit, Display, or Trade Show Work.

"Temporary Event" shall mean an event lasting no more than six months.

"Trade Show" shall mean a gathering in which one or more businesses or association of businesses in one or more industries or professions show their products or services to possible customers or patrons. A "Trade Show" may include but is not limited to a gathering in which there are exhibits, displays, or demonstrations of specific products or services or that highlight all or part of an industry or profession.

(c) **Preemption.** Nothing in this Section 21C.8 shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law.

(d) **Operative Date and Application.**

(1) This Section 21C.8 shall become operative upon the initial setting of a Prevailing Rate of Wages for Exhibit, Display, or Trade Show Work by the Board of Supervisors. This initial Prevailing Rate of Wages shall be set in accordance with the process established in Section 21C.7(c)(1), except the Civil Service Commission shall submit to the Board of Supervisors data as to the Prevailing Rate of Wages no later than the first week in August 2014. Thereafter, the Commission shall submit data as to the Prevailing Rate of Wages for Exhibit, Display, or Trade Show Work on or before the first Monday in November each year, including 2014, in accordance with Section 21C.7(c)(1).

(2) This Section 21C.8 is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or Agreement issued or entered into by the City. This Section shall only apply to Contracts, Leases, Franchises, Permits, or Agreements entered into on or after the operative date of this Section.

(e) **Severability.** If any provision or provisions of this Section 21C.8 or any application thereof is held invalid, such invalidity shall not affect any other provisions or applications of the Section.

(Added by Ord. 90-14, File No. 140383, App. 6/19/2014, Eff. 7/19/2014)

MASTER LEASE EXHIBIT I

WORKFORCE DEVELOPMENT PLAN

(Pier 70 28-Acre Site)

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PIER 70 28-ACRE SITE WORKFORCE DEVELOPMENT PLAN

I. Project Background. The development plan for the 28-Acre Site under the Transaction Documents provides for the development of a new mixed-use neighborhood composed of office, retail, market rate and affordable residential uses, as well as entirely new infrastructure, utilities, parks and open space. This Workforce Development Plan sets forth the activities Developer and Vertical Developer shall undertake, and require their Construction Contractors, Consultants, Subcontractors, Subconsultants, and Commercial Tenants, as applicable, to undertake, to support workforce development in both the construction and end use phases of the 28-Acre Site Project, as set forth in this Workforce Development Plan.

The Port and Developer have entered into the DDA that provides for the development of the 28-Acre Site Project in a series of Phases. In connection with the DDA, the Port and the Developer will enter into a Master Lease providing Developer the right to construct Horizontal Improvements within the 28-Acre Site Project after Port approval of Phase Submittals and issuance of necessary Regulatory Approvals. Developer will enter into contracts with Contractors and Consultants to construct all Horizontal Improvements allowed under the Master Lease.

The DDA also sets forth a process for the conveyance of Option Parcels by Parcel Leases to Vertical Developers. When a Vertical Developer is selected, the Port and the Vertical Developer will enter into a Vertical DDA that provides the procedures for the Port's delivery of a Parcel Lease to the Vertical Developer and sets forth the rights and obligations for the Vertical Developer's construction of Vertical Improvements and Deferred Infrastructure. Vertical Developers will enter into contracts with Construction Contractors and Consultants to construct the Vertical Improvements allowed in the Vertical DDAs. Upon completion of the Vertical Improvements, the applicable Parcel Lease, between the Port and the Vertical Developer, shall govern the operation and use of the Vertical Improvements.

II. Purpose of the Workforce Development Plan. This Workforce Development Plan sets forth the employment and contracting requirements for the construction and operation of the 28-Acre Site Project. This Workforce Development Plan has been jointly prepared by the Port and Developer (on behalf of itself and each Vertical Developer), in consultation with others including OEWD and other relevant City Agencies.

The purpose of this Workforce Development Plan is to ensure training, employment and economic development opportunities are part of the development and operation of the 28-Acre Site Project. This Workforce Development Plan creates a mechanism to provide employment and economic development opportunities for economically disadvantaged persons and San Francisco residents. The Port and Developer agree that job creation and equal opportunity contracting opportunities in all areas of employment are an essential part of the redevelopment of Pier 70. The Port and Developer agree that it is in the best interests of the 28-Acre Site Project and the City for a portion of the jobs and contracting opportunities to be directed, to the extent possible based on the type of work required, and subject to collective bargaining agreements, to local, small and economically disadvantaged companies and individuals whenever there is a qualified candidate.

This Workforce Development Plan identifies goals for achieving this objective and outlines certain measures that will be undertaken in order to help ensure that these goals and objectives are successfully met. In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project.

This Workforce Development Plan requires:

- Developer or Vertical Developers to fund certain OEWD job readiness and training programs run by CityBuild and TechSF.

- Developer or Vertical Developer shall include in all leases, subleases or other occupancy contracts provisions that require all Permanent Employers that occupy more than 25,000 gsf to enter into a First Source Hiring Agreement (in the forms attached hereto as Attachment A-1 and Attachment A-2) that will require participation in the City's Workforce System towards the hiring goals of Chapter 83 hiring goals applicable to Covered Operations for First Source referrals and, where applicable, partnership with TechSF. Developer shall also include in such leases, subleases or other occupancy contracts provisions that require Lessees and service providers to identify a single point of contact and contact OEWD's Business Services team to discuss its obligations under the First Source Hiring Agreement.

- On an annual basis, Developer shall provide First Source program and contact information to Permanent Employers that occupy less than 25,000 gsf, so they may avail themselves of referral services offered by OEWD.

- Developer and Vertical Developers of projects that are not otherwise covered by local hire requirements to enter into a First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

- Developer and Vertical Developers to meet the hiring and apprenticeship goals applicable to certain construction work for Local Residents and Disadvantaged Workers for Covered Projects as set forth in Attachment B (Local Hiring Requirements).

- Developer and Vertical Developers to meet the utilization and outreach goals applicable to certain construction work for Local Business Enterprises in accordance with the requirements set forth in Attachment C (LBE Utilization Plan).

- Developer to meet the outreach goals applicable to the initial leasing of retail space suitable for use by local diverse small businesses.

The foregoing summary is provided for convenience and for informational purposes only. In case of any conflict between this Workforce Development Plan and the ***DDA***, the provisions of this Workforce Development Plan shall control.

III. Workforce Development Plan.

A. DEFINITIONS

The following terms specific to this Workforce Development Plan have the meanings given to them below or are defined where indicated. Other initially capitalized terms are defined in the **Appendix Part B** or in other Transaction Documents. This Workforce Development Plan and all Workforce-Development Plan-specific definitions will prevail over any other Transaction Document in relation to the rights and obligations of Developer's and Vertical Developers with respect to workforce development. All references to the DDA or Vertical DDA, as applicable, include this Workforce Development Plan unless explicitly stated otherwise.[1]

"Chapter 83" is defined in Section III.D.2 hereof.

"Commercial Activity" means retail sales and services, restaurant, hotel, education and office uses, technology and biotechnology business, and any other non-profit or for-profit commercial uses permitted under the SUD that are conducted within a Vertical Improvement.

"Commercial Lease" is defined in Section III.D.2 hereof.

"Commercial Tenant" means a tenant, subtenant or other occupant that enters into a lease, sublease or other occupancy contract for a Covered Operation.

"Construction Contractor" means a construction contractor hired by or on behalf of Developer or a Vertical Developer who performs Construction Work on the 28-Acre Site or other construction work otherwise covered under the LBE Utilization Plan or First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

"Construction Work" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement.

"Construction Workforce Requirements" is defined in Section III.C.1 hereof.

"Consultant" is defined in Attachment C attached hereto.

"Covered Operations" means (i) Commercial Activity which results in the expansion of entry and apprentice level positions that are located within a newly constructed Vertical Improvement or an addition, or alteration thereto, where the Vertical Improvement (or addition or alteration thereto) contains more than 25,000 gross square feet in floor area, and (ii) the operation of a Residential Project containing more than 25,000 square feet or more than 10 Residential Units. Covered Operations do not include (a) any operations or activities conducted by tenants, subtenants or owners of Residential Units, (b) Residential Projects containing less than 25,000 square feet or fewer than 10 dwelling units, (c) Vertical Improvements containing less than 25,000 square feet and (d) activities or operations conducted by tenants, subtenants and other occupants of less than 25,000 gross square feet of sublease space within a Vertical Improvement.

"Disadvantaged Worker(s)" is defined in Attachment B attached hereto.

"Final, Binding and Non-Appealable" means 90-days after the subject approval, or if a third party files an action challenging the approval during such 90-day period, thirty days after the final judgment or other resolution of the action or issue.

"FSHA" means the City's First Source Hiring Administration.

"FSHA Operations Agreement" means a First Source Hiring Agreement for Business, Commercial, Operation and Lease Occupancy of the Building, for Permanent Employers or for Permanent Tech Employers, as more particularly described in Section III.D.2. hereof.

"Internship" shall mean a learning and career preparation method that occurs within the context of a course or program. Internships include career exploration and direct experience and include guidance by staff, mentors, employers, and peers. An intern obtains a good understanding of the requirements of the occupation and an overview of all aspects of their chosen industry, and develops college and career readiness and success skills, such as critical thinking, problem-solving, collaboration and communication.

"Job Readiness and Training Funds" is defined in Section III.B.1 hereof.

"Lessee" shall mean a Tenant, business operator and any other occupant of a commercial office building. Lessee shall include every person, tenant, subtenant, or any other entity occupying the building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

"Local Business Enterprise(s)" or **"LBE"** means a firm that has been certified as an LBE as set forth in Administrative Code Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance).

"Local Resident(s)" is defined on Attachment C attached hereto.

"NEDO" is a neighborhood economic development organization.

"OEWD" means the City's Office of Economic & Workforce Development.

"**Operations Workforce Requirements**" is defined in Section D.1 hereof.

"**Permanent Employer**" shall mean each employer in a Covered Operation.

"**Permanent Tech Employer**" shall mean a Permanent Employer that both (i) employs primarily Technology Occupations and Technology-Enabled Occupations, and (ii) occupies more than 25,000 gsf within the 28-Acre Site Project.

"**Prevailing Rate of Wages**". The Prevailing Rate of Wages as defined in Section 6.1, and established under subsections 6.22(e)(3) and 6.22(f), of the Administrative Code.

"**Prevailing Wage Covered Project**" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

"**Referral**" shall mean a member of the Workforce System who has participated in an OEWD workforce training program.

"**Registered Apprenticeship**" shall mean a work experience that combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at the outset of a training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Registered apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, registered apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

"**Subconsultant**" is defined in Attachment C attached hereto.

"**Subcontractor**" is defined in Attachment A3 attached hereto.

"**TechSF**" shall mean a program which has been established by the City and County of San Francisco and managed by the OEWD, to provide training, education and job placement assistance services to jobseekers, and connects local employers to a qualified workforce in order to help all involved benefit from the growth of the local technology industry, Technology-Enabled Occupations and Technology Occupations across all sectors. For the purposes of this document, this term will refer to any successor programs, which provide similar services.

"**Technology-Enabled Occupations**" shall mean occupations that require skills related to Information, Media and ICT Literacy as highlighted in California's Digital Literacy definition, "[one's capacity] for using digital technology, communications tools, and/or networks in creating, accessing, analyzing, managing, integrating, evaluating, and communicating information in order to function in a knowledge based economy and society." Technology-Enabled Occupations require the ability to analyze, access and work with common computing and communications devices, operating systems, networking systems and applications. These occupations require the ability to understand and use ICT computing, communications and information technologies; use technologies for advance research, analysis and administrative operations. These occupations also require the ability to create, interpret and work with an increasing variety of digital media.

"Technology Occupations" shall mean positions that require core competencies in information and communication technology (ICT) systems and solutions. These develop and deploy technologies and infrastructures to both support their enterprise and users. Additionally, technology occupations require skills in research, design, development analysis of custom technological products; including but not limited to software, application, and cloud-based products. Technology occupations also include positions that related to the sales, marketing and engineering of these technology-based products. occupations typically occur in the major industry clusters as defined by the North Industry Classification System (NAICS): Software Publishers; Wired Wireless Telecommunications; Satellite Communications; Data Processing, Hosting and Services; Internet Publishing and Broadcasting and Web Search Portals; and Computer Design. Major technology occupation clusters as identified by the Bureau of Labor include but are not limited to: information support and services; network systems; program software development; and web and digital communicat

"Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

"Work Experience" shall mean any experience which combine an on-the-job learning component with related classroom instruction designed to maximize the value of on-the-job experiences. Work Experience Education is classified in the California Education Code as General, Exploratory, or Vocational. General work experience exposes students to the world of work; exploratory work experience also allows students to experience a variety of careers; and vocational work experience allows students to explore a career interest in greater depth.

"Workforce System" is defined in Attachment A1 attached hereto.

B. WORKFORCE JOB READINESS AND TRAINING FUNDS.

1. **Application**. Developer will provide OEWD with $1 Million in funding to support the job training and readiness programs run by CityBuild and TechSF as more particularly set forth in this **Section III.B.1** (all funds required under this Section III.B.1, the **"Job Readiness and Training Funds"**). The funding requirements under Sections III.B.2 and III.B.3 will be binding on Developer and its successors and assigns under the DDA. The funding requirements under Section III.B.4 will be binding on Developer or may be assigned to the applicable Vertical Developer under the terms of their Vertical DDA and/or Parcel Lease.

2. **CityBuild Program**. The 28-Acre Site Project will pay a total of **$250,000** across the three Phases of development in accordance with this Section III.B.2 that the City will use to fund CityBuild programs.

   a. Purpose and Amount. The 28-Acre Site Project will pay the City a total of $250,000 that the City will use to fund CityBuild programs run by OEWD's Workforce Development Division. Funds will be allocated by amount and program in OEWD's discretion, but such programs may include the CityBuild Academy, an 18-week pre-apprenticeship training

program that prepares citywide residents for entry into the trades; the Construction Administration & Professional Service Academy, an 18-week program offered at City College of San Francisco that prepares San Francisco residents for entry-level careers as professional construction office administrators; or the CityBuild Women's Mentorship Program, a volunteer program that connects women construction leaders with experienced professional and mentors.

b. Manner and Timing of Payment. Developer will pay the CityBuild program funds in accordance with the following schedule:

i. Phase 1: Developer will pay the City $83,333 within fifteen days after the Phase 1 Approval becomes Final, Binding and Non-Appealable.

ii. Phase 2: Developer will pay the City $83,333 within fifteen days after the Phase 2 Approval becomes Final, Binding and Non-Appealable.

iii. Phase 3: Developer will pay the City $83,334 within fifteen days after the Phase 3 Approval becomes Final, Binding and Non-Appealable.

3. **CityBuild Services.** The 28-Acre Site Project will pay a total of **$100,000** that will be used to remove barriers to permanent employment.

a. Purpose and Amount. The 28-Acre Site Project will pay $100,000 to fund the delivery of services to assist individuals, interested in entering CityBuild or the trades, with addressing barriers to employment. The services will offer case management and supportive services (driver license, housing, union dues, tools, uniform/boots). The resources will be primarily for Bayview Hunter's Point neighborhood residents and surrounding areas. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction. These funds will be distributed directly to Young Community Developers. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction.

b. Manner and Timing of Payment. Developer will make the payment directly to Young Community Developers within fifteen days after the Phase 1 Approval become Final, Binding and Non-Appealable.

4. **TechSF Bridge Training for BVHP/Dogpatch Communities & Targeted End Use Jobs.** The 28-Acre Site Project will pay $650,000 associated with commercial-office development in Phase 1 and in future Phases, in accordance with this Section.

a. Purpose and Amount. The Vertical Developers of the first commercial-office project in Phase 1 and the Vertical Developer of the first commercial-office project to be developed in any subsequent Phase will be required to pay funds to the City that will be used by OEWD to support moderate-skilled job training and education programs that prepare individuals in the Bayview Hunter's Point neighborhood residents and surrounding areas in zip codes 94124, 94107, 94103, 94102, 94110, 94134, 94115, and 94112 and other disadvantaged citywide residents for technology (e.g., IT administrator, data scientist, etc.) and technology-enabled (e.g., office administration) office skills positions for Lessee's new employee hiring and incumbent employee advancement offered through the TechSF initiative or OEWD-identified partners. Tech SF will customize technology training based on the types of Lessee leasing space within the Phase, which may include office skills, advanced manufacturing or biotech technology training.

b. Manner and Timing of Payment.

i. Phase 1: The Vertical DDA for the first office-commercial project in Phase 1 will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

ii. Phase 2 or 3: The Vertical DDA for the first office-commercial project to be proposed in Phase 2 (or the first office-commercial project to be proposed in Phase 3 if no office commercial project is proposed for Phase 2) will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

c. Accounting. Developer and Vertical Developers will have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in accordance with the provisions of this **Section III.B.4**. The Job Readiness and Training Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall maintain records as part of the City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available upon Developer's request.

d. Board Authorization. By approving the DDA and form of Vertical DDA, including this Workforce Development Plan, the Board of Supervisors authorizes the City (including OEWD) to accept and expend the Job Readiness and Training Funds paid by the Developer as set forth herein. The Board of Supervisors also agrees that any interest earned on any the Job Readiness and Training Funds shall remain in designated accounts for use by OEWD for workforce readiness and training consistent with this Exhibit O and shall not be transferred to the City's general fund.

C. CONSTRUCTION WORK

1. **Application**. Developers, Vertical Developers and Construction Contractors shall comply with the applicable provisions of this **Section III.C.1** (the "**Construction Workforce Requirements**") that are requirements of the DDA with respect to Developer, and of the Vertical DDA with respect to Vertical Developers.

2. **Local Hiring Requirements**. Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must comply with the Local Hiring Requirements set forth on Attachment B attached hereto with respect to Covered Projects (as defined therein).

3. **First Source Hiring Program for Construction Work**. Developer, with respect to any Horizontal Improvements that are not subject to the Local Hiring Requirements, and each Vertical Developer with respect to each Vertical Improvement that is not subject to the Local Hiring Requirements, will enter into a Memorandum of Understanding with the City's First Source Hiring Administration in the form attached hereto as Attachment A-3 under which each Developer and Vertical Developer must include in their contracts with Construction Contractors for Construction Work that is not subject to the Local Hiring Requirements, a requirement that the applicable Construction Contractor enter into a First Source Hiring Agreement in the form attached thereto as Exhibit A, and to provide a signed copy of the relevant Form exhibits to the FSHA.

4. **Local Business Enterprise Requirements**. Developer, all Vertical Developers and their respective Contractors and Consultants (as defined in Attachment C) must comply with the Local Business Enterprise Utilization Program set forth in Attachment C hereto.

5. **Obligations; Limitations on Liability**. Developer and each Vertical Developer shall use good faith efforts, working with the OEWD or its designee, to enforce the applicable Construction Workforce Requirements with respect to its Construction Contractors (as defined above), Contractors and Consultants (as defined in Attachment C), and each Construction Contractor, Contractor and Consultant, as applicable, shall use good faith efforts, working with OEWD or its designee, to enforce the Construction Workforce Requirements with respect to its Subcontractors and Subconsultants (regardless of tier). However, Developer and Vertical Developers shall not be liable for the failure of their respective Construction Contractors, Contractors and Consultants, and Construction Contractors, Contractors and Consultants shall not be liable for the failure of their respective Subcontractors and Subconsultants.

6. **Prevailing Wages**.

   a. Prevailing Wages. Subject to any collective bargaining agreements in the building trades, Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must (A) pay, and

shall require its respective Construction Contractors (and subcontractors regardless of tier) to pay, all persons performing work on a Prevailing Wage Covered Project no less than the applicable Prevailing Rate of Wages, and (B) comply with, and require its Contractors and Subcontractors to comply with, the provisions of Administrative Code 23.61, which requires Contractors and Subcontractors to comply with Administrative Code subsections 6.22(e)(5), (6), (7) and subsection 6.22(f) for any Prevailing Wage Covered Project .

b. Enforcement. City's Office of Labor Standards Enforcement ("*OLSE*") enforces labor laws adopted by San Francisco voters and the San Francisco Board of Supervisors. The Port designates OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the Work.

D. PROJECT OPERATIONS

1. **Application**. Covered Operations within the 28-Acre Site Project will be subject to the applicable First Source Hiring Requirements (including TechSF) and Retail Marketing Requirements set forth in this **Section III.D.1** (collectively, the "**Operations Workforce Requirements**"). The Operations Workforce Requirements will be binding on Vertical Developers entering into Parcel Leases.

2. **First Source Hiring Program for Operations.**

a. First Source Hiring Agreements. Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to comply with the operational requirements of the then-current Administrative Code Chapter 83 ("**Chapter 83**") in accordance with this Workforce Development Plan (subject to limitations on Changes to Existing City Laws as provided in Section 5.3 of the Development Agreement). Compliance with Chapter 83 will be achieved by the following:

i. Vertical Developer will include in all leases, subleases or other occupancy contracts for Covered Operations (each, a "**Commercial Lease**"), a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment A-1.

ii. Vertical Developer will require the applicable party to provide a signed copy of each FSHA Operations Agreement within 10 business days of execution of the Commercial Lease.

iii. With the execution of each applicable Commercial Lease, Vertical Developer will provide information and require Lessee to notify OEWD Business Services.

b. First Source Hiring Agreements for Permanent Tech Employers. The purpose of the FSHA Tech Operations Agreement is to facilitate job training and education opportunities for participants in the TechSF Program. In addition to the First Source Hiring Agreements above, Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to :

i. If Vertical Developer is a Permanent Tech Employer, provide hiring executive(s) contact information to OEWD Business Services for itself, and enter into a FSHA Tech Operations Agreement in the form of Attachment A-2;

ii. Vertical Developer will include in all lease, subleases or other occupancy contracts for Covered Operations (each, a **"Commercial Lease"**), a requirement that the Commercial Tenant to enter into the FSHA Tech Operations Agreement in the form in Attachment A-2; and

iii. Provide contact information for any Commercial Tenant that is a Permanent Tech Employer. Vertical Developer will provide the executive(s) contact information within 10 days of execution of, or, if available, prior to execution of the applicable Commercial Lease, and will provide updated contact information annually thereafter.

iv. With the execution of each applicable Commercial Lease with a Permanent Tech Employer, Vertical Developer will provide information related to TechSF and require Lessee to notify OEWD Business Services staff. Vertical Developer will only be required to provide information as supplied to it by OEWD Business Services staff. If no information is supplied by OEWD Business Services staff, then this subsection will be deemed complete.

3. Local Diverse Small Business Retail Marketing Program.

a. Application. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 in accordance with this Section III.D.3.

b. Program Goals. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 designed to (i) attract and support diverse small businesses in retail, PDR, arts and commercial spaces within the 28-Acre Site, with a specific focus on District 10

entrepreneurs and businesses, and to (ii) leverage resources available through existing local, state and federal programs delivered through local partner organizations (e.g., OEWD, NEDOs, *etc.*). Developer, working with its Vertical Developer Affiliates, will seek to incorporate 5% local small diverse businesses within traditional retail and PDR spaces in the 28-Acre Site Project, excluding Parcel E4.

c. Marketing Program.

i. Using its best available information, Developer will provide in each Phase Submittal, the projected commercial space available in the Phase and a general overview of retail, PDR, arts and commercial spaces that could be available for sublease within the applicable Phase to local diverse small businesses. To the extent feasible, the information will include the items described below, at a conceptual level, with the understanding that the description will be based on Developer's best projections at the time, but will be subject to change as the Phase is developed:

(1) Potential type of use: retail, services, PDR, restaurant, etc.;

(2) Type of space: new construction, rehabilitated space, floor to ceiling heights, likely mechanical systems, loading access, parking availability;

(3) Approximate size of spaces;

(4) Location: building parcels and street/park frontage locations;

(5) Projected timing: timing for delivery of core and shell space availability and anticipated lease sign target date prior to the delivery of core and shell; and

(6) Contact: name of broker or Developer contact for any follow up questions.

ii. Developer will provide Port and OEWD with an update to the information described above within six to eight months after the initial Phase Submittal if the information provided with the Phase Submittal has changed materially.

iii. During each Phase, Developer will coordinate with OEWD and real estate brokers with the goal of identifying small businesses that might lease space within Vertical Improvements in the Phase by complying with the following process:

(1) From and after the applicable Phase Approval, Developer provide information on the potential leasing opportunities to OEWD. OEWD to coordinate businesses, entrepreneurs, and NEDOs about potential opportunities.

(2) OEWD/Small Business Services will provide support through during lease negotiations with local diverse small businesses identified through this marketing program and engage 1-2 NEDOs that serve small businesses with specific focus on those based in District 10. It is anticipated that OEWD will require each NEDO to provide the following services:

(a) Initial consultation to determine potential businesses and entrepreneurs to conduct outreach about potential opportunities at the 28-Acre Site.

(b) Consultation with entrepreneurs and businesses necessary to successfully locate their business at the 28-Acre Site. This could include services typically provided by NEDOs such as business plan support, small business financing, loan applications, understanding bank underwriting criteria, and training in basic financial management concepts, including, building equity, maintaining adequate working capital, managing growth and other issues critical to the growth and financial stability of the businesses.

(c) NEDOs will identify businesses/entrepreneurs that are eligible and interested in leasing space at Pier 70.

(d) NEDOs will share information on outreach events and conversations with OEWD and Developer.

(e) Provide support during lease negotiations with local diverse small businesses identified through this marketing program.

iv. Subject to restrictions on visitor-serving Priority Retail Frontages on Parcels E1, E2 and E3 set forth in Section 7.20 of the DDA, Developer, working through its Vertical Developer Affiliates, will specifically consider neighborhood-serving retail and services that could potentially sublease space subject to Parcel Leases between Port and Vertical Developer Affiliates, including grocery stores, dry cleaners, hardware, after-school programs, recreation and activity spaces, and similar neighborhood-serving businesses.

v. Developer, through its Vertical Developer Affiliates, will engage brokers to manage the overall marketing and outreach strategy for leasing of commercial, retail, and neighborhood spaces within

Option Parcels taken down by Vertical Developer Affiliates, including the Building 12 market hall. When entering into such contracts with brokers, Developer will emphasize the goals of the small business program and the marketing information prepared by Developer at the beginning of each Phase and will require the applicable broker(s) to engage with the businesses that OEWD/NEDOs have identified in clause (iii) above for the potential spaces available.

d. Sublease Commitments. Developer, working through its Vertical Developer Affiliates, will use good faith efforts to market new sublease space coming on the market with the initial opening of each Vertical Improvement to diverse local small businesses that it identifies through the marketing program described in **Subsection III.D.3.c** above, at fair market rents and subject to then-existing market conditions. In order to provide time for the small business to develop, Developer will provide a mutual option to extend after the initial lease term. The initial term and option to extend would be a minimum of 8 years. In its evaluation of potential subtenants hereunder, Developer, acting through its Vertical Developer Affiliates, will consider the history and past success of the proposed retail subtenant and its business, as well as the type of business, its ability to enhance the overall 28-Acre Site Project, and its long term viability. Each such potential subtenant must meet standard experience and financial qualifications associated with investment reporting, including (i) the proposed programmatic layout; (ii) its long term proforma and business model; and (iii) financial qualifications, which may include reasonable guarantees of performance.

E. GENERAL PROVISIONS

1. **Enforcement**. OEWD shall have the authority to enforce the Construction Workforce Requirements and the Operations Workforce Requirements. The Port and OEWD staff agree to work cooperatively to create efficiencies and avoid redundancies and to implement this Workforce Development Plan in good faith, and to work with all of the 28-Acre Site Project's stakeholders, including Developer and Vertical Developers, Construction Contractors (and Subcontractors) and Permanent Employers, in a fair, nondiscriminatory and consistent manner.

2. **Third Party Beneficiaries**. Each contract for Construction Work and Covered Operations shall provide that OEWD shall have third party beneficiary rights thereunder for the limited purpose of enforcing the requirements of this Workforce Development Plan applicable to such party directly against such party.

3. **Flexibility**. Some jobs will be better suited to meeting or exceeding the hiring goals than others, hence all workforce hiring goals under a Construction Contract will be cumulative, not individual, goals for that Construction Contract or

Permanent Employer. In addition, Developer and Vertical Developers shall have the right to reasonably spread the workforce goals, in different percentages, among separate Construction Contracts or Permanent Employers so long as the cumulative goals among all of the Construction Contracts or Permanent Employers at any given time meet the requirements of this Workforce Development Plan. The parties shall make such modifications to the applicable First Source Hiring Agreements consistent with Developer and Vertical Developers' allocation. This acknowledgement does not alter in any way the requirement that Developer, Vertical Developers, Construction Contractors and Permanent Employers comply with good faith effort obligations to meet their respective participation goals for the Construction Work and Covered Operations.

4. **Exclusivity**. In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project. Without limiting the generality of the foregoing, if the City implements or modifies any workforce development policy or requirements after the date of this Workforce Development Plan, whether relating to construction or operations, that would otherwise apply to the 28-Acre Site Project and Developer asserts that such change as applied to the 28-Acre Site Project would be prohibited by the Development Agreement (including an increase in the obligations of Developer, any Vertical Developer, or their contractors under any provisions of the DDA or any Vertical DDA), then the parties shall resolve the issue through the Dispute Resolution procedures of Section III.F below.

F. DISPUTE RESOLUTION.

1. **Meet and Confer**. In the event of any dispute under this Workforce Development Plan (including, without limitation, as to compliance with this Workforce Development Plan), the parties to such dispute shall meet and confer in an attempt to resolve the dispute. The parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Arbitration Provisions of Attachment D (Dispute Resolution) attached hereto, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction.

2. **Arbitration**. Disputes arising under this Workforce Development Plan may be submitted to the provisions of Attachment D (Dispute Resolution) hereof if the meet and confer provision of Section III.F.1 above does not result in resolution of the dispute.

Attachment A-1

Form of First Source Hiring Agreement for Operations

City and County of San Francisco First Source Hiring Program

Office of Economic and Workforce
Development Workforce
Development Division

Attachment A-1: First Source Hiring Agreement

For Business, Commercial, Operation and Lease Occupancy of a Vertical Improvement

This First Source Hiring Agreement (this "FSHA Operations Agreement"), is made as of , by and between (the "Lessee"), and the First Source Hiring Administration, (the "FSHA"), collectively the "Parties":

RECITALS

WHEREAS, Lessee has plans to occupy a portion of the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between [Developer/Vertical Developer] and the City acting through the San Francisco Port Commission;

WHEREAS, the **[Developer/Vertical Developer]** was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract");and

WHEREAS, as a material part of the consideration given by Lessee under the Contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");

[Use the following WHEREAS for Vertical Developer operations of Vertical Improvements]

WHEREAS, Lessee has plans to operate the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between Lessee and the City acting through the San Francisco Port Commission; and

[Use the following WHEREAS for subtenants of Vertical Improvements]

WHEREAS, as a material part of the consideration given by Lessee under the property contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");]

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Operations Agreement, initially capitalized terms shall be defined as follows:

a. "Entry Level Position" shall mean any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.

b. "Developer" shall mean FC Pier 70, LLC, a Delaware limited liability company, including any successor during the term of this FSHA Operations Agreement.

c. "Lessee" shall mean every commercial tenant, subtenant, or any other entity occupying a Workforce Improvement for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer required to enter into a First Source Hiring Agreement as defined in Chapter 83.

d. "Project Site" shall mean the area consisting of an approximately 28-acre site located in the Pier 70 area bounded by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east.

e. "Referral" shall mean a member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

f. "Vertical Developer" shall mean [*insert name of applicable Vertical Developer*], including any successor during the term of a FSHA Operations Agreement.

g. "Vertical Improvement" shall mean a new building that is built at the Project Site.

h. "Workforce Improvement" shall mean Vertical Improvements that are subject to Chapter 83.

i. Workforce System: The First Source Hiring Administration established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire.

Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. Notwithstanding anything to the contrary herein, nothing in this FSHA Operations Agreement precludes Lessee from immediately advertising and filling an Entry Level Position that performs essential functions of its operation prior to notifying OEWD provided, however, the obligations of this FSHA Operation Agreement to make good faith efforts to fill such vacancies permanently with Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business. If Lessee has an immediate need to fill an Entry Level Position that performs essential functions, Lessee shall provide OEWD notice of such position, and the fact that there is an immediate need to fill such position, on or before the date such position is advertised to the general public.

c. This FSHA Operations Agreement shall be in full force and effect as to each Workforce Improvement until ten (10) years following the date Lessee opens for business at the Premises, and all subsequent leases within 10 years of that date. After that date, this FSHA Operations Agreement shall terminate and be of no further force and effect on the parties hereto, but the requirements of Chapter 83 shall continue to apply.

d. Unless otherwise agreed to by the Parties, compliance with this FSHA Operations Agreement shall be determined on an individual Workforce Improvement basis and will be measured by dividing the number of new Entry Level Positions occupied by Referrals by the total number of new Entry Level Positions within the Workforce Improvement. Notwithstanding anything to the contrary, new Entry Level Positions occupied by Referrals within the Project Site, but not within the Vertical Improvement, may, at the election of Developer, be counted towards compliance of the Workforce Improvement for this Agreement.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this FSHA Operations Agreement. Determination of good faith efforts shall be based on all of the following:

a. Lessee will execute this FSHA Operations Agreement and Exhibit B-1 attached hereto upon entering into leases for the commercial space of the Workforce Improvement. Lessee will also accurately complete and submit Exhibit B-1 annually to reflect employment conditions.

b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this FSHA Operations Agreement.

c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public, subject to the provisions of Section 2 above. The Lessee must identify a single point of contact responsible for communicating Entry Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.

d. Lessee attempts to fill at least 50% of open Entry Level Positions with Referrals. Specific hiring decisions shall be the sole discretion of the Lessee.

e. Nothing in this FSHA Operations Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this FSHA Operations Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Operations Agreement.

Lessee's failure to meet the criteria set forth in this Section 3 does not impute "bad faith", but shall trigger a review of the referral process and compliance with this FSHA Operations Agreement. Failure and noncompliance with this FSHA Operations Agreement will result in penalties as defined in SF Administrative Code Chapter 83. Lessee agrees to review SF Administrative Code Chapter 83, and execution of the FSHA Operations Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this FSHA Operations Agreement shall be in writing and sent via mail or email as follows:

If to OEWD:

ATTN:

If to Lessee:

ATTN:

5. ENTIRE AGREEMENT

This FSHA Operations Agreement and the Transaction Documents contain the entire agreement between the parties and shall not be modified in any manner except by an

instrument in writing executed by the parties or their respective successors. If any term or provision of this FSHA Operations Agreement shall be held invalid or unenforceable, the remainder of this FSHA Operations Agreement shall not be affected. If this FSHA Operations Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This FSHA Operations Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Lessee, their obligations shall be joint and several.

Section titles and captions contained in this FSHA Operations Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This FSHA Operations Agreement shall be governed and construed by laws of the State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the following have executed this FSHA Operations Agreement as of the date set forth above.

Date:_____ Signature:_____

Name of Authorized Signer: _____

Company: _____

Address:_____

Phone:_____

Email: _____

Business Name: _____ **Phone:** _____

Main Contact: _____ **Email:** _____

_____ _____

Signature of authorized representative* **Date**

**By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of Exhibit B First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed Exhibit B and Exhibit B-1. Lessee will also complete and submit an Exhibit B-1 annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) If an **Entry Level Position** becomes available.

Section 1: Select your Industry

☐ Auto Repair	☐ Entertainment	☐ Personal Services
☐ Business Services	☐ Elder Care	☐ Professionals
☐ Consulting	☐ Financial Services	☐ Real Estate
☐ Construction	☐ Healthcare	☐ Retail
☐ Government Contract	☐ Insurance	☐ Security
☐ Education	☐ Manufacturing	☐ Wholesale
☐ Food and Drink	☐ I don't see my industry *(Please Describe)*_____	

Section 2: Describe Primary Business Activity

_____

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
mailto:Business.Services@sfgov.orgWebsite: www.workforcedevelopmentsf.org

Attachment A-2

Form of First Source Hiring Agreement for Tech Operations

[see attached]

Attachment A-2: Form of First Source Hiring Agreement
For Commercial Office Lease Occupancy by Permanent Tech Employers

This First Source Hiring Agreement (this "**Agreement**") for Permanent Tech Employers, is made as of , 20XX by and between (the "**Lessee**"), and the First Source Hiring Administration, (the "**FSHA**"), collectively the "Parties":

RECITALS

WHEREAS, the San Francisco Port Commission and **[insert name of master tenant under a Parcel Lease]** (the "**Port Tenant**") are parties to that certain Parcel Lease dated as of _____, 20XX (the "**Parcel Lease**") for the building at [Address] (the "**Premises**"); and

WHEREAS, the Workforce Development Plan attached as Exhibit [XX] to the Parcel Lease (the "**Workforce Development Plan**") requires all Covered Operations that are also Permanent Tech Employers (as those terms are defined in the Workforce Development Plan) to enter into a First Source Hiring Agreement for operations in the form of this Agreement, in satisfaction of the requirements of the City's First Source Hiring Program under Chapter 83 of the San Francisco Administrative Code ("**Chapter 83**"); and

WHEREAS, Lessee is a Permanent Tech Employer and is **[the Port Tenant under the Parcel Lease][a "Covered Subtenant" under that certain Sublease with the Port Tenant dated as of _____, 20XX (the "Covered Sublease")]**; and

WHEREAS, as a material part of the consideration given by Lessee under the **[Parcel Lease][Covered Sublease]**, Lessee, as a Permanent Tech Employer, has agreed to enter into this Agreement that sets forth participation and reporting requirements to participate in the Tech SF Initiative managed by the Office of Economic and Workforce Development (OEWD); and

WHEREAS, the form of this Agreement may be subject to change upon mutual agreement of the Port Tenant or Covered Subtenant, as applicable, and OEWD subject to provisions of the Workforce Development Plan.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "AMI" means unadjusted median income levels derived from the Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

b. "Disadvantaged Worker" as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).

c. Internship: A learning and career preparation method that occurs within the context of a course or program. Internships include careers exploration and direct experience and include guidance by staff, mentors, employers, and peers. An intern obtains a good understanding of the requirements of the occupation and an overview of all aspects of their chosen industry, and develops college and career readiness and success skills, such as critical thinking, problem-solving, collaboration and communication.

d. Local Resident: An individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

e. Permanent Tech Employer shall mean an employer that both (i) employs primarily Technology Occupations and Technology-Enabled Occupations, and (ii) occupies more than 25,000 gsf within the Project.

f. Referral: A member of the Workforce System who has participated in an OEWD workforce training program.

g. Registered Apprenticeship combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at outset of training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Registered Apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, Registered Apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

h. Technology-Enabled Occupations: occupations that require skills related to Information. Media and ICT Literacy as highlighted in California's Digital Literacy

definition, "[one's capacity] for using digital technology, communications tools, and/or networks in creating, accessing, analyzing, managing, integrating, evaluating, and communicating information in order to function in a knowledge based economy and society." Technology-Enabled Occupations require the ability to analyze, access and work with common computing and communications devices, operating systems, networking systems and applications. These occupations require the ability to understand and use ICT computing, communications and information technologies; use technologies for advance research, analysis and administrative operations. These occupations also require the ability to create, interpret and work with an increasing variety of digital media.

i. Technology Occupations: defined as positions that require core competencies in information and communication technology (ICT) systems and solutions. These occupations develop and deploy technologies and infrastructures to both support their enterprise and product users. Additionally, technology occupations require skills in research, design, development and analysis of custom technological products; including but not limited to software, web, application, and cloud-based products. Technology occupations also include positions that are related to the sales, marketing and engineering of these technology-based products. Technology occupations typically occur in the major industry clusters as defined by the North American Industry Classification System (NAICS): Software Publishers; Wired Telecommunications; Wireless Telecommunications; Satellite Communications; Data Processing, Hosting and Related Services; Internet Publishing and Broadcasting and Web Search Portals; and Computer Systems Design. Major technology occupation clusters as identified by the Bureau of Labor Statistics include but are not limited to: information support and services; network systems; program and software development; and web and digital communications.

j. TechSF: A program which has been established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development, to provide training, education and job placement assistance services to jobseekers, and connect local employers to a qualified workforce in order to help all involved benefit from the growth of the local technology industry, and technology-based and technology-enabled occupations across all sectors. For the purposes of this document, this term will refer to any successor programs which provide similar services.

k. TechSF Community Benefits Program: defined in Section 3 hereof.

l. Work Experience: Experience which combine an on-the-job learning component with related classroom instruction designed to maximize the value of on-the-job experiences. Work Experience Education is classified in the California Education Code as General, Exploratory, or Vocational. General work experience exposes students to the world of work; exploratory work experience also allows students to experience a variety of careers; and vocational work experience allows students to explore a career interest in greater depth.

m. Workforce System: The First Source Hiring Administrator established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee is required to hold one meeting with OEWD's Business Services Team regarding the hiring of individuals through TechSF for any available positions in Technology Occupations or Technology-Enabled Occupations. Provided Lessee utilizes nondiscriminatory screening criteria, Lessee shall have the sole discretion to interview and hire any Referrals.

b. Hiring decisions shall be entirely at the discretion of Lessee. Lessee will notify OEWD's Business Services Team of every hire who is a Referral from Tech SF..

c. Lessee will report to OEWD Business Services annually (beginning with the one-year anniversary date of its **[Parcel Lease]|Covered Sublease]** on activities conducted by Lessee under this Agreement related to the compliance of good faith effort obligations enumerated in Section 3 hereof, which may include number of Referrals, hires, or other metrics covered by the TechSF Community Benefits Program.

d. This Agreement will be in full force and effect as to the **[Parcel Lease][Covered Sublease]** until the earlier of [for **Parcel Lease:** ***insert the date that is 10 years from the execution of the Parcel Lease*****||for Covered Subleases and subsequent Subleases within 10-year period:** ***insert the date that is 10 years from the date of execution]***.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Within forty-five days after the commencement of the applicable **[Parcel Lease]|Covered Sublease]**, Lessee will contact OEWD as required by the Workforce Development Agreement. Within six months after the commencement of the applicable **[Parcel Lease]|Covered Sublease]**, or at a later date if agreed to by OEWD, Lessee will prepare and submit to OEWD its community benefits program designed to facilitate job training and education opportunities for participants in the TechSF program or (or successor program designated by OEWD) (the "**TechSF Community Benefits Program**") and will implement the TechSF Community Benefits Program for the term of this Agreement. The TechSF Community Benefits Program shall either consist of the measures in subsections (a) through (c) of this Section 3, or the Lessee will have discretion in designing its own unique TechSF Community Benefits Program to an equal or higher qualitative standard as the measures described below. If a Lessee elects to design its own unique TechSF Community Benefits Program, such program will require approval from OWED, not to be unreasonably withheld. The TechSF Community Benefits Program may be revised annually with the consent of OEWD. The following measures (which may be in addition to other measures reasonably implemented by Lessee) will qualify as compliance with this requirement:

a. Provide indoor space to host temporary jobseeker networking, career panel and other OEWD-identified job placement assistance events related to technology or technology-

enabled occupations through the Workforce System. OEWD/Tech SF would manage the planning, coordination and marketing for events. Programming may include one of the following:

i. hosting one event per year at site location for up to 150 individuals, if requested by OEWD/Tech SF. If no such request is made, then this subsection will be deemed to have been satisfied for the year.
ii. participating in two additional TechSF activities per year.

b. Host at least 5 Work Experience and/or Internship opportunities for every 100 permanent employees per year, targeting OEWD Referrals and Bayview Hunter's Point and surrounding area neighborhood residents, and other Disadvantaged Workers.

c. Volunteer employee time for on-site training opportunities, which could include workplace tours, job shadowing, classroom lectures, mock interviews, career panels, resume workshops, mentoring, student showcases or other supportive activities.
   i. Lessee shall provide 100 employee hours per year (e.g. 25 employees at 4 hours each or other combination to be determined by the Lessee), through company's Community Social Responsibility (CSR) agenda or other policies.

d. Target creating up to five (5) Registered Apprenticeship positions (as that term is defined in the Workforce Development Plan) for every 100 permanent employees, per year, to the extent a USDOL or DAS approved training program exists within the City of San Francisco for occupations which the Lessee is currently hiring for, and interview qualified Referrals through the TechSF Initiative.

Lessee's failure to prepare and implement the TechSF Community Benefits Program set forth in this Section 3 does not impute "bad faith" but shall trigger a review of the referral process and compliance with this Agreement. Violations of this Agreement will be subject to penalties outlined in Chapter 83.

4. COLLECTIVE BARGAINING AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts ("**Collective Bargaining Agreements**"). In the event of a conflict between this Agreement and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Agreement.

5. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services. Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

6. ENTIRE AGREEMENT; MISC.

This Agreement contains the entire agreement between the parties with respect to the subject matter thereunder and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If this Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Lessee, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: _____ Signature:: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

Attachment A3: First Source Hiring Agreement For Construction

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of , by and between the City and County of San Francisco (the "City") through its First Source Hiring Administration ("FSHA") and ("Project Sponsor").

WHEREAS, Project Sponsor, as developer, proposes to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"); and

WHEREAS, the Administrative Code of the City provides at Chapter 83 for a "First Source Hiring Program" which has as its purpose the creation of employment opportunities for qualified Economically Disadvantaged Individuals (as defined in Exhibit A); and

WHEREAS, the Project requires a building permit for a commercial activity of greater than 25,000 square feet and/or is a residential project greater than ten (10) units and therefore falls within the scope of the Chapter 83 of the Administrative Code; and

WHEREAS, Project Sponsor wishes to make a good faith effort to comply with the City's First Source Hiring Program.

Therefore, the parties to this Memorandum of Understanding agree as follows:

A. Project Sponsor, upon entering into a contract for the construction of the Project with Contractor after the date of this MOU, will include in that contract a provision requiring the Contractor to enter into a First Source Hiring Agreement in the form attached hereto as Exhibit A. It is the Project Sponsor's responsibility to provide a signed copy of Exhibit A to First Source Hiring program and CityBuild within 10 business days of execution.

B. CityBuild shall represent the First Source Hiring Administration and will provide referrals of Qualified (as defined in Exhibit A) Economically Disadvantaged Individuals for employment on the construction phase of the Project as required under

Chapter 83. The First Source Hiring Program will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent jobs located within the commercial space of the Project.

C. The owners or residents of the residential units within the Project shall have no obligations under this MOU, or the attached First Source Hiring Agreement.

D. FSHA shall advise Project Sponsor, in writing, of any alleged breach on the part of the Project's contractor and/or tenant(s) with regard to participation in the First Source Hiring Program at the Project prior to seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code.

E. As stated in Section 83.10(d) of the Administrative Code, if Project Sponsor fulfills its obligations as set forth in Chapter 83, it shall not be held responsible for the failure of a contractor or commercial tenant to comply with the requirements of Chapter 83.

F. This MOU is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code. The parties agree that this MOU shall be recorded and that it may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

G. Except as set forth in Section E, above: (1) this MOU shall be binding on and inure to the benefit of all successors and assigns of Project Sponsor having an interest in the Project and (2) Project Sponsor shall require that its obligations under this MOU shall be assumed in writing by its successors and assigns. Upon Project Sponsor's sale, assignment or transfer of title to the Project, it shall be relieved of all further obligations or liabilities under this MOU.

Signature: _____ Date:

Name of Authorized Signer: Email:

Company: Phone:

Address:

Project Sponsor:

Contact: Phone:

Address: Email:

_____ Date:

First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl. San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager, ken.nim@sfgov.org

Exhibit A:
First Source Hiring Agreement

This First Source Hiring Agreement (this "Agreement"), is made as of , by and between , the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"), and a copy of this Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.

b. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.

c. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on the Project.

d. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.

e. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.

f. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.

g. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.

h. "Entry Level Position". A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.

i. "First Opportunity". Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.

j. "Job Classification". Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

k. "Job Notification". Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.

l. "Publicize". Advertise or post available employment information, including participation in job fairs or other forums.

m. "Qualified". An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this Agreement.

n. "System". The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.

o. "System Referrals". Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.

p. "Subcontractor". A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)'s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor's employment needs under the Contract:

i. On Exhibit A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on the project for each trade.

ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.

iii. Contractor will collaborate with CityBuild staff to identify, by trade, the number of Core workers at project start and the number of workers at project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.

iv. Contractor and Subcontractors will provide documented verification that its "core" employees for this contract meet the definition listed in Section 1.a.

b.

i. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the project.

ii. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:

(A) If Contractor meets the criteria in Section 5(a) below that establishes "good faith efforts" of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and

(B) After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes "good faith efforts" of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.

c. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the first opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process, Contractor's only obligations with regards to any available Entry Level Positions subject to such collective bargaining agreement(s) during the term of the Contract shall be the following:

a. Contractor shall notify the appropriate union(s) of the Contractor's obligations under this Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).

b. Contractor shall use "name call" privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

5. CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction Exhibit A-1: CityBuild Workforce Projection Form 1; and

b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this Agreement. Such review shall be conducted by FSHA in accordance with Section 11(c) below.

c. Meet with the Project's owner, developer, general contractor, or CityBuild representative to review and discuss your plan to meet your local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.

d. Contact a CityBuild representative to review your hiring projections and goals for the Project. The Project developer and/or Contractor must take active steps to advise all of its Subcontractors of the local hiring obligations on the Project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the project

e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying your expected hiring needs during the Project's duration.

f. Notify your respective union(s) regarding your local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate your union's collective bargaining agreement(s).

g. Be sure to reserve your "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable collective bargaining agreement(s).

h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on the Project in a timely matter in order to facilitate CityBuild's notification to these unions of the Project's workforce requirements.

i. Submit a "Job Request" in the form attached hereto as Attachment A-1, Form 3, to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). You should simultaneously contact your union about the position as well, and let them know that you have contacted CityBuild as part of your local hiring obligations.

j. Developer has an ongoing, affirmative obligation and must advise each of its Subcontractors of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the project, including openings that arise from layoffs of original crew. Developer/contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the developer/contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.

k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Project developer and/or Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Project developer and/or Contractor will request a meeting with the Project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.

l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Project, source of hire, and any other pertinent information as pertain to compliance with this Agreement.

m. Maintain accurate records of your efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor and/or Project developer through a San Francisco community-based organization whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Project developer and/or Contractor on a project-by-project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and the City's online project reporting system (currently Elation), provided, however, that Contractor shall retain the primary responsibility for meeting the

requirements imposed under this Agreement. Contractor shall ensure that this Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

8. CONTRACTOR'S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this Agreement, CityBuild shall:

a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.

b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor's Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;

c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;

d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;

e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;

f. Provide Contractor with reporting forms for monitoring the requirements of this Agreement; and

g. Monitor the performance of the Agreement by examination of records of Contractor as submitted in accordance with the requirements of this Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:

(1) Applicants
(2) Job offers
(3) Hires
(4) Rejections of applicants

b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.

c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this Agreement.

12. DURATION OF THIS AGREEMENT

This Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this Agreement shall terminate and it shall be of no further force and effect on the parties hereto.

13. NOTICE

All notices to be given under this Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received. all as follows:

If to FSHA: First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to CityBuild: CityBuild Compliance Manager
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to Developer:

Attn:

If to Contractor:

Attn:

a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, "Contractor Reports") shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

15. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

16. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. SUCCESSORS

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several.

18. HEADINGS

Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions

19. GOVERNING LAW

This Agreement shall be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

CONTRACTOR:

Date: _____ Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

FIRST SOURCE HIRING PROGRAM
EXHIBIT A-1 - CITYBUILD
CONSTRUCTION CONTRACTS

FORM 1: CITYBUILD WORKFORCE PROJECTION

Instructions

- *The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.*
- *All subcontractors with contracts in excess of $100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.*
- *The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.*
- *It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.*
- *All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.*

Construction Project Name:		Construction Project Address:	
Projected Start Date:		Contract Duration:	*(calendar days)*
Company Name:		Company Address:	
Main Contact Name:		Main Phone Number:	
Main Contact Email :			
Name of Person with Hiring Authority:		Hiring Authority Phone Number:	
Hiring Authority Email:			

Name of Authorized Representative	Signature of Authorized Representative*	Date

By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Table 1: Briefly summarize your contracted or subcontracted scope of work

Table 2: Complete on the following page

- *List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees.*
- *Total Number of Workers on the Project The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.*

Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			

Table 3: List your core or existing employees projected to work on the project

- *Please provide information on your projected core or existing employees that will perform work on the jobsite.*
- *"Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.*

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
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		J☐ A☐		
		J☐ A☐		
		J☐ A☐		

FOR CITY USE ONLY: CityBuild Staff: _____ Approved: Yes ☐ No ☐ Date: _____
Reason: _____

FORM 3: CITYBUILD JOB NOTICE FORM

INSTRUCTIONS: To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: workforce.development@sfgov.org
2. Contact Workforce Development at 415-701-4848 or by email: local.hire.ordinance@sfgov.org

   OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

ATTENTION: *Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.*

Section A. Job Notice Information

Trade _____ # of Journeymen _____ # of Apprentices _____

Start Date _____ Start Time _____ Job Duration _____

Brief description of your scope of work: _____

Section B. Union Information *(Union contractors complete Section B. Otherwise, leave Section B blank)*

Local # _____ Union Contact Name _____ Union Phone # _____

Section C. Contractor Information

Project Name: _____

Jobsite Location: _____

Contractor: _____ Prime ☐ Sub ☐

Contractor Address: _____

Contact Name: _____ Title: _____

Office Phone: _____ Cell Phone: _____ Email: _____

Alt. Contact: _____ Phone #: _____

Contractor Contact Signature _____ Date _____

OEWD USE ONLY *Able to Fill* Yes ☐ No ☐

WORFORCE DEVELOPMENT PLAN – ATTACHMENT B

LOCAL HIRING PLAN FOR CONSTRUCTION

1.1 SUMMARY

A. This Attachment B to the Pier 70 28-Acre Site Workforce Development Plan ("**Local Hiring Plan**") governs the obligations of the Project to comply with the City's Local Hiring Policy for Construction pursuant to Chapter 82 of the San Francisco Administrative Code (the "**Policy**"). In the event of any conflict between Administrative Code Chapter 82 and this Attachment, this Attachment shall govern.

B. The provisions of this Local Hiring Plan are hereby incorporated as a material term of the DDA and each Vertical DDA. Under the DDA and each Vertical DDA, the Developer or Vertical Developer thereunder, as applicable, shall require any Contractor performing Construction Work to agree that (i) the Contractor shall comply with all applicable requirements of this Local Hiring Plan; (ii) the provisions of this Local Hiring Plan and the Policy are reasonable and achievable by Contractor and its Subcontractors; and (iii) they have had a full and fair opportunity to review and understand the terms of the Local Hiring Plan.

C. The Office of Economic and Workforce Development (OEWD) is responsible for administering the Local Hiring Plan and will be administering its applicable requirements. For more information on the Policy and its implementation, please visit the OEWD website at: www.workforcedevelopmentsf.org.

D. Capitalized terms not defined herein shall have the meanings ascribed to them in the DDA or the Policy, as applicable.

1.2 DEFINITIONS

A. "Apprentice" means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.

B. "Area Median Income (AMI)" means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

C. "Construction Work" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA or Parcel Lease, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable residential buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement. Work occurring prior to execution of the DDA is not subject to Local Hire.

D. "Covered Project" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

E. "Contractor" means a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs Construction Work on the 28-Acre Site

F. "Disadvantaged Worker" as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).

G. "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of 3 business days' notice.

H. "Local Resident" means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

I. "Non-Covered Project" means any construction projects not covered by the San Francisco Local Hiring Policy.

J. "Project Work". Construction Work performed as part of a Covered Project.

K. "Project Work Hours" means the total onsite work hours worked on a construction contract for a Covered Project by all Apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.

L. "Subcontractor" means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Contractor or another subcontractor to provide services to a Contractor or another subcontractor in fulfillment of the Contractor's or that other subcontractor's obligations arising from a contract for construction work on a Covered Project who performs Construction Work on the 28 Acre site.

M. "Targeted Worker" means any Local Resident or Disadvantaged Worker.

N. "Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

1.3 LOCAL HIRING REQUIREMENTS

A. Total Project Work Hours By Trade. For all construction contracts for Covered Projects, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers. The mandatory participation levels required under this Local Hire Program will be determined by OEWD for each Phase under the DDA, and in no event shall be greater than 30%; however, the Parties acknowledge that Developer intends to require each construction contract for

Covered Projects to meet the mandatory participation levels on an individual contract level.

B. Apprentices: For all construction contracts for Covered Projects, at least 30% of the Project Work Hours performed by Apprentices within each trade is required to be performed by Local Residents, with an aspirational goal of achieving 50%. Hiring preferences shall be given to Apprentices who are referred by the CityBuild program This document also establishes a goal of no less than 25% of Project Work Hours performed by Apprentices within each trade to be performed by Disadvantaged Workers.

C. Out-of-State Workers. For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to OEWD the number of Project Work Hours performed by residents of states other than California.

D. Pre-construction or other Local Hire Meeting. Prior to commencement of Construction Work on Covered Projects, Contractor and its Subcontractors whom have been engaged by contract and identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by Developer or Vertical Developer or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority. Contractor and its Subcontractors who are engaged after the commencement of Construction Work on a Covered Project shall attend a future preconstruction meeting or meetings as mutually agreed by Contractor and OEWD staff.

E. This Local Hiring Plan does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Local Hiring Plan shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

F. Construction Work for Non-Covered Projects will be subject to the First Source Hiring Program for Construction Work in accordance with Section III.C.3 of the Workforce Development Plan.

1.4 CITYBUILD WORKFORCE DEVELOPMENT PROGRAM: EMPLOYMENT NETWORKING SERVICES

A. OEWD administers the CityBuild Program. Subject to any collective bargaining agreements in the building trades and applicable law, CityBuild shall be a primary resource available for Contractor and Subcontractors to meet Contractors' local hiring requirements under this Local Hiring Plan. CityBuild has two main goals:

1. Assist with local hiring requirements under this Local Hiring Plan by connecting Contractor and Subcontractors with qualified journey-level, Apprentice, and pre-Apprentice Local Residents.

2. Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force.

B. Where a Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of this Local Hiring Plan, the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers; including the following:

1. Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.

2. Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All workers networked through CityBuild will qualify as Disadvantaged Workers under this Local Hiring Plan. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is a "Disadvantaged Worker" as defined above.

C. CONDITIONAL WAIVER FROM LOCAL HIRING REQUIREMENTS

A. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the Local Hiring Requirements of Section 1.3 on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.

1. Specialized Trades: OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of this Local Hiring Plan will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the Project Work Hours utilized in each designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade.

2. Credit for Hiring on Non-Covered Projects: Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:

a. the Targeted Workers are paid the prevailing wages or union scale for work on the Non-Covered Projects; and

b. such credit hours shall be committed to by the Contractor on future projects to satisfy any short fall the Contractor may have on a Covered Project. Such commitment shall be in writing by the Contractor, shall extend for a period of time negotiated between the contractor and OEWD, and shall commit to satisfying any assessed penalties should Contractor fail to achieve the required credit hours.

3. Sponsoring Apprentices: Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new Apprentices in trades in which noncompliance is likely and retaining those Apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California

Department of Industrial Relations that the new Apprentices are registered and active Apprentices. Contractor will be required to write a sponsorship letter on behalf of the identified candidate to the appropriate Local Union and will make the necessary arrangements with the Union to hire the candidate as soon as s/he is indentured.

4. Direct Entry Agreements: OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with the California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with this Local Hiring Plan by Contractor or its Subcontractors hiring and retaining Apprentices who are enrolled through such direct entry agreements. Contractor may also utilize OEWD-approved organizations with direct entry agreements with Local Unions, including District 10 based organizations to hire and retain Targeted Workers. To the extent that Contractor or its Subcontractors have hired Apprentices or Targeted Workers under a direct entry agreement entered into by OEWD or reasonably approved by OEWD, OEWD will not assess penalties for non-compliance with this Local Hiring Plan.

5. Corrective Actions: Should local employment conditions be such that adequate Targeted Workers for a craft, or crafts, are not available to meet the requirements and Contractor can document their efforts to achieve the requirements through the mechanisms and processes in this document, a corrective action plan must be negotiated between Contractor and OEWD.

1.5 LOCAL HIRING FORMS

A. Utilizing the City's online Project Reporting System, Contractors for Covered Projects shall submit the following forms, as applicable, to the Contracting City Agency and OEWD:

1. Form 1: Local Hiring Workforce Projection. OEWD Form 1 (Local Hiring Workforce Projection), a copy of which is attached hereto, shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

2. Form 2: Local Hiring Plan. For Covered Projects estimated to cost more than $1,000,000, Contractor shall prepare and submit to Contracting City Agency and OEWD for approval a Local Hiring Plan for the project using OEWD Form 2, a copy of which is attached hereto. This Form 2 shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

3. Job Notifications. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.

4. Form 4: Conditional Waivers. If a Contractor or a Subcontractor believes the local hiring requirements cannot be met, it will submit OEWD Form 4 (Conditional Waiver), a copy of which is attached hereto, as more particularly described in Articles 1.4 and 1.5 above.

1.6 ENFORCEMENT, RECORD KEEPING, NONCOMPLIANCE AND PENALTIES

A. Subcontractor Compliance. Each Contractor and Subcontractor shall ensure that all Subcontractors agree to comply with applicable requirements of this document. All Subcontractors agree as a term of participation on the Project that the City shall have third party beneficiary rights under all contracts under which Subcontractors are performing Project Work. Such third party beneficiary rights shall be limited to the right to enforce the requirements of this Local Hiring Plan directly against the Subcontractors. All Subcontractors on the Project shall be responsible for complying with the recordkeeping and reporting requirements set forth in this Local Hiring Plan. Subcontractors with work in excess of the of $600,000 shall be responsible for ensuring compliance with the Local Hiring Requirements set forth in Section 1.3 of this Local Hiring Plan based on Project Work Hours performed under their Subcontracts, including Project Work Hours performed by lower tier Subcontractors with work less than the Threshold Amount.

B. Reporting. Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and will monitor compliance with this Local Hiring Plan electronically.

C. Recordkeeping. Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of Construction Work, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on a Covered Project.

1. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the Apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a Local Resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the Covered Project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method) as allowed by law.
2. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.
3. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the OEWD.

D. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Contractor and Subcontractors working on a Covered Project with requirements of this Local Hiring Plan. Contractor shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of Covered Projects. Contractor and all Subcontractors shall also allow representatives of OEWD to have access to employees of the Contractor and Subcontractors and the records required to be maintained under this document.

E. Noncompliance and Penalties. Failure of Contractor and/or its Subcontractors to comply with the requirements of this document and the obligations set forth in this Local Hiring Plan may subject Contractor to the consequences of noncompliance, including but not

limited to the assessment of penalties, but only if City determines that the failure to comply results from willful actions of Contractor and/or its Subcontractors, and not by reason of unavailability of sufficient qualified Local Residents and Disadvantaged Workers to meet the goals required hereunder. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled.

1. **Penalties Amount.** If any Contractor or Subcontractor fails to satisfy the Local Hiring Requirements of this Local Hiring Plan applicable to Project Work Hours performed by Local Residents, and the applicable Contractor or Subcontractor is unable to provide evidence reasonably satisfactory to the City that such failure arose solely due to unavailability of qualified Local Residents despite Contractors or Subcontractors good faith efforts in accordance with this Local Hiring Progam, then the Contractor, and in the case of any Subcontractor so failing, and Subcontractor shall jointly and severally forfeit to the City, an amount equal to the Journeyman or Apprentice prevailing wage rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under subsection 6.22(e)(3) of the Administrative Code, for the primary trade used by the Contractor or Subcontractor on the Covered Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. The assessment of penalties under this subsection shall not preclude the City from exercising any other rights or remedies to which it is entitled.

2. **Assessment of Penalties.** OEWD shall determine whether a Contractor and/or any Subcontractor has failed to comply with the Local Hire Requirement. If after conducting an investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of penalties to the Contractor and/or any Subcontractor that sets forth the basis of the assessment and orders payment of penalties in the amounts equal to the Journeyman or Apprentice prevailing wage rates, as applicable, for the primary trade used by the Contractor or Subcontractor on the Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. Assessment of penalties under this subsection shall be made only upon an investigation by OEWD and upon written notice to the Contractor or Subcontractor identifying the grounds for the penalty and providing the Contractor or Subcontractor with the opportunity to respond pursuant to the recourse procedures prescribed in this Local Hiring Plan.

3. **Recourse Procedure.** If the Contractor or Subcontractor disagrees with the assessment of penalties, then the following procedure applies:

   a. The Contractor or Subcontractor may request a hearing in writing within 15 days of the date of the final notification of assessment. The request shall be directed to the City Controller. Failure by the Contractor or Subcontractor to submit a timely, written request for a hearing shall constitute concession to the assessment and the forfeiture shall be deemed final upon expiration of the 15-day period. The Contractor or Subcontractor must exhaust this administrative remedy prior to commencing further legal action.

   b. Within 15 days of receiving a proper request, the Controller shall appoint a hearing officer with knowledge and not less than five years' experience in

labor law, and shall so advise the enforcing official and the Contractor or Subcontractor, and/or their respective counsel or authorized representative.

c. The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days of such notification unless all parties agree to an extended period.

d. Within 30 days of the conclusion of the hearing. the hearing officer shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the hearing officer shall consist of findings and a determination. The hearing officer's findings and determination shall be final.

e. The Contractor or Subcontractor may appeal a final determination under this by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure Section 1084 *et seq.*, as applicable and as may be amended from time to time.

1.8 COLLECTIVE BARGAINING AGREEMENT

Nothing in this Local Hiring Plan shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (Collective Bargaining Agreements"). In the event of a conflict between this Local Hiring Plan and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Local Hiring Plan.

END OF DOCUMENT

SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 1
CONSTRUCTION CONTRACTS

FORM 1: LOCAL HIRING WORKFORCE PROJECTION

Contractor: _____ **Project Name:** _____ **Contract #:** _____

The Contractor must complete and submit this *Local Hiring Workforce Projection* (Form 1) prior to the start of construction and quarterly until all subcontracting is complete. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount.

Will you be able to meet the mandatory Local Hiring Requirements?

☐ **YES (*Please provide information for all contractors performing construction work in Table 1 below.*)**

☐ **NO (*Please complete Table 1 below and Form 4: Conditional Waivers.*)**

INSTRUCTIONS FOR COMPLETING TABLE 1:

1. Please organize the contractors' information based on their Trade Craft work.
2. For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (*i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.*)
3. If you anticipate utilizing Apprentices on this project, please note the requirement that 30% of Apprentice hours must be performed by San Francisco residents.
4. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

TABLE 1: WORKFORCE PROJECTION

Trade Craft	Contractor *List contractors by Trade Craft*		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
Example: *Laborer*	*Contractor X*	***Journey***	800	250	31%
		Apprentice	200	100	50%
Example: *Laborer*	*Contractor Y*	***Journey***	500	100	20%
		Apprentice	0	0	0
Example:	**TOTAL LABORER**	***Journey***	1300	350	**27%**
		Apprentice	200	100	**50%**
Example:	**TOTAL**		**1500**	**450**	**30%**
		Journey			
		Apprentice			
		Journey			
		Apprentice			
		Journey			
		Apprentice			

DISCLAIMER: *If the Total Work Hours for a Trade Craft are less than 5% of the Total Project Work Hours, the Trade Craft is exempt from the Mandatory Requirement. Subsequently, if the Trade Craft exceeds 5% of the Total Project Work Hours at any time during the project, the Trade Craft is subject to the Mandatory Requirement.*

Name of Authorized Representative	Signature	Date	Phone	Email

SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 2
CONSTRUCTION CONTRACTS

FORM 2: LOCAL HIRING PLAN

Contractor: _____ **Project Name:** _____ **Contract #:** _____

If the Estimate for this Project exceeds **$1 million**, then Contractor must submit a *Local Hiring Plan* using this Form 2 through the City's Project Reporting System. Form 2 shall be initially submitted prior to the start of construction and include all known subcontractors. Contractor shall update this Form 2 quarterly as subcontractors are identified and shall continue with updates until all subcontracting is complete. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved *Conditional Waivers* (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.

INSTRUCTIONS:

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 30% of apprentice hours must be performed by San Francisco residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
Example: *Laborer*	*1500*	*450*	*30%*	*200*	100	50%

List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Start Date	Number of Working Days	*Contractor Signature
Contractor X Joe Smith	250	100	350	3/25/13	60	*Joe Smith*
Contractor Y Michael Lee	100	0	100	5/25/13	30	*Michael Lee*

****We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.***

City Use Only	
OEWD Approval	☐ Yes ☐ No
Signature and Date:	

SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 4
CONSTRUCTION CONTRACTS

FORM 4: CONDITIONAL WAVIERS

Contractor: _____ **Project Name:** _____ **Contract #:** _____

Upon approval from OEWD, Contractors and Subcontractors may use one or more of the following pipeline and retention compliance mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by OEWD. If applicable, each subcontractor must submit their individual Waiver request to OEWD and copy their Prime Contractor. This form can be submitted at any time.

TRADE WAIVER INFORMATION: Please provide information on the Trades you are requesting Waivers for:

Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours	Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours
1.			3.		
2.			4.		

Please check any of the following Conditional Waivers and complete the appropriate boxes for approval:

☐ 1. SPECIALIZED TRADES ☐ 2. SPONSORING APPRENTICES ☐ 3. CREDIT FOR NON-COVERED PROJECTS

1. SPECIALIZED TRADES: Will your firm be requesting Conditional Waivers for "Specialized Trades" designated by OEWD and listed on OEWD's website or project-specific Specialized Trades approved by OEWD during the bid period? ☐ Yes ☐ No

Please CHECK off the following Specialized Trades you are claiming for Condition Waiver:

☐ MARINE PILE DRIVER ☐HELICOPTER, CRANE, OR DERRICK BARGE OPERATOR ☐IRONWORKER CONNECTOR
☐ STAINLESS STEEL WELDER ☐TUNNEL OPERATING ENGINEER ☐ELECTRICAL UTILITY LINEMAN ☐MILLWRIGHT
☐ TRADE CRAFT IS LESS THAN 5% OF TOTAL WORK HOURS. ***LIST:***

a. List OEWD-approved project-specific Specialized Trades approved during the bid period:

OEWD APPROVAL: ☐ Yes ☐ No | **OEWD Signature:**

2. SPONSORING APPRENTICES: Will you be able to work with OEWD to sponsor an OEWD-specified number of new apprentices in the agreeable trades into California Department of Industrial Relations' Division of Apprenticeship Standards approved apprenticeship programs? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS: Construction Trade	Est. # of Sponsor Positions	Union (Yes / No)	If Yes, Local #	Est. Start Date	Est Duration of Working Days	Est Total Work Hours Performed
		Y☐ N☐				
		Y☐ N☐				

OEWD APPROVAL: ☐ Yes ☐ No | **OEWD Signature:**

3. CREDIT for HIRING on NON-COVERED PROJECTS: If your firm cannot meet the mandatory local hiring requirement, will you be requesting credit for hiring Targeted Workers on Non-covered Projects? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS: Labor Trade, Position, or Title		Est. # of Off-site Hires	Est Total Work Hours Performed	Offsite Project Name	Project Address
	Journey				
	Apprentice				

OEWD APPROVAL: ☐ Yes ☐ No | **OEWD Signature:**

WORKFORCE DEVELOPMENT PLAN

ATTACHMENT C - LBE UTILIZATION PLAN

1. Purpose and Scope. This Attachment C ("**LBE Utilization Plan**") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Workforce Plan or Section 14B.20 as applicable. The Port and Developer will seek to, whenever practicable, conduct outreach to contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities such as the 94107, 94124, and 94134 zip codes. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.

2. Roles of Parties. In connection with the design and construction phases of all Construction Work (as defined in the Workforce Plan), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs"). Developer and each Vertical Developer shall participate in a local business enterprise program, and the City's Contract Monitoring Division will serve the roles as set forth below.

3. Definitions. For purposes of this Attachment, the definitions shall be as follows:

a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.

b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Contracting Party as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Contracting Party.

c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of an LBE Improvement.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of an LBE Improvement.

e. "Contracting Party" means a Project Sponsor, Contractor or Consultant retained to work on LBE Improvements, as the case may be.

f. "Contractor" shall mean a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs construction work on an LBE Improvement.

g. "Follow-on Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to an approved building permit or site permit/addenda issued after the building permit or site permit/addenda for the Initial Tenant Improvements.

h. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.

i. "Initial Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to the first building permit or site permit/addenda issued for such spaces after completion of building core and shell.

j. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.

k. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

l. "LBE Improvements" means, as applicable, (a) all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA and (b) Workforce Buildings.

m. "Project Sponsor" shall mean the Developer of Horizontal Improvements or the Vertical Developer under a Vertical DDA.

n. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for an LBE Improvement.

o. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for Construction Work.

p. "Workforce Buildings" means the following: (i) residential buildings, including associated residential units, common space, amenities, parking and back of house construction; (ii) commercial office, retail, parking buildings core & shell; (iii) tenant improvement for all commercial spaces in residential or commercial buildings (office, retail) which are 15,000 square feet (per square footage on building permit application) and above; and (iv) all construction related to standalone affordable housing buildings. Workforce Buildings shall expressly exclude: (i) residential owner-contracted improvements in for-sale residential units; (ii) tenant improvements for the Arts Building (E4), including core and shell and tenant improvements; and (iii) tenant improvements related to PDR spaces. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such

improvements. Such association will consider. in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.

4. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Plan and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of 17% of the total cost of all Contracts for an LBE Improvement awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A); Follow-on Tenant Improvements and services are not included in the numerical goal. Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation requirement, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. Where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, that there are not sufficient qualified Small and Micro-LBEs available, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro- LBEs, and for SBA-LBEs.

6. Project Sponsor Obligations. For each LBE Improvement, the Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns. The LBE Liaison shall be a LBE Consultant with the experience in and responsible for making recommendations on how to maximize engagement of local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. For the term of the DDA or VDDA as applicable, at least once per year, each Project Sponsor and the Port shall hold a public workshop for applicable contractor communities to publicize anticipated contracting opportunities for LBE Improvements for the succeeding year, which workshops may be held independently or in conjunction with each other; provided, that the Port's obligations hereunder shall be limited to contracting opportunities relating to operations and maintenance of publicly-owned improvements within the 28-Acre Site. Each Project Sponsor will use good faith efforts to hire Small, Micro or SBA-LBEs for ongoing service contracts including janitorial, security and parking management contracts and advertise these contracting opportunities with the CMD except to the extent impractical or infeasible (e.g., a parking management contract cannot be broken down to allow two parking operators). Each project sponsor agrees to utilize a "subguard" policy or other means (i.e., OCIP or CCIP) to provide bonding capacity or assistance for LBEs working on the Project at the developer or contractor's option, should the firm be required to bond.

If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.

b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant, in their sole discretion, may divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.

c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant may advertise for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (http://mission.sfgov.org/OCABidPublication) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As Contractor deems necessary, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals for LBEs to ask questions about the selection process and technical specifications/requirements.

d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.

e. Public Solicitation. The Project Sponsor or its prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.

f. Outreach and Other Assistance. The Project Sponsor or its prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract

information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

g. Contacts. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.

h. Good Faith/Nondiscrimination. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).

i. Incorporation into contract provisions. Project Sponsor shall include in Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including the overall LBE participation goal and any LBE percentage that may be required under such Contract (Note: Developer/applicable tenants shall follow this programs Good Faith Efforts for Follow-on Tenant Improvements and services, but such work is not subject to the numerical LBE goal).

j. Monitoring. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

k. Maintain Records and Cooperation. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs. and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;

l. Quarterly and Annual Reports. During construction, the LBE Liaison(s) shall prepare a quarterly and annual report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and

m. Meet and Confer. Attend the meet and confer process described in Section 10.

8. Good Faith Outreach. Good faith efforts shall be deemed satisfied solely by compliance with Section 7. Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 7.a, and following CMD's notice under Section 9.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

9. CMD Obligations. The following are obligations of CMD to implement this LBE Utilization Plan:

a. During the fifteen (15) business day notification period for upcoming Contracts required by Section 7.a, CMD will work with the Project Sponsor and its Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.

b. Provide assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.

c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.

d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.

e. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, CMD staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.

10. Meet and Confer Process. Commencing with the first Contract that is executed for an LBE Improvement, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation.

11. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 7 and 10 above.

12. Collective Bargaining Agreements. Nothing in this Attachment C shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Attachment C and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.

13. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding

good faith efforts as set forth in Section 7. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

a. Name/Type of Contract(s) let (e.g. civil engineering contract, environmental consulting, etc.)
b. Name of Contractors (including identifying which are LBEs and non-LBEs)
c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
d. Scope of work performed by LBEs (e.g. under an architect, an LBE could be procured to provide renderings)
e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
f. Total LBE participation is defined as a percentage of total Contract dollars.
g. Outcomes with respect to Developer's efforts to engage (hire) local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

14. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

15. Remedies. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this Attachment C. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Attachment C, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed $25,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

For all other violations of this Attachment C, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.3 of the Development Agreement.

16. Duration of this Agreement. This Attachment C shall terminate (i) as to each work of Horizontal Improvement where work has commenced under the DDA, upon issuance of a SOP Compliance Determination for the applicable Horizontal Improvement; and (ii) as to each Workforce Building where work has commenced under the applicable Vertical DDA, upon issuance of a SOP Compliance Determination for the applicable Vertical Improvements thereunder; (iii) as to all Initial Tenant Improvements and Follow-on Tenant Improvements, ten (10) years after issuance of the first Temporary Certificate of Occupancy for the Vertical Improvements in which the Initial Tenant Improvements or Follow-on Tenant Improvements are located, and (v) for any Horizontal Improvements or Workforce Building that has not commenced before the termination of the Development Agreement, upon the termination of the Development Agreement. Upon such termination, this Attachment C shall be of no further force and effect.

17. Notice. All notices to be given under this Attachment C shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD: _____
_____
_____
Attn: _____

If to Project Sponsor: _____
_____
_____
Attn: _____ _____

If to Contractor: _____
_____
_____
Attn: _____

If to Consultant: _____
_____
_____
Attn: _____

Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

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Attachment D

Dispute Resolution

1. Arbitration

Any dispute involving the alleged breach or enforcement of this Workforce Development Plan (excluding disputes relating to the First Source Hiring Agreement and the applicable City ordinances, which shall be resolved in accordance with their respective terms) shall be submitted to arbitration in accordance with this **Attachment** D.

The arbitration shall be submitted to the American Arbitration Association, San Francisco, California office ("***AAA***") which will use the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. If there is a conflict between the Commercial Rules of the AAA and the arbitration provisions in this Attachment D, the arbitration provisions of this Attachment D shall govern. The arbitration shall take place in the City and County of San Francisco.

2. Demand for Arbitration

The party seeking arbitration shall make a written demand for arbitration ("***Demand for Arbitration***") in accordance with the notice procedures of Appendix Pt. A, Section 5 (Notices). The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying the entities believed to be involved in the dispute; (2) a copy of the notice of default, if any, sent from one party to the other; (3) any written response to the notice of default; and (4) a brief statement of the nature of the alleged default.

3. Parties' Participation

All persons or entities affected by the dispute (including, as applicable, OEWD, the Port, Developer, Vertical Developers, Construction Contractor (and subcontractor) and Permanent Employer) and shall be made Arbitration Parties. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such affected person or entity as an Arbitration Party; provided that, upon request by any party, the arbiter may dismiss such party if it is not reasonably affected by the dispute.

4. OEWD Request to AAA

Within seven (7) business days after service or receipt of a Demand for Arbitration, OEWD shall transmit to AAA a copy of the Demand for Arbitration and any written response thereto from an Arbitration Party. Such material shall be made part of the arbitration record.

5. Selection of Arbitrator

One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the Arbitration Parties in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator

within seven (7) business days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be the arbitrator's agreement to: (i) submit to all Arbitration Parties the disclosure statement required under California Code of Civil Procedure Section 1281.9; and (ii) render a decision within thirty (30) days from the date of the conclusion of the arbitration hearing.

*6. **Setting of Arbitration Hearing***

A hearing shall be held within ninety (90) days of the date of the filing of the Demand for Arbitration with AAA, unless otherwise agreed by the Arbitration Parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

*7. **Discovery***

In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05 as it may be amended from time to time.

*8. **California Law Applies***

California law, including the California Arbitration Act, Code of Civil Procedure Part 3, Title 9, §§ 1280 through 1294.2, shall govern all arbitration proceedings in any Employment and Contracting Agreement.

*9. **Arbitration Remedies and Sanctions***

The arbitrator may impose only the remedies and sanctions set forth below:

a. Order specific, reasonable actions and procedures to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance with the Workforce Development Plan.

b. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the applicable sections of the Workforce Development Plan, or from granting extensions or modifications to existing contracts related to services covered by the applicable sections of the Workforce Development Plan, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract.

c. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any Arbitration Party to comply with any of the requirements in this Workforce Development Plan. Contracts may be continued upon the condition that a program for future compliance is approved by OEWD. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of the Workforce

Development Plan unless the breaching party has failed to cure after being provided written notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent uncured willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "***willful breach***" means a knowing and intentional breach.

d. Direct any Arbitration Party to produce and provide to OEWD any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

10. ***Arbitrator's Decision***

The arbitrator will normally make his or her award within twenty (20) days after the date that the hearing is completed but in no event past thirty (30) days from the conclusion of the arbitration hearing; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party and shall also copy all Arbitration Parties by email (if email addresses are provided).

11. ***Default Award; No Requirement to Seek an Order Compelling Arbitration***

The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) the person or entity received actual written notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

12. ***Arbitrator Lacks Power to Modify***

Except as expressly provided above in this Attachment D, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Workforce Development Plan or to negotiate new agreements or provisions between the parties.

13. ***Jurisdiction/Entry of Judgment***

The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The prevailing Arbitration Party(ies) shall be entitled to reimbursement for the arbitrator's fees and related costs of arbitration. If a subcontractor is the losing party and fails to pay the fees within 30 days, then the applicable Construction Contractor (for whom that subcontractor worked) shall pay the fees. Each Arbitration Party shall pay its own attorneys' fees, provided, however, those attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

14. Exculpation

Except as set forth in **Section 13** of this Attachment D, each Arbitration Party shall expressly waive any and all claims against OEWD, the Port and the City for costs or damages, direct or indirect, relating to this Workforce Development Plan or the arbitration process in this Attachment D, including but not limited to claims relating to the start, continuation and completion of construction.

MASTER LEASE EXHIBIT J

FORM OF SUBTENANT ESTOPPEL CERTIFICATE

The undersigned, _____ ("**Subtenant**"), is the subtenant of a portion of the real property located at [_____], commonly known as _____, within the 28-Acre Site at Pier 70 in San Francisco, California, pursuant to that certain Sublease (as defined below) between Subtenant and [_____] ("**Sublandlord**"), and hereby certifies to the City and County of San Francisco, a municipal corporation, operating through the San Francisco Port Commission ("**Port**"), Sublandlord, [and to _____] the following to the best of Subtenant's knowledge after diligent inquiry:

1. That there is presently in full force and effect a sublease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "**Sublease**") dated as of _____, 20___, between Subtenant and Sublandlord, covering property located at [_____], as further described in the Sublease (the "**Subleased Premises**"). A true, correct and complete copy of the Sublease is attached hereto as ***Schedule 1***.

2. That the Sublease has not been modified, assigned, supplemented or amended except as follows:

_____

_____

3. That the Sublease is subject to the terms and conditions of that certain Lease No. L-[XXXXX] between Port and [_____] ("**Master Tenant**"), as may have been amended from time to time (as amended, the "**Master Lease**") and to the terms and conditions of that certain Master Sublease between Master Tenant and [entity in which tax credit investor has an interest], as may have been amended from time to time (as amended, the "**Master Sublease**"].

4. That the Sublease represents the entire agreement between Sublandlord and Subtenant with respect to the Subleased Premises.

5. That the commencement date under the Sublease was _____, 20____, and the expiration date of the Sublease is _____, 20____. Subtenant has no options to lease additional space, no rights of refusal with respect to leasing additional space, and no renewal options [except as follows: _____.]

6. That the present minimum monthly rent which Subtenant is paying under the Sublease is $_____. All rent, charges and other payments due Sublandlord under the Sublease have been paid to and including _____, 20__.

7. That, if applicable, the present percentage rent payable by Subtenant on a [monthly/quarterly/annual] basis is _____ percent of _____.

8. That the security deposit held by Sublandlord under the terms of the Sublease is $_____, and Sublandlord (or any other party) holds no other deposit from Subtenant for security or otherwise.

9. That Subtenant has accepted possession of the Subleased Premises and that all conditions of the Sublease to be satisfied by Sublandlord have been completed or satisfied to the satisfaction of Subtenant (including completion of any landlord work and payment in full of any tenant allowance) [except as follows:_____].

10. That Subtenant, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Sublandlord under the Sublease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Sublease [other than _____].

11. That, to Subtenant's actual knowledge, Sublandlord is not in default or breach of the Sublease or the Master Lease, [or Master Sublease], nor. to Subtenant's actual knowledge, has Sublandlord committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Sublease or the Master Lease [or Master Sublease] by Sublandlord [other than _____].

12. That Subtenant is not in default or in breach of the Sublease, nor has Subtenant committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Sublease by Subtenant [other than _____].

13. That Subtenant is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

14. The undersigned hereby certifies that he or she is duly authorized to sign and deliver this Certificate on behalf of Subtenant.

15. "**Subtenant's actual knowledge**" means the actual knowledge of [_____], Subtenant's [_____], after investigation of Subtenant's appropriate records of, and operations at, the Subleased Premises.

This Certificate shall be binding upon Subtenant and inure to the benefit of Port, Sublandlord, [_____] and their respective successors and assigns.

Dated: _____, 20____.
[Insert name of Subtenant]

By: _____
Name: _____
Title: _____

MASTER LEASE EXHIBIT K

FORM OF TENANT ESTOPPEL CERTIFICATE

The undersigned, [_____], a [_____] ("**Tenant**"), is the tenant of the real property having an address at [_____] [_____] within the 28-Acre Site at Pier 70 located in San Francisco, California (the "**Property**"), and hereby certifies to the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission ("**Port**") [and to _____] the following as of the date set forth below:

1. That there is presently in full force and effect Lease No. L-[_____] dated as of [_____], 201[_], (as may be modified, assigned, supplemented and/or amended as set forth in ***paragraph 2*** below, the "**Lease**"), between Tenant, as tenant, and Port, as landlord, covering the Property and other improvements, as further described in the Lease (the "**Premises**").

2. That the Lease has not been modified, assigned, supplemented or amended except as follows: _____.

3. That the Lease represents the entire agreement between Port and Tenant with respect to the Premises.

4. That the commencement date under the Lease was [____], 201[_], and the expiration date of the Lease is [____], 20[__].

5. That the present minimum monthly base rent which Tenant is paying under the Lease is $_____.

6. [**add if applicable:**] That the Percentage Rent (as defined in the Lease) paid by Tenant for the most recent full calendar month prior to the date set forth below was $_____.]

7. That the security deposits held by Port under the terms of the Lease are as follows: $_____.

8. That Tenant has accepted possession of the Premises and that, to the best of Tenant's knowledge, all conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of Tenant.

9. That, to the best of Tenant's knowledge, Tenant, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease other than _____.

10. That, to Tenant's actual knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.

11. That, to the best of Tenant's knowledge, Tenant is not in default or in breach of the Lease, nor has Tenant committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by Tenant.

12. Tenant is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon Tenant and inure to the benefit of Port, [_____] and [its/their respective] successors and assigns.

Dated: _____, 20___.

[ ], a [_____]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

MASTER LEASE EXHIBIT L

FORM OF PORT ESTOPPEL CERTIFICATE

The undersigned, the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission ("**Port**"), is the owner of the fee simple estate in the real property having an address at [_____], within Pier 70 in San Francisco, California (the "**Property**"), and hereby certifies to [_____], a [_____] ("**Tenant**") [and to _____] the following as of the date set forth below:

1. That there is presently in full force and effect Lease No. L-[_____] dated as of [_____], 20[__] (as modified, assigned, supplemented and/or amended as set forth in ***paragraph 2*** below, the "**Lease**"), between Port, as landlord, and Tenant, as tenant, for the Property located within a portion of that certain real property known as **[Pier 70/Insert building address]**, as further described in the Lease (the "**Premises**").

2. That the Lease has not been modified, assigned, supplemented or amended except as follows [_____].

3. That the Lease represents the entire agreement between Port and Tenant with respect to the Premises except as follows:

4. That the commencement date under the Lease was [_____], 20[__], and the expiration date of the Lease is [_____], 20[__]. Tenant does not have any right to renew the lease term. **[modify for Lease for Parcel E4: except for one 15-year term to extend]**

5. That the present monthly minimum rent under the Lease is $[_____].

6. That the Percentage Rent (as defined in the Lease) paid by Tenant for the most recent full calendar month prior to the date set forth below was $[_____](mark N/A if not applicable).

7. That the security deposits held by Port under the terms of the Lease are as follows: $[_____].

8. Intentionally omitted.

9. That, to the actual knowledge of Port, Port is not in default or in breach of the Lease, nor has Port committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port except as follows:

For purposes of this Estoppel Certificate, the term "actual knowledge" shall mean the actual knowledge of [_____], Port's property manager for the Premises after inquiry.

10. That, to the actual knowledge of Port, Tenant is not in default or in breach of the Lease, nor has Tenant committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by Tenant except as follows: [_____].

11. That, to the actual knowledge of Port, Tenant, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease other than [_____].

12. That Port has not assigned, conveyed, transferred, or mortgaged its interest in the Lease or the Premises except as follows: [_____].

13. That Port has not received written notice of any threatened eminent domain proceedings from a governmental entity having eminent domain powers against Port's interest in the Premises.

14. The undersigned hereby certifies that he or she is duly authorized to sign and deliver this Certificate on behalf of Port.

This Certificate shall be binding upon and inure to the benefit of Tenant, Port, [_____] and their respective successors and assigns.

Dated: [_____], 20[__].

CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

MASTER LEASE EXHIBIT M
LENDER'S RIGHTS

1. LENDERS' RIGHTS

1.1. Definitions.

"**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 Five Hundred Million Dollars ($500,000,000) in the aggregate (or the equivalent in foreign currency), or (ii) an Affiliate of an entity described in clause (i).

"**Borrower**" when used in reference to a Permitted Lien means Tenant or, in the case of a Mezzanine Loan, an owner of Tenant.

"**Developer Construction Obligations**" means Master Developer's and Tenant's duty under the DDA and this Lease, as applicable, 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 (as defined in the DDA);

(iii) rehabilitation of the Historic Buildings for reuse in accordance with the Secretary's Standards;

(iv) Developer Mitigation Measures (as defined in the DDA); and

(v) Associated Public Benefits (as defined in the DDA).

"**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.

"**Encumbered Property**" means the specific real property interest in the Leasehold Estate that is the collateral under a Permitted Lien.

"**Lender Acquisition**" means a Permitted Lender or its nominee taking direct or indirect 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.

"**Mezzanine Loan**" means a loan secured by a pledge of equity interests in Borrower.

"**Mezzanine Lender**" is an entity that makes a Mezzanine Loan to a direct or indirect owner of Borrower, subject to **Section 1.3(c)** hereof (Mezzanine Financing).

"**Permitted Lender**" means a Bona Fide Institutional Lender or a Mezzanine Lender that makes a Permitted Loan.

"**Permitted Lien**" means a mortgage, deed of trust or other security instrument, given to secure a Borrower's repayment obligation to a Permitted Lender, that encumbers:

(i) Borrower's real property interest in the Leasehold Estate; or

(ii) Borrower's ownership interests in Tenant.

"**Permitted Loan**" means a loan or Mezzanine Loan that a Permitted Lender makes to fund or refinance the cost of Developer Construction Obligations, secured by a Permitted Lien.

"**Successor by Foreclosure**" means any person who obtains title to all or any portion of or any interest in the Leasehold Estate 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 Leasehold Estate 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.

"**Tenant's Construction, Restoration and Maintenance Obligations**" means Tenant's obligations for construction of the Horizontal Improvements as more particularly described in Section 12.1 of this Lease, Tenant's covenants to repair and maintain the Premises as more particularly described in Section 11.1 and Tenant's obligations for Restoration of the Premises as more particularly described in Section 15.1.

1.2. ***Right to Encumber.***

(a) Permitted Loans. Tenant is expressly permitted to obtain one or more Permitted Loans from Permitted Lenders. As security for any Permitted Loan, Tenant will have the right, at any time during the Term and without Port consent, to grant one or more Permitted Liens to secure the Permitted Loans.

(b) Prohibited Loans. Tenant is expressly prohibited from: (i) granting any liens on any real or personal property interest in or related to the Premises to secure obligations other than Tenant's obligations under this Lease including, without limitation, the Developer Construction Obligations; or (ii) providing compensation or rights to any lender as consideration for matters unrelated to the Project.

(c) Loan Transfers. A Permitted Lender may transfer any part of its interest in a Permitted Loan and Permitted Lien without the prior consent of or notice to either Party.

1.3. ***Certain Assurances.***

(a) Port Cooperation.

(i) The Port agrees to cooperate reasonably to confirm rights and obligations under the provisions of this ***Exhibit M*** that protect the rights of Permitted Lenders hereunder.

(ii) If requested by a Permitted Lender, the Port will enter into a separate agreement to implement this Article. But the Port will have no obligation to agree to any additional provisions that could, in the Port's sole judgment, adversely affect any of the Port's rights and remedies under this Lease. The Port Director's execution and delivery of an agreement under this Subsection will be conditioned on its prior receipt of payment for all costs incurred to review and negotiate the agreement. If paid by Master Developer or Tenant, as applicable, these costs will not be Soft Costs for purposes of the DDA or this Lease.

(b) Construction Loans. Tenant must provide the Port with a conformed copy of any Permitted Lien that is recorded in the Official Records or filed with the California Secretary of State.

(b) Mezzanine Loans. Tenant must provide the Port with the name of each Mezzanine Lender and the priority of its Permitted Lien, together with a copy of the Permitted Lien and other agreements describing the security for the Permitted Loan or granting foreclosure rights to the Mezzanine Lender. To protect confidential proprietary information, Tenant may comply with this requirement by making the relevant documentation available for review by a Port representative during regular business hours at Tenant's offices in San Francisco.

(c) Requests for Notice. The Port will not be required to recognize any Permitted Lender's rights unless Tenant or the Permitted Lender has provided notice under **Article 35** (Notices) of each Permitted Lender's addresses for notice. The Port will be entitled to rely on any notice delivered in this manner until superseded by a later notice given in the same manner.

1.4. ***Lenders' Notice Rights.***

(a) Delivery of Notices. The Port will deliver a copy of any notice given to Tenant under **Article 23** (Events of Default) or **Article 24** (Remedies) to each Permitted Lender at the notice address in a previously delivered request made under **Subsection 1.3(d)** (Requests for Notice). The Port will also deliver a notice of Tenant's failure to cure any default or breach under **Article 23** (Events of Default) or **Article 24** (Remedies) to each Permitted Lender at its notice address.

(b) Effect of Delayed Delivery of Notice. The Port's delay or failure to provide notice to a Permitted Lender under this Section will extend the Permitted Lender's cure period by the number of days the Port delayed before delivering notice.

(c) No Extension for Unknown Lenders. If the Port receives a request for notice from a Permitted Lender under **Subsection 1.3(d)** (Requests for Notice) after the Port has already delivered a notice to Tenant under **Article 23** (Events of Default) or **Article 24** (Remedies), the request will not extend any of the time periods in this Article.

1.5. ***Right to Cure.***

(c) Lender Election. Each Permitted Lender will have the right at its sole election to cure any Event of Default or Material Breach; provided that all such acts must be performed in compliance with the terms of this Lease. Except after Permitted Lender or a Successor in Foreclosure acquires Tenant's interest under this Lease, no such action

will constitute an assumption by such Permitted Lender of the obligations of Tenant under this Lease. Subject to compliance with the applicable terms of this Lease, each Permitted Lender and its agents and contractors will have full access to the Premises for purposes of accomplishing any of the foregoing. The cure period for the Permitted Lender will be the same period as Tenant's cure period, plus an additional: (i) 30 days to cure a monetary Event of Default or Material Breach; or (ii) 60 days to cure any other Event of Default or Material Breach that the Permitted Lender could cure without foreclosing on its Permitted Lien.

(d) Port Forbearance for Foreclosure. If an Event of Default or Material Breach is not cured within the cure period under **Subsection 1.1(c)** (Lender Election) or cannot be cured by the Permitted Lender without foreclosing on its Permitted Lien, the Port will forbear from exercising its remedies and provide the Permitted Lender an extended cure period if, within the cure period under **Subsection 1.1(c)** (Lender Election):

(i) the Permitted Lender has a recorded or filed its Permitted Lien and given notice to the Port under **Section 35** (Notices) that the Permitted Lender intends to proceed with due diligence to complete a Lender Acquisition;

(ii) the Permitted Lender begins foreclosure proceedings within 60 days after delivering notice under **clause (i)** and diligently completes the Lender Acquisition; and

(iii) after becoming the Successor by Foreclosure, the Permitted Lender or its nominee diligently proceeds to cure any Event of Default or Material Breach for which the Port delivered notice to the Permitted Lender under **Subsection 1.4(a)** (Delivery of Notices) and the Permitted Lender gave to the Port under **clause (i)** of this Subsection.

The period from the date Lender provides notice to Port delivering notice under **clause (i)** until a Lender acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is herein called the "**Foreclosure Period.**"

(e) Deemed Cure by Foreclosure. No Permitted Lender will be required to cure any Event of Default or Material Breach that is personal to the Borrower, such as Borrower's Insolvency or failure to submit required information in the Borrower's possession. The Permitted Lender's completion of a Lender Acquisition to become a Successor by Foreclosure will be deemed to be a cure of any Event of Default or Material Breach that resulted in the Lender Acquisition.

1.6. ***Obligations with Respect to the Property.***

(a) Relationship to Lease. Except as set forth in this Article, no Permitted Lender will have any obligations or other liabilities under this Lease until it becomes a Successor by Foreclosure to the Tenant's interest in the Leasehold Estate (referred to as "**Foreclosed Property**") and expressly assumes its Borrower's rights and obligations under this Lease in writing. A Permitted Lender (or its designee) that becomes a Successor by Foreclosure to any Foreclosed Property will take title subject to all of the terms and conditions of this Lease to the extent applicable to the Foreclosed Property, including any Claims for payment or performance of obligations that are due as a condition to enjoying the benefits under this Lease after the Lender Acquisition is complete.

(b) Relationship with the Port. As of the date of the Permitted Lender's completion of a Lender Acquisition and assumption of Tenant's rights and obligations under this Lease, the Port will recognize the Permitted Lender as Tenant under this Lease.

(c) Port Right to Terminate. The Port will have the right to terminate this Lease with respect to the Foreclosed Property if the Successor by Foreclosure does not agree to assume the Developer Construction Obligations relating to the Foreclosed Property accruing under the DDA and this Lease in writing within 90 days after the date of the Lender Acquisition. If a Successor by Foreclosure affirms its intent to assume the Developer Construction Obligations under the DDA and this Lease, the Schedule of Performance with respect to the Foreclosed Property will be extended as needed for the Successor by Foreclosure to comply with the Developer Construction Obligations.

(d) Obligations of Lender Prior to Lender Acquisition. Prior to a Lender Acquisition, Port will have no right to enforce any obligation under this Lease against any Lender unless such Lender expressly assumes and agrees to be bound by this Lease in a form reasonably approved in writing by Lender and Port, which form will be consistent with the terms of this Lease (for the avoidance of doubt, the foregoing will not limit Port's rights and remedies against Tenant notwithstanding any interest Lender may have in Tenant or any right against any successor owner of the Property for a continuing default, as set forth in and subject to the limitations of this ***Exhibit M***. However, Lender agrees to comply during a Foreclosure Period with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by Lender prior to acquiring possession of the Lease, including the payment of all Impositions and any other sums due and owing hereunder.

(e) No Obligation to Restore. Subject to Section 1.6(g) (Lender Agreement to Restore), if a Tenant Event of Default occurs prior to (x) completion of the Horizontal Improvements, (y) following any damage or destruction to completed Horizontal Improvements or Historic Buildings 2, 12 and 21 (collectively, the "**Historic Buildings**") but prior to completion of the Horizontal Improvements or prior to the Restoration of any completed Horizontal Improvements or Historic Buildings, as applicable, each Permitted Lender, either before or after foreclosure or action in lieu thereof, will not be obligated to perform any of Tenant's Construction, Restoration and Maintenance Obligations beyond the extent necessary to preserve or protect the Improvements already made, to remove any debris and to perform other reasonable measures to protect the public; provided, however, any other Person who thereafter obtains title to the Leasehold Estate, or any interest therein from or through such Lender (or its designee), or any other Successor Owner (other than such Lender) will be obligated to Restore any damage or destruction to the Improvements in accordance with this Lease, except that any time period for such Restoration shall be reset as if the applicable casualty or condemnation occurred as of the date of the Lender Acquisition.

(f) Obligation to Sell If Not Restore. In the event that Lender acquires the Foreclosed Property through a Lender Acquisition and Lender chooses not to complete or Restore the Improvements following a casualty event, it will notify Port in writing of its election within one hundred twenty (120) days following the later of the Lender Acquisition or the casualty, and will therefore use good faith efforts to sell its interest under this Lease and the DDA with reasonable diligence to a purchaser that will be obligated to Restore the Improvements and complete the Horizontal Improvements, but in any event Lender will use good faith efforts to cause such sale to occur within nine (9) months following Lender's written notice to Port of its election not to Restore (the "**Sale Period**").

(g) Lender Agreement to Restore. If Lender fails to sell its interest in the Leasehold Estate within the Sale Period, such failure will not constitute a default hereunder but Lender will be obligated to Restore the Improvements to the extent this Lease obligates Tenant to so Restore (except that, if the applicable casualty or condemnation occurred prior to the Lender Acquisition, any time period for such Restoration shall be reset as if the applicable casualty or condemnation occurred as of the

date of the Lender Acquisition). In the event Lender agrees, or is deemed to have agreed, to Restore the Improvements, (i) all such work will be performed in accordance with all the requirements set forth in this Lease, (ii) Lender shall engage a qualified construction manager with at least ten (10) years' experience managing construction projects of a similar nature, and (iii) Lender shall confirm to Port in writing that its construction manager satisfies the foregoing requirement.

(h) Developer Construction Obligations. Section 12.1 of this Lease provides that Tenant must construct, the Horizontal Improvements during the Term in accordance with the DDA including Articles 13-17 thereof. Without limiting Subsections 1.6(c), (f) and (g) hereunder, the rights and obligations of a Lender to perform the Developer Construction Obligations hereunder will be governed by the applicable provisions set forth in DDA Article 18 (Lender's Rights).

1.7. ***New Lease.*** In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except (i) by Total Condemnation, or (ii) as the result of damage or destruction as provided in ***Article 15*** (Damage or Destruction), Port will serve upon Lender written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. The Senior Lender will thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions ("**New Lease**"):

(a) Upon the written request of Lender, within thirty (30) days after service of such notice that this Lease has been terminated ("**New Lease Execution Period**"), Port will enter into a New Lease of the Premises with the most senior Lender giving notice within such period or its designee, provided that Lender assumes Tenant's obligations as Sublandlord under any Subleases then in effect; and

(b) Such New Lease will be entered into at the Lender's cost, will be effective as of the date of termination of this Lease, and will be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). The New Lease will have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. The New Lease will require Lender to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the New Lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is continuing and is reasonably susceptible of being performed by such Lender, including any obligation to Restore subject to ***Sections 1.6(e)*** (Obligation to Sell If Not Restore) and ***1.6(f)*** (Lender Agreement to Restore). Upon the execution of the New Lease, Lender will pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and will pay all expenses, including reasonable Attorneys' Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such New Lease. The provisions of this ***Section 1.7(b)*** will survive any termination of this Lease (except as otherwise expressly set out in the first sentence of ***Section 1.7*** (New Lease)), and will constitute a separate agreement by Port for the benefit of and enforceable by Lender.

1.8. ***Nominee.*** Any rights of a Lender under this ***Exhibit M***, as amended hereby, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Lender; provided, however, no Lender will acquire title to the Lease through a nominee or

designee which is not a Person otherwise permitted to become Tenant hereunder; provided, further that a Lender may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Lender.

1.9. ***Subleases and Other Property Agreements.*** Effective upon the commencement of the term of any New Lease executed pursuant to ***Subsection 1.7*** (New Lease), any Sublease then in effect will be assigned and transferred without recourse by Port to Lender. Between the date of termination of this Lease and expiration of the New Lease Execution Period, Port will not (1) enter into any new management agreements or agreements for the maintenance of the Premises or the supplies therefor (collectively, "**Other Property Agreements**") or Subleases which would be binding upon Lender if Lender enters into a New Lease, (2) cancel or materially modify any of the existing Subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, termination or surrender of any Subleases subject to a Non-Disturbance Agreement with the Subtenant of such Sublease or Other Property Agreement without the written consent of Lender, which consent will not be unreasonably withheld or delayed; provided, however Lender's prior approval will not be required for any Other Property Agreement entered into, cancelled, or modified by Port due to an emergency. Effective upon the commencement of the term of the New Lease, Port will also quitclaim to Lender, its designee or nominee (other than Tenant), without recourse, all of Tenant's Personal Property remaining on the Premises.

1.10. ***Consent of Lender.*** Port will not (i) modify this Lease in a manner that increases base rent or percentage rent owed to Port, decreases the Term, amends any provision of this ***Exhibit M***, or otherwise amends the terms of this Lease in a manner that creates a material adverse effect upon Senior Lender, or (ii) terminate or cancel this Lease without Senior Lender's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any such modification, termination or cancellation of this Lease without Senior Lender's consent will be effective against Senior Lender. No merger of this Lease and the fee estate in the Premises will occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Lender.

1.11. ***Reliance.*** The provisions of this ***Exhibit M*** are for the benefit of the Lender and may be relied upon and shall be enforceable by the Lender.

1.12. ***Priority of Lender Protections*** In the event of a conflict between a provision in this ***Exhibit M***, on the one hand, and any other provision of this Lease, on the other hand, the provision set forth in this ***Exhibit M*** will control.

1.13. ***No Impairment of Permitted Lien.*** No default under this Lease by a Borrower will invalidate or defeat the Permitted Lien of any Permitted Lender. A breach of any obligation secured by any Permitted Lien will not defeat, diminish, render invalid or unenforceable, or otherwise impair Tenant's rights or obligations or be, by itself, a default under this Lease.

1.14. ***Multiple Permitted Liens.***

(a) Lien Priority Generally. If at any time there is more than one Permitted Lien against any real property interest securing a Permitted Loan to Borrower, the Permitted Lien of the Permitted Lender prior in time to all others on that portion of the encumbered real property interest (the "**Senior Lender**") will be vested with the rights under this Article to the exclusion of the holder of any other Permitted Lien except to the extent that the Permitted Lender holding the junior Permitted Lien has obtained the consent of the Permitted Lender holding the senior Permitted Lien.

(b) Succeeding Rights. If the Permitted Lender holding the senior Permitted Lien fails to exercise the rights set forth in this Article, a Permitted Lender holding the junior Permitted Lien will succeed to the rights set forth in this Article only if:

(i) all Permitted Lenders holding the senior Permitted Liens have failed to exercise the rights set forth in this Article; and

(ii) the Permitted Lender holding the junior Permitted Lien seeking to exercise its rights has provided prior written notice to the Port under **Subsection 1.5(b)**(Port Forbearance for Foreclosure).

(c) No Extension after Failure to Act. No failure by the Permitted Lender holding the senior Permitted Lien to exercise its rights under this Article or delay in the response of any Permitted Lender to any notice by the Port will extend any cure period or Tenant's or any Permitted Lender's rights under this Article.

(d) Port's Reliance on Title Report. For purposes of this Section, in the absence of a final order to the contrary that is served on the Port, a title report prepared by a reputable title company licensed to do business in California and having an office in San Francisco setting forth the order of priorities of Permitted Liens on real property interests in the Premises may be relied upon by the Port as conclusive evidence of priority.

1.15. Cured Defaults. Upon a Permitted Lender's timely cure of any Event of Default or Material Breach under **Subsection 1.6(b)** (Right to Cure), the Port's right to pursue any remedies for the cured Event of Default or Material Breach will terminate.

MASTER LEASE EXHIBIT N
City and Port Special Provisions

The Municipal Code (available at www.sfgov.org) and City and Port policies described in this Exhibit are incorporated by reference as though fully set forth in the Lease (collectively, the "**City and Port Special Provisions**"). Tenant is charged with full knowledge of and compliance with each applicable requirement, whether or not summarized below. All statutory references in this Exhibit are to the Municipal Code as in effect on the Reference Date of the DDA unless specified otherwise. Initially capitalized or highlighted terms used in this Exhibit and not defined in the DDA have the meanings ascribed to them in the cited ordinance.

The application to the 28-Acre Site Project of the specified provisions of the City and Port Special Provisions is subject to **DA § 5.3** (Changes to Existing City Laws and Standards) and waivers under Sections 6, 7, 8 and 9 of Ordinance No. 224-17, which is attached to and incorporated into the City and Port Special Provisions (collectively, the "**DA Waivers**").

The descriptions below are not comprehensive but are provided for notice purposes only. Tenant understands that its failure to comply with any applicable provision of the City and Port Special Provisions will give rise to the specific remedies under the applicable City and Port Special Provisions and in certain cases give rise to a default under the Lease, which could result in a default under the DA as well. References to "Developer" in the City and Port Special Provisions will apply to Tenant Parties and their successors under the Lease and DA Successors under the DA.

Municipal Codes and Policies Summarized

1. Nondiscrimination in Contracts and Property Contracts
2. Health Care Accountability Ordinance
3. Prevailing Wages and Working Conditions in Construction Contracts
4. Other Prevailing Wage Rate Requirements
5. First Source Hiring Program
6. Criminal History In Hiring And Employment Decisions
7. Employee Signature Authorization Ordinance
8. Tobacco Products and Alcoholic Beverages
9. Integrated Pest Management Program
10. Resource-Efficient Facilities and Green Building Requirements
11. Tropical Hardwood and Virgin Redwood Ban
12. Diesel Fuel Measures
13. Arsenic-Treated Wood
14. Food Service and Packaging Waste Reduction Ordinance
15. Bottled Drinking Water
16. Graffiti Removal and Abatement
17. Drug-Free Workplace
18. Nutritional Standards and Guidelines
19. All-Gender Toilet Facilities
20. Indoor Air Quality
21. Conflicts of Interest
22. Sunshine
23. Contribution Limits-Contractors Doing Business with the City
24. Implementing the MacBride Principles – Northern Ireland

Contracting, Hiring, and Construction

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

(a) Covered Contracts. All provisions in this Section regarding the Nondiscrimination in Contracts and Property Contracts ordinance apply to "subcontracts to contracts" and "property contracts" as defined in Administrative Code sections 12B.2 and 12C.2.

(b) Covenant Not to Discriminate. In its development of the FC Project Area, 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 (Cal. Gov. 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.

(c) Requirement to Include. Developer must: (i) include a nondiscrimination clause in substantially the form of **Subsection (a** (Covenant Not to Discriminate); and (ii) incorporate by reference Administrative Code sections 12B.2(a), 12B.2(c)-(k), and 12C.3(a) in all applicable contracts, subcontracts, and subleases and require all contractors, subcontractors, and subtenants to comply with those provisions.

(d) Nondiscrimination in Benefits. Developer agrees not to discriminate between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of employees, where the domestic partnership has been registered with any governmental entity under state or local law authorizing registration, subject to the conditions set forth in Administrative Code section 12B.2. Developer's agreement relates to bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits (collectively "**Core Benefits**"), as well as other employee benefits described in section 12B.1(b), during the term of each applicable contract, subcontract, and sublease.

(e) Form. On or before the Reference Date, Developer must complete, execute, deliver to, and obtain approval of its completed *Nondiscrimination in Contracts and Benefits* form CMD-12B-101 from CMD. The form is available on CMD's website.

(f) Penalties. Developer understands that under Administrative Code section 12B.2(h), the City may assess against Developer or deduct from any payments due Developer a penalty of $50 for each person for each calendar day during which Developer or its subcontractor, property contractor, or other contractor discriminated against a protected person in violation of this Section. Violation of this Section, if not cured after notice and opportunity to

cure, also will be an Event of Default under the DDA and the DA and a material breach of any applicable contract, subcontract, or sublease.

2. **Health Care Accountability Ordinance.**
(Admin. Code ch. 12Q)

(a) Developer agrees to comply fully with and be bound by the Health Care Accountability Ordinance ("**HCAO**"), as set forth in Administrative Code chapter 12Q, unless exempt.

(b) Covered Employees. For each Covered Employee, Developer must provide the appropriate health benefit set forth in HCAO section 12Q.3, unless it is exempt as a small business under HCAO section 12Q.3(e).

(c) Notice and Opportunity to Cure. If Developer fails to cure a violation of the HCAO after receiving notice of a violation and an opportunity to cure the violation, the City will have the remedies set forth in HCAO section 12Q.5(f), subject to the DA Waivers, which the City may exercise individually or in combination with any of its other rights and remedies.

(d) Covered Contracts. Any Contract, Subcontract, or Sublease, as defined in Chapter 12Q, that Developer enters into for public works, public improvements, or for services must require the Contractor, Subtenant, or Subcontractor, as applicable, to comply with the applicable provisions of the HCAO and must contain contractual obligations substantially the same as those set forth in the HCAO. Developer agrees to notify the Contracting Department promptly of any Subcontractors performing services covered by Chapter 12Q and certify to the Contracting Department that Developer has notified the Subcontractors of their HCAO obligations under this Chapter.

(e) Noncompliance. Developer will be responsible for monitoring compliance with the HCAO by each Subcontractor, Subtenant, and Contractor performing services on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its Subcontractors, Subtenants, or Contractors. The City's remedies for Developer's noncompliance with the HCAO are subject to the DA Waivers.

(f) Retaliation Prohibited. Developer must not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City of any issue regarding noncompliance or anticipated noncompliance with the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Representation and Warranty. Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Reporting. Upon request, Developer must provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO.

(i) Records. After receiving a written request from the City to inspect pertinent payroll records and after at least 10 days to respond have elapsed, Developer agrees to provide the City with access to pertinent payroll records relating to the number of employees employed and terms of medical coverage. In addition, the City and its Agents, in consultation with the Department of Public Health, may conduct audits of Contracting Parties, although such audits

shall be conducted through an examination of records at a mutually agreed upon time and location within 10 days after written notice. Developer agrees to cooperate with the City in connection with these audits.

(j) Threshold. If a Subcontractor, Subtenant, or Contractor is exempt from the HCAO because the amount payable to the Subcontractor, Subtenant, or Contractor under all of its contracts with the City or relating to City-owned property is less than $25,000 (or $50,000 for nonprofits) in that City Fiscal Year, but the Subcontractor, Subtenant, or Contractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to the Subcontractor, Subtenant, or Contractor to equal or exceed $75,000 in that City Fiscal Year, then all of the Contractor's, Subtenant's, or Subcontractor's contracts with the City and relating to City-owned property will become subject to the HCAO from the date on which the later agreement is executed.

3. 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 FC Project Area 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 must comply with the prevailing wage requirements in *WDP § III.C.6 (Prevailing Wages)* that apply to construction work on all Prevailing Wage Covered Projects by Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) (as defined in the WDP).

(c) Penalties. The Port has designated OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in accordance with the WDP, subject to the DA Waivers.

4. Other Prevailing Wage Rate Requirements.
(Admin. Code ch. 21C)

(a) Under Administrative Code ch. 21C, individuals employed in certain activities at the FC Project Area are entitled to be paid not less than either the highest general prevailing rate of wages (including fringe benefits or their matching equivalents) paid in private employment for similar work in the area in which the contract is being performed, as determined by the Civil Service Commission or the "**Prevailing Rate of Wages**" (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the activities meet any of the specified exemptions. Covered activities are:

(i) motor bus services provided to the general public (§ 21C.1);

(ii) "**Janitorial Services**" (§ 21C.2);

(iii) operation of a "**Public Off-Street Parking Lot, Garage, or Automobile Storage Facility**" (§ 21C.3);

(iv) theatrical or technical services related to the presentation of a show, including workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services (§ 21C.4);

(v) operation of a "**Special Event**" (§ 21C.8);

(vi) "**Broadcast Services**" (§ 21C.9); and

(vii) driving a "**Commercial Vehicle**" or loading or unloading materials, goods, or products into or from a Commercial Vehicle in connection with the presentation of a "**Show**" or for a Special Event (§ 21C.10).

(b) Agreement. Developer agrees to comply with the obligations in Administrative Code chapter 21C and to require its tenants, contractors, and any subcontractors to comply with the obligations in chapter 21C. In addition, if Developer or its tenant, contractor, or any subcontractor fails to comply with these obligations, the City will have all available remedies against Developer to secure compliance and seek redress for workers who provided the services.

(c) OLSE. For current Prevailing Wage rates, see the OLSE website or call the OLSE at 415-554-6235.

5. First Source Hiring Program.
(Admin. Code ch. 83)

Developer's obligations to comply with the First Source Hiring Program are set forth in *WDP §§ II.C.3 (First Source Hiring Program for Construction Work)* and *II.D2 (First Source Hiring Program for Operations)*.

6. Criminal History In Hiring And Employment Decisions.
(Admin. Code ch. 12T)

(a) Agreement to Comply. Administrative Code Chapter 12T ("**Chapter 12T**") will only apply to a Contractor's, Subcontractor's, or subtenant's operations to the extent those operations are in furtherance of performing a Contract or Property Contract with the City subject to Chapter 12T. If applicable, Developer will comply with and be bound by Chapter 12T, including the remedies and implementing regulations, with respect to applicants to and employees of Developer who would be or are performing work at the FC Project Area under the DDA.

(b) Breach. Developer must incorporate Chapter 12T by reference in all contracts related to be performed in furtherance of a Contract or Property Contract with the City, as defined in Administrative Code section 12T.1. Developer will be responsible for monitoring compliance by its Subcontractors, Contractors, and subtenants, but the City agrees that Developer will not be liable for their noncompliance.

(c) Prohibited Activities. Developer and its Subcontractors, Contractors, and subtenants must not inquire about, require disclosure of, or if the information is received, base an Adverse Action on an applicant's or potential applicant's or employee's: (i) Arrest not leading to a Conviction, except under circumstances identified in Chapter 12T as an Unresolved Arrest; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise

rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system; (v) a Conviction that is more than seven years old, based on the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction, except that a Contractor, Subcontractor, or subtenant may inquire about, require disclosure of, base an Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or employee's driving record if driving is more than a de minimis element of the employment in question.

(d) Employment Applications. Developer and its Subcontractors, Contractors, and subtenants must not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any Conviction History or unresolved arrest until either after the first live interview with the person, or after a conditional offer of employment in accordance with section 12T.4(c).

(e) Disclosure. Developer and its Subcontractors, Contractors, and subtenants must state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Developer or its Subcontractors, Contractors, and subtenants at the FC Project Area that the DDA and all Contracts and Property Contracts will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Posting. Developer and its Subcontractors, Contractors, and subtenants must post the notice prepared by the OLSE, available on OLSE's website, in a conspicuous place at the FC Project Area and at other workplaces, job sites, or other locations under the Subcontractor's, Contractor's, or subtenant's control at which work is being done or will be done in furtherance of performing a Contract or Property Contract under the DDA with the City. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the FC Project Area or other workplace at which it is posted.

(g) Penalties. Developer and its Subcontractors, Contractors, and subtenants understand and agree that upon any failure to comply with Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T, subject to **Subsection (b)** (Breach) and the DA Waivers, including a penalty of $50 for each employee, applicant or other person as to whom the violation occurred or continued, and thereafter, for subsequent violations, the penalty may increase to no more than $100, for each employee or applicant whose rights were, or continue to be, violated.

(h) Inquiries. If Developer has any questions about the applicability of Chapter 12T, it may contact the Port for additional information. The Port will consult with the Director of the City's Office of Contract Administration, who has authority to grant a waiver under the circumstances set forth in section 12T.8 of Chapter 12T.

7. Employee Signature Authorization Ordinance.
(S.F. Admin Code §§ 23.50-23.56)

The City has adopted an Employee Signature Authorization Ordinance, which requires employers of employees in hotel or restaurant projects on public property with 50 or more full-time or part-time employees to enter into a "card check" agreement with a labor union regarding

the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Developer agrees to comply with the requirements of the ordinance, if applicable, including any requirements applicable to its successors, as specified in Administrative Code section 23.54.

Use Of City Property

8. Tobacco Products and Alcoholic Beverages.
(Admin. Code § 4.20; Health Code art. 19K)

(a) Definitions. For purposes of this Section: (i) "**alcoholic beverage**" is defined in California Business and Professions Code section 23004 and excludes cleaning solutions, medical supplies, and other products and substances not intended for drinking; and (ii) "**tobacco product**" is defined in Health Code section 1010(b).

(b) Advertising Ban. New general advertising signs that are visible to the public are prohibited on the exterior of any City-owned building under Administrative Code section 4.20-1.

(c) Tobacco Sales Ban. No person may sell tobacco products on property owned by or under the control of the City under Health Code article 19K.

(d) Alcoholic Beverage Advertising. Port property used for operation of a restaurant, concert or sports venue, or other facility or event where the sale, production, or consumption of alcoholic beverages is permitted, will be exempt from the alcoholic beverage advertising prohibition in Administrative Code section 4.20(a)-(c).

9. Integrated Pest Management Program.
(Env. Code ch. 3)

(a) IPM Plan. Chapter 3 of the Environment Code (the "**IPM Ordinance**") describes an integrated pest management policy ("**IPM Policy**") to be implemented by all City departments. Except for the permitted uses of pesticides provided in IPM Ordinance section 303, Developer must not use or apply during the DDA term, and must not contract with any party to provide pest abatement or control services to the FC Project Area, except in compliance with the Port's integrated pest management plan ("**IPM Plan**").

(b) Application. Although not a City Department, Developer agrees to comply, and must require all of Developer's contractors to comply, with the Port's approved IPM Plan and IPM Ordinance sections 300(d), 302, 304, 305(f), 305(g), and 306, as if Developer were a City department. Among other matters, the IPM Ordinance: (i) provides for the use of pesticides only as a last resort; (ii) prohibits the use or application of pesticides on City-owned property except for pesticides granted exemptions under IPM Ordinance section 303 (including pesticides included on the most current Reduced Risk Pesticide List compiled by the Department of the Environment); (iii) imposes certain notice requirements; and (iv) requires Developer to keep certain records and to report to the City all pesticide use by Developer's staff or contractors.

(c) Prior Review. Before Developer or Developer's contractor applies pesticides to outdoor areas, Developer must obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application must be made only by or under the supervision of

a person holding a valid Qualified Applicator certificate or Qualified Applicator license under California law. The City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the Department of the Environment website, http://sfenvironment.org/ipm.

10. Resource-Efficient Facilities and Green Building Requirements.
(Env. Code ch. 7)

Developer agrees to comply with all applicable provisions of the Environment Code relating to resource-efficiency and green building design requirements.

11. 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 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.

12. Diesel Fuel Measures.
(Env. Code ch. 9)

Consistent with the City's Greenhouse Gas Emissions Reduction Plan (Env. Code § 903) to reduce greenhouse gas emissions in the City, Developer must minimize exhaust emissions from operating equipment and trucks during construction. Developer's compliance with MMRP Mitigation Measure M-AQ-1a will satisfy this requirement.

13. Arsenic-Treated Wood.
(Env. Code ch. 13)

Developer must not purchase preservative-treated wood products containing arsenic on behalf of the City in the performance of the DDA without obtaining an exemption under Environment Code section 1304 from the Department of Environment. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. In this Section: (a) "**preservative-treated wood containing arsenic**" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative; and (b) "**saltwater immersion**" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

14. Food Service and Packaging Waste Reduction Ordinance.
(Env. Code ch. 16)

Developer agrees to comply fully with and be bound by section 1604(d) of the Food Service and Packaging Waste Reduction Ordinance (Env. Code ch. 16), including the remedies provided in section 1607 and implementing guidelines and rules. By entering into the DDA and the Development Agreement, Developer agrees that if it breaches this provision, and fails to cure within the cure periods provided herein, the City will suffer actual damages that will be impractical or extremely difficult to determine and that the following amounts of liquidated damage are reasonable estimates of the damage that the City will incur based on any violation, established in light of the circumstances existing on the Reference Date: (a) $100 for the first breach; (b) $200 for the second breach in the same year; and (c) $500 for subsequent breaches in the same year. These liquidated damages will not be considered penalties, but agreed monetary damages sustained by the City because of Developer's noncompliance.

15. Bottled Drinking Water.
(Env. Code ch. 24; Port Reso. No. 12-11)

Developer is subject to all applicable provisions of Environment Code chapter 24 prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of 21 fluid ounces or less at Events held on City Property with attendance of more than 100 people during the DDA Term. Also, Developer must comply with the Port's *Zero Waste Policy for Events and Activities* (Port Reso. No. 12-11) for applicable Events at the FC Project Area during the DDA Term.

16. Graffiti Removal and Abatement.
(Pub. Works Code Sec. 23)

(a) Requirement. Developer agrees to remove all graffiti from the FC Project Area, including from the exterior of any structures within the FC Project Area, consistent with the notice and cure provisions of Public Works Code section 23. If the Director of Public Works determines that any property contains graffiti in violation of section 2303, the Director may issue a notice of violation to Developer and any Offending Party. At the time the notice of violation is issued, the Director will take one or more photographs of the alleged graffiti and make copies of the photographs available to Developer and any Offending Party upon request. The photographs will be dated and retained as a part of the file for the violation. The notice will give Developer and any Offending Party 30 days after the date of the notice to either remove the graffiti or request a hearing on the notice of violation and set forth the procedure for requesting the hearing. This Section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property.

(b) Application. In this Section, "**graffiti**" means any inscription, word, figure, marking, or design that is affixed, marked, etched, scratched, drawn, or painted on any building, structure, fixture, or other improvement, whether permanent or temporary, including signs, banners, billboards, and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (i) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the DDA or the Port

Building Code; (ii) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*); (iii) any painting or marking that a City department makes in the course of its official duties or as part of a public education campaign; or (iv) any painting or marking required for compliance with any local, state, or federal law.

17. Drug-Free Workplace.
(41 U.S.C. ch. 81; Police Code art. 40)

To the extent applied by a federal grant or contract for the Project, the Drug-Free Workplace Act of 1988 (41 U.S.C. ch. 81) will apply to Developer. Developer agrees to adopt a Drug-Free Workplace Policy and comply with all other applicable requirements of the drug-free workplace laws under Police Code article 40.

18. Nutritional Standards and Guidelines.
(Admin. Code § 4.9-1)

(a) Definitions. For the purpose of this Section: (i) "**meal**" means "**prepared food**" as defined in Environment Code section 1602(l), which means food or beverages prepared within San Francisco for individual customers or consumers in a form commonly understood to be a breakfast, lunch, or dinner; (ii) "**Nutritional Standards Requirements**" means the food and beverage nutritional standards and calorie labeling requirements set forth in Administrative Code section 4.9-1(c); (iii) "**restaurant**" is defined in Health Code section 451(s) and includes any coffee shop, cocktail lounge, sandwich stand, public school cafeteria, in-plant or employee eating establishment, and any other eating establishment that gives or offers for sale food that requires no further preparation to the public, guests, patrons, or employees for consumption on or off the premises; (iv) "**vending machine**" is defined in Administrative Code section 4.2(a) and means an automated machine dispensing products or services, including food, beverages, tobacco products, newspapers, and periodicals.

(b) Vending Machines. Any permitted vending machine must comply with the Nutritional Standards Requirements in section 4.9-1(c). Developer must incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the FC Project Area or for the supply of food and beverages to that vending machine.

(c) Restaurants. Any restaurant on City property is encouraged to ensure that at least 25% of meals offered on the menu meet the Nutritional Standards Requirements set forth in Administrative Code section 4.9-1(e).

(d) Penalties. Developer's failure to comply with the Nutritional Standards Requirements in section 4.9-1(c) will be considered an Event of Default under the DDA and in addition to its other remedies, which will be subject to the DA Waivers, the City may require the removal of any vending machine on the FC Project Area that is not permitted or that violates the Nutritional Standards Requirements. Developer will be responsible for monitoring compliance with the Nutritional Standards Requirements by each subcontractor, subtenant, and contractor performing services or occupying premises on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its subcontractors, subtenants, or contractors.

19. All-Gender Toilet Facilities.
(Admin. Code § 4.1-3)

Developer must include at least one all-gender toilet facility on each floor of any new building on City-owned land or that is constructed by or for the City where toilet facilities are required or provided. Unless not allowed by an existing lease, whenever extensive renovations are made on one or more floors in any building on land that the City owns or in a building that is leased to or by the City, Developer will provide at least one all-gender toilet facility on each floor where the renovations take place and toilet facilities are required or provided. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures. "Extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the required toilet facilities.

20. Indoor Air Quality.
(Env. Code § 711(g))

Developer agrees to comply with section 711(g) of the Environment Code and regulations adopted under Environment Code section 703(b) relating to construction and maintenance protocols to address indoor air quality.

Use Of Port Property

21. Southern Waterfront Community Benefits and Beautification Policy.
(Port Reso. No. 07-77)

(a) Policy Goals. The Port's *Policy for Southern Waterfront Community Benefits and Beautification* identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Developer must provide community benefits and beautification measures in consideration for the use of the Project Site. Examples of desired benefits include: (i) beautification, greening, and maintenance of any outer edges of and entrances to the FC Project Area; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Developer's interaction with the Port, neighbors, visitors, and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the FC Project Area that are low-emission diesel equipment and use biodiesel or other reduced particulate emission fuels; (v) commitment to use low-impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the FC Project Area of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified as LBEs under Administrative Code chapter 14B; and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Developer's performance of the Project Requirements under the DDA will satisfy the requirements under this policy. Developer agrees to provide the Port with documents and records regarding these activities at the Port's request.

(b) Agreement to Use Local Truckers. Except to the extent inconsistent with any pertinent collective bargaining agreement, Developer agrees that, for all directly contracted or

service agreement trucking opportunities associated with Developer's operations at the FC Project Area, including hauling materials on, off, and within the Project Site, Developer will make good faith efforts to use Local Truckers first. For purposes of this Section, "**truckers**" means a business that provides trucking services for a profit, and "**Local Truckers**" means truckers that CMD has certified as LBEs.

To the extent that Developer in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Developer must use Local Truckers for a minimum of 60% of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the 60% requirement; equipment rental and disposal fees will not be counted. Developer will not be in default of this provision for not meeting the 60% minimum if Developer offered trucking opportunities to Local Truckers, but the Local Truckers were unavailable or unwilling to perform the work.

During all periods of construction activities at the Project Site, Developer must submit a monthly report to the Port and CMD stating the total cost to Developer of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers. The monthly report must document all truckers who conducted contract or service agreement work for Developer, and identify truckers that are Local Truckers. If Developer fails to meet the 60% minimum in any month, the report must document Developer's good faith outreach efforts to contact Local Truckers and the reasons that the work could not be conducted by Local Truckers. At the Port's or CMD's request, Developer must provide additional documentation required to ensure Developer's compliance with this provision. Developer's failure to comply with this Section will be a Material Breach under the DDA.

Other Public Policies

22. Conflicts of Interest.
(Calif. Gov. Code §§ 87100 *et seq.* & §§ 1090 *et seq.*; Charter § 15.103; Campaign and Govt'l Conduct Code art. III, ch. 2)

Through its execution of the DDA, 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 Port if Developer becomes aware of any such fact during the DDA Term.

23. Sunshine.
(Calif. Gov. Code §§ 6250 *et seq.*; Admin. Code ch. 67)

Developer understands and agrees that under the California Public Records Act (Calif. Gov. 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.

24. 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 the DDA, 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 board of directors; (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.

25. Implementing the MacBride Principles – Northern Ireland.
(Admin. Code ch. 12F)

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

AMENDED IN COMMITTEE
10/26/17

FILE NO. 170863 ORDINANCE NO. 224-17

[Development Agreement - FC Pier 70, LLC - Pier 70 Development Project]

Ordinance approving a Development Agreement between the City and County of San Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east; waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b).

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font.*
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background and Findings.

(a) California Government Code Sections 65864 et seq. ("Development Agreement Law") authorize any city, county, or city and county to enter into an agreement for the development of real property within its jurisdiction.

(b) Chapter 56 of the Administrative Code sets forth certain procedures for processing and approving development agreements in the City and County of San Francisco (the "City").

(c) In April 2011, the Port Commission (the "Port") selected Forest City Development California, Inc., a California corporation, through a competitive process to

negotiate exclusively for the mixed-use development (the "Project") of approximately 28 acres (the "28-Acre Site") of Seawall Lot 349, a land parcel under Port jurisdiction that is bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east commonly known as Pier 70. Forest City Development California, Inc. is now wholly owned by Forest City Realty Trust, Inc., a New York Stock Exchange-listed real estate company. FC Pier 70, LLC ("Developer"), a wholly-owned ~~an~~ affiliate of Forest City Realty Trust, Inc., ~~Development California, Inc.,~~ will act as the master developer for the Project. ~~("Developer").~~

(d) In conjunction with this ordinance, the Board of Supervisors has taken or intends to take a number of other actions in furtherance of the Project, including approval of: (1) a trust exchange agreement between the Port and the California State Lands Commission; (2) a disposition and development agreement ("DDA") between Developer and the Port; (3) amendments to the General Plan; (4) amendments to the Planning Code that create the Pier 70 Special Use District (the "SUD amendments") over the 28-Acre Site and two adjacent parcels known as the "Illinois Street Parcels" and incorporate more detailed land use controls of the Pier 70 SUD Design for Development; (5) amendments to the Zoning Maps; (6) approval of a development plan for the 28-Acre Site in accordance with Charter Section B7.310 (adopted as part of Proposition D, November 2008) and Section 4 of the Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative (Proposition F, November 2014); (7) a memorandum of understanding for interagency cooperation among the Port, the City, and other City agencies (the "ICA") with respect to the subdivision of the 28-Acre Site and construction of infrastructure and other public facilities; (8) formation proceedings for financing districts and a memorandum of understanding between the Port and the Assessor, the Treasurer-Tax Collector, and the Controller regarding the assessment, collection, and allocation of ad valorem and special taxes to the financing

districts; and (9) a number of related transaction documents and entitlements to govern the Project.

(e) At full build-out, the Project will include: (1) 1,100 to 2,150 new residential units, at least 30% of which, in the Affordable Housing Area that includes the 28-Acre Site and a portion of the 20th/Illinois Parcel, will be on-site housing affordable to a range of low- to moderate-income households as described in the Affordable Housing Plan in the DDA; (2) between 1 million and 2 million gross square feet of new commercial and office space; (3) rehabilitation of three significant contributing resources to the historic district; (4) space for small-scale manufacturing, retail, and neighborhood services; (5) transportation demand management on-site, a shuttle service, and payment of impact fees to the Municipal Transportation Agency that it will use to improve transportation connections through the neighborhood; (6) 9 acres of new open space, potentially including active recreation on rooftops, a playground, a market square, a central commons, and waterfront parks along the shoreline; (7) on-site strategies to protect against sea level rise; and (8) replacement studio space for artists leasing space in Building 11 in Pier 70 and a new arts space.

(f) While the DDA binds the Port and Developer, other City agencies retain a role in reviewing and issuing certain later approvals for the Project. Later approvals include approval of subdivision maps and plans for horizontal improvements and public facilities, design review and approval of new buildings under the SUD amendments, and acceptance of Developer's dedications of horizontal improvements and public facilities for maintenance and liability under the Subdivision Code. Accordingly, the City and Developer negotiated a development agreement for the Project (the "Development Agreement"), a copy of which is in Board File No. 170863 and incorporated in this ordinance by reference. The DDA, the Development Agreement, the ICA, the Tax MOU, and all leases and vertical disposition development

agreements that the Port enters into in accordance with the DDA are referred to collectively as the "Transaction Documents."

(g) Development of the 28-Acre Site in accordance with the DDA and the Development Agreement will help realize and further the City's goals to restore and revitalize the Union Iron Works Historic District, increase public access to the waterfront, increase public open space and community facilities within the neighborhood, increase affordable and market-rate housing, and create a significant number of construction and permanent jobs along the southeastern waterfront. In addition, the Project will provide additional benefits to the public that could not be obtained through application of existing City ordinances, regulations, and policies.

Section 2. Environmental Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (Cal. Public Resources Code §§ 21000 et seq.) ("CEQA"). A copy of this determination is in Board File No. 170863 and incorporated in this ordinance by reference.

(b) The Board of Supervisors previously adopted Resolution No. 402-17, a copy of which is in Board File No. 170987, making CEQA findings for the Project. The Board of Supervisors adopts and incorporates in this ordinance by reference the Planning Commission's findings under CEQA.

Section 3. Consistency Findings.

The Planning Commission recommended that the Board of Supervisors approve the Development Agreement and amendments to the General Plan, the Planning Code, and the Zoning Maps at a public hearing on August 24, 2017, by Resolution Nos. 19978 and 19979, a ~~copy~~copies of which ~~is~~are in Board File No. 170863. The Board of Supervisors adopts and incorporates by reference in this ordinance the Planning Commission's findings of consistency

with the General Plan, as amended, and the eight priority policies of Planning Code Section 101.1.

Section 4. Public Trust Findings.

At a public hearing on September ~~12~~26, 2017, the Port Commission consented to the Development Agreement and approved the trust exchange agreement and the DDA, subject to Board of Supervisors' approval, finding that the Project would be consistent with and further the purposes of the common law public trust and statutory trust under the Burton Act (Stats. 1968, ch. 1333) by Resolution Nos. 17-44 and 17-47, ~~a copy~~ copies of which ~~is~~are in Board File No. 170863. The Board of Supervisors adopts and incorporates in this ordinance by reference the Port Commission's public trust findings.

Section 5. Approval of Development Agreement.

The Board of Supervisors:

(a) approves all of the terms and conditions of the Development Agreement in substantially the form in Board File No. 170863;

(b) finds that the Development Agreement substantially complies with the requirements of Administrative Code Chapter 56;

(c) finds that the Project is a large multi-phase and mixed-use development that satisfies Administrative Code Section 56.3(g); and

(d) approves the Workforce Development Plan attached to the DDA in lieu of requirements under Administrative Code Chapter 14B, Article VII of Chapter 23, ~~and~~Section 56.7(c), and Chapter 83 to the extent that Chapter 83 applies to construction work that is subject to the Local Hiring Requirements of the Workforce Development Plan.

Section 6. Administrative Code Chapter 56 Waivers.

The Board of Supervisors waives the application to the Project of the following provisions of Administrative Code Chapter 56 to the extent inconsistent with the Development Agreement, the DDA, or the ICA, specifically:

(a) Section 56.4 (Application, Forms, Initial Notice, Hearing); Section 56.7(c) (Nondiscrimination/Affirmative Action Requirements); Section 56.8 (Notice); Section 56.10 (Negotiation Report and Documents); Section 56.15 (Amendment and Termination); Section 56.17(a) (Annual Review); Section 56.18 (Modification or Termination); and Section 56.20 (Fee); and

(b) any other procedural or other requirements if and to the extent that they are not strictly followed.

Section 7. Other Administrative Code Waivers.

The Board of Supervisors waives the application to the Project of these provisions of the Administrative Code: (a) Chapter 6 (Public Works Contracting Policies and Procedures) other than the payment of prevailing wages as required in Chapter 6; (b) Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting); (c) Competitive Bidding Procedures ~~appraisal effective date, and Additional~~ Appraisal Review as defined in Section 23.3 (Chapter Definitions) and required by Section 23.3 (Conveyance and Acquisition of Real Property); (d) Section ~~23.26~~23.31 (Year-to-Year and Shorter Leases); (e) Section 23.30-~~23.42~~ (Lease of Real Property~~s When City is Landlord~~); (f) Sections 23.33 (Competitive Bidding Procedures); (fg) Section 23A.7 (Transfer of Jurisdiction Over Surplus Properties to the Mayor's Office of Housing~~and Community Development~~); ~~and~~ (gh) Subsection (c)(2) of Section 61.5~~(c)(2)~~ (Listing of Unacceptable Non-Maritime Land Uses); and (i) remedies and penalties for noncompliance with Section 4.9-1(c) (Nutritional Standards and Guidelines), Section 12Q.5(f) (Health Care Accountability), or

Section 12T (Criminal History in Hiring and Employment) that would result in termination of any Transaction Document, impairment of Developer's or any vertical developer's development rights at the 28-Acre Site, or debarment of Developer or any vertical developer from future contract opportunities with the City.

Section 8. Planning Code Waivers.

The Board of Supervisors:

(a) finds that the impact fees and exactions payable under the Development Agreement will provide greater benefits to the City than the impact fees and exactions under Planning Code Article 4 and waives the application of, and to the extent applicable exempts the Project from, impact fees and exactions under Planning Code Article 4 on the condition that Developer and all building developers comply with impact fees and exactions established in the Development Agreement; and

(b) finds that the Transportation Plan attached to the Development Agreement includes a Transportation Demand Management Plan ("TDM Plan") and other provisions that meet the goals of the City's Transportation Demand Management Program in Planning Code Section 169 and waives the application of Section 169 to the Project on the condition that Developer implements and complies with the TDM Plan for the required compliance period.

Section 9. Subdivision Code Waivers.

(a) The Board of Supervisors waives the application to the Project of time limits under Subdivision Code ~~Section 1333.3(b) (Rights Conveyed),~~ Section 1346(e) (Improvement Plans) and Section 1355 (Time Limit for Submittal) to the extent that they conflict with the ICA or the Development Agreement.

(b) The Board of Supervisors also waives the application to the Project of Subdivision Code Section 1348 (Failure To Complete Improvements Within Agreed Time),

and the following terms shall apply in lieu thereof: The Public Improvement Agreement, as defined in the ICA, shall include provisions consistent with the Transaction Documents and the applicable requirements of the Municipal Code and the Subdivision Regulations regarding extensions of time and remedies that apply when improvements are not completed within the agreed time.

Section 10. Authorization.

(a) The Board of Supervisors affirms that the waivers in this ordinance do not waive requirements under the Development Agreement Law and authorizes the City to execute, deliver, and perform the Development Agreement as follows:

(1) the Director of Planning, the City Administrator, and the Director of Public Works are authorized to execute and deliver the Development Agreement with signed consents of the Port Commission, the Municipal Transportation Agency, and the San Francisco Public Utilities Commission; and

(2) the Director of Planning and other appropriate City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with its terms.

(b) The Director of Planning is authorized to exercise discretion, in consultation with the City Attorney, to enter into any additions, amendments, or other modifications to the Development Agreement that the Director of Planning determines are in the best interests of the City and that do not materially increase the obligations or liabilities of the City or materially decrease the benefits to the City as provided in the Development Agreement. Final versions of any additions, amendments, or other modifications to the Development Agreement shall be provided to the Clerk of the Board of Supervisors for inclusion in Board File No. 170863 within 30 days after execution by all parties.

Section 11. Ratification of Past Actions; Authorization of Future Actions.

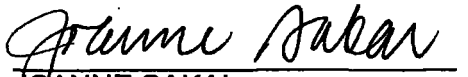
All actions taken by City officials in preparing and submitting the Development Agreement to the Board of Supervisors for review and consideration are hereby ratified and confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken by City officials consistent with this ordinance.

Section 12. Effective and Operative Dates.

(a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned, or the Mayor does not sign the ordinance within ten days after receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

(b) This ordinance shall become operative only on the effective date of the DDA. No rights or duties are created under the Development Agreement until the operative date of this ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
JOANNE SAKAI
Deputy City Attorney

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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 170863 **Date Passed:** November 14, 2017

Ordinance approving a Development Agreement between the City and County of San Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east; waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b).

October 19, 2017 Budget and Finance Committee - CONTINUED

October 26, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 26, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

October 31, 2017 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

November 14, 2017 Board of Supervisors - FINALLY PASSED

Ayes: 9 - Breed, Cohen, Farrell, Fewer, Peskin, Ronen, Safai, Sheehy and Yee

Absent: 2 - Kim and Tang

File No. 170863

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 11/14/2017 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

11/15/17
Date Approved

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383 RECORDING REQUESTED BY, AND WHEN RECORDED, MAIL TO:	FOR RECORDER'S USE ONLY

[APN: Lot 001, Block 4052 (Portion) and Lot 004, Block 4111 (Portion)]

MEMORANDUM OF MASTER LEASE

THIS MEMORANDUM OF MASTER LEASE (this "**Memorandum**") dated for reference purposes as of _____, _____ is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the "**Port**"), and **FC Pier 70, LLC**, a Delaware limited liability company (the "**Tenant**").

1. Agreement. Port and Tenant have entered into a Master Lease dated as of _____, _____ (the "**Master Lease**"), under which (a) Port agrees to lease to Tenant the Premises described in Exhibit A attached hereto (the "**Site**"), (as may be altered in accordance with the terms of the Master Lease, the "**Premises**"). Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Master Lease.

2. Term. Twenty-five (25) years, unless earlier terminated or otherwise extended in accordance with that certain Disposition and Development Agreement between Port and Tenant dated _____, _____ ("**DDA**")

3. Effect of Recordation of Partial Release. The Master Lease contemplates that the Port and Tenant will from time to time execute and record a Partial Release of Master Lease covering a certain portion of the Premises in the Official Records of the City and County of San Francisco ("**Released Portion of Premises**"). Recording of a Partial Release of Master Lease will automatically terminate the Master Lease as it applies to the Released Portion of Premises that is the subject of the Partial Release of Master Lease, and after such recording, other than the terms and provisions that survive the expiration or earlier termination of the Master Lease, the Master Lease shall have no further force or effect on such Released Portion of Premises.

4. Notice. The parties have executed and recorded this Memorandum to give notice of the Master Lease and their respective rights and obligations under the Master Lease to all third parties. The Master Lease is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Master Lease, the Master Lease shall control.

5. Counterparts. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF the parties hereto have caused this Memorandum of Lease Disposition and Development Agreement to be executed by their duly appointed representatives as of the date first above written.

TENANT:

FC PIER 70, LLC, a Delaware limited liability company

By: _____

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

Port Resolution No. 17 – 43 (September 26, 2017)
Board of Supervisors Resolution No. 401-17

By: _____
Name: [_____],
Deputy City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

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 _____

On _____ before me, _____ personally
(insert name and title of the officer)

appeared _____

_____

_____,

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.

_____ (Seal)
Signature

CERTIFICATE OF ACKNOWLEDGMENT

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 _____

On _____ before me, _____ personally
(insert name and title of the officer)

appeared _____
_____
_____,

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.

_____ (Seal)
Signature

MASTER LEASE SCHEDULE 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.

MASTER LEASE SCHEDULE 1.1
DDA §§ 15.8 AND 15.9

15.8. Acceptance of Park Parcels and Phase Improvements. All Port Acceptance Items are subject to Port Commission acceptance as described in this Section. Within 30 days after the Chief Harbor Engineer's issuance of an SOP Compliance Determination for any Port Acceptance Item, Port staff will place an item on the Port Commission's calendar in accordance with Subsection 5.3(c) (Port Commission Meetings). Port staff will prepare a staff memorandum to the Port Commission that will include the following: (i) a description of the Port Acceptance Item to be accepted; (ii) a finding that the applicable Port Acceptance Item is functional and is constructed in conformity with the Project Requirements and Regulatory Requirements; (iii) a list of any permitted encroachments, easements or title exceptions that the Port is willing to accept on terms agreed upon by the Parties prior to the Chief Harbor Engineer's issuance of an SOP Compliance Determination; (iv) a description of any Deferred Infrastructure associated with the Port Acceptance Item that will be constructed and accepted at a later time to avoid damage to the Port Acceptance Item, as previously approved by Port in accordance with the ICA; (v) any conditions of acceptance, including conditions related to existing sub-surface improvements as described in Subsection 15.8(d) (Sub-Surface Improvements Below Port Acceptance Items); and (vi) the Chief Harbor Engineer's recommendation that the Port Commission accept the applicable Port Acceptance Item on the following terms.

(a) Conformity Findings. The Port Commission must find that the applicable Port Acceptance Item described in the staff memorandum is functional and is constructed in conformity with the Project Requirements and Regulatory Requirements.

(b) Delegation for Deferred Infrastructure. Completion of the approved Deferred Infrastructure identified in the staff memorandum will not be a pre-requisite to Port Commission acceptance of a Port Acceptance Item, but the Port Commission will delegate to the Port Director or her designee the authority to accept at a later date, the approved Deferred Infrastructure associated with the applicable Port Acceptance Item once it is complete. The Port Commission resolution will specify any conditions to the actions delegated to the Port Director.

(c) Release and Acceptance. The Port Commission will authorize and direct the Port Director, or her designee, to promptly, but in no event later than 10 business days after satisfaction of all conditions required by the Port Commission for acceptance, if any, record a signed, acknowledged Partial Release of Master Lease under ML § 1.1(b) (Adjustment of Premises for Development) release from the Master Lease, the real property occupied by the accepted Port Acceptance Item. With respect to the approved Deferred Infrastructure associated with the applicable Port Acceptance Item accepted by the Port Director under Section 15.8(b) (Delegation for Deferred Infrastructure), the Port Director will sign and record a Partial Release of Master Lease under ML § 1.1(b) (Adjustment of Premises for Development) promptly, but in no event later than 10 business days after the later of (1) the Chief Harbor Engineer's issuance of an SOP Compliance Determination for the applicable approved Deferred Infrastructure, or (2) satisfaction of all conditions required by the Port Commission for acceptance of the Approved Deferred Infrastructure, if any. The Port Director will deliver a conformed copy of the recorded document to Developer promptly after recordation.

(d) Sub-Surface Improvements Below Port Acceptance Items. If a Port Acceptance Item or associated approved Deferred Infrastructure includes sub-surface improvements for which the City has not yet accepted ownership (e.g., completed but unaccepted combined sewer storage facilities that lie beneath a completed Park Parcel), a condition to Port's acceptance of the Port Acceptance Item or the associated approved Deferred Infrastructure will be the Developer entering into an agreement reasonably satisfactory to the Parties and the City prior to Port acceptance under which the Port grants to Developer a right-of-entry for maintenance, repair and inspection purposes and Developer retains ownership and liability for the sub-surface improvements until such time as the sub-surface improvements are formally accepted by the City. The terms of the agreement will require Developer, among other things, to extend the applicable insurance coverages, indemnity and release provisions under the Master Lease to the subject property.

(e) Effect of Recordation. Recordation of the Partial Release of Master Lease under ML § 1.1(b) (Adjustment of Premises for Development) will:

(i) transfer ownership of the accepted Port Acceptance Item or Deferred Infrastructure, as applicable, to the Port; and

(ii) release Developer from future obligations for liability or repair of the accepted Port Acceptance Item or Deferred Infrastructure, as applicable, except to the extent provided under Subsection 15.8(d) (Sub-Surface Improvements Below Port Acceptance Items), Section 9.3 (General Indemnity), Section 9.4 (Environmental Indemnity), and applicable warranties.

15.9. Acceptance of Other Horizontal Improvements. The ICA provides for the City Agencies to meet and confer to consider other standards and procedures for acceptance of Horizontal Improvements, including Utility Infrastructure and, if desired, adopt procedures for acceptance of Horizontal Improvements. For any Horizontal Improvement that any City Agency accepts in accordance with applicable Regulatory Requirements, upon a City Agency's acceptance of a Horizontal Improvement, the Parties will record a Partial Release of Master Lease under ML § 1.1(b) (Adjustment of Premises for Development) unless the acceptance relates only to sub-surface improvements where the surface improvements have not been accepted, or vice versa, in which case, as a condition to the acceptance, Developer will be required to provide the accepting agency with access rights in accordance with the Master Lease, and warranties covering the accepted improvements for a period of time as specified in the conditions to acceptance and thereafter, under the applicable Public Improvement Agreement.

MASTER LEASE SCHEDULE 14.3
DISCLOSURE SUMMARY SHEET

[To be prepared and inserted prior to execution]

DDA EXHIBIT B11

PIER 1
SAN FRANCISCO, CA 94111

LICENSE TO USE PROPERTY

LICENSE NO. ____

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AND

FC PIER 70, LLC,

A DELAWARE LIMITED LIABILITY COMPANY

[PORTIONS OF PIER 70]

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

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BASIC LICENSE INFORMATION

License Date:	
License Number:	
Port:	**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Port's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Licensee:	FC Pier 70, LLC a Delaware limited liability company
Licensee's Main Contact Person and Mailing Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Billing Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Emergency Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Insurance Contact and Address (not broker):	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Parking Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:

Contact Information for Licensee's Agent for Service of Process:	
License Area:	The License Area is located in the Pier 70 area of the City and County of San Francisco, as more particularly shown on *Exhibit A* attached hereto and made a part hereof, together.
Length of Term:	[_____]
Commencement Date:	[_____]
Expiration Date:	
License Fee:	This License is entered into in furtherance of Licensee's obligations under the Disposition and Development Agreement by and between Port and Licensee, dated _____, 2018. In consideration thereof, there is no License Fee due hereunder.
Environmental Security:	Environmental Oversight Deposit of $10,000. **[Note: Additional security dependent on type of activity and location.]**
Permitted Activity:	The License Area shall be used solely for the permitted activities described in ***Exhibit B*** attached hereto, as may be updated from time to time and appended hereto, for the construction of Horizontal Improvements outside of the 28-Acre Site under the DDA, and for no other purpose.
Additional Prohibited Uses:	In addition to, and without limiting, the Prohibited Uses specified in Section 7 below, Licensee shall be prohibited from using the License Area for any of the following activities: (a) (b) Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.
Invasive Work:	Notwithstanding the foregoing, Licensee will provide Port prior written notice before it may enter the License Area to perform any Permitted Activity that involves invasive testing, excavation or construction ("**Invasive Work**"). Each written notice will identify the scope of Invasive Work, the anticipated date for commencement and the anticipated duration for the Invasive Work.

Cure Period where applicable:	-Five (5) days following notice for failure to pay any Fees and/or all other charges hereunder. -One (1) day following notice if the Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion. -Five (5) business days following notice if Licensee defaults in its obligation to maintain insurance under the provisions of Article 21 set forth in *Schedule 1* (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials). -For any other non-monetary default not described above, thirty (30) days, or, if such cure cannot reasonably be completed within such 30-day period, if Licensee does not commence such cure within such 30-day period, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.
Maintenance and Repair:	See Section 9.3
Utilities and Services:	See Sections 9.1 and 9.2
Location of Asbestos:	[If applicable, see *Schedule 3* attached hereto].
Workforce Development Plan and Prevailing Wages:	Licensee will comply with the Workforce Development Plan attached to the DDA and Master Lease and Section 13.3(f) (Prevailing Wages) of the Master Lease in connection with Licensee's performance in the License Area of the Permitted Activities as if such plan and section were incorporated into this License except that any reference in such plan or section, as applicable, to "Developer" or "Tenant" will mean Licensee and "Premises" or "Facility" will mean the License Area and "Project", or similar words will mean the Pier 70 Mixed-Use Project.
Prepared By:	[_____]

LICENSE TO USE PROPERTY

1. BASIC LICENSE INFORMATION.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as licensor, and the party identified in the Basic License Information as licensee ("**Licensee**"). The Basic License Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this "**License.**" In the event of any conflict or inconsistency between the Basic License Information and the License provisions, the Basic License Information will control.

2. GRANT OF LICENSE.

2.1. ***License.*** In consideration of the stated conditions and agreements, Port hereby grants permission to Licensee to carry on the Permitted Activity within the License Area described in the Basic License Information and ***Exhibit A*** attached hereto.

2.2. ***Encroachment.***

(a) If Licensee or its Agents or Invitees uses or occupies space outside the License Area without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Licensee shall immediately vacate such Encroachment Area and pay as an additional charge for each day Licensee used, occupied, uses or occupies such Encroachment Area, an amount equal to the square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Encroachment Area, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Licensee uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Licensee or its Agents or Invitees, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this License (including Licensee's obligation to Indemnify Port as set forth in this Section), at law or in equity.

(b) In addition, Licensee shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Licensee has failed to vacate the Encroachment Area, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Vacate, if applicable, delivered by Port to Licensee following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area, issuance of each Notice to Vacate and survey of the Encroachment Area. Licensee's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of Section 14 below (Indemnity and Exculpation) shall also apply to Licensee's and its Agents' and Invitees' use and occupancy of the Encroachment Area as if the License Area originally included the Encroachment Area, and Licensee shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Licensee in surrendering the

Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 2.2 and the reasonableness of the amount of the charges described in this Section 2.2.

3. TERM; REVOCABILITY.

This License is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the Commencement Date and expires on the Expiration Date specified in the Basic License Information ("**Term**") unless sooner terminated pursuant to the terms of this License.

The Parties acknowledge that Licensee is undertaking the Permitted Activities hereunder to fulfill its obligations under the DDA (which include obligations to construct Horizontal Improvements in accordance with the Schedule of Performance, as those terms are defined in the DDA. Therefore, Port will not revoke or terminate this License prior to the Expiration Date unless Licensee causes an uncured event of default hereunder or under the DDA that would otherwise permit a termination thereof.

Initials: _____
Licensee

4. FEES.

4.1. ***License Fee***. As described in the Basic License Information, no License Fee is due hereunder. Any other sums payable by Licensee to Port hereunder shall be paid in cash or by good check to the Port and delivered to Port's address specified in the Basic License Information, or such other place as Port may designate in writing. All other sums payable by Licensee, including without limitation, any additional charges and late charges, are referred to collectively as "Fees."

4.2. ***Additional Charges***. Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 21.3 (Tenant's Environmental Condition Notice Requirements) of the Master Lease as shown on ***Schedule 1*** (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials) attached hereto, 15.1 (SWPPP), 21.1(d) (CMD Form), or to provide evidence of the required insurance coverage described in Section 11 below (Insurance), then upon written notice from Port of such failure, Licensee shall pay an additional charge in the amount of Three Hundred Dollars ($300). In the event Licensee fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Licensee additional written notice requesting such document, then Licensee shall pay to Port an additional charge in the amount of Three Hundred Fifty Dollars ($350) for each additional written notice Port delivers to Licensee requesting such document. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

4.3. ***Late Charges/Habitual Late Payer.*** Licensee acknowledges that late payment by Licensee to Port of Fees or other sums due under this License will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Licensee fails to pay Fees on the date due, such failure shall be subject to a Late Charge at Port's discretion. Licensee shall also pay any costs including attorneys' fees incurred by Port by reason of Licensee's failure to timely pay Fees. Additionally, in the event Licensee is notified by Port that Licensee is considered to be a Habitual Late Payer, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Licensee's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Licensee.

4.4. ***Default Interest.*** Any Fees, if not paid within five (5) days following the due date and any other payment due under this License not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Licensee nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Licensee. Licensee shall also pay any costs, including attorneys' fees incurred by Port by reason of Licensee's failure to pay Fees or other amounts when due under this License.

4.5. ***Returned Checks.*** If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5. ENVIRONMENTAL OVERSIGHT DEPOSIT.

(a) Before the Commencement Date, Licensee must deliver to Port the Environmental Oversight Deposit in cash, in the sum specified in the Summary of Basic Information, as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Licensee's operations under this License; provided, however, that the Environmental Oversight Deposit will not be deemed an advance of any payment due to Port under this License, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

(b) Port may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("Environmental Notice") to Licensee and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Licensee has not begun to cure or comply with the Environmental Notice or is not working actively to cure the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, attorneys' fees, and collection and laboratory analysis of environmental samples.

(c) If an Environmental Notice is delivered to Licensee, and Licensee has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port may apply a maximum of $500 from the Environmental Oversight Deposit for each Environmental Notice delivered to Licensee to reimburse Port for its administrative costs.

(d) Licensee must pay to Port immediately upon demand a sum equal to any portion of the Environmental Oversight Deposit Port expends or applies.

(e) Provided that no Environmental Notices are then outstanding, Port will return the balance of the Environmental Oversight Deposit, if any, to Licensee within a reasonable time after the expiration or earlier termination of this License. Port's obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.

6. PERMITTED ACTIVITY; SUITABILITY OF LICENSE AREA.

The License Area shall be used and occupied only for the Permitted Activity specified in the Basic License Information and for no other purpose. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by Port. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By entering onto the License Area under this License, Licensee acknowledges [**Note: Add if applicable:** its receipt of ***Schedule 1*** regarding the presence of certain Hazardous Materials and] it shall be deemed to have inspected the License Area and accepted the License Area in its "**As Is**" condition and as being suitable for the conduct of Licensee's activity thereon.

7. PROHIBITED USES.

Licensee shall use the License Area solely for Permitted Activities and for no other purpose. Any other use in, on or around the License Area or surrounding or adjacent Port property shall be strictly prohibited, including, but not limited to, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) (each, a "**Prohibited Use**").

In the event Port determines after inspection of the License Area that a Prohibited Use or Prohibited Uses are occurring in, on or around the License Area, then Licensee shall immediately cease the Prohibited Use(s) and shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of written notice to Licensee to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) of the License Area that Licensee has not ceased the Prohibited Use, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Cease Prohibited Use delivered to Licensee. The parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area and Licensee's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 7 and the reasonableness of the amount of the charges described in this Section 7.

8. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.

8.1. ***Compliance with Laws.*** Licensee, at Licensee's sole cost and expense, promptly shall comply with all Laws relating to or affecting Licensee's use or occupancy of the License Area.

8.2. ***Regulatory Approval.*** Licensee understands that Licensee's activity on the License Area may require Regulatory Approvals from Regulatory Agencies. Licensee shall be solely responsible for obtaining any such Regulatory Approvals, and Licensee shall not seek any Regulatory Approval without first obtaining the prior written approval of Port, not to be unreasonably withheld, subject to this Section 8.2. Port, at no cost to Port, will cooperate reasonably with Licensee in Licensee's efforts to obtain required Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with applicable Laws and to further terms and conditions of this License, including without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (i) encumber, restrict or adversely change the use of any Port property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions; or (ii) subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees to which Port may be subject). All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by the Port or would create obligations on the part of the Port (whether on or off of the License Area) to perform or observe, unless in each instance the Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for the fines and penalties. To the fullest extent permitted by Law, Licensee agrees to Indemnify City, Port and their Agents from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

8.3. ***Port Acting As Owner of Property.*** By signing this License, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a Regulatory Agency of City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activity on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

8.4. ***Accessibility.*** California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related

accessibility requirements. The law does not require landlords to have the inspections performed. Licensee is hereby advised that the License Area has not been inspected by a CASp and, except to the extent expressly set forth in this License, Port shall have no liability or responsibility to make any repairs or modifications to the License Area in order to comply with accessibility standards. The following disclosure is required by law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Licensee understands and agrees that Licensee may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws. As further set forth in this Section, Licensee further understands and agrees that it is Licensee's obligation, at no cost to Port, to cause Licensee's use of the License Area to be conducted in compliance with the all federal or state disability access Laws.

9. UTILITIES, SERVICES, MAINTENANCE AND REPAIR.

9.1. ***Utilities***. Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the License Area except that the foregoing will not diminish any Port obligation under the DDA, if any, to work cooperatively with Licensee with respect to any Licensee right to access utilities. Except as may be otherwise provided in the Basic License Information, Licensee shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the License Area or to be used by Licensee. Except as otherwise set forth in the Development Agreement, Licensee will procure all electricity for the License Area from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. Except as otherwise set forth in the Development Agreement, if the SF Public Utilities Commission determines that it cannot feasibly provide service to Licensee, Licensee may seek another provider.

9.2. ***Services***. Port has no responsibility or liability of any kind with respect to the provision of any services to Licensee or on, in, or to the License Area. Licensee shall make arrangements and shall pay all charges for all services to be furnished on, in or to the License Area or to be used by Licensee, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

9.3. ***Maintenance and Repairs***. Licensee shall not be obligated to make any repairs, replacement or renewals of any kind, nature of description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon (collectively, "**Repairs**"), except to the extent that Licensee, or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. In the event that Licensee or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property that is not otherwise consistent with the Pier 70 Mixed-Use Project, Licensee shall be responsible and Port may, at its sole and absolute discretion, elect to repair the same itself or require Licensee to repair the same, all at Licensee's sole cost and expense. Upon receipt of any invoice from Port for costs incurred

by Port related to any repair performed by Port in accordance with this Section, Licensee shall immediately reimburse Port therefor. This provision shall survive the expiration or earlier termination of this License.

10. TAXES AND ASSESSMENTS.

Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the Licensee's possession, use, or occupancy, as distinguished from the ownership, of the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee shall report any assignment or other transfer of any interest in this License or any renewal or extension hereof to the County Assessor within 60 days after such assignment transaction or renewal or extension. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

11. INSURANCE.

11.1. *Required Insurance.*

Licensee shall maintain throughout the Term, at Licensee's expense, insurance in accordance with the insurance provisions set forth in Article 20 of the Master Lease as shown on ***Schedule 1*** (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials) except that the term "Tenant" used thereunder will mean Licensee, the terms "Premises" or "Facility" used thereunder will mean the License Area, and the terms "Improvements," "Horizontal Improvements," "Project," or similar words used thereunder will mean the Pier 70 Mixed-Use Project.

12. NOTICES.

Except as otherwise expressly provided in this License or by Law, all notices (including notice of consent or non-consent) required or permitted by this License or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic License Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by Licensee in Licensee's written response to Port's written request for such information.

All notices under this License shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

13. DEFAULT BY LICENSEE; REMEDIES.

13.1. ***Event of Default.*** The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee; or

(b) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee.

(c) An assignment, or attempted assignment, of this License by Licensee, except in connection with an assignment or other Transfer of Licensee's rights permitted or approved by Port under the DDA;

(d) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License.

13.2. ***Port's Remedies.*** Upon default by Licensee, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee's obligations.

14. INDEMNITY AND EXCULPATION.

The provisions of Article 19 (Indemnification of Port) of the Master Lease, as shown on ***Schedule 1*** (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials) will govern, except that "Tenant" as used thereunder will mean Licensee, "Premises" as used thereunder will mean the License Area, and "Improvements," "Horizontal Improvements," or "Project" or similar words as used thereunder will mean the Pier 70 Mixed-Use Project.

15. HAZARDOUS MATERIALS.

The provisions of Article 21 (Hazardous Materials) of the Master Lease as shown on ***Schedule 1*** (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials) will govern except that "Tenant" as used thereunder will mean Licensee, "Premises" as used thereunder will mean License Area, and "Improvements," "Horizontal Improvements," or "Project" or similar words as used thereunder will mean "Pier 70 Mixed-Use Project."

15.1. *Storm Water Pollution Prevention.*

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. If applicable to the Permitted Activities hereunder, Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning operations in the License Area.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the

San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

15.2. ***Presence of Hazardous Materials***. California Law requires landlords to disclose to Licensees the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials (as herein defined) may be present on or near the License Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally occurring radionuclides, lead and formaldehyde. [**Note: Add if applicable:** Further, the following known Hazardous Materials are present on the property: Hazardous Materials described in the reports listed in ***Schedule 2*** attached hereto, copies of which have been delivered to or made available to Licensee.] By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Licensee must disclose the information contained in this Section to any sublicensee, licensee, transferee, or assignee of Licensee's interest in this License. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

16. PORT'S ENTRY ON LICENSE AREA.

16.1. ***Entry for Inspection***. Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties.

16.2. ***Emergency Entry***. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License.

16.3. ***No Liability***. Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area, or entry by the public (as Licensee has a non-exclusive right to use the License Area) onto the License Area.

17. IMPROVEMENTS AND ALTERATIONS.

Except as specified in the Basic License Information to the extent required to implement the Pier 70 Mixed-Use Project and construct the Horizontal Improvements under the DDA, Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area (including the installation of any trade fixtures affixed to the License Area or whose removal will cause injury to the License Area).

18. SURRENDER.

Upon the expiration or earlier termination of this License, Licensee shall surrender to Port the License Area and any pre-existing alterations and improvements in the same or better condition as it was in at the Commencement Date, subject to ordinary wear and tear). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by Licensee properly performing all of its obligations under this License. The License Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this License and any other encumbrances created by Port. On or before the expiration or earlier termination hereof, Licensee shall remove all of its personal property and, unless Port directs otherwise, any

alterations and improvements that Licensee has installed with Port's consent, and perform all restoration made necessary by the removal of Licensee's personal property.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property and any alterations and improvements that Licensee has installed with or without Port's consent that Licensee does not remove from the License Area prior to the expiration or earlier termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned property and repairing any damage to the License Area resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee. Licensee hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

19. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.

19.1. ***Litigation Expenses***. The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this License, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

19.2. ***City Attorney***. For purposes of this License, reasonable fees of attorneys of the City's Office of the City Attorney shall 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.

19.3. ***Limitation on Damages***. Licensee agrees that Licensee will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this License, or for any Claim based upon this License, except to the extent of the fair market value of Port's fee interest in the License Area (as encumbered by this License). Licensee's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Licensee expressly waives all such liability.

19.4. ***Non-Liability of City Officials, Employees and Agents***. No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License. Under no

circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

19.5. ***Limitation on Port's Liability Upon Transfer.*** In the event of any transfer of Port's interest in and to the License Area, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this License thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

20. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Fees or otherwise relieve Licensee from any of its obligations under this License.

21. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this License relating to any such code provision shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance. Notwithstanding the foregoing, to the extent that any of the City and Port requirements set forth in this Section 21 have been modified or waived under the DDA or Development Agreement as applied to the Pier 70 Mixed-Use Project, then the applicable provisions of the DDA or Development Agreement will prevail. Without limiting the foregoing, the Workforce Development Plan attached to the DDA will govern Licensee's obligations hereunder with respect to any requirements of the Administrative Code with respect to First Source Hiring (Administrative Code Chapter 83) and Local Business Enterprises (Administrative Code Chapter 14B) that would otherwise be applicable hereto.

21.1. ***Nondiscrimination.***

(a) Covenant Not to Discriminate. In the performance of this License, Licensee covenants and agrees not to discriminate 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 or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapters 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapters 12B or 12C of the Administrative Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) Sublicenses and Other Contracts. Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such

Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all Sublicensees and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Licensee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of $50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

21.2. ***Resource-Efficient Facilities and Green Building Requirements.*** Licensee agrees to comply with all applicable provisions of Environment Code Chapter 7 relating to resource-efficiency and green building design requirements.

21.3. ***Prohibition of Tobacco Sales and Advertising.*** Licensee acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

21.4. ***Prohibition of Alcoholic Beverages Advertising.*** Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

21.5. ***Graffiti Removal.*** Licensee agrees to remove all graffiti from the License Area, within forty-eight (48) hours of the earlier of Licensee's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "**Graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners,

billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this License or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

21.6. ***Restrictions on the Use of Pesticides***. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee's staff or contractors. If Licensee or Licensee's contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

21.7. ***MacBride Principles Northern Ireland***. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

21.8. ***Tropical Hardwood and Virgin Redwood Ban***. Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

21.9. ***Preservative-Treated Wood Containing Arsenic***. Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the

Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

21.10. ***Notification of Limitations on Contributions.*** If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.10 shall apply. Through its execution of this License, Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensee acknowledges that the foregoing restriction 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. Licensee further acknowledges that, if applicable, the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that if this Section 21.10 applies, Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

21.11. ***Sunshine Ordinance.*** In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

21.12. ***Conflicts of Interest.*** Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

21.13. ***Drug-Free Workplace.*** Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

21.14. ***Public Transit Information.*** Licensee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Licensee employed on the License Area, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the License Area and encouraging use of such facilities, all at Licensee's sole expense.

21.15. ***Food Service and Packaging Waste Reduction Ordinance.*** Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Licensee agrees that the sum of one hundred dollars ($100.00) liquidated damages for the first breach, two hundred dollars ($200.00) liquidated damages for the second breach in the same year, and five hundred dollars ($500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

21.16. ***San Francisco Bottled Water Ordinance.*** Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the License Area with attendance of more than 100 people.

22. WAIVER OF RELOCATION.

Licensee hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, to the extent allowed under applicable Law.

23. SIGNS.

Licensee shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices on the License Area without Port's prior written consent. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Licensee shall obtain all Regulatory Approvals required by such Laws. Licensee, at its sole cost and expense, shall remove all signs placed by it on the License Area at the expiration or earlier termination of this License.

24. MISCELLANEOUS PROVISIONS.

24.1. ***California Law.*** This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and Licensee hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

24.2. ***Entire Agreement.*** This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License.

24.3. ***Amendments***. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

24.4. ***Severability***. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by law.

24.5. ***Interpretation of License***.

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has 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 this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this License.

(g) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

24.6. ***Successors***. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

24.7. ***Real Estate Broker's Fees***. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

24.8. ***Counterparts***. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

24.9. ***Authority***. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee has and is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

24.10. ***No Implied Waiver***. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

24.11. ***Time is of Essence***. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

24.12. ***Cumulative Remedies***. All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

24.13. ***Survival of Indemnities***. Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

24.14. ***Relationship of the Parties***. Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

24.15. ***No Recording***. Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

24.16. ***Additional Written Agreement Required***. Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

25. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"**Agents**" when used with reference to either party to this License or any other person, means the officers, directors, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"**Basic License Information**" refers to the summary of basic license information attached to this License.

"**CMD**" means the Contract Monitoring Division of the City's General Services Agency.

"**Cal-OSHA**" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"**City**" is defined in Section 1.

"**Claim**" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"**Commencement Date**" means the date specified in the Basic License Information.

"**Cure Period**" means the period of time described in the Basic License Information.

"**DDA**" means that certain Disposition and Development Agreement by and between Port and FC Pier 70, LLC, dated as of _____, 2018.

"**Development Agreement**" means that certain Development Agreement by and between the City and FC Pier 70, LLC, dated

"**Encroachment Area**" is defined in Section 2.2.

"**Encroachment Area Charge**" is defined in Section 2.2.

"**Environmental Laws**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Environmental Regulatory Action**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Environmental Regulatory Agency**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Environmental Regulatory Approval**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Exacerbate**" or "**Exacerbating**" " is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Expiration Date**" means the date specified in the Basic License Information.

"**Fees**" means all sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 4.

"**Handle**" or "**Handling**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material Claim**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material Condition**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Indemnified Parties**" the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, all other Person acting on their behalf, and each of them.

"**Indemnify**" means to indemnify, protect, defend, and hold harmless forever. "**Indemnification**" and "**Indemnity**" have correlating meanings.

"**Interest Rate**" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"**Investigate**" or "**Investigation**" is defined in Section 21.6 of Schedule 1 attached hereto.

"**Invitees**" means Licensee's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, Sublicensees, and any other person whose rights arise through them.

"**Late Charge**" means a fee equivalent to fifty dollars ($50.00).

"**Law**" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area, including Regulatory Approvals issued to Port which require Licensee's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the parties.

"**License**" is defined in Section 1.

"**License Area**" means the area described in the Basic License Information.

"**License Fee**" means the monthly usage charge for the License Area described in the Basic License Information.

"**Master Lease**" means Port Lease No. L-_____, by and between the Port as Landlord, and FC Pier 70, LLC, a Delaware limited liability company, as Tenant.

"**New Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Notice to Cease Prohibited Use**" is defined in Section 7.

"**Notice to Vacate**" is defined in Section 2.2.

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**Permitted Activity**" is means the activity described in the Basic License Information.

"**Pier 70 Mixed-Use Project**" means that certain development project undertaken by Licensee as more particularly described in the DDA and Development Agreement.

"**Pier 70 Risk Management Plan**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Pre-Existing Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Port**" is defined in Section 1.

"**prevailing party**" is defined in Section 19.1.

"**Prohibited Use**" is defined in Section 7.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"**Release**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Remediate**" or "**Remediation**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**State Lands Indemnified Parties**" means the State of California, the California State Lands Commission, all of its heirs, legal representatives, successors and assigns, and all other Persons acting on its behalf.

"**SWPPP**" is defined in Section 15.1.

"**Term**" is defined in Section 3.

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IN WITNESS WHEREOF, Port and Licensee have executed this License as of the last date set forth below

Licensee: **FC PIER 70, LLC,** a Delaware limited liability company

By: _____
Name: _____
Title: _____

Date signed: _____

By: _____
Name: _____
Title: _____

Date signed: _____

Port: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: _____
Michael J. Martin,
Deputy Director, Real Estate and Development

Date signed: _____

Approved as to Form: DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

License Prepared by [INSERT NAME] , Commercial Property Manager_____(initial)

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SCHEDULE 1

MASTER LEASE PROVISIONS FOR INDEMNITY, INSURANCE AND HAZARDOUS MATERIALS

19. INDEMNIFICATION OF PORT.

19.1. General Indemnification of the Indemnified Parties. Subject to Section 19.4, (Exclusions from Indemnifications, Waivers and Releases). Tenant agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the Premises or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the Premises, or any acts or omissions of Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

(b) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises or any part thereof by Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

(c) any latent, design, construction or structural defect relating to the Improvements, any other Subsequent Construction, or any other matters relating to the condition of the Premises caused directly or indirectly by Tenant or any of its Agents, Invitees, or Subtenants;

(d) any failure on the part of Tenant or its Agents, Invitees, or Subtenants, as applicable, to perform or comply with any of the terms, covenants, or conditions of this Lease or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents or Subtenants;

(f) any acts, omissions, or negligence of Tenant, its Agents, Invitees, or Subtenants; and

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use or occupancy.

19.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under Section 19.1 (General Indemnification of the Indemnified Parties) and subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), Tenant, for itself and on behalf of its Subtenants, Agents, or any of their respective Agents (individually "Related Third Party" and collectively "Related Third Parties") or their respective Invitees agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition existing or occurring during the Term;

(ii) any Handling or Release of Hazardous Materials in, on, under, around or about the Premises during the Term;

(iii) any Exacerbation of any Hazardous Material Condition in, on, under, around or about the Premises during the Term; or

(iv) failure by Tenant or any Related Third Party to comply with the Pier 70 Risk Management Plan, or failure by their respective Invitees to comply with the Pier 70 Risk Management Plan within the Premises during the Term; or

(v) claims by Tenant or any Related Third Party for exposure during the Term from and after the Commencement Date to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(b) Losses under Section 19.2(a) includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date of demand until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(c) Tenant understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this Section 19.2, subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), arises upon the earlier to occur of:

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises;

(ii) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises;

(iii) the Exacerbation of any Hazardous Material Condition; or

(iv) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

19.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in Section 19.4 (Exclusions from Indemnifications; Waivers and Releases), Tenant's Indemnification obligations under this Lease are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Tenant, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Tenant and continues at all times thereafter until finally resolved. Tenant's Indemnification obligations under this Lease are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Tenant constitute Additional Rent owing from Tenant to Port hereunder and are due and payable from time to time immediately upon Port's request, as incurred.

19.4. Exclusions from Indemnifications; Waivers and Releases.

(a) Nothing in this Article 19 (Indemnification of Port) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in Sections 19.1 (General Indemnification of Indemnified Parties), 19.2 (Hazardous Materials

Indemnification),), or the defense obligations set forth in Sections 19.3 (Scope of Indemnities) and 19.6 (Defense) extend to Losses:

(i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, or

(ii) from third parties' claims for exposure to Hazardous Materials in, on or under any portion of the Premises prior to the earlier of the (1) commencement of the License, if any, executed under the DDA for access to such portion of the Premises prior to the effective date of this Lease where Tenant has exclusive control of the Premises; or (2) effective date of this Lease with respect to such portion of the Premises; or

(iii) without limiting Tenant's Indemnification obligations under Sections 19.2(a)(ii), 19.2(a)(iv), or 19.2(a)(v), and to the extent the applicable Loss was not caused by the failure of Tenant or a Related Third Party to comply with the Pier 70 Risk Management Plan, or the failure of their respective Invitees to comply with the Pier 70 Risk Management Plan while on the Premises, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Horizontal Improvement Parcels after the Acceptance Date for such parcel (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Horizontal Improvement Parcel and is not also present in, on or around the Premises); provided, however, the foregoing limitation on Tenant's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Tenant or any of its Related Third Parties.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under Section 19.2 (Hazardous Materials Indemnification) is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Tenant in asserting a claim or claims under such insurance policy but without waiving any of its rights under Section 19.2 (Hazardous Materials Indemnification). Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Tenant, the Indemnification from Tenant under Section 19.2 (Hazardous Materials Indemnification) will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Tenant pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Tenant.

19.5. Survival. Tenant's Indemnification obligations under this Lease and the provisions of this Article 19 (Indemnification of Port) survive the expiration or earlier termination of this Lease (or, the partial termination of this Lease with respect to any portion of the Premises released in accordance with Section 1.1(b) Adjustment of Premises for Development)).

19.6. Defense. Tenant will, at its option but subject to reasonable approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Tenant's choice; provided, that in all cases Port will be entitled to participate in such defense, compromise or settlement at its own expense. If Tenant fails, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port will have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole cost, to carry out such defense, compromise or settlement which expense is due and payable to the Port within fifteen (15) days after receipt by Tenant of a detailed invoice for such expense.

19.7. Waiver. As a material part of the consideration of this Lease, Tenant hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from any Losses, including (i) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (ii) goodwill, (iii) business opportunities, (iv) any act or omission of persons occupying adjoining premises, (v) theft, (vi) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination, (vii) Building defects, (viii) inability to use all or any portion of the Premises due to sea level rise or flooding or seismic events, (ix) arising from the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard, and (x) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the Premises or the 28-Acre Site, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of the Indemnified Parties or State Lands Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties or State Lands Indemnified Parties, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Tenant or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties or State Lands Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue, or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties or State Lands Indemnified Parties arising out of this Lease or the uses authorized hereunder, including, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the waivers and releases in this Lease will remain effective. Therefore, with respect to the claims released in this Lease, Tenant waives any rights or benefits provided by California Civil Code Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE WAIVERS AND RELEASES MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE WAIVERS AND RELEASES AT THE TIME THIS LEASE WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Tenant's Initials: _____

Tenant acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

20. INSURANCE.

20.1. Required Insurance Coverage. In addition to the Additional Insurance Requirements to be provided by Tenant or Tenant's Subtenants or Agents that conduct any Special Event under Exhibit H (Procedures for Special Events), Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than Twenty Million Dollars ($20,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, liquor liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars ($250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Subsequent Construction or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than Five Million Dollars ($5,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation Tenant's Agents and Invitees.

(c) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation in statutory amounts, with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury, or illness. In the event Tenant is self-insured for the insurance required pursuant to this Section 20.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. In addition, Tenant will be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively as applicable with Employer's Liability limit not less than Five Million Dollars ($5,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Subsequent Construction, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's personal property or contractors' equipment as applicable.

(e) Flood Insurance.

(i) During construction of the improvements, for any parcel located within a flood zone on the City's flood maps, flood insurance will be in an amount equal to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates.

(ii) During construction of the improvements, for any parcel not located within a flood zone on the City's flood maps, flood insurance will be in an amount to the extent available at commercially reasonable rates from recognized insurance carriers or through the NFIP equal

to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates

(f) Pollution Legal Liability. Tenant, at its sole cost and expense, will procure Pollution Legal Liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim, for a period of not less than five (5) years, and a subsequent policy for an additional five (5) years, for a total term of ten (10) years. Each of the State Lands Indemnified Parties will be named as additional insureds under the terms of any such policy. If Tenant procures any such policy for a period that is longer than ten (10) years, Tenant will ensure that each of THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE STATE LANDS INDEMNIFIED PARTIES are named as additional insureds for such longer period of time.

(g) Construction Activities. Insurance required in connection with construction of Horizontal Improvements is as set forth below:

(i) Contractor Requirements. Tenant must require its contractors and subcontractors to maintain the following coverages:

(1) Commercial general liability insurance with limits of not less than $5 million each occurrence on a policy form that is at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01);

(2) Comprehensive automobile liability insurance with a policy limit of not less than $5 million each occurrence on a policy form that is at least as broad as ISO Form Number CA 0001 covering automobile liability, Code 1 (any auto);

(3) Worker's compensation insurance with statutory limits and employer's liability insurance with limits of not less than $1 million each accident, injury, or illness;

(4) Watercraft liability insurance (if operating watercraft) protection and indemnity insurance with limits not less than $1 million each occurrence, or with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, wreck removal, and damages "In Rem" (the vessel); and

(5) Marine general liability (MGL) (if operating watercraft) with limits not less than $10 million each occurrence and aggregate basis;

(6) Vessel pollution liability insurance (if operating watercraft with engines or fuel usage) with limits not less than $5 million per occurrence and $5 million in the aggregate with a deductible not to exceed $50,000 with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost; insurance should cover liability imposed under laws for any loss, damage, cost, liability or expense arising out of the sudden, accidental, and unintentional discharge, spillage, leakage, emission, or release of any substance of any kind into or on the navigable waters of the United States or the adjoining shorelines.

(7) Contractor's pollution liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim.

(ii) Builder's Risk Requirements. In addition, Tenant or General Contractor must carry "Builder's All Risk" insurance on a "Special Form" ("All Risk") Builder's Risk meeting the following requirements.

(1) The amount of coverage must be equal to the full replacement cost of any existing structures affected by the work and full replacement cost of all new construction, including all materials and equipment intended to become part of the permanent structures. The policy must provide coverage for "soft costs," such as design and engineering fees, code

updates, permits, bonds, insurance, and inspection costs caused by an insured peril. The Builder's Risk insurance may have a deductible clause not to exceed $100,000.

(2) The Builder's Risk policy must identify the City and County of San Francisco and the San Francisco Port Commission as loss payees, subordinate to any lender requirements.

(3) The Builder's Risk policy must include the following coverages: (A) all damages of loss to the work and to appurtenances, to materials and equipment to be incorporated into the project while the same are in transit, stored on or off the site, to construction plant and temporary structures; (B) the costs of debris removal, including demolition as may be made reasonably necessary by covered perils, resulting damage, and any applicable law; and (C) start up and testing and machinery breakdown including electrical arcing.

(iii) Professional Services Requirements. Tenant must require all providers of engineering and geotechnical professional services under contract with Tenant to provide professional liability coverage with limits not less than Five Million Dollars ($5,000,000.00) each claim. With respect to all other professional services provided to Tenant for the Horizontal Improvements, Tenant must require all providers of such professional services under contract with Tenant to provide professional liability coverage with limits not less than Two Million Dollars ($2,000,000.00) each claim. Such insurance will provide coverage during the period when such professional services are performed and for a period of 3 years after issuance of a Certificate of Occupancy for the Horizontal Improvements. This requirement may be met by the use of an extended reporting period. Notwithstanding anything to the contrary, the coverage required in this clause (iii) may be provided with a lower limit for subcontractors that are local business enterprises (LBEs) or are performing work under subcontracts of $100,000 or less only. Tenant shall have the right to request a waiver of the requirements of this clause (iii) by delivering written request to Port, and Port shall respond within a reasonable period of time to any such request; provided, with respect to waiver requests for LBEs and subcontracts only, so long as the waiver request was sent by electronic mail, addressed to one or more line staff responsible for administration of this Lease stating in the subject line "Immediate Action Required to Avoid Deemed Consent" or words to the same effect, Port will be deemed to have approved such waiver if Port does not respond to the waiver request within five (5) business days.

(h) Other Coverage. Such other insurance or different coverage amounts may change from time to time as required by the City's Risk Manager, if in the reasonable judgement of the City's Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the Premises, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Tenant determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Tenant will provide to Port evidence supporting Tenant's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(i) Substitution. Notwithstanding the foregoing, Tenant shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in this Article 20 (Insurance) with insurance coverage maintained by one or more of Tenant's Agents, Invitees or transferees as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of this Article 20 as determined by Port.

20.2. General Requirements.

(a) Insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance required hereunder, such insurance shall name the Tenant as the first named insured. As to liability insurance Tenant shall ensure that Port and the City of San Francisco are named as additional insureds under all general liability, automobile liability, vessel pollution, pollution, Public Boat Dock liability coverages. Any umbrella and/or excess liability insurance will include an endorsement through a blanket additional endorsement or equivalent naming as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) As to Commercial General Liability and automobile liability insurance, shall provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought;

(iv) Will provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 20.1(a) (General Liability Insurance), 20.1(b) (Automobile Liability Insurance), 20.1(c) (Worker's Compensation),, and 20.1(f) (Pollution Legal Liability);

(v) Will be subject to the reasonable approval of Port, which approval shall not be unreasonably withheld.

(b) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant shall furnish Port certificates with respect to the policies required under this Section within thirty (30) days after the Commencement Date and, with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy, and, within sixty (60) days after Port's request, shall also provide Port with copies of each such policy, or shall otherwise make such policy available to Port for its review. If at any time Tenant fails to maintain the insurance required pursuant to Section 20.1, (Required Insurance Coverage), or fails to deliver certificates as required pursuant to this Section, then, upon thirty (30) business days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Tenant shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(c) Insurance of Others. To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies be endorsed to include the "CITY AND COUNTY OF SAN FRANCISCO AND THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES" as additional insureds under the terms of any such policy. Unless otherwise specified in this agreement, Tenant will ensure that all contractors and sub-contractors performing work on the Premises and all operators and subtenants of any portion of the Premises carry adequate insurance coverages.

(d) Excess Coverage. All requirements may be satisfied by any combination of umbrella and excess liability policies (including blanket policies).

20.3. Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 20.1(d) (Personal Property Insurance) to the extent that such loss is reimbursed by an insurer.

21. HAZARDOUS MATERIALS.

21.1. Compliance with Environmental Laws. Tenant will comply and cause its Agents, Invitees, and all Persons under any Sublease, to comply with all Environmental Laws, operations plans (if any), the Pier 70 Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials on, under or about the Premises, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable Laws and any reasonable conditions or limitations required by Port, (c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

21.2. Tenant Responsibility. Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the Premises except as permitted under Section 21.1 (Compliance with Environmental Laws);

(b) Will not cause or permit any Hazardous Material Condition; and

(c) Will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the Premises, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles used in connection with the Premises in violation of any Environmental Laws;

(d) Tenant will be the "Generator" of any waste, including hazardous waste , resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the Premises;

(e) Will comply with all provisions of the Pier 70 Risk Management Plan with respect to the Premises, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually and

(f) Will comply, and will cause all of its Subtenants that are subject to an operations plan, to comply with the operations plan applicable to Tenant or such Subtenant, if any.

21.3. Tenant's Environmental Condition Notification Requirements. The following requirements are in addition to the notification requirements specified in the (i) operations plan(s), if any, (ii) the Pier 70 Risk Management Plan, and (iii) Environmental Laws:

(a) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 21.1 (Compliance with Environmental Laws), Handled, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Tenant's notice to Port by oral or other means, Tenant must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Tenant's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Tenant's receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or Tenant's occupancy of the Premises;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, under or about the Premises during the Term or Tenant's occupancy of the Premises; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises. Tenant must provide Port with copies of any of the documents within the scope of this Section 21.3(d) upon Port's request.

(e) Tenant must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. At Tenant's request, in lieu of providing Port with copies of non-privileged communications with other persons that are not Environmental Regulatory Agencies, Tenant will (1) make available for Port's review, such non-privileged communications at Tenant's San Francisco office or at Port's office, and (2) reimburse Port for additional costs related to Port's review of such non-privileged communications at Tenant's San Francisco office (including but not limited to additional time related to travel to and from Tenant's office).

(f) Port may from time to time request, and Tenant will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

21.4. Remediation Requirement.

(a) After notifying Port in accordance with Section 21.3 (Tenant's Environmental Condition Notification Requirements) and subject to Section 21.4(d), Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises; provided Tenant must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with Section 21.3. Except as provided in the previous sentence, Tenant must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under Section 21.4(a), before this Lease terminates for any reason, Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease: (i) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Tenant's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Tenant's use of the Premises, or due to Subsequent Construction or construction of the Horizontal Improvements.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take actions that are reasonably necessary in Port's reasonable judgment to protect the value of the Premises, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises.

(d) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, under, around or about the Premises, Tenant will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

21.5. Pesticide Prohibition. Tenant will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage as further described in Section 21.6 of the body of the License.

21.6. Additional Definitions.

"Environmental Laws" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees, and all permits, licenses, approvals, or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety, or community right-to-know requirements related to the work being performed under this Lease. "Environmental Laws" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"Environmental Regulatory Action" when used with respect to Hazardous Materials 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, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"Exacerbate" or "Exacerbating" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure 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, it being understood that the mere discovery of Hazardous Materials does not cause "Exacerbation". Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, construction of Improvements and Alterations under this Lease. "Exacerbate" also means failure to comply with the Pier 70 Risk Management Plan. "Exacerbation" has a correlative meaning.

"Handle" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "Handling" and "Handled" have correlative meanings.

"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 substance", "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 reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), PCB-containing materials, and any 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 Materials" also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"Hazardous Material Claim" means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties, the State Lands Indemnified Parties, or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"Hazardous Material Condition" means the Release or Exacerbation, or threatened Release or Exacerbation, of Hazardous Materials in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, under, or about the Premises during the Term or Tenant's occupancy of the Premises.

"Investigate" or "Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"New Hazardous Material" means a Hazardous Material that is not a Pre-Existing Hazardous Material.

"Pier 70 Risk Management Plan" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"Pre-Existing Hazardous Materials" means any Hazardous Material existing on, in, about or around the Premises as of the Effective Date and identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"Release" means when used with respect to Hazardous Materials any accidental, actual, imminent or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"Remediate" or "Remediation" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat,

stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"State Lands Indemnified Parties" means the State of California, the California State Lands Commission, and all of their respective heirs, legal representatives, successors and assigns, and all other Persons acting on their behalf.

LICENSE TO USE PROPERTY
SCHEDULE 2
HAZARDOUS MATERIAL DISCLOSURE

[To be prepared and attached prior to execution]

LICENSE TO USE PROPERTY
SCHEDULE 3
ASBESTOS NOTIFICATION AND INFORMATION

[To be prepared and attached prior to execution]

DDA EXHIBIT B12

FORM OF GUARANTY – LOSS SECURITY
(28-Acre Site Project)

This **GUARANTY** (28-Acre Site Project) (this "**Guaranty**"), is made by _____ ("**Obligor**"), in favor of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation and charter Port (the "**City**"), acting by and through the **SAN FRANCISCO PORT COMMISSION** (the "**Port**" or the "**Port Commission**"), as of the effective date under **Section 1.1,** in reference to the Disposition and Development Agreement, dated as of _____, 2018 (the "**DDA**"), between the Port and FC Pier 70, LLC, a Delaware limited liability company ("**Developer**"). In addition to terms defined in this preamble and the Appendix, capitalized terms used in this Guaranty are defined in **Section 1.4**.

1. GUARANTY

1.1. Effective Date. This Guaranty will be effective on the date that Obligor delivers the executed original of this Guaranty to the Port.

1.2. Guaranteed Obligation. Under the terms of this Guaranty, Obligor irrevocably and unconditionally guarantees to the Port of the full performance of the Guaranteed Obligation. This Guaranty is an absolute, unconditional, present, and continuing guaranty and is a guaranty of payment and performance, not of collection and enforcement. Obligor's obligations under this Guaranty are direct and primary.

(a) Performance. Obligor agrees to perform the Guaranteed Obligations at its sole expense promptly after receiving the Port Demand. In performing the Guaranteed Obligations, Obligor also agrees to pay any costs that the Port reasonably incurs because of Developer's failure to perform the Performance Obligations.

(b) Payment. Any amount due under this Guaranty but not paid within 30 days after Obligor's receipt of the Port Demand will bear interest at the annual rate of 10% from the date the Port Demand was delivered to Obligor until paid. Interest will be calculated on the basis of a 365-day year and the actual number of days elapsed, compounded annually.

1.3. Direct Action Permitted. Obligor's obligations under this Guaranty are independent of Developer's obligations under the DDA. Accordingly, the Port may:

(a) enforce any of its rights under this Guaranty independently of its other rights or remedies following the Material Breach;

(b) bring an action against Obligor without first proceeding against Developer or any other Credit Enhancement or Credit Enhancer, regardless of whether Developer is joined in the action; and

(c) join Obligor in any action against Developer under the DDA to enforce the Guaranteed Obligation.

1.4. Definitions. The following terms are defined as follows.

"**Credit Enhancement**" means any form of collateral or additional security given to the Port for Developer's performance under the DDA, including this Guaranty and guaranties given by any other person.

"**Credit Enhancer**" means any person providing Credit Enhancement, including Obligor.

"**Dollars**" and "**$**" signify legal tender of the United States of America.

"**fiscal year**" means the annual period applicable to Obligor's fiscal reporting.

"**Guaranteed Obligation**" means the Developer Reimbursement Obligation for Phase XXXX of the Project to the extent not satisfied by Developer or any other source.

"**Liquid Assets**" means the sum of the following assets of Obligor:

(i) cash;

(ii) demand deposits;

(iii) marketable securities consisting of short-term (maturities of one year or less) obligations issued or guaranteed as to principal and interest by the United States of America;

(iv) short-term (maturities of one year or less) certificates of deposit issued by a federally-chartered bank with assets greater than $50 million;

(v) other marketable securities traded on a nationally-recognized exchange operating in the United States; and

(vi) mutual funds.

"**Loss Security**" means Adequate Security that Developer is required to provide under *DDA § 17.2 (Loss Security)* to secure the Developer Reimbursement Obligations for each Phase.

"**Loss Security End Date**" means the date that is one year after the earliest to occur of the following events:

(i) issuance of an SOP Compliance Determination for all Phase Improvements except Deferred Infrastructure to be constructed by an Unrelated Vertical Developer within the Phase;

(ii) expiration or termination of the DDA with respect to Developer; and

(iii) expiration or termination of all of Developer's rights to develop or submit Phase Submittal applications to develop any portion of the FC Project Area.

"**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, and for a corporation or other legal form, owner equity.

"**Obligor Net Worth Requirement**" when used in reference to Adequate Security means a person with an Obligor Net Worth 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 as otherwise approved by the Port Director.

"**Port Demand**" means Port's demand for Obligor's performance under this Guaranty, delivered in accordance with **Section 7.2**, following the occurrence of a Material Breach by Developer with respect to its performance of any of the Guaranteed Obligations.

"**Secured Amount**" means Obligor's maximum liability under this Guaranty to the Port, which is limited to $5 million, exclusive of the Port's costs of enforcement and collection under this Guaranty.

"**Significant Adverse Change to Obligor**" means the occurrence of:

(i) an Insolvency proceeding with respect to Obligor that is not dismissed within 120 days after it is filed; or

(ii) entry of a final judgment against Obligor in an amount greater than 20% of the Obligor Net Worth, if Obligor does not satisfy or bond the judgment; or

(ii) Obligor Net Worth falling below the Obligor Net Worth Requirement.

"**Substitute Security**" means a form of Adequate Security given to replace this Guaranty under conditions specified in *DDA § 17.4(b) (Effect of Significant Adverse Change)* that:

(i) is in form and substance and issued by one or more persons meeting the Obligor Net Worth Requirement reasonably satisfactory to the Port; and

(ii) meets all DDA requirements for Loss Security.

2. WAIVERS

By executing this Guaranty, Obligor freely and knowingly, irrevocably, absolutely, and unconditionally waives all of the following rights and benefits it might otherwise have.

2.1. General Waivers. Obligor waives:

(a) notice of acceptance of this Guaranty;

(b) demand of payment, notice of nonperformance, notice of dishonor, presentation, protest, and notices of any kind, except as specifically provided in this Guaranty;

(c) any right to assert or plead any statute of limitations relating to this Guaranty or the DDA;

(d) any right to require the Port to proceed against Developer or any other person liable to the Port except to the extent expressly set forth in the DDA;

(e) any right to require the Port to apply any other security it may hold under the DDA to cure Developer's default, except to the extent expressly set forth in the DDA;

(f) any right to require the Port to pursue or enforce any remedy that the Port now has or may later have against Developer or any other person;

(g) any right to participate in any other security now or later held by the Port;

(h) any defense that Developer may have due to:

(i) the incapacity, lack of authority, death, or disability of Developer or any other person;

(ii) Obligor's attempted revocation or repudiation of this Guaranty;

(iii) the Port's failure to file or enforce a claim against the estate (in any other proceeding) of Developer or any others;

(iv) any Port election in a proceeding under the United States Bankruptcy Code, as amended (11 U.S.C. §§ 101 et seq.);

(v) any borrowing or granting of a security interest under the United States Bankruptcy Code;

(vi) the Port's election of any remedy against Obligor, Developer, or any other party to the extent permitted under this Guaranty or the DDA even if the Port's

election destroys Obligor's rights of subrogation and reimbursement against Developer or any other Credit Enhancer by operation of law or otherwise;

(vii) the Port's taking, modification, or releasing of any collateral or guarantees, or failure to perfect any security interest in, or the taking of or failure to perfect any other action with respect to any collateral securing performance of obligations under the DDA without an express release of this Guaranty;

(viii) any act or omission by the Port that directly or indirectly results in or aids the discharge of Developer, any other Credit Enhancer, or any of the Guaranteed Obligation by operation of law or otherwise, unless the discharge results in the full satisfaction of the applicable Guaranteed Obligation;

(ix) any amendment or modification of the DDA or related documents, whether or not known or consented to by Obligor;

(x) any offset by Obligor against any obligation now or later owed to Obligor by Developer or any other person, regardless of any act or omission that might otherwise operate as a legal or equitable discharge of Obligor;

(xi) Developer's sale, transfer, or assignment of any portion of its interest in the DDA or the FC Project Area or of its interest in the Master Lease or the License; and

(xii) prior actions or proceedings by the Port against Developer or Obligor following a default by Developer under the DDA, the Master Lease, or the License; and

(i) all benefits under California Civil Code sections 2787-2855, inclusive, and sections 2899 and 3433.

2.2. Subrogation.

(a) Waiver of Subrogation. Obligor waives any defense to enforcement of this Guaranty based on the impairment or destruction of its right of subrogation, reimbursement, contribution, or indemnification for any amounts paid or cost incurred by Obligor under this Guaranty and defense at law or in equity, including any rights with respect to real property security under section 580d of the California Code of Civil Procedure, as interpreted in *Union Bank v. Gradsky* (1968) 265 Cal.App.2d 40, or under one or more of sections 580a, 580b, or 726 of the California Code of Civil Procedure. In that regard, Obligor agrees that none of will affect its liability for the Guaranteed Obligation under this Guaranty:

(b) Revival of Obligor's Rights. After the Guaranteed Obligation are fully satisfied, Obligor will be subrogated to the Port's rights against Developer or others with respect to the Guaranteed Obligation. The Port will take steps that Obligor reasonably requests to implement the subrogation on condition that:

(i) Obligor pays all costs the Port incurs to implement the request; and

(ii) Obligor holds the Port harmless from any resulting liability in form and substance reasonably satisfactory to the Port.

(c) The Port agrees that none of the waivers or consents given by Obligor in this Guaranty will impair Obligor's rights under this Section.

2.3. Enforcement. Obligor waives all rights to require the Port to do any of the following:

(a) seek performance of the Guaranteed Obligation from Developer or any other Credit Enhancer or Credit Enhancement, or marshall assets or liens, before seeking performance of the Guaranteed Obligation from Obligor;

(b) apply any payments Obligor makes under this Guaranty in any particular manner;

(c) enforce any remedy that the Port has against Developer or any other Credit Enhancer at any time;

(d) provide any benefit of, or any right to participate in or direct the application of, any existing or after-acquired Credit Enhancement; and

(e) try any action relating to this Guaranty or the DDA, the Master Lease, or the License before a jury.

2.4. Port's Reliance. Obligor acknowledges that the Port is relying on all of the waivers contained in this Guaranty, and that these waivers are a material part of the consideration to the Port for entering into the DDA, the Master Lease, and the License.

2.5. Reasonableness and Effect of Waivers. Obligor expressly agrees that:

(a) each of the waivers given in this Guaranty is made with full knowledge of its significance and consequences;

(b) under the circumstances, the waivers are reasonable and not contrary to public policy or law; and

(c) if any waiver is determined to be contrary to any applicable law or public policy by a final judgment, that waiver will be effective only to the maximum extent permitted by law, and no other waiver will be affected.

3. PORT'S AUTHORITY TO MODIFY OBLIGATIONS

The Port has the right to take any of the following actions at any time without notice and without affecting Obligor's obligations under this Guaranty:

(a) amend, compromise, release, or otherwise alter the DDA (in accordance with its terms) and any Credit Enhancement;

(b) accept new or additional Credit Enhancement;

(c) accept partial payment on or partial performance of, or forbear from enforcement of, the Guaranteed Obligation;

(d) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate, or enforce any part of the Guaranteed Obligation and any Credit Enhancement and apply any Credit Enhancement to the Guaranteed Obligation;

(e) release Developer and any other Credit Enhancer from liability for any part of the Guaranteed Obligation; or]

(f) consent (to the extent the Port's consent is required under the DDA) to Developer's sale, transfer, or assignment of any part of its interest in the DDA, the Master Lease, the License, or any Parcel Lease.

3.2. Consents. Obligor consents to and agrees that none any the following will affect its obligations under this Guaranty or the validity of this Guaranty, whether or not Obligor has notice. The Port in its sole discretion, may take any of the following actions:

(a) refuse or fail to enforce any portion of its rights under this Guaranty, the DDA, or any related documents;

(b) compromise, settle, or extend the time for payment or performance of all or any part of the Guaranteed Obligation; and

(c) deal in all respects with Obligor as if this Guaranty were not in effect.

3.3. No Discharge of Obligations. Obligor expressly intends to remain liable for the Guaranteed Obligation under this Guaranty, regardless of any act or thing that might otherwise operate as a legal or equitable discharge of a surety.

3.4. Payments to Other Persons. The Port will be under no obligation to marshall any assets in favor of Obligor or against, or in payment or performance of, any or all of the Guaranteed Obligation. If the Port is required to disgorge any payment applied to the Guaranteed Obligation in an Insolvency proceeding or in any other forum where the payment is avoided as a fraudulent conveyance or preferential payment, or for any other reason, the portion of the Guaranteed Obligation covered by the disgorged payment will be revived as if the avoided payment had not been made.

3.5. Additional Rights. This Guaranty is in addition to, and not in substitution for or in reduction of, any other guaranty by Obligor, or any obligation of Obligor under any other agreement or applicable law that may now or later exist in favor of the Port. Obligor's liability under this Guaranty will not be contingent upon the Port's enforcement of any lien or realization upon any other security the Port may hold for the Guaranteed Obligation.

3.6. Recourse. The Port will have the absolute right to seek recourse against Obligor to the full extent provided in this Guaranty, without impairment due to the Port's inability to claim any amount of the Guaranteed Obligation from Obligor or Developer or others as a result of Insolvency under the Bankruptcy Code or other applicable law. No election to proceed in one form of action or proceeding, or against any person, or on any obligation, will be a waiver of the Port's right to proceed in any form of action or proceeding or against other persons unless the Port has expressly waived that right in writing.

4. REPRESENTATIONS AND WARRANTIES

4.1. Obligor Representations. By executing and delivering this Guaranty, Obligor represents and warrants to the Port, and agrees that the Port may rely unconditionally on, all of the following representations of Obligor as of the effective date under **Section 1.1**.

(a) Authority. Obligor has the power and authority to execute and deliver this Guaranty and to perform its obligations under it.

(b) Current Knowledge. Obligor:

(i) has performed an independent investigation into the matters covered by this Guaranty;

(ii) has received a copy of, is familiar with, and fully understands the DDA and the Guaranteed Obligation; and

(iii) has had the opportunity to consult with counsel of its choice regarding the legal effect of this Guaranty.

(c) Future Information. Obligor has established adequate means of obtaining from Developer on a continuing basis financial, operational, and other information pertaining to Developer's performance of its obligations under the DDA, the Master Lease, and the License. Obligor assumes full responsibility for keeping fully informed with respect to Developer's ownership, business, operation, condition, and assets.

(d) Relationship to Developer. Obligor owns indirectly all or a controlling portion of Developer's membership interests, or of the stock of Developer's sole or controlling stockholder parent entity.

(e) Ratification. Obligor ratifies all of Developer's acts with respect to its decision to enter into the DDA, the Master Lease, and the License with the Port and to begin development of the FC Project Area.

(f) Consideration. Obligor:

(i) has received adequate consideration for executing and delivering this Guaranty to the Port; and

(ii) will derive material financial benefit from the Port's execution of the DDA and the Port's actions under which the obligation to provide this Guaranty arose.

(g) Effectiveness. No conditions to the full effectiveness of this Guaranty exist.

(h) No Port Representations or Duties. The Port:

(i) has not made any representations or warranties to Obligor regarding Developer's creditworthiness and business acumen or the prospects of performance of the Guaranteed Obligation from sources other than Developer;

(ii) except to the extent within the scope of public records laws, will have no duty to disclose or report to Obligor any information disclosed to the Port at any time relating to Developer's ownership, business, operation, condition, or assets; and

(iii) will have no duty to inquire into Developer's authority or powers with regard to the Guaranteed Obligation.

4.2. Enforceability. This Guaranty is a valid and binding obligation of Obligor, enforceable in accordance with its terms. Obligor will execute, acknowledge, and deliver to the Port all documents and take all actions reasonably required by the Port from time to time to confirm or effect the matters set forth in, or otherwise to carry out the purposes of, this Guaranty.

4.3. Obligor Net Worth Requirement.

(a) Agreement. Obligor agrees:

(i) at all times while this Guaranty is in effect to meet the Obligor Net Worth Requirement; and

(ii) to maintain no less than $27.5 million in Liquid Assets until the Loss Security End Date.

(b) Required Notices. Obligor agrees to advise the Port promptly of:

(i) any transaction providing for the sale, transfer, encumbrance, pledge, mortgage, or other disposition of any Liquid Assets or the rents, profits, or proceeds of Liquid Assets if, after the transaction, Obligor would no longer meet the minimum Liquid Assets requirement; and

(ii) the completion of the financial audit of Obligor for the fiscal year preceding the effective date of this Guaranty.

(c) Time of Verification.

(i) Obligor will provide evidence of compliance with the Obligor Net Worth Requirement under **Section 4.3** (Obligor Net Worth Requirement) at no cost to the Port within10 business days after Obligor delivers notice to the Port that the financial audit of Obligor for the fiscal year immediately preceding the Effective Date is complete.

(ii) Obligor must demonstrate that it complies with the Obligor Net Worth Requirement by making available for review by the Port in a private data room Obligor's audited financial statements, and copies of any conditional or revocable agreements necessary for Obligor to meet the Obligor Net Worth Requirement noted in the financial statements.

(iii) Before delivering this Guaranty to the Port, Obligor must verify that Obligor satisfies the Obligor Net Worth Requirement.

(iv) Not more than once in any calendar year unless the Port reasonably believes that a Significant Adverse Change to Obligor has occurred, the Port may require Obligor to verify that it still meets the Obligor Net Worth Requirement in accordance with **Section 4.3(d)**.

(d) Form of Verification.

(i) Obligor will verify that it meets the Obligor Net Worth Requirement when required under **Section 4.3(c)** by delivering to the Port a copy of a financial statement on the Obligor's financial condition prepared by a CPA. The report must not be dated more than six months before the Effective Date or the date of any later Port request and must include the CPA's unqualified opinion that the data in financial statement are fairly stated in all material respects.

(ii) Obligor's audited financial statements must be performed in accordance with GAAP or tax basis accounting standards consistently applied, and the CPA that prepared them must opine that the financial statements present fairly, in all material respects, Obligor's financial position for the applicable fiscal year and changes in its financial position and cash for that period in conformity with the applicable accounting standards.

(iii) If Obligor is a publicly-traded company, the requirement for an independent financial statement will be waived, but Obligor will provide Port with relevant publicly available financial information to verify Obligor's Net Worth.

(e) Substitute Security.

(i) If at any time while this Guaranty is in effect, the Obligor Net Worth falls below the Obligor Net Worth Requirement or a Significant Adverse Change to Obligor occurs, Obligor will notify the Port and Developer as soon as reasonably practicable.

(ii) Whether or not Obligor provides notice under **clause (i)** of this Subsection, Developer is required under *DDA § 17.4(b) (Effect of Significant Adverse Change)* to provide the Port with Substitute Security.

(iii) If Developer does not comply with *DDA § 17.4(b) (Effect of Significant Adverse Change)*, Obligor agrees to provide Substitute Security within 10 business days after notice from the Port.

(iv) The Port's failure to give notice of Developer's failure to comply with the DDA will not relieve Obligor of its obligations under this Guaranty.

(v) Promptly after receiving Substitute Security, the Port will cancel and return this Guaranty to Obligor.

4.4. Tax Liability. To the knowledge of the person signing this Guaranty on behalf of Obligor after reasonable and appropriate inquiry, Obligor has filed all required tax returns (federal, state, and local) and has paid all taxes, including all property taxes, interest, and penalties, due as of the date of this Guaranty, subject to future audits and good faith disputes. The charges, accruals, and reserves on Obligor's books for taxes or other governmental charges are expected to be adequate.

4.5. Compliance with Laws. Obligor has complied in all material respects with all laws, regulations, and requirements applicable to its business and has obtained all Regulatory Approvals from all Regulatory Agencies that are necessary for the transaction of its business.

5. DEFAULTS AND REMEDIES

5.1. Defaults. The occurrence of any of the following will be a default by Obligor under this Guaranty.

(a) Payment. Obligor fails to satisfy any Port demand for payment of a Guaranteed Obligation within the Secured Amount within 30 days after the Port delivers its notice and demand for payment to Obligor.

(b) Performance. Obligor fails to initiate steps to satisfy any Port demand for performance of a Guaranteed Obligation within the Secured Amount within 60 days after the Port delivers its notice and demand for performance to Obligor and, after the initial steps, fails to complete the required performance under this Guaranty.

(c) Substitute Security. Obligor fails to deliver Substitute Security within 10 days after the Port's notice.

5.2. Remedies.

(a) Payment Default. The Port may initiate an action against Obligor for the Port's actual damages arising from Obligor's default.

(b) Performance Default. The Port may initiate an action against Obligor for specific performance or actual damages, or both, arising from Obligor's default.

(c) Substitute Security Default. The Port's sole remedy for Obligor's failure to provide Substitute Security when required is an action against Obligor for specific performance.

(d) Provisions Governing Actions. *App ¶ 4 (Actions)* will apply to any actions that the Port files to enforce its remedies under this Guaranty.

(e) Nonbinding Arbitration. Either Obligor or the Port may submit any dispute over the interpretation or enforcement of this Guaranty to nonbinding arbitration using procedures in *DDA § 10.5 (Nonbinding Arbitration)*.

6. TERM OF GUARANTY

6.1. Termination.

(a) Generally. Subject to **Subsection (b)** (Survival of Covenants), **Subsection (c)** (Insolvency Proceedings), and **Subsection (d)** (Exhaustion of Secured Amount) of this Section, Obligor's liability under this Guaranty will terminate, and Obligor will be relieved of any further obligations under this Guaranty with respect to the Guaranteed Obligation, on the Loss Security End Date.

(b) Survival of Covenants. All covenants by Obligor in this Guaranty will be deemed to be material and will survive termination of any portion of the DDA if the Guaranteed Obligation arose before, but was not satisfied by, the applicable Termination Date.

(c) Insolvency Proceedings. If any person that has made payments to the Port for application to the Guaranteed Obligation is the subject of an Insolvency proceeding, the Guaranteed Obligation will survive until:

(i) the statute of limitations for the trustee or other party in an Insolvency proceeding may avoid any payment to the Port has run without an action for disgorgement being filed against the Port; or

(ii) if the Port has disgorged the avoided payment, whether or not a final judgment is entered, Obligor or another person has reimbursed the Port, including the Port's attorneys' fees and costs; or

(iii) the Guaranteed Obligation is fully satisfied.

(d) Exhaustion of Secured Amount. Obligor's liability under this Guaranty will terminate early if and on the date that Obligor has spent the Secured Amount on the Guaranteed Obligation before the Loss Security End Date.

6.2. Cancellation. Promptly after Obligor's request following termination of this Guaranty, the Port will cancel and return it.

7. GENERAL PROVISIONS

7.1. Standard Provisions and Rules of Interpretation. *App Part A (Standard Provisions and Rules of Interpretation)* is incorporated into this Guaranty by this reference.

7.2. Notices. *App ¶ 5 (Notices)* governs the procedures for delivery of notices, demand, and other communications between Obligor and the Port. Addresses for notice under this Guaranty are listed below.

Port:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Att'n: Byron Rhett, Director, Planning & Development

Telephone: (415) 274-0400
Facsimile: (415) 274-0495
Email:Byron.rhett@sfport.com

Port Attorney's Office
Port of San Francisco
Pier 1
San Francisco, CA 94111
Att'n: Eileen Malley, General Counsel

Telephone: (415) 274-0485
Facsimile: (415) 274-0494
Email Eileen.Malley@sfcityatty.org

Obligor:

With a copy to:

7.3. No Effect on DDA. Nothing in this Guaranty affects the respective rights and obligations of the Port and Developer under the DDA or the other Transaction Documents.

OBLIGOR:

_____
a _____

By:
Name:
Title:

Executed on _____.

DDA EXHIBIT C1

CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR

FINANCING PLAN

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO,
ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

FC PIER 70, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

28-ACRE SITE

ELAINE FORBES, EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

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ATTACHMENTS

FP Exhibit A:	Form of Acquisition and Reimbursement Agreement
FP Exhibit B:	Form of Requisition
FP Exhibit C:	Form of Promissory Note-LP
FP Exhibit D:	Form of Promissory Note-X
FP Exhibit E:	RMA Term Sheet
FP Exhibit F:	Outline of Special Funds (to be added)
FP Schedule 1:	Summary Proforma
FP Schedule 2:	Sample Cumulative IRR calculation
FP Schedule 3:	Preliminary Entitlement Cost Statement
FP Schedule 4:	Overview of Project Payment Sources (Other than Port Capital)
FP Schedule 5:	Sample Credit Bid Calculations
FP Schedule 6:	Sample Pro Rata Payments Calculations
FP Schedule 7:	Sample Shoreline Reserve/Project Reserve Division of Funds

Maps: Pier 70 SUD Public Financing Districts

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FINANCING PLAN

This **FINANCING PLAN** implements, is a part of, and is attached as **DDA Exhibit C1** to and incorporated into the Disposition and Development Agreement (the "**DDA**") between the City and County of San Francisco (including its agencies and departments, the "**City**"), acting by and through the San Francisco Port Commission (the "**Port**" or the "**Port Commission**"), and FC Pier 70, LLC ("**Developer**") (each, a "**Party**").

Initially capitalized and other terms are defined in the Appendix to Transaction Documents for the Pier 70 Mixed-Use Project (the "**Appendix**") or in other Transaction Documents as specified in the Appendix, which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents.

1. FINANCING OVERVIEW

1.1. Financing Plan Term.

(a) Effective Date. This Financing Plan, as part of the DDA, becomes effective on the Reference Date. Because certain financial obligations and rights will continue after the Port has issued SOP Compliance Determinations for all Horizontal Improvements at the 28-Acre Site, the Parties have agreed that this Financing Plan will have an independent termination date and continue in effect after the DDA Term ends, subject to *DDA § 12.9 (Effects of Termination on Project Payment Sources)*.

(b) Termination. This Financing Plan will terminate when it has been fully performed by the following actions:

(i) the Port has conveyed all Development Parcels to Vertical Developers and Land Proceeds have been applied to the Project Payment Obligation or revenue-sharing;

(ii) the Port has satisfied the Project Payment Obligation;

(iii) the Port has set aside funding for the Pier 70 Shoreline Protection Facilities in the amount determined under **Subsection 4.7(f)** (Determining Pier 70 Shoreline Protection Facilities);and

(iv) revenue-sharing under this Financing Plan is complete.

1.2. Funding Goals. This Financing Plan establishes the contractual framework for financing horizontal development of the Project in accordance with the DDA and to achieve the following Funding Goals.

- Construct Horizontal Improvements in the FC Project Area in coordination with vertical development of the 28-Acre Site and minimize excess carrying costs of horizontal development.
- Use Public Financing Sources to leverage other sources and enhance the Port's ability to satisfy the Project Payment Obligation and each Party's anticipated share of Project Surplus.
- Provide Developer with the opportunity to achieve a market-rate Developer Return on its use of Developer Capital for Horizontal Development Costs.

- Provide the Port with the opportunity to achieve a market-rate Return on Port Capital on its use of Port Capital for Horizontal Development Costs.

- Meet affordable housing goals that San Francisco voters established as City policy by adopting Proposition F.

- Provide the Port with Fair Market Value for Parcel K North and each Option Parcel in compliance with AB 418.

- Use tax-exempt debt to the extent reasonably feasible, consistent with this Financing Plan and Governing Law and Policy.

- Protect the Parties' investments in Horizontal Improvements by providing a funding source for Ongoing Maintenance Costs.

- Provide a mechanism for San Francisco to adapt to rising sea levels and protect its land, residents, and businesses by financing Shoreline Protection Facilities, including Pier 70 Shoreline Protection Facilities, and other Port capital needs after full Project build-out.

- Implement sound and prudent municipal fiscal policies that protect the City General Fund, the Port Harbor Fund, and the City's and the Port's respective financial standings and fiduciary obligations, while operating in the constraints of this Financing Plan and Governing Law and Policy.

1.3. Overview of Financing Districts. As part of the Project Approvals, the Board of Supervisors indicated its intent to form the financing districts outlined in **FP Schedule 4** with anticipated boundaries as shown in attached Public Financing Maps. Each financing district is discussed in more detail in **Article 4** (Mello-Roos Taxes), **Article 6** (Tax Increment), and **Article 12** (Housing Tax Increment).

(a) Pier 70 Leased Property CFD. The Pier 70 Leased Property CFD at formation will cover certain Pier 70 Leased Property and include a Facilities CFD and a Services CFD. The CFD will consist of three Zones and a Future Annexation Area. Zone 1 will include all Development Parcels to be developed as NOI Property in Phase 1 other than Historic Building 12. Zone 2 will include all Development Parcels to be developed as NOI Property in future phases except Historic Building 21. Zone 3 will include Historic Building 12 and Historic Building 21.

(i) Facilities Special Taxes from all three Zones will be applied to:

(1) Capital Costs of the FC Project Area;

(2) PNLP Payments; and

(3) the Historic Building Feasibility Gap.

(ii) Shoreline Special Taxes from Zone 1 and Zone 2 will be applied as set forth in **Section 4.7** (Project Reserve and Shoreline Accounts).

(iii) A total of $20 million in the aggregate of Arts Building Proceeds from Zone 1 and Zone 2 of the Pier 70 Leased Property CFD and Zone 2 of the Pier 70 Condo CFD will be deposited into the Arts Building Account and applied

as described in **Section 10.2** (Arts Building Funding), to the extent of available funds.

(iv) The Future Annexation Area consists of Parcels E1, F, G, H1, H2, C1A and could include Parcel E4 or Parcel K South, or both, if the parcels cease to be used for the purposes specified in the DDA.

(v) The Pier 70 Leased Property CFD RMA will authorize the levy of Improvement Special Taxes on each Taxable Parcel in the Pier 70 Leased Property CFD. Under the RMA, the CFD will levy Improvement Special Taxes at different rates for Market-Rate Rental Projects and Taxable Commercial Parcels.

(vi) Improvement Special Taxes will be deposited into the following subaccounts of the Facilities Special Tax Fund of the Special Fund Trust Account that the Pier 70 Leased Property CFD will establish:

(1) the Capital Improvements Account, which will be used to pay Capital Costs and for any other use allowed under this Financing Plan;

(2) the Project Reserve Account with a portion of the Shoreline Special Taxes, for use as a reserve for Capital Costs and any other use allowed under this Financing Plan;

(3) the Arts Building Account, which will consist of a total of $20 million in the aggregate of Arts Building Proceeds from Zone 2 of the Pier 70 Condo CFD and Zone 1 and Zone 2 of the Pier 70 Leased Property CFD, to be used for the Noonan Replacement Space, Arts Building Funding, and community space, or to finance a public building on Parcel E4 if neither Developer nor the Arts Master Tenant builds out the parcel, as more fully described in **Article 10** (Arts Building); and

(4) the Shoreline Account with a portion of the Shoreline Special Taxes to fund Shoreline Adaptation Studies and, after the Shoreline Protection Project is approved, Shoreline Protection Facilities.

(vii) The Services CFD will levy Services Special Taxes on each Taxable Parcel in the Pier 70 Leased Property CFD to pay for Ongoing Maintenance Costs of the FC Project Area Maintained Facilities, which will consist of:

(1) Public Spaces in the FC Project Area;

(2) Public ROWs in the FC Project Area; and

(3) Shoreline Improvements in or adjacent to the FC Project Area.

(b) Pier 70 Condo CFD. The Pier 70 Condo CFD at formation will include Parcel K North and Parcels C1C, C2B, and D, which the Port will sell for development as Residential Condo Projects, and include a Facilities CFD and a Services CFD. The CFD will consist of two Zones and a Future Annexation Area. Zone 1 will consist of Parcel K North. Zone 2 will include all Residential Condo Projects in the 28-Acre Site. The Future Annexation Area will consist of Parcel E1, Parcel F, Parcel G, Parcel H1, Parcel H2, Parcel C1A, and could include Parcel E4 or Parcel K South, or both, if the parcels cease to be used for the purposes specified in the DDA.

(i) Facilities Special Taxes from both Zones in the Pier 70 Condo CFD (except as indicated below) will be applied to the following:

(1) the Michigan Street segment;

(2) the Historic Building Feasibility Gap;

(3) Capital Costs incurred in the horizontal development of the FC Project Area;

(4) PNLP Payments;

(5) Pier 70 Shoreline Protection Facilities (from Zone 2 only);

(6) Shoreline Adaptation Studies and Shoreline Protection Facilities; and

(7) payment of Promissory Note-X.

(ii) A total of $20 million in the aggregate of Arts Building Proceeds from Zone 2 of the Pier 70 Condo CFD and Zone 1 and Zone 2 of the Pier 70 Leased Property CFD will be deposited into the Arts Building Account and used for:

(1) the Noonan Replacement Space;

(2) Arts Building Funding; and

(3) community facilities; or

(4) a public building on Parcel E4 if neither Developer nor the Arts Master Tenant builds out the parcel.

(iii) Improvement Special Taxes levied in the Pier 70 Condo CFD will be deposited into the Capital Improvements Account and used for:

(1) the Michigan Street segment;

(2) Capital Costs; and

(3) any other use allowed under this Financing Plan.

(iv) Services Special Taxes from Zone 1 of the Pier 70 Condo CFD will pay the Ongoing Maintenance Costs of the Parcel K North Maintained Facilities, which will be:

(1) Public Spaces in Zone 1;

(2) Public ROWs in Zone 1;

(3) other Public Spaces outside of the FC Project Area and the 20th Street CFD;

(4) other Public ROWs in Pier 70 north of 20th Street and outside of the 20th Street CFD; and

(5) Shoreline Protection Facilities.

(v) Services Special Taxes from Zone 2 of the Pier 70 Condo CFD will pay the Ongoing Maintenance Costs of the FC Project Area Maintained Facilities, which will be:

(1) Public Spaces and Public ROWs in the FC Project Area; and

(2) Shoreline Improvements in and adjacent to the FC Project Area.

(c) Hoedown Yard CFD.

(i) The Hoedown Yard CFD will include a Facilities CFD and a Services CFD. Hoedown Yard CFD Proceeds will be used to finance:

(1) Irish Hill Park;

(2) acquisition of shoreline space near the former Hunters Point Power Plant; and

(3) other Port Capital Costs.

(ii) Services Special Taxes from the Hoedown Yard CFD will pay the Ongoing Maintenance Costs of the Hoedown Yard Maintained Facilities, which will be:

(1) Public Spaces in the Hoedown Yard CFD;

(2) Public ROWs in the Hoedown Yard CFD;

(3) other Public Spaces outside of the FC Project Area and the 20th Street CFD;

(4) other Public ROWs in Pier 70 north of 20th Street and outside of the 20th Street CFD; and

(5) Shoreline Protection Facilities.

(d) Sub-Project Areas G-2, G-3, and G-4. Sub-Project Area G-2 will correspond to Phase 1 of the Project. Sub-Project Area G-3 will correspond to Phase 2. Sub-Project Area G-4 will correspond to Phase 3.

(i) Appendix G-1 (Sub-Project Area G-1 (the Historic Core)) authorizes and Appendix G-2 (Sub-Project Areas G-2, G-3, and G-4) will authorize the IFD to use Allocated Tax Increment from all of the Sub-Project Areas in Project Area G to meet the Waterfront Set-Aside requirement under IFD Law on a Project Area G-wide basis rather than on a sub-project area basis.

(ii) Under Appendix G-2, the IFD will be authorized to pledge and use Project Tax Increment to pay eligible Capital Costs, which under Governing Law and Policy in effect on the Reference Date exclude Public Benefit Costs and Excess Return, and to pay Special Debt Service on Mello-Roos Bonds and debt service on Tax Increment Bonds issued to finance eligible Capital Costs for the FC Project Area.

(iii) Appendix G-2 will authorize the IFD to pledge and use HB Tax Increment from Historic Building 12 and Historic Building 21 to pay the Historic Building Feasibility Gap, to pay directly for Port Improvements at Pier 70 outside of the FC Project Area, and to pay Special Debt Service on Mello-Roos Bonds issued to finance the Historic Building Feasibility Gap.

(iv) Appendix G-2 will authorize the IFD to pledge and use Port Tax Increment to pay directly for Port Improvements at Pier 70 outside of the FC Project Area, and to pay debt service on Tax Increment Bonds issued to finance those Port Improvements.

(e) IRFD. The IRFD will cover the Hoedown Yard and public right-of-way bisecting it, which will be annexed to the IRFD after the City transfers it to the private developer. The IRFD Financing Plan authorizes the IRFD to use Allocated Housing Tax Increment to finance the Affordable Housing Projects in the 28-Acre Site and Parcel K South.

1.4. Summary Proforma.

(a) Contents. **FP Schedule 1** (Summary Proforma) contains the following key projections and estimates for each Phase and for the horizontal development as a whole:

(i) Developer's Entitlement Sum and line item estimates by category;

(ii) Developer's Site Preparation costs by line item;

(iii) application of Developer Capital and each other anticipated source, including Advances of Land Proceeds, to other Horizontal Development Costs;

(iv) accrual of Developer Return on Entitlement Costs, costs of Site Preparation, and other Horizontal Development Costs (sample calculations and formulas for Cumulative IRR are shown in **FP Schedule 2**);

(v) accrual of Interest on Land Proceeds;

(vi) the market value of each Option Parcel assuming entitlements are in place, also referred to as Land Value Indicators;

(vii) the market value of Parcel K North assuming entitlements are in place;

(viii) the rehabilitation costs and amounts of the Historic Building Feasibility Gaps for Historic Building 12 and Historic Building 21;

(ix) the Arts Building Funding;

(x) the funding gap for the Affordable Housing Projects;

(xi) levy and allocation of Mello-Roos Taxes;

(xii) growth and allocation of Project Tax Increment;

(xiii) bonding capacity for the Project; and

(xiv) Project Surplus available for revenue-sharing.

(b) Assumptions. The Proforma incorporates certain assumptions that informed the drafting of this Financing Plan. Proforma assumptions include the following:

(i) Financing districts described in this Financing Plan will be established and Tax Revenues from each district will be available for their authorized uses.

(ii) The Board of Supervisors will amend the City's Special Tax Financing Law to authorize all uses of Facilities Special Taxes described in this Financing Plan.

(iii) Development Parcels will be developed for both residential and commercial-office uses at densities described as the "*Mid-Point Project*" in the Land Use Plan and Design for Development.

(iv) Two Development Parcels in the 28-Acre Site and Parcel K South will be designated for Affordable Housing Projects. As described in **Article 12** (Housing Tax Increment) and in the Affordable Housing Plan, the financing sources for these parcels will include 28-Acre Site Affordable Housing Fees, 28-Acre Site Jobs/Housing Equivalency Fees, and Housing Tax Increment.

(v) Entitlement Costs on the 28-Acre Site will be paid by early Project Payment Sources expected to consist of a combination of Early Mello-Roos Bond Proceeds and an Advance of Land Proceeds from the Port's sale of Parcel K North.

(vi) The Port will convey Option Parcels in fee or by ground lease for Fair Market Value determined under *DDA art. 7 (Parcel Conveyances)*.

(vii) If Developer exercises its Option for an Option Parcel, Developer or a Vertical Developer Affiliate will enter into a Vertical DDA in the form of

DDA Exh D2, which will specify the ground rent or purchase price payable for the Option Parcel on terms described in this Financing Plan.

(viii) If Developer does not exercise its Option for an Option Parcel, the Port will issue a Public Offering for the parcel in accordance with *DDA § 7.5 (Public Offering Procedures)*.

(ix) The Port will coordinate with the City to issue Mello-Roos Bonds on behalf of each CFD for the applicable Phase and use the proceeds to pay Capital Costs and Developer pass-throughs based on the approved Phase Budget.

(x) Advances of Land Proceeds and Public Financing Sources, when available, will be preferred over Developer Capital or Port Capital to pay the costs of Phase Improvements.

(xi) Whenever the Project Payment Obligation for a Current Phase includes both a Developer Balance and a Port Balance, Developer and the Port will be paid by available Project Payment Sources as specified in **Subsection 2.4(f)** (Priorities for Payment) and **Subsection 2.4(g)** (Pro Rata Payments).

(xii) Under the Governing Law and Policy in effect on the Reference Date, pay-as-you-go Facilities Special Taxes, proceeds of Mello-Roos-only Bonds, Advances of Land Proceeds, and, at the Port's sole discretion, Port Capital Advances, are the only Project Payment Sources that the Port expects to use to reimburse Developer for its Public Benefit Costs.

(c) Future Events.

(i) Both Parties acknowledge that the Proforma is illustrative only, and future events that do not conform to Proforma assumptions will not provide the applicable Party with a unilateral right to:

(1) disapprove a payment based solely on a difference between actual costs and estimated costs in the Proforma;

(2) disapprove a payment based solely on a difference between actual revenues and estimated revenues in the Proforma;

(3) demand payment for estimated costs in the Proforma that Developer did not actually incur;

(4) demand payment if estimated revenues in the Proforma exceed actual revenues or are not available when projected;

(5) amend this Financing Plan; or

(6) terminate the DDA.

(ii) The Parties agree that the Port may reasonably rely on the updated proforma that Developer submits for a Phase to determine whether to make a Port Capital Advance in that Phase and to size any requests that the City issue Bonds under this Financing Plan.

(iii) To the extent that horizontal development varies from Proforma assumptions, certain provisions of this Financing Plan will no longer apply and will be deemed severed from this Financing Plan.

1.5. Payment Sources for FC Project Area. This section provides an overview of the Project Payment Sources for the Entitlement Sum and other Capital Costs of the Project and the treatment of those sources, subject to more detailed conditions in this Financing Plan.

(a) General Principle. Governing Law and Policy will prevail over any conflict with this Financing Plan or any other part of the DDA relating to Project Payment Sources.

(b) Mello-Roos Bond Proceeds. Mello-Roos Bonds secured and payable by Facilities Special Taxes or Project Tax Increment, or both, will be the preferred public financing approach for a significant amount of the Phase Improvement Costs.

(c) Port and Other Sources.

(i) Advances of Land Proceeds and Public Financing Sources are the only sources that the Port is required to apply to the Project Payment Obligation.

(ii) The Port in its sole election may elect to use Port Capital Advances to pay Capital Costs and Developer pass-throughs when Public Financing Sources are not available and, once committed through a Phase Approval process, the Port must use the amount committed.

(iii) The Parties may agree to use additional sources that become available under conditions specified in **Section 1.7** (Additional Sources).

(d) Developer Capital.

(i) Developer has used and will use Developer Capital to pay for Entitlement Costs and other Horizontal Development Costs when Land Proceeds, Port Capital, and Public Financing Sources are not available.

(ii) The Port will make progress payments from time to time on behalf of the Acquiring Agencies in accordance with this Financing Plan and the Acquisition Agreement.

(e) Pier 70 Leased Property CFD Improvement Special Taxes. Improvement Special Taxes from the Pier 70 Leased Property CFD will fund, in no particular order:

(i) the Entitlement Sum;

(ii) Public Benefit Costs (using pay-as-you-go Facilities Special Taxes only);

(iii) other Capital Costs;

(iv) Noonan Replacement Space, Arts Building Funding, and community facilities, or a public building on Parcel E4 if neither Developer nor the Arts Master Tenant builds out Parcel E4, using Arts Building Proceeds from Zone 1 and Zone 2 only under the conditions specified in **Section 10.2** (Arts Building Funding);

(v) the Historic Building Feasibility Gap as specified in **Section 11.1** (Subsidy for Historic Buildings 12 and 21);

(vi) PNLP Payments;

(vii) Shoreline Adaptation Studies and Shoreline Protection Facilities; and

(viii) Pier 70 Shoreline Protection Facilities.

(f) Pier 70 Condo CFD Improvement Special Taxes. Improvement Special Taxes from the Pier 70 Condo CFD will fund, in no particular order:

(i) the Michigan Street segment;

(ii) the Entitlement Sum;

(iii) Public Benefit Costs;

(iv) other Capital Costs;

(v) Noonan Replacement Space, Arts Building Funding, and community facilities, or a public building on Parcel E4 if neither Developer nor the Arts Master Tenant builds out the parcel, using Arts Building Special Taxes from Zone 2 only under conditions specified in **Section 10.2** (Arts Building Funding);

(vi) the Historic Building Feasibility Gap;

(vii) PNLP Payments;

(viii) Pier 70 Shoreline Protection Facilities (Improvement Special Taxes from Zone 2 of the Pier 70 Condo CFD only);

(ix) Shoreline Adaptation Studies and Shoreline Protection Facilities; and

(x) payment of Promissory Note-X.

(g) Project Tax Increment. Subject to the Interest Cost Limitation, Allocated Project Tax Increment and proceeds of Bonds secured and payable by Project Tax Increment will fund, in no particular order:

(i) the Entitlement Sum;

(ii) other eligible Capital Costs, which exclude Public Benefit Costs and Excess Return under the Governing Law and Policy in effect on the Reference Date;

(iii) the Historic Building Feasibility Gap;

(iv) PNLP Payments;

(v) Pier 70 Shoreline Protection Facilities; and

(vi) Special Debt Service and the Leased Property Backup Fund.

(h) Port Tax Increment. Subject to the Interest Cost Limitation, Allocated Port Tax Increment and proceeds of Bonds secured and payable by Port Tax Increment will fund, in no particular order:

(i) Irish Hill Park;

(ii) Port Improvements; and

(iii) Special Debt Service on Bonds issued to finance the Historic Building Feasibility Gap solely on the conditions specified in **Article 11** (Historic Buildings).

1.6. Other Sources and Costs. This Section provides an overview of the Parties' agreement as to public sources for other Improvements in the SUD and the treatment of those sources, subject to more detailed conditions specified elsewhere in this Financing Plan.

(a) Historic Building Feasibility Gap. The Port will apply Port Tax Increment from Historic Building 12 and Historic Building 21 and proceeds of Bonds secured and payable by Port Tax Increment from those Historic Buildings to finance the Historic Building Feasibility Gap as described in **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service).

(b) 20th/Illinois Plaza. The 20th/Illinois Plaza will be an obligation of the Vertical Developer that the Port selects to develop Parcel K North. The construction costs of these Improvements will be treated as an Advance of Land Proceeds under **Subsection 7.4(a)** (Parcel K North).

(c) Waterfront Set-Aside. Under the IFD Law, the Port will apply Allocated Tax Increment from Sub-Project Area G-1, Sub-Project Area G-2, Sub-Project Area G-3, and Sub-Project Area G-4 to fund Improvements required by the IFD Law.

(d) Interim Lease Revenues. The Port will apply the amount of Interim Lease Revenues reported as Percentage Rent under the Master Lease as a credit toward Land Proceeds. The Port may use these credited amounts as applicable to:

(i) make Advances of Land Proceeds in accordance with **Section 7.3** (Advances of Land Proceeds) to satisfy any outstanding Project Payment Obligation; and

(ii) for revenue sharing by the Developer Share and the Port Share.

(e) Master Marketing Fee Account. Although the Port has no proprietary interest in the Master Marketing Fees that Developer will collect from all Vertical Developers, the Parties have agreed that each Vertical Developer will deposit its initial payment into Escrow. The fees will be disbursed from Escrow to a segregated account to be held by the Special Fund Trustee. In turn, the Special Fund Trustee will disburse fees to Develop in accordance with and subject to conditions in each Vertical Developer's Vertical DDA.

1.7. Additional Sources.

(a) Cooperation. The City, the Port, and Developer will cooperate to identify additional sources and incentives that might be available for Improvements at the FC Project Area, such as incentives for historic rehabilitation, brownfield remediation, transit-oriented development, and sustainable development.

(b) Conditions to Other Sources. The Parties must agree to use any permitted source that is not identified in this Financing Plan as a Project Payment Source for Capital Costs. Any potential new source other than Port Capital that meets all of the following conditions will be deemed to be permitted if it:

(i) is less costly than Developer Capital;

(ii) does not materially increase the Capital Cost;

(iii) does not increase the time for implementation, cost, or financing of any Phase;

(iv) does not impose additional regulations and restrictions that are inconsistent with this Financing Plan or the DDA;

(v) does not require the Improvements to be made out of sequence with the Phasing Plan in effect when the funds would be available if resequencing would cause a material cost increase;

(vi) does not result in lower residual values for Option Parcels; and

(vii) does not impose requirements that would create a material negative impact on Developer's ability to market and transfer the Development Parcels.

(c) Horizontal Development Costs. Administrative costs and additional work required by accepting a new source to be applied to Capital Costs will be Hard Costs or Soft Costs recorded on the Developer Capital Schedule or Port Capital Schedule as applicable.

1.8. Limitation on Sources. Developer acknowledges that none of the following is a Project Payment Source to pay or secure and pay Bonds issued to pay Capital Costs under any circumstances not specified in this Financing Plan:

(a) City General Fund;

(b) Port Harbor Fund other than Land Proceeds and any Port Capital that the Port commits to use;

(c) Improvement Special Taxes deposited in the Shoreline Account or special taxes collected from outside of the Pier 70 Leased Property CFD or the Pier 70 Condo CFD;

(d) Port Tax Increment in the Special Fund Trust Account holding Port Tax Increment (except to the extent described in **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service));

(e) Housing Tax Increment; or

(f) Tax Increment from outside of the Sub-Project Areas, except to fund the Waterfront Set-Aside.

1.9. Special Fund Accounts. Schedule 4 lists each Project Payment Source other than Port Capital described in this Financing Plan and specifies the authorized uses of each source. The Port will enter into a Special Fund Administration Agreement with the Special Fund Trustee with directions to establish segregated accounts for each specific purpose, without prejudice to the Port's right to revise these directions for convenience or efficiency. Changes affecting Mello-Roos Taxes or Tax Increment from the 28-Acre Site and Parcel K North will be subject to Developer's prior consent until the Project Payment Obligation and Promissory Note-LP have been fully paid.

1.10. Due Diligence Related to Public Financing. The Parties agree as follows.

(a) Compliance with Law. Before spending any Public Financing Sources, the Port and the City will consult with the City's Bond Counsel to confirm that the expenditure is authorized under CFD Law, IFD Law, IRFD Law, or the Tax Code, as applicable.

(b) Record-Keeping. Consistent with **Article 9** (Reporting), each Party will keep appropriate records of expenditures of Advances of Land Proceeds, Developer Capital, and Advances of Port Capital (including descriptions of financed Improvements, dates of original expenditures and dates on which Improvements are placed in service) that they expect to be reimbursed from Public Financing Sources to assist with Bond Counsel's review.

2. FLOW OF FUNDS

2.1. Port Payments. References in any Transaction Document to Port payments or disbursements will mean any of the following funds of the Port, any CFD, the IFD, or the IRFD that are applied as described in this Financing Plan:

(a) Land Proceeds from Parcel K North and the 28-Acre Site that the Port uses to make Advances of Land Proceeds to the Pier 70 CFDs to pay Capital Costs and Developer pass-throughs, which Escrow Agents will disburse from Escrow Accounts as specified in Joint Escrow Instructions in accordance with **Subsection 2.4(f)** (Priorities for Payments);

(b) Port Capital that the Port uses to make Port Capital Advances to the Pier 70 CFDs to pay Developer's Capital Costs and Developer pass-throughs;

(c) Mello-Roos Taxes that the Special Fund Trustee disburses from the applicable segregated account in the Facilities Special Tax Fund to pay Capital Costs, Developer pass-throughs, or the Historic Building Feasibility Gap;

(d) Project Tax Increment that the Special Fund Trustee disburses from the applicable segregated account in the Tax Increment Fund to pay Capital Costs, Developer pass-throughs, or the Historic Building Feasibility Gap;

(e) Bond Proceeds that an Indenture Trustee disburses from the applicable Capital Improvement Account under an Indenture to pay Capital Costs (subject to the Interest Cost Limitation, if applicable), Developer pass-throughs, Promissory Note-LP,

and Promissory Note-X (from Mello-Roos-only Bonds), or the Historic Building Feasibility Gap;

(f) Interim Satisfaction Balance that the Special Fund Trustee disburses from the Revenue Account or as otherwise set forth in this Financing Plan;

(g) Project Surplus that the Special Fund Trustee disburses from the Revenue Account after the Final Audit;

(h) Housing Tax Increment that the Special Fund Trustee disburses to or as requested by MOHCD; and

(i) Port Tax Increment that the Special Fund Trustee disburses from the applicable segregated account in the Tax Increment Fund to pay Special Debt Service on Bonds issued to finance the Historic Building Feasibility Gap.

2.2. Payment Requests and Requisitions.

(a) Payment Requests. The Port will reimburse Developer for its Capital Costs related to Phase Improvements in accordance with Approved Payment Requests that Developer will obtain in accordance with the Acquisition Agreement.

(i) As specified in more detail in *AA art. 4 (Payment Requests)*, Developer will prepare each Payment Request in the form of *AA Exh C (Payment Request)*, number each successive Payment Request in ascending order, attach supporting documents, and submit the Payment Request package to the Chief Harbor Engineer, who will distribute copies for review to the extent necessary under the ICA and to any construction consultant engaged by the Port.

(ii) After the Chief Harbor Engineer, in consultation with the construction review consultant, determines that a Payment Request is complete, he will arrange for each applicable Acquiring Agency to inspect and approve the Phase Improvements covered by the Payment Request. The Chief Harbor Engineer will forward each Approved Payment Request promptly to the Port Finance Director. Each Approved Payment Request will authorize the use of Project Payment Sources to pay the Acquisition Price of Horizontal Improvements (or their Components) listed in the Approved Payment Request in accordance with this Financing Plan.

(b) Requisitions. The Port will reimburse Developer for Horizontal Development Costs (other than those covered by the Entitlement Cost Statement and Approved Payment Requests) with Developer Return in accordance with Approved Requisitions that Developer will obtain in accordance with this Subsection. Developer will prepare each Requisition in the form of **FP Exhibit B**, number each successive Requisition in ascending order, attach supporting documents, and submit the Requisition package to the Port Finance Director. The Port Finance Director will review Requisitions for completeness and give notice to Developer of her approval or disapproval.

(c) Numbering and Priority. The Port Finance Director will assign priority to each Approved Payment by the date of approval by numbering it in ascending order. Subject to **Subsection 2.4(f)** (Priorities for Payment), the Approved Payments will have priority for payment in ascending order.

(d) Directions to Disburse. As Project Payment Sources become available, the Port Finance Director will provide written directions to each applicable Payment Agent for disbursement of funds to pay Approved Payments in accordance with **Subsection 2.4(d)** (Payments from Project Payment Sources).

(e) Revenue Sharing. The Port is obligated to make or direct distributions for revenue-sharing in accordance with this Financing Plan. Because revenue-sharing does not pay for Horizontal Development Costs, Developer is not required to submit Payment Requests or Requisitions for any form of revenue-sharing under this Financing Plan.

(f) Discretion Regarding Procedures. Each Party will retain discretion to suggest, accept, or reject changes in procedures regarding review, approval, and disbursements under this Financing Plan. To the extent that any suggested change affects procedures in the ICA, each affected Acquiring Agency must also approve the change before the Parties may begin to implement the changes. This Subsection does not permit the Parties to make substantive changes to Developer's or the Port's reimbursement rights or payment obligations under this Financing Plan.

(g) Repayment of Port Capital. When Developer submits a Payment Request under **Subsection 2.2(a)** (Payment Requests) or a Requisition under **Subsection 2.2(b)** (Requisitions), the Port Finance Director will determine if a Port Balance exists and, if it does, direct the Special Fund Trustee to disburse available Project Payment Sources to both the Developer (or the party receiving a Developer pass-through) and the Port in accordance with this Financing Plan.

2.3. Entitlement Costs.

(a) Entitlement Cost Statement.

(i) Up to the Reference Date, Developer spent Developer Capital on Entitlement Costs. Developer Return on Developer's Entitlement Costs began to accrue on the later of July 12, 2011, or the date on which Developer incurred the costs. Developer's Preliminary Entitlement Cost Statement is attached as **FP Schedule 3** showing Developer's line item breakdown of: (1) Entitlement Costs; and (2) Developer Return accrued on each line item of Entitlement Costs for the period ending about 90 days before the Reference Date, with estimates up to the Reference Date.

(ii) Developer must provide its updated Entitlement Cost Statement to the Port for review and approval no later than 60 days after the Reference Date. The approved Entitlement Cost Statement will be an Approved Payment under this Financing Plan. The Port will be obligated to pay the amount of the Entitlement Sum reflected in the approved Entitlement Cost Statement under this Section, subject to **Subsection 2.3(b)** (Project Payment Sources for Entitlement Costs).

(iii) Developer Return will accrue on the unpaid balance of the Entitlement Sum from the Reference Date until the date the Entitlement Sum is fully paid.

(b) Project Payment Sources for Entitlement Costs.

(i) IFD Law imposes the Interest Cost Limitation on the use of Tax Increment that also applies to any Bonds secured and payable by Tax Increment.

(ii) The Interest Cost Limitation does not apply to Land Proceeds, Mello-Roos Taxes, and proceeds of Mello-Roos-only Bonds. The Port will apply Advances of Land Proceeds, Improvement Special Taxes from the Pier 70 CFDs (including amounts in the Project Reserve Account), and proceeds of Mello-Roos-only Bonds to pay Excess Return until paid in full before applying those sources to any other part of the Entitlement Sum.

(c) Payment Process.

(i) The Port's escrow instructions will direct the Escrow Agent to make an Advance of Land Proceeds to the Pier 70 CFDs by disbursing Parcel K North Proceeds to Developer unless **clause (v)** of **Subsection 7.4(a)** (Parcel K North) applies.

(ii) The amount of the disbursement will be the lesser of: (1) Parcel K North Proceeds; and (2) the outstanding Developer Balance. Any Parcel K North Proceeds in excess of the Developer Balance will be deposited into the Land Proceeds Fund for application to Capital Costs.

(iii) Concurrently with the disbursement under this Subsection, the Port will enter the date of its Advance of Land Proceeds and the amounts applied to Entitlement Costs and Allowed Developer Return on the allonge to Promissory Note-LP. The Port will also enter the amount applied to Excess Return on the allonge to Promissory Note-X.

(iv) If the Entitlement Sum is not fully paid by the disbursement under this Subsection, the Port will authorize the disbursements of other Project Payment Sources to Developer under **Subsection 2.2(d)** (Directions to Disburse), subject to the Interest Cost Limitation if applicable, as Project Payment Sources become available until the unpaid balance of the Entitlement Sum and accrued Developer Return are paid.

(v) In the alternative, if the Entitlement Sum is not fully paid by Pier 70 CFD Proceeds, the Port will have the right, but will in no event be obligated, to make a Port Capital Advance to the Pier 70 CFDs to pay any remaining balance. If the Port does so, the Port will make a contemporaneous entry on the Port Capital Schedule that specifies the date of the Advance and the amounts applied to the Entitlement Sum, Allowed Developer Return, and Excess Return.

(vi) Contemporaneously with each disbursement under this Section, Developer will make corresponding entries on the Developer Capital Schedule that specify the date of the disbursement and the amounts applied to the Entitlement Sum, Allowed Developer Return, and Excess Return.

2.4. Horizontal Development Costs.

(a) Allocation of Developer's Costs. To comply with Governing Law and Policy, including Tax Code provisions relating to tax-exempt debt, the Parties will review Horizontal Development Costs to determine eligibility for reimbursement from Public Financing Sources and tax-exempt proceeds of Public Financing Sources. Examples of the Parties' preliminary conclusions follow.

(i) Costs to demolish existing structures to clear the 28-Acre Site for horizontal development would be eligible for tax-exempt financing.

(ii) Costs of Utility Infrastructure, Public ROWs, Public Spaces, Transportation Infrastructure, Shoreline Improvements, and Shoreline Adaptation Studies would be eligible for tax-exempt financing.

(iii) Because Entitlement Costs and any Site Preparation Costs supporting vertical development may not be eligible for financing under CFD Law, IFD Law, or IRFD Law, or if eligible under those laws, may not be eligible for tax-exempt financing under the Tax Code, the Parties will consult with the City's Bond Counsel prior to the issuance of Bonds.

(b) Developer Cash Flow in each Quarter.

(i) Developer will account for its use of Developer Capital in each Developer Quarterly Report, which must update Developer's spending on Phase Improvement Costs by Phase and provide prior notice when Developer expects Phase Improvement Costs to reach or exceed the applicable Phase Budget.

(ii) Developer must record its use of Developer Capital for Phase Improvement Costs on the Developer Capital Schedule, which must be updated and attached to each Developer Quarterly Report. Developer must record on the Developer Capital Schedule the date and amount of funds received and applied to the Developer Balance. The Developer Schedule must include sufficient detail about expenditures (including a description of the expenditures, the date of the expenditure and the date on which the related Horizontal Improvement is placed in service) for the City and the Port (including the Port Finance Director and Bond Counsel) to determine the appropriate Project Payment Source to reimburse an expenditure.

(c) Port Capital Advances. The Port must record each Port Capital Advance on the Port Capital Schedule, which must be updated and attached to its next Port Quarterly Report. The Port must record on the Port Capital Schedule the date and amount of funds received and applied to the Port Balance. The most recently updated Port Capital Schedule will serve as the Port's Payment Request whenever **Subsection 2.4(g)** (Pro Rata Payments) applies.

(d) Payments from Project Payment Sources.

(i) As described in **Section 2.2** (Payment Requests and Requisitions), Developer must submit Payment Requests and Requisitions to the Port from time to time for Capital Cost payments. The Port Director will disburse funds in accordance with this Subsection for any portion of the Entitlement Sum not fully paid with Developer Return under **Section 2.3** (Entitlement Costs) and other Approved Payments.

(ii) The Port Finance Director will review and annotate each Approved Payment, if not already specified, for:

(1) costs that are subject to restrictions or limitations under this Financing Plan or Governing Law and Policy; and

(2) applicable priorities.

(iii) As any Project Payment Source becomes available, the Port Finance Director will identify the unpaid Approved Payments for eligible uses of the available funds under Governing Law and Policy in ascending order of priority as specified in **Subsection 2.4(f)** (Priorities for Payment), then annotate those to be paid:

(1) to update Capital Costs to the date of calculation by reference to the most recent Developer Quarterly Report and, if applicable, Port Quarterly Report, with separate calculations for Allowed Return and Excess Return accrued to the date of calculation with daily accrual rates to be added when the disbursements are actually made;

(2) amounts eligible for payment from any tax-exempt Bond Proceeds; and

(3) amounts eligible for payment from any other Public Financing Sources.

(iv) Whenever she is asked to approve disbursements for Developer Return, the Port Finance Director will be entitled to receive information about the related costs to ensure that the disbursement is paid with the appropriate Project Payment Sources.

(v) The Port Finance Director will direct disbursements by signing, dating, and delivering copies of the signed Approved Payments as appropriate to the applicable Payment Agents, with copies to Developer, the CFD Agent, and the IFD Agent as applicable.

(vi) Contemporaneously with each disbursement under this Financing Plan, the Parties will make corresponding entries on the Developer Capital Schedule, the Port Capital Schedule, and the allonges, as applicable.

(e) Progress Payments. Approved Payments that the Port Finance Director delivers to any Payment Agent will authorize the Payment Agent to make monthly progress payments when additional funds that it holds for disbursement in accordance with this Financing Plan become available. Each Payment Agent will document progress payments in accordance with the record-keeping requirements of its applicable Escrow Instructions, Special Fund Administration Agreement, or Bond Indenture.

(f) Priorities for Payment. The following priorities will apply to the disbursement of Project Payment Sources unless the Parties agree otherwise by a countersigned writing.

(i) The Entitlement Cost Statement, as updated under **Subsection 2.3(a)** (Entitlement Cost Statement), and accrued Developer Return on the Entitlement Sum will have the highest priority for payment.

(ii) Other Approved Payments will have priority designated by the Port Director's numbering, subject to adjustments as needed for Project Funding Sources, which include the following.

(1) Whenever tax-exempt Bond Proceeds are available, priority will be given to PNLP Payments to the extent necessary to comply with Treasury Regulation section 1.150-2, which requires costs to be

reimbursed no later than 18 months after the later of: (A) the date of the expenditure; or (B) or the date the project is placed in service up to a maximum of three years after the expenditure. PNLP Payments will be deposited in the Land Proceeds Fund until the Project Payment Obligation is satisfied.

(2) Whenever pay-as-you-go Improvement Special Taxes from Zone 1 or Zone 2 of the Pier 70 Leased Property CFD, pay-as-you-go Improvement Special Taxes from the Pier 70 Condo CFD, or Mello-Roos only Bond Proceeds are available, priority will be given to payments of Excess Return regardless of the priority of the Approved Payment under **Section 2.2** (Payment Requests and Requisitions). This Paragraph does not affect the priority of payments under Promissory Note-X, which remains subordinate to satisfaction of the Project Payment Obligation and Promissory Note-LP.

(3) Payments of Excess Return may be deferred if the only available funds are subject to the Interest Cost Limitation, regardless of the priority assigned to the cost on which the Excess Return is accruing. If Allowed Return is fully paid by available funds, the Excess Return will continue to accrue until fully paid.

(4) Arts Building Proceeds, Historic Building Proceeds, Hoedown Yard CFD Proceeds, Pier 70 CFD Proceeds, and Shoreline Special Taxes will be applied only as specified in this Financing Plan.

(5) Port Tax Increment will be applied to costs for the 28-Acre Site Project only as specified in this Financing Plan

(6) Specified priorities for the application of Project Payment Sources in this Financing Plan will be applied regardless of the relative priorities of the pertinent Approved Payments.

(7) Costs that may be reimbursed by the same Project Payment Source will be paid according to the relative priorities of the Approved Payments absent any other priority or limitation specified in this Financing Plan.

(iii) The Historic Building Feasibility Gap for Historic Building 12 and for Historic Building 21 will be paid at the time and in the manner set forth in **Article 11** (Historic Buildings).

(iv) This clause applies if a Developer Balance is outstanding and the Port Balance is zero when the Port commits to making a Port Capital Advance under **Section 7.5** (Treatment of Port Capital Advances). The pre-existing Developer Balance must be satisfied by Project Payment Sources, which may include the Port Capital Advance, before **Subsection 2.4(g)** (Pro Rata Payments) applies.

Example: Assume the Port Balance is zero and the Developer Balance is $30 million when the Port commits to make a Port Capital Advance of $10 million by paying a portion of the Developer Balance down to $20 million on 1/1/19. After the Port Capital Advance, Developer expends an additional $10 million, then Project Payment

Sources become available. The Project Payment Sources would be applied in the following priority: (1) payment in full of the pre-existing Developer Balance on 1/1/19, plus Developer Return to the date of payment; and (2) payment of the Developer Balance ($10 million plus Developer Return) and the Port Balance ($10 million plus Return on Port Capital) pro rata under **Subsection 2.4(g)** (Pro Rata Payments).

(v) Subject to **clause (iv)** of this Subsection, after the Port makes a Port Capital Advance, Project Payment Sources will be applied to the Developer Balance and the Port Balance by pro rata payments as described in **Subsection 2.4(g)** (Pro Rata Payments).

(vi) To the extent that a Developer Balance and a Port Balance are not satisfied by Project Payment Sources available during a Current Phase, the priorities for paying each Party's balance will be preserved by the priority of the previously Approved Payment Requests.

(vii) After the Developer Balance and the Port Balance are satisfied, the Interim Satisfaction Balance in a Current Phase will be available for revenue-sharing if the conditions specified in **Section 3.6** (Interim Satisfaction) are satisfied.

(viii) The Pier 70 CFDs and the IFD (due to its pledge of Project Tax Increment to debt of the Pier 70 CFDs) will make payments on Promissory Note-LP until fully paid only after the Project Payment Obligation is satisfied in full, except when **paragraph 1** of **clause (ii)** of **Subsection 2.4(f)** (Priorities for Payment) applies.

(ix) After the Project Payment Obligation and Promissory Note-LP are paid in full, the Pier 70 CFDs will pay Promissory Note-X.

(g) Pro Rata Payments. Except as specified in **clause (iv)** of **Subsection 2.4(f)** (Priorities for Payment), whenever payment obligations under this Financing Plan include both a Developer Balance and a Port Balance, those obligations will be paid pro rata, based on proportionate values of the Developer Balance and the Port Balance, as shown in the illustrative examples in **FP Schedule 6**. Funds will be applied to any outstanding accrued return on capital before application to the capital balances.

2.5. Trust Account for Special Funds. The Port, in its proprietary capacity and as CFD Agent, IFD Agent, and IRFD Agent, will enter into a Special Fund Administration Agreement with the Special Fund Trustee under which the Special Fund Trustee will hold and administer in a Special Fund Trust Account segregated accounts described in this Financing Plan for disbursement.

2.6. Certain Costs Incurred by Vertical Developers. If Developer does not reimburse Vertical Developers for the following costs, subject to treatment as a Capital Cost under this Financing Plan, the Port will enter into reimbursement agreements with Vertical Developers obligated to provide the following Public Benefit Costs under procedures similar to those described in the Acquisition Agreement and this Financing Plan to comply with the CFD Law. Vertical Developer will not be entitled to any other reimbursement under this Financing Plan except for costs associated with Deferred Infrastructure as described in **Subsection 3.1(b)** (Deferred Infrastructure).

(a) Arts Building. Under *DDA § 7.12 (Arts Building)*, Developer will designate a Vertical Developer Affiliate to develop an Arts Building for uses consistent with the SUD provisions at Section 249.79 and the Arts Program (*DDA Exh B6*). The Port has agreed to subsidize the Arts Building with Arts Building Proceeds on conditions and in amounts specified in **FP § 10.2** (Arts Building Funding).

(b) Noonan Replacement Space. *DDA § 7.13 (Noonan Replacement Cost)* requires Developer to provide Temporary Noonan Replacement Space and Permanent Noonan Replacement Space to the Noonan Tenants. **FP § 10.2** (Arts Building Funding) specifies the amounts of Arts Building Proceeds that will be available to fund the Permanent Noonan Replacement Space, depending on whether it is located in the Arts Building or elsewhere in the 28-Acre Site. Under circumstances specified in *DDA § 7.23 (Potential Relocation of Building 11)*, the Port and Developer, each in its sole discretion, may agree to apply Arts Building Proceeds to implement the Building 11 Relocation Plan, subject to prior authorization by the Port Commission and the Board of Supervisors.

(c) Historic Buildings 12 and 21. Developer is required to rehabilitate Historic Building 12 and Historic Building 21 under *DDA § 7.14 (Historic Buildings 12 and 21)*. The Port has agreed to subsidize the designated Vertical Developer Affiliate's costs with Public Financing Sources generated by those buildings, as described in **FP art. 11** (Historic Buildings).

(d) Rooftop Open Space. Under conditions specified in *DDA § 7.15 (Rooftop Open Space)*, the Port may request that Developer include in its Phase Submittal for Phase 3 a location for Rooftop Open Space on an Option Parcel. The pertinent Vertical Developer will not be required to build the Rooftop Open Space unless the Port is able to demonstrate that Public Financing Sources will be available to finance the costs associated with the Rooftop Open Space.

2.7. Special Facility Designation.

(a) Port Revenue Bonds. The Port previously issued Port Revenue Bonds secured and payable by a pledge of Port revenues under the Port Master Indenture. As defined in the Port Master Indenture, pledged Port revenues specifically exclude revenues pledged to repay financing for public facilities that have been designated by the Port as "Special Facilities."

(b) Designation and Effect. The Port hereby designates the SUD as a Special Facility and declares revenues from and with respect to the SUD, including Land Proceeds and Project Surplus, to be Special Facility Revenue pledged to pay Special Facility Revenue Bonds. As a result, the Port revenues from and with respect to the SUD are not "Revenue" subject to and as defined in the Port Master Indenture.

(c) Condition to Issuance of Bonds Payable from Allocated Tax Increment. Before issuing any Mello-Roos Bonds that are payable from Allocated Tax Increment or Tax Increment Bonds, the Port will file with the trustee for the Port Revenue Bonds the certificate, opinion, and report required by the Port Master Indenture.

2.8. Port FY Budget. Each Phase Approval and any amendment to a Phase Budget will obligate the Port to submit a Port FY Budget consistent with the Phase Budget for the next and each succeeding City Fiscal Year during which the Parties expect to use Public Financing Sources, Advances of Land Proceeds, or Port Capital Advances to satisfy any part of the Project Payment Obligation.

3. LAND PROCEEDS

3.1. Use of Land Proceeds. Developer and the Port agree to the uses of Land Proceeds described in this Article. All Land Proceeds will be deposited or deemed deposited into Escrow, which will be deemed to be deposits into the Port Harbor Fund.

(a) Capital Costs. The Port will use Advances of Land Proceeds from Option Parcels as those funds become available to pay the Developer Balance and any Port Balance as specified in this Financing Plan. The Port may also use Advances of Land Proceeds to pay Developer pass-throughs.

(b) Deferred Infrastructure. Subject to the prior approval of all parties to the conveyance documents, when the Port conveys an Option Parcel to a Vertical Developer, the Vertical DDA will:

(i) identify any Deferred Instructure to be constructed by the Vertical Developer; and

(ii) obligate the Vertical Developer to construct any identified Deferred Infrastructure.

After completion of the Deferred Infrastructure by the Vertical Developer, the Developer may, in its sole discretion, agree to reimburse the Vertical Developer for its Deferred Infrastructure costs, in which case Developer will recover such reimbursement as a Capital Cost; provided, however, the Developer will not have the option to reimburse the Vertical Developer if Interim Satisfaction has occurred and if there are Project Payment Sources available to reimburse the Vertical Developer as a Developer pass-through.

(c) 20th/Illinois Plaza.

(i) The Port's offering document for Parcel K North will require the Vertical Developer to build the 20th/Illinois Plaza as a public benefit of the development project. The Port will specify an estimate of the cost to construct the 20th/Illinois Plaza based on third-party cost estimates.

(ii) The 20th/Illinois Plaza offset will be deemed to have been deducted from the Parcel K North Proceeds. The Port will instruct the Escrow Agent to disburse the Parcel K North Proceeds to Developer in accordance with **Section 2.3** (Entitlement Costs).

(iii) The initial amount of the Advance of Land Proceeds will be the sum of Parcel K North Proceeds and the 20th/Illinois Plaza offset, subject to true-up. The Port will enter the disbursement date, amount, and application of funds on the allonges to Promissory Note-LP and Promissory Note-X as applicable.

(iv) The Vertical Developer will be required to provide evidence of its actual costs to build the 20th/Illinois Plaza to the Port. The Port will revise its entries on the allonges to Promissory Note-LP and Promissory Note-X accordingly. The entries will date back to the date on which Parcel K North Proceeds were disbursed from Escrow.

(v) The Port may elect to require the Parcel K North Vertical Developer to build the Michigan Street segment also. If so, the offering

document will specify that the Vertical Developer will be the Port's fee developer for the Michigan Street segment subject to public works contracting requirements and an acquisition agreement complying with the CFD Law, and the Port will agree to pay the Vertical Developer's costs to build the Michigan Street segment using Pier 70 Condo CFD Proceeds. Under this payment structure, the Port will not be making an Advance of Land Proceeds.

(d) Hoedown Yard Improvements.

(i) Assuming that the City exercises or publicly offers its purchase option for the Hoedown Yard, the Port will work with the City on its offering document. At the City's election, the offering document may require the Hoedown Yard Vertical Developer to build Irish Hill Park. Subject to a City-approved budget, the City and the Port will agree to pay the Vertical Developer's costs with Hoedown Yard CFD Proceeds. If Hoedown Yard CFD Proceeds are not sufficient to pay for Irish Hill Park costs, the Port will use Port Tax Increment, except to the extent required under **Article 11** (Historic Buildings), to fill the gap.

(ii) The offering document will also specify whether construction of Irish Hill Park will be a public works project that the City will fund directly with Hoedown Yard CFD Proceeds, or whether the Vertical Developer will pay the cost to build Irish Hill Park conditioned on reimbursement from Hoedown Yard CFD Proceeds to the extent available and subject to the requirements of the CFD Law.

(e) Revenue Sharing. Land Proceeds will be the source of revenue-sharing as described in this Financing Plan.

3.2. Special Fund for Land Proceeds.

(a) Land Proceeds Fund. The Port will enter into the Special Fund Administration Agreement with the Special Fund Trustee specifying the Special Fund Trustee's duties to hold and administer the Land Proceeds Fund in accordance with this Financing Plan. In the Land Proceeds Fund, the Revenue Account has been created as a subaccount. The Special Fund Trustee's principal duties for the Land Proceeds Fund and the Revenue Account are described in this Article.

(b) Interim Satisfaction. At any time when the Project Payment Obligation for a Phase is satisfied, but the other conditions to Interim Satisfaction under **Subsection 3.6(b)** (Interim Satisfaction Event at Closing) have not been met, Land Proceeds will be deposited into the Land Proceeds Fund and be available for Capital Costs until Interim Satisfaction occurs. If all of the conditions under **Subsection 3.6(b)** (Interim Satisfaction Event at Closing) have been met, Land Proceeds will be deposited into, or transferred to, the Revenue Account for revenue-sharing. Funds deposited in the Revenue Account will be immediately disbursed to the Developer in the Developer Share and to the Port in the Port Share.

(c) Revenue Sharing. All other funds deposited in the Revenue Account under this Financing Plan will be immediately disbursed to the Developer in the Developer Share and to the Port in the Port Share. Land Proceeds in the Land Proceeds Fund will be transferred to the Revenue Account for revenue-sharing as described in **Section 3.10** (Distribution of Project Surplus).

(d) Character of Distributed Land Proceeds.

(i) The Developer Share of the Interim Satisfaction Balance distributed to Developer will not be subject to any obligation for Developer to reinvest the funds in Horizontal Development Costs or other restrictions on use under this Financing Plan.

(ii) The Port Share of the Interim Satisfaction Balance distributed to the Port will not be subject to any obligation for the Port to reinvest the funds in Horizontal Development Costs or other restrictions on use under this Financing Plan unless the Port committed to do so in a Phase Budget.

3.3. Right to Credit Bid. Under *DDA art. 7 (Parcel Conveyances)*, Developer, through its Vertical Developer Affiliates, has the right to tender a Credit Bid instead of cash for some or all of the Prepaid Rent or purchase price of each Option Parcel, subject to the Port's rights following a Subordination Event. Under this Section, the permitted amount of any Credit Bid will be applied automatically to a Vertical Developer Affiliate's purchase or ground lease of an Option Parcel.

(a) Calculation of Price. The price that a Vertical Developer Affiliate will be required to pay for Closing any Port conveyance of an Option Parcel will be as set forth in *DDA art. 7 (Parcel Conveyances)*.

(b) Public Financing Sources. Before the Credit Bid Determination Date, the Port will provide to Developer an update on available Public Financing Sources, which will exclude amounts intended to pay Approved Payments. The Parties will assume that the available Public Financing Sources, in addition to the Advance of Land Proceeds from the conveyance, would be used to pay Capital Costs before Developer Capital or Port Capital is used.

(c) Estimated Balance Owing.

(i) Developer will provide an estimate of the Developer Balance as of the Closing Deadline. The Port will provide an estimate of the Port Balance as of the Closing Deadline. The Parties must exchange this information and daily accrual rates by the Credit Bid Determination Date.

(ii) The Parties will assume that Developer will spend Developer Capital on Phase Improvements on projected spending dates occurring before the Closing Deadline to the extent not paid by Public Financing Sources or Land Proceeds. Estimated costs that Developer does not have under contract will not be considered for this purpose.

(iii) The Parties will assume that the Port will make one or more Port Capital Advances to pay for Phase Improvements as specified in any Port commitment to do so under **Section 7.5** (Treatment of Port Capital Advances).

(iv) If no Port Balance will be outstanding on the Credit Bid Determination Date, the amount that a Vertical Developer Affiliate may Credit Bid for the Port's conveyance of the Option Parcel will be determined under **Subsection 3.4(a)** (Developer Balance Only).

(v) If both a Developer Balance and a Port Balance will be outstanding on the Credit Bid Determination Date, the amount that a Vertical Developer

Affiliate may Credit Bid for the Port's conveyance of the Option Parcel will be determined under **Subsection 3.4(b)** (Balances Owed to Both Parties).

(vi) The right to Credit Bid will not affect a Vertical Developer Affiliate's obligation to pay Developer Closing Costs in cash to Close Escrow on the Port's conveyance of an Option Parcel.

(vii) When a Vertical Developer Affiliate must pay Fair Market Value to the Port both in cash and by Credit Bid, the entire Credit Bid must be applied to the outstanding Developer Balance before the Port authorizes disbursement of Land Proceeds to Developer.

3.4. Amount of Credit Bid. The Parties will establish the amount of a Vertical Developer Affiliate's Credit Bid no later than the Credit Bid Determination Date as follows.

(a) Developer Balance Only. This Subsection will apply when the Project Payment Obligation consists solely of the Developer Balance. The Parties' estimates will be subject to final adjustment to confirmed figures at the Close of Escrow.

(i) If the estimated Developer Balance is greater than the Fair Market Value of the Option Parcel, the Credit Bid will be the full amount of the Fair Market Value. The Port, in turn, will be deemed to have received the Credit Bid in Escrow at Closing and to have instructed the Escrow Agent to disburse the amount of the Credit Bid as an Advance of Land Proceeds immediately after Closing to Developer with a corresponding reduction in the Developer Balance, which Developer will record in the Developer Capital Schedule.

(ii) If the estimated Developer Balance is less than the Fair Market Value of the Option Parcel, the following will apply.

(1) The Vertical Developer Affiliate's Credit Bid will be limited to the amount of the Developer Balance, subject to the Port's rights under **Section 3.7** (Parcel Lease Options), plus 45% of the difference between the Fair Market Value of the Option Parcel and the Developer Balance, if any. The Credit Bid will be deemed to have been delivered into Escrow and paid to the Port at the Close of Escrow.

(2) The Port, in turn, will be deemed to have instructed the Escrow Agent to disburse funds in the amount of the Credit Bid at Closing as an Advance of Land Proceeds to Developer immediately after the Port's receipt to satisfy the Developer Balance on an interim basis and reduce the Developer Capital Schedule to zero.

(3) As a condition to Closing, the Vertical Developer Affiliate will be required to deposit cash into Escrow equal to the sum of:

(A) 55% of the difference between Fair Market Value and the Developer Balance; and

(B) the amount of Developer Closing Costs, or as otherwise determined under **Section 3.7** (Parcel Lease Options).

(4) The Joint Escrow Instructions will direct the Escrow Agent to pay Developer Closing Costs and then to disburse the remaining cash

Land Proceeds directly to the Port, or otherwise as set forth in **Section 3.7** (Parcel Lease Options).

(b) Balances Owed to Both Parties. This Subsection will apply when the Project Payment Obligation includes both a Developer Balance and a Port Balance on the Credit Bid Determination Date. The Parties' estimates will be subject to final adjustment to actual amounts at the Close of Escrow.

(i) If the sum of the estimated Developer Balance and Port Balance is greater than the Fair Market Value of the Option Parcel, the maximum amount of the Credit Bid will be Developer's pro rata share of the Fair Market Value, calculated in accordance with **Subsection 2.4(g)** (Pro Rata Payments), and the Vertical Developer must pay the difference between the Credit Bid and the Fair Market Value in cash. The Port, in turn, will be deemed to have received the Credit Bid in Escrow at Closing and to have instructed the Escrow Agent to disburse the amount of the Credit Bid as an Advance of Land Proceeds immediately after Closing to Developer.

(ii) If the Developer Balance and the Port Balance are less than the Fair Market Value of the Option Parcel on the Credit Bid Determination Date, the following will apply.

(1) The Vertical Developer Affiliate's Credit Bid will be limited to the amount of the Developer Balance, plus 45% of the difference between the Fair Market Value of the Option Parcel and the total of the Developer Balance and Port Balance. The Credit Bid will be deemed delivered into Escrow and paid to the Port at the Close of Escrow.

(2) The Port, in turn, will be deemed to have received the Credit Bid in Escrow at Closing, and to have instructed the Escrow Agent to disburse the amount of the Credit Bid immediately after Closing to Developer to satisfy the Developer Balance and reduce the Developer Capital Schedule to zero on an interim basis.

(3) As a condition to Closing, the Vertical Developer Affiliate will be required to deposit cash into Escrow equal to the sum of:

(A) the Port Balance;

(B) 55% of the difference between Fair Market Value of the Option Parcel and total of the Developer Balance and Port Balance; and

(C) the amount of Developer Closing Costs, or as otherwise determined under **Section 3.7** (Parcel Lease Options).

(4) The Joint Escrow Instructions will direct the Escrow Agent to pay Developer Closing Costs and disburse to the Port the remaining Land Proceeds, or otherwise as set forth in **Section 3.7** (Parcel Lease Options).

(iii) Developer must enter all cash and Credit Bids applied to the Developer Balance in the Developer Capital Schedule. The Port must enter all cash applied to the Port Balance in the Port Capital Schedule.

(c) Sample Calculations. The application of funds according to the priorities above is shown in the illustrative examples in **FP Schedule 5** (Sample Credit Bid Calculations), assuming the Port conveys an Option Parcel to a Vertical Developer Affiliate by Prepaid Lease at Fair Market Value.

3.5. Treatment of Third-Party Payments.

(a) Escrow. Unless the Port has made a Parcel Lease Election under **Section 3.7** (Parcel Lease Options), any Unrelated Vertical Developer that ground leases or buys an Option Parcel must deposit cash into Escrow equal to the sum of Fair Market Value and Developer Closing Costs. The Joint Escrow Instructions will direct the Escrow Agent to obtain demands for the Developer Balance and the Port Balance as of the Closing Deadline with daily accrual rates, subject to verification.

(b) Disbursements. Subject to **Section 3.7** (Parcel Lease Options), the Port will direct the Escrow Agent to pay Developer Closing Costs from the Escrow Account, then disburse the remaining funds at the Close of Escrow. Disbursements will be Advances of Land Proceeds for the following purposes and in the following order:

(i) to pay any remaining balance of the Entitlement Sum and accrued Developer Return;

(ii) to pay Capital Costs according to **Subsection 2.4(f)** (Priorities for Payment) and, if applicable, **Subsection 2.4(g)** (Pro Rata Payments); and

(iii) to the Special Fund Trustee for deposit in the Revenue Account of the Land Proceeds Fund.

3.6. Interim Satisfaction.

(a) Effect of Breach. This Section will not apply at any time when a potential breach or an uncured Event of Default by Developer exists.

(b) Interim Satisfaction Event at Closing. An Interim Satisfaction Event will occur by operation of this Financing Plan only when the Land Proceeds from the conveyance of an Option Parcel would be sufficient to:

(i) satisfy the Developer Balance in full in cash or by Credit Bid;

(ii) satisfy the Port Balance in full in cash; and

(iii) pay Phase Improvement Costs under existing contracts that are anticipated to be payable within 30 days after the Close of Escrow.

(c) Distribution of Interim Satisfaction Balance from Escrow. If the Port is conveying the Option Parcel in fee, the Port will instruct the Escrow Agent to disburse the Developer Share and the Port Share of the Interim Satisfaction Balance from Escrow to the Special Fund Trustee for deposit in the Revenue Account of the Land Proceeds Fund. If the Port is conveying the Option Parcel by Parcel Lease, **Section 3.7** (Parcel Lease Options) will apply.

3.7. Parcel Lease Options.

(a) Port Election. Interim Satisfaction will give rise to the Port's right to elect one of the Parcel Lease options under this Section. At Interim Satisfaction, the Port must provide a notice of Parcel Lease Election to Developer no later than 10 days after the appraisal of the Option Parcel becomes final under *DDA § 7.3 (Option Parcel Appraisals)*.

(b) Hybrid Lease. If the notice of Parcel Lease Election states that the Port elects to convey the Option Parcel by Hybrid Lease, the Port will require the Vertical Developer to enter into a Hybrid Lease for the Option Parcel. Under a Hybrid Lease, the Interim Satisfaction Balance will be distributed for revenue-sharing as described in this Subsection.

(i) The Port will direct the applicable Payment Agent to disburse available Public Financing Sources and the Advance of Land Proceeds needed to pay off the Developer Balance and the Port Balance and to pay Developer pass-throughs expected to be payable within 30 days after the Close of Escrow.

(ii) Under a Hybrid Lease, the remaining Land Proceeds will be the Interim Satisfaction Balance available for revenue-sharing as follows.

(1) The Developer Share of the Interim Satisfaction Balance will be disbursed from Escrow directly to Developer.

(2) The Port Share of the Interim Satisfaction Balance will be paid to the Port as Annual Ground Rent. Annual Ground Rent will be calculated by applying the Rent Conversion Factor to the Port Share of the Interim Satisfaction Balance, with the first installment paid at the Close of Escrow.

(3) For example, if the Interim Satisfaction Balance were $10 million, Developer would receive Prepaid Rent of $4.5 million in a lump sum in cash or by Credit Bid, and the Port would receive the first of 99 installments of Annual Ground Rent in cash at the Close of Escrow, calculated by the formula: $5.5 million x Rent Conversion Factor, subject to escalation under the Parcel Lease.

(iii) The Joint Escrow Instructions will direct the Escrow Agent to obtain demands for payment of the Developer Balance from Developer and for payment of the Port Balance from the Port, with each Party's demand subject to verification by the other Party, and to Close only after the Vertical Developer has deposited required funds into Escrow.

(iv) The Joint Escrow Instructions will direct the Escrow Agent to disburse funds remaining in the Escrow Account after paying the Developer Closing Costs in the following order and amounts, each of which will be an Advance of Land Proceeds:

(1) to Developer, the remaining balance of the Entitlement Sum and accrued Developer Return in cash or by Credit Bid, as applicable;

(2) in accordance with **Subsection 2.4(f)** (Priorities for Payment): to Developer, the Developer Balance in cash or by Credit Bid, as applicable; and to the Port, the Port Balance in cash.

(v) If disbursements under **clause (iv)** of this Subsection result in Interim Satisfaction, the Joint Escrow Instructions will direct the Escrow Agent to disburse funds remaining in the Escrow Account for revenue-sharing as follows:

(1) the Developer Share of the Interim Satisfaction Balance in cash or by Credit Bid to Developer; and

(2) the first installment of Annual Ground Rent due under the Hybrid Lease in cash to the Port.

(c) Prepaid Lease. If the notice of Parcel Lease Election states that the Port elects to convey the Option Parcel by Prepaid Lease, the Joint Escrow Instructions for the Prepaid Lease will direct the Escrow Agent to disburse Land Proceeds from Escrow in the following order and amounts:

(i) to the Escrow Agent, the Developer Closing Costs;

(ii) to Developer, the remaining balance of the Entitlement Sum and accrued Developer Return by an Advance of Land Proceeds in cash or by Credit Bid, as applicable;

(iii) the Developer Balance to Developer by an Advance of Land Proceeds in cash or by Credit Bid, as applicable, and the Port Balance to the Port by and Advance of Land Proceeds in cash; and

(iv) the Developer Share of the Interim Satisfaction Balance in cash or by Credit Bid to Developer, and the Port Share in cash to the Port.

(d) Developer Election. Developer will have right to elect to be paid Annual Ground Rent on the same conditions under which the Port can elect to receive Annual Ground Rent. Developer's election will be subject to an agreement between the Port and Developer, under which Developer's right to receive each annual installment of Annual Ground Rent will be subordinate to the Port's receipt of Annual Ground Rent.

3.8. Deferred Fair Market Value Payments.

(a) Deposits. A Vertical Developer may defer paying the entire Fair Market Value for a Commercial Parcel in the following manner. Vertical Developer Affiliates may Credit Bid amounts to be paid under this Section, subject to **Section 3.4** (Amount of Credit Bid).

(i) The Vertical Developer must make a nonrefundable deposit of 10% of the Fair Market Value of the Commercial Parcel.

(ii) No later than six months after making the initial deposit, the Vertical Developer must either:

(1) Close Escrow by paying the balance of the Fair Market Value for the Commercial Parcel; or

(2) make an additional nonrefundable deposit of 10% of the Fair Market Value of the Commercial Parcel.

(iii) The Vertical Developer must Close Escrow no later than six months after making the second deposit if it did not close under **clause (ii)** of this Subsection.

(b) Failure to Close or Make Deposits.

(i) If the Vertical Developer fails to take any step required by **clause (ii)** of **Subsection 3.8(a)** (Deposits), the Vertical Developer will forfeit the initial deposit and all rights to the Commercial Parcel.

(ii) If the Vertical Developer fails to timely Close Escrow under **clause (iii)** of **Subsection 3.8(a)** (Deposits), the Vertical Developer will forfeit both deposits and all rights to the Commercial Parcel.

(c) Application of Deposits. Deposits made under **Subsection 3.8(a)** (Deposits) will be nonrefundable and will be treated as Land Proceeds under **Section 3.3** (Right to Credit Bid) and **Section 3.4** (Amount of Credit Bid) if paid by a Vertical Developer Affiliate or under **Section 3.5** (Treatment of Third-Party Payments) if paid by an Unrelated Vertical Developer. The Port will take the same steps as set forth in **Subsection 3.3(c)** (Estimated Balance Owing) for determining the Developer Balance and the Port Balance by the date of the deposit.

3.9. Reporting. Developer Quarterly Reports must reflect the flow of all funds into and from Escrow for each Port conveyance of an Option Parcel, and the amount of Percentage Rent reported to Port under the Master Lease for the immediately prior Quarter. Each Vertical Developer Affiliate's payments to the Port must be broken down by amounts paid by Credit Bid or in cash. The Port's corresponding disbursements to Developer must also be broken down by Credit Bid and cash. Each Developer Quarterly Report must include an updated Developer Capital Schedule reflecting the Cumulative IRR and the reduction of the Developer Balance when funds are actually received or, in the case of a Credit Bid, as of the date of a deposit under **Section 3.8** (Deferred Fair Market Value Payments) or the Close of Escrow.

3.10. Distribution of Project Surplus.

(a) Distribution of Land Proceeds after Final Audit.

(i) After the Port has accepted the Final Audit under **Subsection 9.4(b)** (Final Audit), the Parties will review the aggregate amount of the Interim Satisfaction Balance distributed from time to time. If the Final Audit shows any discrepancy between the amounts each Party actually received and its respective revenue share, the Port will direct the Special Fund Trustee to make a disbursement from the Land Proceeds Fund as necessary to correct the discrepancy.

(ii) If no funds remain in the Land Proceeds Fund, but the Final Audit shows a discrepancy in the amounts disbursed, the Port will adjust distributions of the Project Surplus to the Port or the Developer, as applicable, to correct the discrepancy.

(iii) If no discrepancy is shown, the balance in the Land Proceeds Fund will be transferred to the Revenue Account and distributed as Project Surplus by Developer Share and Port Share.

(b) Final Distribution. After the Port has accepted the Final Audit under **Subsection 9.4(b)** (Final Audit), the Port will:

(i) transfer all funds in the Land Proceeds Fund to the Revenue Account for immediate disbursement to Developer and the Port by Developer Share and Port Share;

(ii) assign 45% of all PNLP Payments to Developer for payment as described in **Subsection 7.6(c)** (Promissory Note-LP); and

(iii) direct the CFD Agent and the IFD Agent to tender all PNLP Payments to the Special Fund Trustee for deposit into the Revenue Account for disbursement to Developer and the Port by Developer Share and Port Share until Promissory Note-LP has been fully paid.

4. MELLO-ROOS TAXES

4.1. Purpose.

(a) City Policy. Developer acknowledges that the CFD Goals will prevail in the event of any inconsistency with this Financing Plan, except to the extent that the Board of Supervisors waives any provision of the CFD Goals in the CFD Formation Proceedings or otherwise. The term sheet attached as **FP Exhibit E** outlines the principal terms that the Parties expect to be in the RMAs for the Pier 70 CFDs and the Hoedown Yard CFD.

(b) Authority for Pier 70 Leased Property CFD. Subject to Governing Law and Policy and the Pier 70 Leased Property CFD's authorized bonded indebtedness limit, when formed, the Pier 70 Leased Property CFD will be authorized to:

(i) finance all costs described in **Subsection 1.3(a)** (Pier 70 Leased Property CFD);

(ii) enter into a pledge agreement with the IFD to accept and expend Allocated Tax Increment in accordance with this Financing Plan;

(iii) incur indebtedness to repay Port Advances and sign and deliver promissory notes in favor of the Port as described in **Article 7** (Port Advances);

(iv) issue Mello-Roos Bonds through the City at the Port's request for any purpose authorized in this Financing Plan;

(v) after the Project Payment Obligation is fully satisfied, use available Project Payment Sources to pay amounts still owing under Promissory Note-LP, subject to the Interest Cost Limitation to the extent applicable;

(vi) after Promissory Note-LP is fully paid, use available Project Payment Sources to pay amounts owing under Promissory Note-X;

(vii) use Shoreline Special Taxes, amounts remaining in the Project Reserve Account and Shoreline Account, and Mello-Roos Bond Proceeds to pay directly for or pledge as security for Bonds to finance Pier 70 Shoreline Protection Facilities and, subject to Port Commission and Board of Supervisors approval, for other Pier 70 costs and other uses permitted under the CFD Formation Proceedings for the Pier 70 Leased Property CFD;

(viii) for the purpose of maximizing Public Financing Proceeds to the extent permitted under Governing Law and Policy, enter into other arrangements to advance Facilities Special Taxes collected on a pay-as-you-go basis from Taxable Parcels in the Pier 70 Leased Property CFD to pay eligible Capital Costs until other Project Payment Sources are available; and

(ix) use Services Special Taxes to pay Ongoing Maintenance Costs of the FC Project Area Maintained Facilities as described in **Subsection 1.3(a)** (Pier 70 Leased Property CFD).

(c) Authority for Pier 70 Condo CFD. Subject to Governing Law and Policy and the Pier 70 Condo CFD's authorized bonded indebtedness limit, when formed, the Pier 70 Condo CFD will be authorized to:

(i) finance all costs described in **Subsection 1.3(b)** (Pier 70 Condo CFD);

(ii) enter into a pledge agreement with the IFD and accept and expend Allocated Tax Increment in accordance with this Financing Plan;

(iii) incur indebtedness to repay Port Advances and sign and deliver promissory notes in favor of the Port as described in **Article 7** (Port Advances);

(iv) issue Mello-Roos Bonds through the City at the Port's request for any purpose authorized in this Financing Plan;

(v) after the Project Payment Obligation is fully satisfied, use available Project Payment Sources to pay amounts still owing under Promissory Note-LP, subject to the Interest Cost Limitation to the extent applicable;

(vi) after Promissory Note-LP is fully paid, use available Project Payment Sources to pay amounts owing under Promissory Note-X;

(vii) for the purpose of maximizing Public Financing Proceeds available under Governing Law and Policy, enter into other arrangements to advance Facilities Special Taxes collected from Taxable Parcels in the Pier 70 Condo CFD to pay eligible Capital Costs until other Project Payment Sources are available;

(viii) use Services Special Taxes levied in Zone 1 of the Pier 70 Condo CFD to pay Ongoing Maintenance Costs of Parcel K North Maintained Facilities; and

(ix) use Services Special Taxes levied in Zone 2 of the Pier 70 Condo CFD to pay Ongoing Maintenance Costs of FC Project Area Maintained Facilities as described in **Subsection 1.3(b)** (Pier 70 Condo CFD).

(d) Authority for the Hoedown Yard CFD. Subject to Governing Law and Policy and the Hoedown Yard CFD's authorized bonded indebtedness limit, when formed, the Hoedown Yard CFD will be authorized to:

(i) finance all costs described in **Subsection 1.3(c)** (Hoedown Yard CFD);

(ii) issue Mello-Roos Bonds through the City at the Port's request for any purpose authorized in this Financing Plan; and

(iii) use Services Special Taxes from the Hoedown Yard CFD to pay Ongoing Maintenance Costs of Hoedown Yard Maintained Facilities as described in **Subsection 1.3(c)** (Hoedown Yard CFD).

(e) Special Tax Levy on Leasehold Interests. Tenants under the Parcel Leases and the Tenant under the Master Lease will pay Mello-Roos Taxes levied on leasehold interests in the Pier 70 Leased Property CFD. The City, the Port, and Developer agree that the Port's rights to terminate these leasehold interests for any reason may be limited by the Parcel Leases, the Master Lease, and pertinent Indentures, as applicable, to preserve the City's right to collect the Mello-Roos Taxes.

4.2. City Implementation. The City has agreed to undertake the CFD Formation Proceedings for each CFD in the Tax Allocation MOU.

(a) Agreement to Form CFDs. Promptly following the recordation of a Transfer Map for the 28-Acre Site, the City will:

(i) form the Pier 70 Leased Property CFD, with special tax rates and other terms set forth in the RMA Term Sheet set forth in **FP Exhibit E** and as otherwise required by this Financing Plan or agreed by the Parties;

(ii) designate the Future Annexation Area of the Pier 70 Leased Property CFD;

(iii) form the Pier 70 Condo CFD, with special tax rates and other terms set forth in the RMA Term Sheet set forth in **FP Exhibit E** and as otherwise required by this Financing Plan or as agreed by the Parties;

(iv) designate the Future Annexation Area of the Pier 70 Condo CFD; and

(v) form the Hoedown Yard CFD, with special tax rates and other terms set forth in the RMA Term Sheet set forth in **FP Exhibit E** and as otherwise required by this Financing Plan or as agreed by the Parties.

(b) Agreement to Allocate Special Taxes. The City has agreed to allocate to each CFD the Mello-Roos Taxes from each CFD for use in accordance with this Financing Plan.

(c) Appointment of Port as Agent. The City will appoint the Port as CFD Agent to take all authorized actions on behalf of each CFD, including:

(i) directing the Special Fund Trustee to disburse Mello-Roos Taxes for the purposes specified in the applicable CFD Formation Proceedings and described in this Financing Plan;

(ii) determining in collaboration with the Public Finance Division of the Controller's Office whether and in what amounts the City will issue Bonds on behalf of each CFD;

(iii) directing the Indenture Trustees' disbursement of Mello-Roos Bond Proceeds;

(iv) incurring and repaying indebtedness as set forth in Promissory Note-LP and Promissory Note-X; and

(v) for the purpose of maximizing Public Financing Proceeds available under Governing Law and Policy, enter into other arrangements to advance Facilities Special Taxes collected on a pay-as-you-go basis from Taxable Parcels in the Pier 70 Leased Property CFD or proceeds of Mello-Roos-only Bonds to pay eligible Capital Costs until other Project Payment Sources are available.

(d) CFD Reporting Requirements. The Port as CFD Agent will prepare on behalf of each CFD an annual CFD Report in compliance with California Government Code sections 50075.1(d), 50075.3(d), and 53411 for each CFD, reporting on:

(i) the amount of Mello-Roos Taxes collected and expended;

(ii) the amount of Mello-Roos Bond Proceeds collected and expended; and

(iii) the status of the Project.

(e) Tax Allocation MOU. The Port has requested that the Board of Supervisors authorize the Controller and the Treasurer-Tax Collector to enter into the Tax Allocation MOU with the Port under Charter section B7.320 in furtherance of the Financing Documents as follows.

(i) The Treasurer-Tax Collector will levy and collect in a segregated fund Mello-Roos Taxes from each CFD as directed by the Port as CFD Agent, to the extent consistent with the Financing Documents.

(ii) The Port will consult with the Public Finance Division of the Controller's Office on timing, amounts, and other matters relating to Mello-Roos Bonds, and the Port, the Treasurer-Tax Collector, and the Controller will cooperate to implement the objectives of the Financing Documents.

4.3. Special Fund for Special Taxes. Under sections 50075 and 53410 of the California Government Code, Mello-Roos Taxes must be deposited into a designated account. The Port will enter into the Special Fund Administration Agreement with the Special Fund Trustee authorizing the trustee to establish segregated accounts as needed to implement this Financing Plan.

(a) Improvement Special Taxes. The Parties will prepare **FP Exhibit F** for insertion into this Financing Plan during or shortly after the CFD Formation Proceedings

and the IFD Formation Proceedings are complete. The authorized accounts in the Special Tax Fund for Improvement Special Taxes are anticipated to be:

(i) the Pier 70 CFD Facilities Accounts;

(ii) the Project Reserve Account;

(iii) the Shoreline Account;

(iv) the Arts Building Account;

(v) the Pier 70 Condo CFD Account;

(vi) the Hoedown Yard Facilities Account; and

(vii) other accounts to hold funds to repay indebtedness incurred by any Facilities CFD under this Financing Plan.

(b) Shoreline Account. After the Project Payment Obligation is satisfied and Promissory Note-LP is fully paid, any funds remaining in any of the Pier 70 CFD Facilities Accounts and the Project Reserve Account will be transferred to the Shoreline Account.

(c) Services Special Taxes. The authorized accounts in the Services Special Tax Fund will be:

(i) the Pier 70 Leased Property Services Account;

(ii) the Pier 70 Condo CFD Services Account; and

(iii) the Hoedown Yard Services Account.

4.4. Notice of Contract to Maintain Levy of CFD Financing. Under Section 3 of article XIIIC of the California Constitution, under certain circumstances, voters may vote to reduce or repeal the levy of special taxes in a community facilities district. Section 9 of article I of the California Constitution, however, prohibits the passage of a law resulting in an impairment of contract.

(a) Notice. This Section provides notice of the following:

(i) The DDA, including this Financing Plan, is a contract between the Port and Developer.

(ii) This Financing Plan:

(1) describes an integrated program to finance Capital Costs, 100% affordable housing in the AHP Housing Area, the Historic Building Feasibility Gap, the Arts Building Funding, the Noonan Replacement Space, Ongoing Maintenance Costs, the Pier 70 Shoreline Protection Facilities, PNLP Payments, payments on Promissory Note-X, and the CFD Administrative Costs through the application of Mello-Roos Taxes and Mello-Roos Bonds secured and payable by Improvement Special Taxes and Services Special Taxes; and

(2) is an essential part of the consideration for the DDA.

(iii) Any reduction in the City's ability to levy and collect Mello-Roos Taxes on behalf of each CFD for purposes specified in this Financing Plan would materially impair Developer's and the Port's contractual rights and obligations under the DDA.

(b) Intent to Maintain Contract. To further preserve the contractual rights and obligations under the DDA, the Port agrees that the following will apply until all Mello-Roos Bonds and all other debts have been repaid in full or defeased before maturity for any reason other than a refunding.

(i) Until the Port has satisfied the Project Payment Obligation and paid Promissory Note-LP, neither the Port nor the City will initiate or conduct proceedings under CFD Law to reduce the Special Tax rates except by agreement with Developer or if legally compelled to do so (e.g., by a final judgment).

(ii) If the voters adopt an initiative ordinance under section 3 of article XIIIC of the California Constitution that purports to reduce, repeal, or otherwise alter the Special Tax rates, the Port will meet and confer with Developer and the City to consider reasonable legal action to preserve the Port's ability to comply with its obligations under the DDA and this Financing Plan.

4.5. RMA Generally.

(a) Cooperation. Developer and the Port are working cooperatively to develop RMAs for each Pier 70 CFD that are consistent with this Financing Plan. Agreed principal terms for each Pier 70 CFD and the Hoedown Yard CFD are shown in **FP Exhibit E**.

(b) Priority Administrative Costs. In the formation process for each CFD, the Port will estimate the amount of annual CFD Administrative Costs that will have first priority for payment by Mello-Roos Taxes based on: (i) actual administration costs of other community facilities districts in San Francisco; (ii) the CFD's complexity and size; and (iii) estimated costs of administrative services to be provided by Port and City staff and consultants.

(c) Special Tax Rates for Pier 70 Leased Property CFD. Developer and the Port agree as follows.

(i) The maximum annual Facilities Special Taxes in the RMA for the Pier 70 Leased Property CFD will be on a building square footage basis and will not exceed 80% of the anticipated average annual Project Tax Increment to be generated from Taxable Parcels in the CFD. For example, if the projected average annual Project Tax Increment for Leased Parcels is $5.00 per building square foot, then the maximum annual Facilities Special Taxes for the Pier 70 Leased Property CFD will be not higher than $4.00 per building square foot.

(ii) In addition, the Developer and the Port agree that Facilities Special Taxes will not be levied on any Taxable Parcel in the Pier 70 Leased Property CFD after the IFD Termination Date for the Sub-Project Area in which the Taxable Parcel is located.

(d) Reduction of Special Tax Rates for Pier 70 Leased Property CFD. If the City, the Port, and Developer determine, before the City issues the first series of Mello-Roos Bonds secured by Improvement Special Taxes levied in the Pier 70 Leased Property CFD, that the anticipated average annual Project Tax Increment from Taxable Parcels is less than the amount projected at formation of the CFD, then the City and Developer will:

(i) take the steps necessary to reduce the Facilities Special Tax rates in the RMA for the Pier 70 Leased Property CFD to an amount not more than 80% of the revised anticipated average annual Project Tax Increment to be generated from Taxable Parcels in the CFD; and

(ii) take the steps necessary to reduce the Shoreline Special Tax rates to reflect the decrease in assessed valuation.

(e) Delinquencies. Each RMA will include a provision that limits the CFD's authority to increase the levy of Special Taxes on any Taxable Parcel to make up for the delinquencies of other taxpayers in the CFD. The CFD will not be permitted to levy an amount in any year that is more than 10% of the maximum Special Tax Rate for the Taxable Parcel for this purpose.

(f) Annual Levy. After formation of the Pier 70 CFDs, the CFD Administrator will consult with Developer as needed to determine in each City Fiscal Year:

(i) what development has occurred in the prior City Fiscal Year;

(ii) the amount of Project Tax Increment in the Tax Increment Fund;

(iii) the amount of Housing Tax Increment in the Housing Tax Increment Fund;

(iv) the debt service requirements for each CFD; and

(v) the anticipated CFD Administrative Costs.

(g) Material Changes to CFD Law. If CFD Law changes to make Mello-Roos Taxes unavailable or severely impair the uses authorized by the Financing Documents, the Port and Developer in consultation with the City will negotiate in good faith to establish a substitute financing program equivalent in nature and function as allowed under then-current Governing Law and Policy.

4.6. Services Special Taxes.

(a) Authorized Costs. The RMA for each Services CFD will authorize the City to levy Services Special Taxes annually in the amounts needed to provide a perpetual pay-as-you-go source to fund Ongoing Maintenance Costs of Maintained Facilities. Developer acknowledges that Maintained Facilities will never include private open space.

(b) No Prepayment. The RMA for each CFD will provide that taxpayers will not be allowed to prepay Services Special Taxes.

(c) Other Sources for Ongoing Maintenance Costs.

(i) Although the City and the Port will acquire all Horizontal Improvements from Developer under this Financing Plan, the Maintained Facilities are important to the ongoing success and identity of the Project. To protect its investment, Developer has agreed to establish a supporting framework if needed or desired to replace or supplement the Services Special Taxes, which may include assessments through one or more property owners associations, to assist in funding Ongoing Maintenance Costs if necessary.

(ii) In addition, the Port will establish maintenance obligations among all other Pier 70 tenants and property owners, as well as consenting adjacent landowners who benefit from adjacency of Maintained Facilities, to contribute their equitable shares toward Ongoing Maintenance Costs.

(d) Covenants.

(i) The Port has informed Developer that, because of limited Port revenue sources, the Port would not enter into the DDA or Financing Plan without ensuring an ongoing funding source for Ongoing Maintenance Costs.

(ii) Developer agrees to obtain Port or City, if applicable, approval of and establish maintenance covenants to be recorded in the Official Records before the Port or the City conveys any Taxable Parcel in any CFD formed in the SUD. Maintenance covenants will run with the land and be binding on successors in perpetuity.

(iii) The maintenance covenants will specify that the City, including the Port, is an intended beneficiary and obligate every owner of a Taxable Parcel to pay an amount equivalent to Services Special Taxes that would have been levied if the CFDs or their taxing powers are ever eliminated or reduced for any reason, including any vote of the qualified electors in the CFD.

4.7. Project Reserve and Shoreline Accounts.

(a) Funding for Accounts. The CFD Formation Proceedings will authorize the Pier 70 Leased Property CFD to assess Shoreline Special Taxes on Taxable Parcels in the Pier 70 Leased Property CFD.

(i) Shoreline Special Taxes will be levied at the times and the rates in the RMA on each Taxable Parcel in the Pier 70 Leased Property CFD (other than any Historic Buildings).

(ii) Until the Project Payment Obligation is satisfied and Promissory Note-LP is fully repaid, Shoreline Special Taxes, after making any payments due on a Principal Payment Date, paying priority and any other CFD Administrative Costs, and setting aside amounts needed to replenish any other reserves, will be held for authorized purposes.

(b) Division of Funds. For each Phase, until the conditions described in **clause (ii), clause (iii),** or **clause (iv)** of this Subsection have occurred, 75% of the Shoreline Special Taxes collected under **Subsection 4.7(a)** (Funding for Accounts) from Taxable Parcels (other than any Historic Building) in that Phase of the Pier 70 Leased Property CFD will be deposited into the Project Reserve Account.

(i) If at the end of a Phase, the Phase Audit shows that the Phase reached Phase Satisfaction, then the following will apply (as shown in the illustrative examples titled "Shoreline 1" and "Shoreline 1 Formulas" in **FP Schedule 7**).

(1) One-third of the Shoreline Special Taxes collected in the Phase remaining on deposit in the Project Reserve Account will be transferred to the Shoreline Account.

(2) Transfers of Shoreline Special Taxes collected from the Taxable Parcels in the Phase to the Project Reserve Account will be reduced from 75% to 50%.

(3) Amounts remaining on deposit in the Project Reserve Account after the transfer under **paragraph (1)** and amounts later deposited into the Project Reserve Account will be applied as needed for Later Phases.

(ii) If at the end of a Phase, the Phase Audit shows that the Phase did not reach Phase Satisfaction, but Phase Satisfaction could be reached by using one-third or less of the funds in the Project Reserve Account, then the following will apply (as shown in the illustrative examples titled "Shoreline 2" and "Shoreline 2 Formulas" in **FP Schedule 7**).

(1) Funds on deposit in the Project Reserve Account will be disbursed and applied to Capital Costs in accordance with **Subsection 2.4(g)** (Pro Rata Payments) in amounts required to reach Phase Satisfaction for the Phase.

(2) After the transfer under **paragraph (1)**, additional funds from the Project Reserve Account will be transferred to the Shoreline Account so that, after the transfer under this Paragraph, the amount on deposit in the Project Reserve Account from Shoreline Special Taxes collected from Taxable Parcels in the Phase is equal to two-thirds of the amount that was in the Project Reserve Account before the transfer under **paragraph (1)**, as shown in the Phase Audit.

(3) After the transfer under **paragraph (1)**, deposits into the Project Reserve Account of Shoreline Special Taxes from Taxable Parcels in the Phase will be reduced from 75% to 50%.

(4) Amounts remaining on deposit in the Project Reserve Account after the transfer under **paragraph (1)** and amounts later deposited into the Project Reserve Account will be applied as needed for Later Phases.

(iii) If at the end of a Phase, the Phase Audit shows that the Phase did not reach Phase Satisfaction, but Phase Satisfaction can be reached by using more than one-third of the funds in the Project Reserve Account, the following will apply (as shown in the illustrative examples titled "Shoreline 3" and "Shoreline 3 Formulas" in **FP Schedule 7**).

(1) Funds on deposit in the Project Reserve Account will be disbursed and applied to Capital Costs in accordance with

Subsection 2.4(g) (Pro Rata Payments) in amounts required to reach Phase Satisfaction.

(2) After the disbursements under **paragraph (1)**, no transfers will be made to the Shoreline Account.

(3) After the disbursements under **paragraph (1)**, deposits into the Project Reserve Account of Shoreline Special Taxes from Taxable Parcels in the Phase will be reduced from 75% to 50%.

(4) Amounts remaining on deposit in the Project Reserve Account after the disbursements under **paragraph (1)** and Shoreline Special Taxes from Taxable Parcels in the Phase later deposited into the Project Reserve Account will be applied as needed for Later Phases.

(iv) If at the end of a Phase, the Phase Audit shows that the Phase did not reach Phase Satisfaction, and Phase Satisfaction cannot be achieved using funds on deposit in the Project Reserve Fund, then the following will apply (as shown in the illustrative examples titled "Shoreline 4" and "Shoreline 4 Formulas" in **FP Schedule 7**).

(1) All of the funds in the Project Reserve Account will be disbursed and applied to Capital Costs of the Phase in accordance with **Subsection 2.4(d)** (Payments from Project Payment Sources), **Subsection 2.4(f)** (Priorities for Payment), and **Subsection 2.4(g)** (Pro Rata Payments).

(2) The Pier 70 Leased Property CFD will issue Mello-Roos Bonds sized to 75% of and secured by Shoreline Special Taxes levied on Taxable Parcels in the Phase. Bond Proceeds will be applied to Capital Costs of the Phase in accordance with **paragraph (1)**.

(3) If proceeds of Bonds issued under **paragraph (2)** are not sufficient to achieve Phase Satisfaction, available proceeds of any Bonds issued to fund Phase Improvements will be applied. The same priorities will apply.

(4) 75% of the Shoreline Special Taxes will continue to be deposited into the Project Reserve Account to provide funds to pay debt service on Bonds issued under **paragraph (2)**.

(v) For each Phase, funds deposited into the Shoreline Account will be limited initially to 25% of the Shoreline Special Taxes collected under **Subsection 4.7(a)** (Funding for Accounts) from Taxable Parcels in the Phase. After satisfaction of the conditions set forth in **clauses (i), (ii),** or **(iii)** of this Subsection, deposits into the Shoreline Account will be increased to 50% of the Shoreline Special Taxes collected from Taxable Parcels in the Phase. If **clause (iv)** of this Subsection applies, deposits into the Shoreline Account will continue to be limited to 25% of Shoreline Special Taxes collected in the Phase.

(c) Project Reserve. The Project Reserve Account will be used for the following expenses, in the order of priority listed below.

(i) Entitlement Sum and accrued Developer Return;

(ii) other Horizontal Development Costs;

(iii) Developer Balance and Port Balance in accordance with **Subsection 2.4(d)** (Payments from Project Payment Sources), subject to **Subsection 2.4(f)** (Priorities for Payment), and **Subsection 2.4(g)** (Pro Rata Payments); and

(iv) the Historic Building Feasibility Gap.

(d) Shoreline Account. The Shoreline Account will be used for the expenses listed below, subject to completion of any required environmental review under CEQA.

(i) Shoreline Adaptation Studies;

(ii) Shoreline Protection Facilities; and

(iii) Pier 70 Shoreline Protection Facilities if Pier 70 Condo CFD Proceeds are insufficient.

(e) Project Reserve Transfers to Shoreline Account.

(i) When the accounts in the Facilities Special Tax Fund for the Pier 70 CFDs and the Project Reserve Account are each Ready for Close, all funds remaining in each account will be transferred into the Shoreline Account and used for Pier 70 Shoreline Protection Facilities if needed and for other Port capital facilities approved by the Port Commission and the Board of Supervisors.

(ii) The RMA for the Pier 70 Leased Property CFD will provide that the CFD is authorized to continue to levy Shoreline Special Taxes in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD to fund the Shoreline Protection Project after the Port has satisfied all of its payment obligations to Developer under this Financing Plan.

(f) Determining Pier 70 Shoreline Protection Facilities.

(i) Before the anticipated date of the Final Audit, the Port will complete a technical study of the 28-Acre Site Project's shoreline protection needs to provide a commercially reasonable standard of flood protection based on then-available scientific consensus (e.g., National Research Council or Intergovernmental Panel on Climate Change) for mid-high range of projected sea-level rise for the period through the term of the Master Lease and the Parcel Leases for the 28-Acre Site with the latest expiration date.

(ii) The Port and Developer will review the study and agree on a commercially reasonable design for needed potential shoreline improvements to protect the 28-Acre Site from sea-level rise.

(iii) The Port and Developer will review and comment on designs for improvements outside of the 28-Acre Site that are needed to protect the 28-Acre Site, but the Port will have final design control and decision as long as Developer concurs that the scope will protect the 28-Acre Site.

(iv) The Port, in consultation with Developer, will determine the commercially reasonable costs of implementing the flood protection project to

protect the 28-Acre Site determined by this process, including a 100% contingency and annual escalation factors consistent with escalation used in the DDA for other costs and revenues.

(v) Once design is work finalized, the Port and Developer will agree on a construction schedule for the flood protection project. In accordance with this Financing Plan, the Port will fund the Pier 70 Shoreline Protection Facilities with:

(1) Any remaining Allocated Project Tax Increment for the balance of the respective terms of the Sub-Project Areas;

(2) Facilities Special Taxes levied in Zone 2 of the Pier 70 Condo CFD;

(3) available Shoreline Special Taxes; and

(4) any proceeds of any Bonds secured by these sources.

(vi) The costs of Pier 70 Shoreline Protection Facilities will not be financed until all of the following are paid in full:

(1) the Project Payment Obligation;

(2) Promissory Note-LP; and

(3) all other payment obligations to Developer under this Financing Plan.

(vii) After all of the obligations under **clause (vi)** have been satisfied, and the Port has identified and set aside sources to pay for the projected costs of Pier 70 Shoreline Protection Facilities, Public Financing Sources from the 28-Acre Site that are not subject to the Interest Cost Limitation will be applied to Promissory Note-X.

(viii) Nothing in this Subsection will be construed to limit the ability of the Port to:

(1) spend Shoreline Special Taxes from the Shoreline Account;

(2) request that the City issue Bonds secured by Shoreline Special Taxes on deposit in the Shoreline Account; or

(3) spend the resulting Bond Proceeds on Shoreline Protection Facilities outside of Pier 70.

4.8. Shortfall Provisions.

(a) Developer Waiver and Covenant. Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Master Lease Premises until the IFD Termination Date. In addition, Developer covenants that should Developer initiate a Reassessment on a Taxable Parcel in the SUD in violation of the waiver in this Section, and subject to

Subsection 4.8(c) (Circumstances Causing Shortfall), Developer and the Port will take the following measures to avoid shortfalls.

(i) Developer will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(ii) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates:

(1) the applicable IFD Termination Date; and

(2) when the Assessment Shortfall is reduced to zero.

(b) Vertical Developer Waiver and Covenant. The Parties have agreed on forms of Vertical DDAs and Parcel Leases for Vertical Developers that include the following provisions.

(i) A waiver in which the Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of any Taxable Parcel in the SUD until the IFD Termination Date.

(ii) A covenant by the Vertical Developer that should the Vertical Developer initiate a Reassessment on a Taxable Parcel in the SUD in violation of the waiver, and subject to **Subsection 4.8(c)** (Circumstances Causing Shortfall), the Vertical Developer and the Port will take the following measures to avoid shortfalls:

(1) Vertical Developer will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(2) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

(c) Circumstances Causing Shortfall. This Section will apply if Developer or any Vertical Developer initiates a Reassessment on a Taxable Parcel in the SUD in violation of **Subsection 4.8(a)** (Developer Waiver and Covenant) or **Subsection 4.8(b)** (Vertical Developer Waiver and Covenant).

(d) Tax Exemption. Developer and the Port do not intend for this Section to affect the tax-exempt status of any Bonds. Should the Tax Code change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt Bonds to be deemed taxable due to the requirements under this Section, the Port will release the obligations under this Section and it will be deemed severed from this Financing Plan under *App ¶ A.4.3 (Severability)*.

(e) Mutual Expectations as to Shortfall Measures. Neither Developer nor the Port expects the Port to make demand for payment under this Section. In light of the

Parties' mutual expectations, Developer has agreed to the waiver in **Subsection 4.8(a)** (Developer Waiver and Covenant) and to include waiver and covenant language in documents with Vertical Developers as described in **Subsection 4.8(b)** (Vertical Developer Waiver and Covenant).

(f) No Negotiation. Developer understands that the Port would not be willing to enter into this Financing Plan without this Section.

4.9. Future Annexations. This Section will apply to each Development Parcel located in the Future Annexation Area.

(a) Notice of Intended Development. Developer will provide notice to the Port and the City of Developer's decision to develop the parcel as NOI Property or as a Residential Condo Project.

(b) Timing of Annexation. Within 60 days after receiving Developer's notice, the Port and the City will initiate proceedings necessary to:

(i) annex any parcel that will be developed as NOI Property to the Pier 70 Leased Property CFD; or

(ii) annex any parcel that will be developed as a Residential Condo Project to the Pier 70 Condo CFD.

(c) Annexation Procedure. Annexation will be implemented by the Port's delivery of its written unanimous approval (which does not require a public hearing) and an amendment to the Notice of Special Tax Lien as required by the CFD Law. At the recommendation of Bond Counsel, the Port may seek a Board of Supervisors resolution confirming annexation.

4.10. Limit on Actions. Neither the City nor the Port will take any action under the CFD Law or otherwise to do any of the following without Developer's prior consent: (i) initiate proceedings to modify or repeal any provision of any RMA or the CFD Law, the list of authorized facilities and services, the Special Tax rates, or the authorized bonded indebtedness; or (ii) annex any property to any CFD except under **Section 4.9** (Future Annexations). The Port and Developer agree to ask the Board of Supervisors to include a provision in legislation for the CFD Formation Proceedings that affirms, consistent with the Development Agreement, that the City will not enforce any future changes to the CFD Law or the Port IFD Guidelines in a manner that would impair the financing for the 28-Acre Site Project.

4.11. Validation. Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the CFDs and matters authorized under each RMA and this Financing Plan. Attorneys' fees associated with these validation actions will be Port Costs or City Costs that are reimbursable under **Section 9.2** (Port Accounting and Budget).

4.12. Early Facilities Special Taxes. This Section will apply if Early Mello-Roos Bonds secured by Facilities Special Taxes from the Pier 70 Leased Property CFD are issued.

(a) Developer's Agreement to Pay. Before the Port Closes Escrow on any Parcel Lease for a Development Parcel in the Pier 70 Leased Property CFD, Developer will enter into an agreement with the Vertical Developer to reimburse to the Vertical Developer or pay the first two years' Facilities Special Tax levy, if any, on the

Development Parcel. Each payment that Developer makes under its agreement with the Vertical Developer (excluding penalties and interest) will be a Soft Cost reported on the Developer Capital Schedule. The agreement between Developer and the Vertical Developer will require the Vertical Developer to pay any Facilities Special Taxes levied on the Development Parcel if Developer fails to pay or reimburse the Facilities Special Taxes under the agreement.

(b) Amount of Levy. Under its agreement with the Vertical Developer, Developer will only be required to pay or reimburse the Vertical Developer for the amount of the Facilities Special Tax levy that appears on the tax bill for the Development Parcel plus penalties and interest on the payment if delinquent. For example, if Bond Proceeds include capitalized interest sufficient to pay the levy during the two-year period, the CFD will not levy the tax, and no payment obligation will arise.

(c) Limitation on Obligation to Pay. The Parties expect the agreement to provide that Developer will have no obligation to pay or reimburse the Vertical Developer for any of the following with respect to a Development Parcel in the Pier 70 Leased Property CFD after the Port has conveyed the Development Parcel to a Vertical Developer:

(i) Facilities Special Taxes levied on the Development Parcel after the parcel becomes Developed Property as defined in the RMA;

(ii) any other taxes levied on the Development Parcel;

(iii) any more than the amount of an installment of Facilities Special Taxes when due under the tax bill, plus penalties and interest on the payment if delinquent; or

(iv) more than the first two years of Facilities Special Taxes levied on the Development Parcel.

4.13. Conforming Amendments to Transaction Documents. Concurrent with the CFD Formation Proceedings, the Port and Developer in consultation with the City will negotiate in good faith regarding amendments to the DDA, Financing Plan, and Master Lease as required to address orderly foreclosure processes for both the Pier 70 Leased Property CFD and the Pier 70 Condo CFD. If the revisions would be a material change to the approved transaction documents, the Port and Developer will seek Port Commission and Board of Supervisors approval of the agreed amendments to the DDA, Financing Plan, and Master Lease in the Board of Supervisor's resolution approving the CFD Formation Proceedings (or companion legislation to be approved at the same time), and in a separate Port Commission resolution.

5. MELLO-ROOS BONDS

5.1. Legal Limitations. The following limitations and priorities will apply to the use of Mello-Roos Bond Proceeds.

(a) Fair Market Price. To comply with CFD Law section 53313.51, the Acquisition Agreement for the Horizontal Improvements specifies Acquisition Prices for Horizontal Improvements that the Parties agree represent a fair market price or method to determine a fair market price for each capital facility or discrete portion or phase of a capital facility to be acquired. In addition, Horizontal Development Costs will be

reimbursed under this Financing Plan with "an amount reflecting the interim cost of financing cash payments that must be made during the construction of the project."

(b) Interest Cost Limitation. Any Mello-Roos Bonds secured and payable by a pledge of Tax Increment will be subject to the Interest Cost Limitation.

5.2. Use of Proceeds.

(a) Priorities. Until the Project Payment Obligation is satisfied, Mello-Roos Bond Proceeds will be available only after the following are fully funded:

(i) required reserves and costs of issuance;

(ii) capitalized interest for debt service covering a period that the City will determine on a case-by-case basis, in its sole discretion, after consultation with the Port and the Developer; and

(iii) for the purposes authorized in the applicable Indenture.

(b) Payment Priorities. The priorities under **Subsection 2.4(f)** (Priorities for Payment) will apply to all Mello-Roos Bond Proceeds except as limited by Governing Law and Policy, this Financing Plan, and the CFD Formation Proceedings. After satisfying the obligations under **Subsection 2.4(f)** (Priorities for Payment), the Port may use Mello-Roos Bond Proceeds for any other eligible use consistent with applicable Indentures and the CFD Formation Proceedings.

(c) Financing Temporarily Excused. The City will not be obligated to issue any Mello-Roos Bonds under this Financing Plan at any time during which:

(i) Developer or any Vertical Developer Affiliate is in default in the payment of any ad valorem tax or Mello-Roos Taxes levied on any Taxable Parcel in a Sub-Project Area or the Pier 70 Leased Property CFD;

(ii) the Port has declared Developer to be in Material Breach of the DDA;

(iii) the Port has declared any Vertical Developer Affiliate to be in breach of its conveyance agreement provisions incorporating specified DDA obligations;

(iv) the Port or the City, each in its sole judgment in light of the Funding Goals and advice from staff and consultants, finds that market conditions, or conditions affecting the property in the Project (such as tax delinquencies, assessment appeals, damage or destruction of improvements, or litigation), make it fiscally imprudent or infeasible to issue Mello-Roos Bonds; or

(v) the underwriter exercises any right to cancel its obligation to purchase Mello-Roos Bonds during the occurrence and continuation of events specified in its bond purchase agreement with the City.

5.3. Issuance.

(a) Financing Assumptions. The Port will ask the City to issue Mello-Roos Bonds secured and payable by Improvement Special Taxes in accordance with

assumptions in approved Phase Budgets, unless the Port determines that the assessed or appraised value of the applicable Taxable Parcels and the financing do not meet the minimum requirements in the CFD Goals. This Financing Plan is based on certain assumptions regarding Mello-Roos Bonds for the Project, summarized below.

(i) Special Debt Service on Mello-Roos Bonds issued will be secured and paid in part by Project Tax Increment as described in **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment) and in **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment).

(ii) Special Debt Service on Mello-Roos Bonds issued will be secured and paid in part by HB Tax Increment as described in **Section 11** (Historic Buildings).

(iii) The City may issue Mello-Roos-only Bonds secured and payable by Improvement Special Taxes, but not Tax Increment, to finance Excess Return.

(b) Meet and Confer.

(i) Developer will have the right to request through the Port that the City issue Mello-Roos Bonds. The City and the Port agree to meet and confer with Developer regarding its request.

(ii) Before the Port makes any request for the City to sell Mello-Roos Bonds, Port and City staff and consultants will meet and confer with Developer to discuss the terms of the proposed bond issue. The Port and the City in consultation with the Port's financing consultants will retain discretion to determine reasonable and appropriate issuance dates, principal amounts, and primary financing terms in light of the purpose of the financing, the CFD Goals, and the Port IFD Guidelines if applicable.

(c) Consistency with CFD Goals. Mello-Roos Bonds will be issued at the times, in the manner, and in the amounts that are consistent with the requirements set forth in the applicable Indenture and the CFD Goals.

(d) Payment of Debt Service in the Event of Delinquencies. If delinquencies in the payment of Improvement Special Taxes securing Mello-Roos Bonds results in an insufficient amount to pay the debt service on the applicable Mello-Roos Bonds, the CFD will use funds in the following order of priority to cover the shortfall:

(i) a draw on the debt service reserve held under the applicable Indenture; and

(ii) at the Port's sole option, a Port Capital Advance.

(e) Collection of Delinquencies. If delinquent Improvement Special Taxes are collected, they will be applied with regard to the applicable Mello-Roos Bonds in the following order of priority:

(i) for debt service on the applicable Mello-Roos Bonds, if required;

(ii) to replenish the applicable debt service reserve held under the applicable Indenture; and

(iii) reimbursement of any Port Capital Advance made to cure taxpayer delinquencies.

(f) Credit Enhancement.

(i) If the bond underwriter requires or recommends security to enhance the marketability of any Bonds or provide better terms, the Parties will cooperate to determine the form of security that would provide the greatest financial benefit to the Project. Measures may include designating a portion of Mello-Roos Bond Proceeds to fund capitalized interest, a letter of credit in the amount of a specified period of debt service, and a guaranty.

(ii) Neither Party will be required to provide credit enhancement, but a Party choosing to do so will be entitled to reimbursement of associated ancillary costs, such as issuance and annual fees, as Soft Costs recorded on the Developer Capital Schedule or the Port Capital Schedule, as applicable.

(g) Tax-Exempt or Taxable. Developer and the Port agree to cooperate to maximize the tax-exempt treatment of any Mello-Roos Bonds that the City issues, subject to the following.

(i) The Port and the City, after consultation with the Developer, will determine whether Bonds should be taxable or tax-exempt. Bond Counsel for the Port or the City, or both, will evaluate each proposed use of tax-exempt Bonds for the possibility of meeting the private use test (such as reserved parking spaces, management agreements longer than five years, etc.), the private payment test (as a result of revenue-sharing, transfer fees, Port participation in ground leases, etc.), and the private loan test under the Tax Code.

(ii) Bond Counsel for a planned Bond issue for the Project will determine whether all planned uses of the proceeds will qualify for tax-exempt treatment under the Tax Code.

5.4. Bond Indenture.

(a) Covenant to Foreclose. The Port will cause the City to covenant with Mello-Roos Bond bondholders to foreclose any lien of delinquent Improvement Special Taxes consistent with CFD Law, the general practice for community facilities districts in California, and otherwise as determined by the City in consultation with its underwriter or financial advisor for the Mello-Roos Bonds and other consultants.

(b) Reserve Fund Earnings. The Indenture for each issue of Mello-Roos Bonds will provide that earnings on any reserve fund that are not then needed to replenish the reserve fund to the reserve requirement will be transferred: (i) to the applicable Mello-Roos Improvement Fund for allowed uses until it is closed in accordance with the Indenture; and (ii) after the fund is closed, to the debt service fund held under the Indenture.

(c) Continuing Disclosure. Developer agrees to execute a continuing disclosure agreement if requested by an underwriter of Mello-Roos Bonds or any other financing consultant for the bonds. Developer must comply with all obligations under any continuing disclosure agreement that it executes in connection with the offering and sale of any Mello-Roos Bonds.

(d) No Recourse to General Fund or Harbor Fund. Under no circumstances will any bondholder of Mello-Roos Bonds issued under this Financing Plan have recourse to either the City General Fund or the Port Harbor Fund.

5.5. Mello-Roos Bonds for Phases.

(a) Intent to Issue Early Bonds.

(i) Under this Financing Plan, the Port will seek Board of Supervisors approval for the City to issue Early Mello-Roos Bonds as soon as feasible after formation of each CFD, the Reference Date, and the approval of each Later Phase, subject to **Subsection 5.3(a)** (Financing Assumptions). Port requests will also be timed to coordinate with each Phase Budget.

(ii) The Port will size each issue of Early Mello-Roos Bonds by the applicable Improvement Special Taxes and the Taxable Parcels to be taxed, value-to-lien limitations, and underwriter requirements. Although the Port intends to issue Early Mello-Roos Bonds in each Phase, it reserves the right to refrain from requesting issuance during the pendency of any of the circumstances described in **Subsection 5.2(c)** (Financing Temporarily Excused).

(iii) Any Early Mello-Roos Bonds issued in the Pier 70 Leased Property CFD shall not include the Facilities Special Taxes levied in Zone 3 (i.e., Historic Building 12 and Historic Building 21).

(b) Phase 1. Phase 1 Early Mello-Roos Bonds will be secured and payable by a pledge of Facilities Special Taxes from the Pier 70 Leased Property CFD other than Zone 3 and may be secured by Project Tax Increment to the extent described in a Pledge Agreement and **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service). To the extent Early Mello-Roos Bond Proceeds are available, they will be used in Phase 1 as follows.

(i) The Port will use an Advance of Parcel K North Proceeds (which will be net of the costs of the 20th/Illinois Parcel) and Pier 70 Condo CFD Proceeds available after paying for the Michigan Street segment to pay the Entitlement Sum determined under **Subsection 2.3(a)** (Entitlement Cost Statement) and accrued Developer Return.

(ii) Any remaining Early Mello-Roos Bond Proceeds will be used to pay the remaining Developer Balance and any Port Balance according to **Subsection 2.4(g)** (Pro Rata Payments), subject to the Interest Cost Limitation if applicable.

(iii) Any remaining Early Mello-Roos Bond Proceeds would then be used to pay Developer pass-throughs for Phase 1 as they become due.

(c) Security. Mello-Roos Bonds will be secured and payable by pledges of applicable categories of Mello-Roos Taxes, subject to Maximum Tax Rates, value-to-lien limitations, and underwriter requirements. Except for Bonds used to pay Excess Return, Special Debt Service on Mello-Roos Bonds may also be secured and payable by pledges of Project Tax Increment to the extent described in a Pledge Agreement and **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service) and Special Debt Service on Mello-Roos Bonds may also be secured and payable by pledges of HB

Tax Increment to the extent described in a Pledge Agreement and **Section 11.1** (Historic Buildings).

(d) Developer's Consent. By entering into the DDA, including this Financing Plan, Developer acknowledges that the Port has the right and obligation, in accordance with any Phase Budget subject to a Phase Approval, to request that the City issue Early Mello-Roos Bonds and agrees to pay any Facilities Special Taxes that become due before the Port conveys an encumbered Taxable Parcel to a Vertical Developer.

(e) Treatment of Developer's Early Special Tax Payments. In consideration of this agreement, the Port agrees that Developer's Special Tax payments made to service Early Mello-Roos Bonds under this Section will be Soft Costs recorded on the Developer Capital Schedule. The Parties acknowledge that, under the Tax Code in effect on the Reference Date, reimbursement of these costs may not be made with tax-exempt Bond Proceeds.

6. TAX INCREMENT

6.1. IFD Formation. In the IFD Formation Proceedings, the Port will ask the City to take the following actions with respect to the IFD.

(a) Agreement to Allocate Tax Increment. The City agreed to allocate to the IFD the Annual Allocated Tax Increment as set forth in the Port FY Budget for use in Project Area G in accordance with Appendix G-2 and this Financing Plan.

(b) Appointment of Port as Agent. The City appointed the Port as the IFD Agent with the authority to act on behalf of the IFD to implement this Financing Plan, including:

(i) disbursing Allocated Tax Increment as provided in Appendix G-2;

(ii) determining in collaboration with the Public Finance Division of the Controller's Office whether and in what amounts the IFD will issue Bonds;

(iii) directing the Indenture Trustees' disbursement of Bond Proceeds;

(iv) as security for Special Debt Service on any Mello-Roos Bonds, executing and delivering an agreement pledging the NOI Property Project Tax Increment first under **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment), then the Residential Condo Project Tax Increment under **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment);

(v) as security for Special Debt Service on any HB Bonds, executing and delivering an agreement pledging the HB Tax Increment under **Section 11** (Historic Buildings);

(vi) incurring and repaying indebtedness as set forth in Promissory Note-LP;

(vii) otherwise implementing the Funding Goals consistent with Governing Law and Policy; and

(viii) preparing on behalf of the IFD an annual Statement of Indebtedness in compliance with section 53395.8(i)(2) of the IFD Law reporting on the Sub-Project Areas' revenues and debts, listing the following debts:

(1) the obligation to apply any Allocated Tax Increment from Sub-Project Area G-2 as provided in Appendix G-2;

(2) the obligation to apply any Allocated Tax Increment from Sub-Project Area G-3 as provided in Appendix G-2;

(3) the obligation to apply any Allocated Tax Increment from Sub-Project Area G-4 as provided in Appendix G-2;

(4) obligations under Promissory Note-LP;

(5) any pledge of Tax Increment to secure Special Debt Service on Mello-Roos Bonds or other debts of the CFD;

(6) any Tax Increment Bonds issued by the IFD secured by NOI Property Project Tax Increment under **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment);

(7) any Tax Increment Bonds issued by the IFD secured by Residential Condo Project Tax Increment under **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment); and

(8) any other obligations undertaken to implement the Funding Goals in accordance with Governing Law and Policy.

6.2. Tax Allocation MOU. The Port is requesting that the Board of Supervisors authorize the Controller and the Treasurer-Tax Collector to enter into the Tax Allocation MOU with the Port under Charter section B7.320 in furtherance of the Financing Documents with respect to the IFD.

(a) Authorized Actions. The Board of Supervisors authorized and directed the following actions by approving the Tax Allocation MOU.

(i) The Treasurer-Tax Collector will levy and collect in a segregated fund Gross Tax Increment from each Sub-Project Area as directed by the Port as IFD Agent to the extent consistent with the Financing Documents.

(ii) The Controller will disburse Allocated Tax Increment from each Sub-Project Area and a portion of the Allocated Tax Increment from Sub-Project Area G-1 to the IFD for use in Project Area G as directed by the Port as IFD Agent to the extent consistent with Appendix G-1, Appendix G-2, the other Financing Documents, and the Port FY Budget.

(b) Required Cooperation and Consultation. The Port will consult with the Public Finance Division of the Controller's Office on timing, amounts, and other matters relating to Bonds. The Port, the Treasurer-Tax Collector, and the Controller will cooperate to ensure that the objectives of the Financing Documents will be fulfilled.

6.3. Sub-Project Area Tax Increment.

(a) Special Fund for Tax Increment. Section 53396(b) of the IFD Law requires tax increment to be allocated to and paid into a special fund of the district. In compliance with this requirement, the Port has established the Tax Increment Fund in the Special Fund Trust Account with the following segregated accounts for each Sub-Project Area: (i) Project Account; (ii) Port Account; and (iii) Shoreline Account.

(b) Waterfront Set-Aside. Under section 53395.8(g)(3)(C)(ii) of the IFD Law, the IFD may spend the Waterfront Set-Aside "solely on shoreline restoration, removal of bay fill, or waterfront public access to or environmental remediation of the San Francisco waterfront." Both Parties acknowledge that the IFD Law will prevail over any conflicting provision in this Financing Plan and Appendix G-2.

(c) IFD Administrative Costs. Appendix G-2 authorizes the IFD to fund IFD Administrative Costs from Annual Allocated Tax Increment.

(d) Priority of NOI Property Project Tax Increment. The IFD is authorized to use NOI Property Project Tax Increment from each Sub-Project Area in the priority listed below:

(i) to pay Special Debt Service on Mello-Roos Bonds as described in **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service) and **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service);

(ii) to fund the Leased Property Backup Fund to the Leased Property Backup Fund Requirement;

(iii) to pledge as security and pay for Tax Increment Bonds;

(iv) to satisfy the Project Payment Obligation, including the Historic Building Feasibility Gap as provided in **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service), subject to the Interest Cost Limitation;

(v) to pay Developer pass-throughs;

(vi) to make PNLP Payments, subject to the Interest Cost Limitation;

(vii) after the Project Payment Obligation is satisfied, to pay directly or pledge as security for Bonds for Shoreline Protection Facilities, including Pier 70 Shoreline Protection Facilities;

(viii) to enter into other arrangements to use Project Tax Increment, subject to the Governing Law and Policy including the Interest Cost Limitation, to repay advances of Facilities Special Taxes or proceeds of Mello-Roos-only Bonds used to pay Horizontal Development Costs consistent with the Funding Goals; and

(ix) subject to Port Commission and Board of Supervisors approval, for any other purpose authorized by Appendix G-2 and IFD Law.

(e) Priority of Residential Condo Project Tax Increment. The IFD is authorized to use Residential Condo Project Tax Increment from each Sub-Project Area in the priority listed below:

(i) to pledge as security and pay for Tax Increment Bonds;

(ii) to pay Special Debt Service on Mello-Roos Bonds as described in **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service) and **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service);

(iii) to fund the Leased Property Backup Fund to the Leased Property Backup Fund Requirement;

(iv) to satisfy the Project Payment Obligation, including the Historic Building Feasibility Gap, as provided in **Subsection 11.2(a)** (Agreement to Reimburse for Historic Building Feasibility Gap), subject to the Interest Cost Limitation;

(v) to pay Developer pass-throughs;

(vi) to make PNLP Payments, subject to the Interest Cost Limitation;

(vii) after the Project Payment Obligation is satisfied, to pay directly, issue Bonds, or pledge as security for Bonds for Shoreline Protection Facilities, including Pier 70 Shoreline Protection Facilities;

(viii) to enter into other arrangements to use Project Tax Increment, subject to the IFD Law including the Interest Cost Limitation, to repay advances of Facilities Special Taxes or proceeds of Mello-Roos-only Bonds used to pay Capital consistent with the Funding Goals as otherwise permitted under Governing Law and Policy; and

(ix) subject to Port Commission and Board of Supervisors approval, for any other purpose authorized by Appendix G-2 and IFD Law.

6.4. Port Tax Increment. The Port will use Port Tax Increment to finance Irish Hill Park, the Historic Building Feasibility Gap to the extent described in **Article 11** (Historic Buildings), and Improvements at Pier 70 outside of the 28-Acre Site as authorized in Appendix G-2. The Port may choose to perform any authorized project as a public work using Port and City staff or a construction manager that is paid a fee for its services. Authorized projects include those listed below.

(a) Use. The Port will use Port Tax Increment to pay directly for or reimburse a third party for the costs to plan, design, and build the Port Improvements at the Illinois Street Parcels, other maritime uses eligible under IFD Law, and Shoreline Protection Facilities.

(b) Historic Building Feasibility Gap: The Port will use Port Tax Increment to subsidize the Historic Building Feasibility Gap as set forth in **Section 11.1** (Subsidy for Historic Buildings 12 and 21).

(c) Historic Resources. The Port may use Port Tax Increment to pay the costs to rehabilitate historic resources at Pier 70, but outside of the 28-Acre Site, according to the Secretary's Standards.

6.5. Sub-Project Areas.

(a) Base Year. Under IFD Law, the base year for Project Area G, including all of its sub-project areas, is City Fiscal Year 2015-2016.

(b) ERAF Tax Increment.

(i) The IFD Formation Proceedings and Appendix G-2 authorize the allocation of Allocated Tax Increment to the IFD for use in Project Area G. Allocated Tax Increment initially will consist of:

(1) the City Share of Tax Increment (64.59% of each property tax increment dollar in FY 2015-2016); and

(2) the ERAF Tax Increment (25.33% of each property tax increment dollar in FY 2015-2016).

(ii) To ensure that the IFD receives the maximum amount of Allocated Tax Increment for the benefit of the Project, the Port and Developer agree to use ERAF Tax Increment from each Sub-Project Area to pay Developer pass-throughs for Public Facilities before Developer Capital or any other available Public Financing Source is used.

(iii) After the ERAF Debt Period for each Sub-Project Area expires, no further Bonds secured and payable by ERAF Tax Increment will be issued.

(iv) Because the Sub-Project Areas are required to use ERAF Tax Increment for Horizontal Development Costs of Public Facilities, the following will apply separately for each Sub-Project Area and to any Bonds secured and payable by ERAF:

(1) the Bonds will be considered to be issued in the first City Fiscal Year in which the Sub-Project Area uses ERAF Tax Increment to pay any Horizontal Development Costs of Public Facilities; and

(2) the Bonds must be repaid no later than 45 years after the date the IFD actually receives $100,000 of Allocated Tax Increment from each Sub-Project Area.

(c) IFD Cap. Subject to the IFD Cap, Appendix G-2 authorizes the allocation of Tax Increment to the IFD for use in Project Area G beginning in the City Fiscal Year following the applicable Sub-Project Area's formation and continuing for 45 years after the date the Sub-Project Area actually receives $100,000 of Allocated Tax Increment.

(d) Pledge of Tax Increment.

(i) The IFD will use Tax Increment from each Sub-Project Area for the purposes specified in this Financing Plan. The Port will ask the Board of Supervisors to authorize the IFD to incur debt and to pledge and use Tax Increment as provided in Appendix G-2 and this Financing Plan in the IFD Formation Proceedings.

(ii) As described in **Article 7** (Port Advances), the Port intends to meet the Project Payment Obligation under this Financing Plan in part by making

Advances of Land Proceeds and Port Capital Advances to the Pier 70 CFDs. Under IFD Law, "debt" includes the Developer Balance, the Port Balance, and amounts owing under Promissory Note-LP.

(iii) The IFD Cap does not limit the amount of debt that the Port, the CFD, or the IFD will undertake under this Financing Plan. The Port represents and warrants that it has not, in its capacity as IFD Agent, made any pledges of Tax Increment from any of the Sub-Project Areas to any other debt as defined under IFD Law.

(e) Acquisition Prices. In accordance with IFD Law section 53395.8(g)(12), the Acquisition Agreement for the Acquiring Agencies' purchases of Horizontal Improvements specifies a price or method to determine a price for each public facility or discrete portion or phase of a facility. In addition, the Horizontal Development Costs of Horizontal Improvements will be reimbursed under this Financing Plan with an amount reflecting the interim cost of financing construction. Payments under this Financing Plan and the Acquisition Agreement using Project Tax Increment or the proceeds of Bonds secured and payable by Project Tax Increment will be subject to the Interest Cost Limitation.

(f) Increment Carryover. As long as Developer is not in Material Breach of the DDA, Project Tax Increment remaining after payment of all costs and debt incurred for Horizontal Development Costs in any Current Phase will be available for use in a Later Phase, subject to the 5-year limit on accumulation of tax increment under IFD Law section 53395.2 and other provisions of Governing Law and Policy.

(g) Waterfront Set-Aside. The Board of Supervisors has approved Appendix G-1, and the Port Commission has requested that the Board of Supervisors approve Appendix G-2. IFD Law and Appendix G-2 as proposed will allow the Waterfront Set-Aside requirement applicable to Project Area G to be met on a Project Area G-wide basis rather than on a Sub-Project Area basis. Appendix G-1 provides that the Port's use of more than 20% of the Allocated Tax Increment from Sub-Project Area G-1 on Waterfront Set-Aside would allow the IFD, in the discretion of the Port as IFD Agent, to set aside less than 20% of Allocated Tax Increment from the Sub-Project Areas for the Waterfront Set-Aside.

(h) Application of Tax Increment to Special Debt Service. This Subsection describes how Project Tax Increment will be credited to Assessed Parcels in the Pier 70 Leased Property CFD (other than Zone 3, which is governed by **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service) to offset the levy of Facilities Special Taxes needed for debt service on Mello-Roos Bonds issued on behalf of the CFD. Any references in this **Subsection** to property in the Pier 70 Leased Property CFD shall mean only the property located in Zone 1 and Zone 2 of the Pier 70 Leased Property CFD. The offset of Facilities Special Taxes for property in Zone 3 of the Pier 70 Leased Property CFD is governed by **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service). Project Tax Increment will not be used to reduce Shoreline Special Taxes, Arts Building Special Taxes, or Services Special Taxes in the Pier 70 Leased Property CFD.

(i) *Step 1.* By May 30 in each City Fiscal Year, the Treasurer-Tax Collector will prepare a Payment Report that specifies the NOI Property Project Tax Increment and the Residential Condo Project Tax Increment for each Taxable Parcel in the IFD. The IFD Agent will verify the amount of Available Credit Tax Increment, which will consist of Project Tax Increment on deposit with the

Special Fund Trustee that is available to pay Special Debt Service on Mello-Roos Bonds from the following sources in the following order of priority:

(1) NOI Property Project Tax Increment;

(2) Residential Condo Project Tax Increment remaining after its use under **clause (i)** of **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment); and

(3) the Leased Property Backup Fund.

(ii) *Step 2.* At the beginning of the next City Fiscal Year, the CFD Administrator will:

(1) advise the Treasurer-Tax Collector of the Potential Facilities Special Tax Levy on each NOI Property; and

(2) deliver to the Treasurer-Tax Collector and the Controller an Assessed Parcel Credit Report that specifies the amount of the Facilities Special Tax Credit available to offset the Potential Facilities Special Tax Levy for each Current Parcel in the Pier 70 Leased Property CFD.

(iii) *Step 3 Alternative 1*: If the Available Credit Tax Increment is equal to or greater than the Potential Facilities Special Tax Levy on each Current Parcel as shown in the Assessed Parcel Credit Report, the following will apply to the current City Fiscal Year.

(1) Based on the Assessed Parcel Credit Report, the Controller will direct the disbursement of: (A) the amount of Available Credit Tax Increment equal to the Potential Facilities Special Tax Levy on all Current Parcels to the Mello-Roos Bond debt service account designated by the CFD Administrator; and (B) the balance to the Project Account of the Tax Increment Fund.

(2) The CFD Administrator will not levy any Facilities Special Taxes on the Current Parcels in the Pier 70 Leased Property CFD for the City Fiscal Year.

(3) The CFD Administrator will levy the Potential Facilities Special Tax Levy on every Taxable Parcel other than the Current Parcels according to the RMA.

(iv) *Step 3 Alternative 2.* If the Available Credit Tax Increment is less than the Potential Facilities Special Tax Levy on each Current Parcel as shown in the Assessed Parcel Credit Report, the following will apply to the current City Fiscal Year:

(1) Based on the Assessed Parcel Credit Report, the Controller will direct the disbursement of all Available Credit Tax Increment to the applicable Mello-Roos Bond debt service account designated by the CFD Administrator.

(2) Because Available Credit Tax Increment is not sufficient to offset the Potential Facilities Special Tax Levy on each Current Parcel, the

CFD Administrator will apply the specific Parcel Increment Amount to the Current Parcel that generated it.

(3) The CFD Administrator will apply any remaining Available Credit Tax Increment on a pro rata basis (based on the Potential Facilities Special Tax Levy of the Current Parcels in the City Fiscal Year) to each Current Parcel until the amount applied is equal to the Potential Facilities Special Tax Levy for a Current Parcel or the Available Credit Tax Increment is fully applied.

(4) The CFD Administrator will levy Facilities Special Taxes in the City Fiscal Year on each Current Parcel in the amount equal to the Current Parcel's Potential Facilities Special Tax Levy after applying the amounts under **paragraph (2)** and **paragraph (3)** of this alternative.

(5) The CFD Administrator will levy the Potential Facilities Special Tax Levy on every Taxable Parcel other than the Current Parcels according to the RMA.

(v) Leased Property Backup Fund.

(1) The Leased Property Backup Fund will be funded from Project Tax Increment in accordance with **Subsection 6.3(d)** (Priority of NOI Property Project Tax Increment) and **Subsection 6.3(e)** (Priority of Residential Condo Project Tax Increment) and held by the Special Fund Trustee, and will be drawn upon to pay the Special Debt Service on each Current Parcel if Project Tax Increment is insufficient for that purpose. When fully funded, the Leased Property Backup Fund will hold deposits equal to the Leased Property Backup Fund Requirement to provide funds to offset Facilities Special Taxes for which credits can be made under **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service)

(2) The Parties understand that the Tax Code imposes certain conditions on creation and maintenance of the Leased Property Backup Fund. In any given City Fiscal Year, the IFD will not be authorized to use Project Tax Increment for items lower in priority than the Leased Property Backup Fund until funds in the Leased Property Backup Fund meet Leased Property Backup Fund Requirement.

6.6. Tax Increment Bonds.

(a) Authorization to Issue. Appendix G-2 authorizes the IFD to issue Tax Increment Bonds in compliance with Governing Law and Policy, subject to the same Project-based constraints, limitations, and procedures applicable to Mello-Roos Bonds under this Financing Plan. The Parties anticipate seeking issuance of Tax Increment Bonds to fund the Project Payment Obligation secured, on a first-priority basis, from Residential Condo Project Tax Increment and, on a subordinate basis, from NOI Property Project Tax Increment. Any reference in this Financing Plan to the Project Share of Tax Increment or Mello-Roos Bonds secured and payable by Project Tax Increment will also mean the proceeds of any Tax Increment Bonds that the City issues for those purposes.

(b) Condition to Issuance. The IFD will not issue Tax Increment Bonds secured by the NOI Property Project Tax Increment until the Leased Property Backup Fund has reached its Leased Property Backup Fund Requirement.

6.7. Validation. Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the Sub-Project Areas and matters authorized under Appendix G-2 and this Financing Plan. Attorneys' fees associated with these validation actions will be Port Costs or City Costs that are reimbursable under **Section 9.2** (Port Accounting and Budget).

7. PORT ADVANCES

7.1. Port Revenues.

(a) Allowed Uses of Port Revenues. Under the Burton Act, AB 418, and Charter section B6.406, Land Proceeds and Port Capital are public trust revenues that must be deposited into the Port Harbor Fund. Once deposited into the Port Harbor Fund, the Port may spend those revenues subject to any priorities established under any Indenture or other debt instrument secured and payable by those funds, for:

(i) uses specified in section 3 and section 5 of the Burton Act;

(ii) uses specified in Charter appendix B;

(iii) uses specified in AB 418 and any other state legislation authorizing Port expenditures; and

(iv) other uses consistent with the public trust.

(b) Trust Consistency. The Port Commission has determined that the Port's use and handling of Land Proceeds and Port Capital as specified in this Financing Plan are authorized under AB 418 and the Charter and are otherwise consistent with the public trust and the Burton Act.

7.2. Port Election. At its sole election and subject to **Section 1.7** (Additional Sources), the Port will have the right to use any source that is less costly than Developer Capital for purposes consistent with this Financing Plan. The procedures applicable to the Port's decisions to use Port Capital are described in **Subsection 7.5(a)** (Port's Right) and are expressly excluded from **Section 1.7** (Additional Sources). Each Port Advance will be treated as specified in this Article.

7.3. Advances of Land Proceeds.

(a) Use of Land Proceeds. The Port will use Land Proceeds to make Advances of Land Proceeds to the Pier 70 CFDs to the extent necessary to pay Capital Costs whenever Land Proceeds are available. Until advanced, Land Proceeds are deemed deposited into the Port Harbor Fund by deposit into any Escrow Account, the Land Proceeds Fund, or the Revenue Account in accordance with this Financing Plan.

(b) Promissory Note-LP and Promissory Note-X.

(i) Before the Port makes the first Advance of Land Proceeds by application of cash or a Credit Bid to the Project Payment Obligation, the CFD

Agent will sign Promissory Note-LP in the form of **FP Exhibit C** and Promissory Note-X in the form of **FP Exhibit D** and deliver them to the Port.

(ii) Contemporaneously with each Advance of Land Proceeds, the CFD Agent will provide to the Port the following information with respect to the application of funds:

(1) the date and Phase to which each entry applies;

(2) amounts applied to pay the Developer Balance, accounting separately for amounts applied to the Entitlement Sum, Developer Capital spent on other Horizontal Development Costs, Allowed Developer Return, and Excess Return;

(3) amounts applied to pay the Port Balance, accounting separately for amounts spent on Horizontal Development Costs, Allowed Return on Port Capital, and Excess Return; and

(4) amounts used or reserved to pay Developer pass-throughs as they become due.

(iii) The Port will enter on the allonge to Promissory Note-X the date, Phase, and any portion of an Advance of Land Proceeds used to pay Excess Return to Developer or Excess Return to the Port. The Port will enter on the allonge to Promissory Note-LP all other information regarding the Advance.

(iv) Interest will begin to accrue on each Advance of Land Proceeds from the date of the Advance at an annual rate to be agreed upon by Port and Developer before the parties seek Board of Supervisors approval of the resolutions approving the CFD Formation Proceedings, compounded quarterly, until paid.

(v) The CFD Agent or IFD Agent will make PNLP Payments to the Port to from time to time as Public Financing Sources become available.

(1) PNLP Payments will have priority over other uses of tax-exempt Bond Proceeds if necessary to comply with Treasury Regulation section 1.150-2 and maximize the amount of tax-exempt Bond Proceeds that can be used to make PNLP Payments.

(2) Contemporaneously with each PNLP Payment, the Port will make entries on the allonge to specify the application of funds. PNLP Payments will be applied first to pay accrued interest, then to principal in chronological order of each Advance of Land Proceeds.

(3) Subject to **Section 3.6** (Interim Satisfaction), until Horizontal Improvements are complete and the Project Payment Obligation is satisfied, the CFD Agent will deposit PNLP Payments into the Land Proceeds Fund for use as a Project Payment Source.

(4) After the Chief Harbor Engineer has issued SOP Compliance Determinations for all Horizontal Improvements and the Port has accepted the Final Audit, the CFD Agent will deposit PNLP Payments

into the Revenue Account for disbursements of the Developer Share and the Port Share.

(vi) Neither the CFD Agent nor the IFD Agent will make any payments on Promissory Note-X until the Project Payment Obligation and Promissory Note-LP have been paid in full unless the Parties provide countersigned instructions otherwise or the Port provides proof of payment in full.

7.4. 20th/Illinois Parcel Land Proceeds. The Port Commission and the Board of Supervisors have authorized the Port to publicly offer and sell the 20th/Illinois Parcel, subdivided into Parcel K North and Parcel K South, at Fair Market Value. The Advance of Land Proceeds from the sale of Parcel K North will be treated as specified in **Subsection 7.3(b)** (Promissory Note-LP and Promissory Note-X).

(a) Parcel K North.

(i) The Port has established Parcel K North's Fair Market Value based on its highest and best use by a proprietary appraisal, which the Port has used to establish a minimum offering price for Parcel K North. The Port has begun the process to publicly offer the parcel for sale in accordance with the Port's customary procedures. The offering is open to all qualified bidders, including Developer.

(ii) The bid documents specify as follows.

(1) The winning bidder must deposit the purchase price and Developer Closing Costs into Escrow and Close of Escrow must occur as set forth in the DDA.

(2) The Port may require the purchasers to build the 20th/Illinois Plaza. In that circumstance, the offering documents will specify an allowance for the required Improvements, and the amount of each offset will be deemed to be an Advance of Land Proceeds.

(3) The Port may require the purchasers to build the Michigan Street segment as the Port's fee developer. In that circumstance, the offering documents will specify a cost allowance that the Port will pay with the Mello-Roos Bond Proceeds secured and payable by Facilities Special Taxes levied in the Pier 70 Condo CFD.

(iii) If the winning bidder is an Unrelated Vertical Developer, the Port will instruct the Escrow Agent to disburse the Parcel K North Proceeds in the following order of priority from Escrow at Closing as follows, until the funds have been disbursed fully:

(1) an Advance of Land Proceeds to pay Excess Return included in the Entitlement Sum and Excess Return accrued since the Reference Date;

(2) an Advance of Land Proceeds to pay the balance of the Entitlement Sum and Allowed Developer Return accrued since the Reference Date;

(3) an Advance of Land Proceeds to pay the Developer Balance and the Port Balance, subject to **Subsection 2.7(a)** (Pro Rata Payments); and

(4) for deposit into the Land Proceeds Fund.

(iv) If Developer is the winning bidder, its selected Vertical Developer Affiliate may pay at least in part by Credit Bid subject to all limitations and conditions of **Section 3.3** (Right to Credit Bid) and **Section 3.4** (Amount of Credit Bid). The Credit Bid will be recorded as an Advance of Land Proceeds.

(v) This clause will apply only if the Closing has not occurred by the first anniversary of the Reference Date, and the delay is not caused by Environmental Delay, Litigation Delay, or Developer's acts or omissions. In 60 days after the first anniversary of the Reference Date, the Port must elect one of the following options.

(1) The Port may elect to make an Advance to the CFD in an amount equal to the appraised Fair Market Value of Parcel K North, which will be treated as an Advance of Land Proceeds and applied as set forth in **clause (iii)** of this Subsection. Under this election, the proceeds of any later Port sale of Parcel K North would be Harbor Fund Revenues free of any restrictions under this Financing Plan.

(2) The Port may make an offer to sell Parcel K North to a Vertical Developer Affiliate at its appraised Fair Market Value by a Credit Bid subject to all limitations and conditions of **Section 3.3** (Right to Credit Bid) and **Section 3.4** (Amount of Credit Bid) and otherwise on terms specified in the bid package and the Vertical DDA for the parcel, except the requirement for an appraisal under *DDA art. 7 (Parcel Conveyances)*. If sold under this clause, the Credit Bid will be treated as an Advance of Land Proceeds.

7.5. Port Capital Advances.

(a) Port's Right. The Port has the right to make a Port Capital Advance when Land Proceeds and Public Financing Sources are not projected to be available to pay for projected Horizontal Development Costs, subject to the following limitations to allow for a coordinated plan of finance and associated capital formation activities by Developer.

(i) During its review of a Phase Budget, the Port may commit to make a Port Capital Advance, separate from or including the Port Share of any Interim Satisfaction Balance, by providing notice to Developer in 60 days after Developer submits the proposed Phase Budget.

(ii) The Port may propose to make a Port Capital Advance at other times during a Phase. To do so, the Port must notify Developer of the proposed amount and use of Port Capital at least six months before the projected date of a capital expense (which may be a Developer pass-through) in the Phase Budget.

(iii) The Parties will meet and confer promptly after the Port's notice to agree on the timing and amount of any proposed Port Capital Advance. After the Parties have agreed, the Port must deposit the agreed amount of Port Capital in the Port Capital Advance Fund held by the Special Fund Trustee at least

four months before the agreed date. Developer must exhaust the Port Capital Advance before spending Developer Capital.

(iv) Port Capital Advances may be used to pay Developer pass-throughs for Phase Improvements that would otherwise be paid by Developer Capital or to reimburse Developer for costs of Phase Improvements when no Public Financing Sources are available. If the Port uses a Port Capital Advance to reimburse Developer for costs of Phase Improvements when no Public Financing Sources are available, then **clauses (i)-(iii)** of this Subsection will not apply.

(b) Delivery and Use of Port Capital Advances.

(i) If the Port meets the time frames in **clause (i)** and **clause (ii)** of **Subsection 7.5(a)** (Port's Right), but the funds are subject to the annual City budget process, the Port must deliver the funds to the Special Fund Trustee for deposit in the Port Capital Advance Fund no later than three months after the Board of Supervisors approves the appropriation.

(ii) If the funds are Project-generated, such as the Port Share of any Interim Satisfaction Balance, the Port must direct the Escrow Agent to disburse the funds from Escrow to the Special Fund Trustee for deposit in the Port Capital Advance Fund.

(c) Port Capital Advances.

(i) Contemporaneously with each Port Capital Advance, the Port will enter on the Port Capital Schedule the following information with respect to the application of funds:

(1) the date and Phase to which each entry applies; and

(2) amounts applied to pay the Entitlement Sum and other Capital Costs.

(ii) Return on Port Capital will begin to accrue on the date each Port Capital Advance is disbursed at the annual rate of 10%, compounded quarterly, until paid.

(iii) The Port will update the Port Capital Schedule after any quarter in which it makes a Port Capital Advance or receives a payment under **Subsection 2.4(g)** (Pro Rata Payments) to provide ongoing updates of the status of the Port Balance.

(d) Port Withdrawal from Port Capital Advance Fund. If both of the following conditions are satisfied, the Port may withdraw funds in the Port Capital Advance Fund.

(i) An Interim Satisfaction Event exists.

(ii) Project Payment Sources will be available when needed to pay for all remaining Phase Improvement Costs in the Phase Budget.

7.6. CFD Payment Obligations.

(a) Sources to Repay Port Advances.

(i) Subject to the Interest Cost Limitation as applicable, the Pier 70 CFDs may use Public Financing Sources to pay Promissory Note-LP and Promissory Note-X.

(ii) The Pier 70 CFDs will be authorized to direct the Special Fund Trustee to disburse funds in the Land Proceeds Fund in accordance with **Subsection 2.4(f)** (Priorities for Payments) to pay Port Capital Costs.

(b) Port Harbor Funds. Funds that the Pier 70 Leased Property CFD and the Pier 70 Condo CFD pay to the Port for Port Capital Costs will be Port Harbor Revenues upon delivery to the Port. Payments will be recorded on the Port Capital Schedule.

(c) Promissory Note-LP.

(i) All PNLP Payments to the Port will be deemed Land Proceeds and will be deposited and used in accordance with **clause (v)** of **Subsection 7.3(b)** (Promissory Note-LP and Promissory Note-X).

(ii) Promptly after accepting the Final Audit, as adjusted under **Subsection 3.10(a)** (Distribution of Land Proceeds after Final Audit), the Port will execute and deliver to Developer the assignment attached to Promissory Note-LP, dated as of the date the Port accepts the Final Audit. The Port will provide copies of the assignment contemporaneously to the CFD Agent and the Special Fund Trustee.

(iii) All amounts in the Land Proceeds Fund will be disbursed in accordance with **Subsection 3.2(c)** (Revenue Sharing). Disbursements will not be recorded on the Developer Capital Schedule or the Port Capital Schedule.

(d) Promissory Note Entries. The Port agrees to make contemporaneous entries on Promissory Note-LP Promissory Note-X, and the Port Capital Schedule to track Advances of Land Proceeds, Port Capital Advances, the accrual of Interest on Land Proceeds, Return on Port Capital, and the application of Project Payment Sources to Promissory Note-LP, Promissory Note-X, and Port Capital Costs.

8. ACQUISITION OF HORIZONTAL IMPROVEMENTS

8.1. Commercially Reasonable Costs.

(a) Deemed Reasonableness. For work described in Developer's construction contracts, not including change orders, any Horizontal Development Cost that Developer incurs will be deemed commercially reasonable and to represent the fair market value price of a Horizontal Improvement if: (i) the contract is secured through a competitive bid process with three or more qualified firms and awarded to the lowest responsible bidder; (ii) the contract meets the requirements in **Subsection 8.1(c)** (Sole Source Contracts); or (iii) the contract has a value of $250,000 or less.

(b) Lowest Responsible Bidder. Developer will select the lowest responsible bidder after considering price and proposed schedule, with other factors such as the

contractor's ability to contribute to Developer's obligations under the Workforce Program, Local Hiring, and other contracting goals and requirements, financial strength, proposed project team, and any unique benefits offered to the Project.

(c) Sole Source Contracts. If Developer selects a contractor to perform a particular scope as a sole source, Developer must validate the bid by:

(i) providing the Port with an analysis of Soft Costs relative to the expected Project budget;

(ii) providing the Port with an engineer's cost estimate for Hard Costs; or

(iii) demonstrating that the product or service is available from only one supplier in the Bay Area region.

(d) Port Validation. The Port may hire a third-party consultant to validate Developer's estimated Hard Costs and Soft Costs when evaluating the commercial reasonableness of Horizontal Development Costs. If the Parties disagree as to commercial reasonableness, *DDA § 14.4(c) (Disputes)* will apply, and they may agree to submit any disputes as to commercial reasonableness of Horizontal Development Costs in accordance with for resolution under *DDA § 10.5 (Nonbinding Arbitration)*.

(e) Satisfaction of CFD Law. The parties have determined that the provisions of this Subsection 8.1 (Commercially Reasonable Costs) and the provisions of the Acquisition Agreement satisfy Government Code Section 53314.9.

8.2. Guaranteed Maximum Price Contract.

(a) Selection Process. If Developer uses a Guaranteed Maximum Price form of contract, it will select a CM-GC in accordance with **Subsection 8.1(a)** (Deemed Reasonableness) and **Subsection 8.1(b)** (Lowest Responsible Bidder) before the preconstruction period.

(b) Bid Requirements. In its bid, the CM-GC must identify the following:

(i) preconstruction costs;

(ii) General Conditions as a fixed monthly cost for the staff and support necessary to complete the Horizontal Improvements;

(iii) a construction management fee as a fixed percentage to be applied to the cost of Horizontal Improvements;

(iv) a preliminary estimate for the cost of the Horizontal Improvements; and

(v) any Horizontal Improvements the CM-GC intends to self-perform.

(c) Contract Negotiations.

(i) At the end of the preconstruction period, Developer will negotiate a GMP contract based on budgeting and estimating performed by the CM-GC in

collaboration with various sub-trades at various design milestones during preconstruction.

(ii) Developer will have the option to proceed under the negotiated GMP contract terms or terminate the CM-GC and issue a new bid solicitation for in accordance with **Subsection 8.1(a)** (Deemed Reasonableness) and **Subsection 8.1(b)** (Lowest Responsible Bidder). The selected CM-GC will be required to solicit competitive bids in accordance with **Section 8.1** (Commercially Reasonable Costs) for each sub-trade package including work it wishes to self-perform.

(iii) GMP contract terms will limit contingency to less than 15% unless it is determined by a competitive bidding process that the market terms for contingency are higher than 15%, in which case the contingency may be set consistent with market terms and Developer will notify Port of the contingency amount.

(iv) Customary incentives to ensure performance actually paid to the CM-GC under the GMP contract will be considered a commercially reasonable cost of the contract.

8.3. Progress Payments. Under this Financing Plan and procedures in the Acquisition Agreement, the Port will make progress payments from time to time using Project Payment Sources as each source becomes available. If the Developer Balance and the Port Balance are both zero when the Project Payment Sources are available, and the funds are not subject to priorities under this Financing Plan, the funds will be applied to Developer pass-throughs.

8.4. Payment Conditions. Developer acknowledges that it must satisfy all conditions to payment in the Acquisition Agreement before the Port will be obligated to approve a Payment Request for Horizontal Development Costs of Horizontal Improvements.

8.5. Reimbursements for Horizontal Development Costs. Developer and the Port acknowledge the following.

(a) Expenditures in Reliance of Reimbursement and Return. Developer's use of Developer Capital before Land Proceeds and Public Financing Sources are available is not a gift or a waiver of Developer's right to reimbursement for Horizontal Development Costs and to receive Developer Return.

(b) Payments in Installments. Developer will be reimbursed for Horizontal Development Costs and receive Developer Return in installments as Project Payment Sources become available in accordance with this Financing Plan and the Acquisition Agreement, and Developer Return will accrue on any unpaid balance until the Developer Balance is satisfied by all available Project Payment Sources.

(c) Limited Project Revenues and Sources.

(i) Both Parties wish to use Public Financing Sources to the greatest extent and as early as feasible for Horizontal Development Costs.

(ii) Developer expressly acknowledges that:

(1) the Port's Public Financing Sources to pay Excess Return will be limited to Mello-Roos Taxes and Mello-Roos-only Bonds;

(2) the Port's and the financing districts' payment obligations are not guaranteed and are subject to **Section 1.8** (Limitation on Sources); and

(3) while the Port may elect in its sole discretion to make Port Capital Advances for the Project, it is under no obligation, and may not be compelled, to use Port Capital except to the extent that it makes a commitment to do so under **Section 7.5** (Treatment of Port Capital Advances).

(d) Termination of Acquisition Agreement. The Acquisition Agreement is an independent contract that will survive termination of this Financing Plan unless the Acquisition Agreement has expired on its own terms.

9. REPORTING

9.1. Developer Accounting.

(a) Phase Accounts. Developer agrees to establish and maintain separate Phase Accounts for each Phase in form reasonably approved by the Port to track Developer's Horizontal Development Costs as they are incurred, the accrual of Developer Return on its unreimbursed Horizontal Development Costs, and the application of Project Payment Sources to Developer's Capital Costs. Each Phase Account must calculate separately accrual of Developer Return up to the Interest Cost Limitation and accrual of Excess Return.

(b) Developer Quarterly Reports. Quarterly, after the date of each Phase Approval and continuing until the Project Payment Obligation has been fully satisfied, Developer will prepare and deliver to the Port a Developer Quarterly Report in a form reasonably acceptable to the Port. Developer Quarterly Reports must include the following information, reported separately for each Phase for which Developer has obtained a Phase Approval and in the aggregate for the Project as a whole:

(i) if applicable, a statement of Horizontal Development Costs previously incurred by Developer but not yet reimbursed;

(ii) updated estimates if any have been prepared, of additional Horizontal Development Costs to be incurred as specified in this Subsection;

(iii) accrued paid and unpaid Developer Return, accounting separately for Developer Return up to the Interest Cost Limitation and Excess Return;

(iv) if applicable, adjustments to the prior Developer Quarterly Report;

(v) application of Project Payments Sources that Developer has received during the reporting period, accounting separately for each source;

(vi) new development expected to occur or that is occurring, and, if available to the Developer, the assessed value of which is expected to be included

on the secured real property tax roll in the City Fiscal Year before the Later Phase Developer Quarterly Report will be due;

(vii) any conveyances of Development Parcels that are expected to occur and if, based on available information, Developer reasonably expects the assessed value will be included on the secured real property tax roll for a City Fiscal Year before the Later Phase Developer Quarterly Report will be due;

(viii) Cumulative IRR, accounting for any distributions of Interim Satisfaction Balance and anticipated future distributions for the Current Phase;

(ix) Port Costs and Other City Costs, billed, paid, and unpaid; and

(x) specific uses of Master Marketing Fees that Developer collects from Vertical Developers or their successors.

(c) Effect of Termination.

(i) Subject to **clause (ii)** of this Subsection, Developer Quarterly Reports must cover all Phases, even if Developer has Transferred part or all of its interest in a Phase to an Unrelated Transferee.

(ii) Developer's obligation to provide Developer Quarterly Reports will terminate as to any Terminated Phase after Developer has provided to the Port the Developer Quarterly Report covering the reporting period ending on the applicable Termination Date.

(iii) Developer will be obligated to provide a Phase Audit under **Subsection 9.3(a)** (Phase Audit) for any Terminated Phase covering the Phase up to the Termination Date and to cooperate with any successor master developer to the extent necessary for the successor to complete any Phase Audit required under **Subsection 9.3(a)** (Phase Audit) and Final Audit required under **Subsection 9.3(b)** (Final Audit).

9.2. Port Accounting and Budget.

(a) Accounting for Use of Port Capital. Quarterly, after the date of each Phase Approval and continuing until the Project Payment Obligation has been fully satisfied, the Port will prepare and deliver to the Developer a Port Quarterly Report in a form reasonably acceptable to the Developer. Port Quarterly Reports must include the following information, reported separately for each Phase for which Developer has obtained a Phase Approval and in the aggregate for the Project as a whole: (i) all entries under **Subsection 7.6(d)** (Promissory Note Entries); (ii) accrued paid and unpaid Return on Port Capital, accounting separately for Return on Port Capital up to the Interest Cost Limitation and Excess Return; (iii) if applicable, adjustments to the prior Port Quarterly Report; (iv) application of Project Payment Sources that Port has received during the reporting period, accounting separately for each source; and (v) Port Costs and Other City Costs, billed, paid, and unpaid.

(b) Budget Preparation.

(i) Within 90 days after the Reference Date: (1) the Port will deliver to Developer an estimate of Port Costs and Other City Costs projected to be incurred through the end of City Fiscal Year 2018-2019; and (2) the Port and

Developer will meet and confer to create a Port FY Budget of projected Port Costs, Other City Costs, and Public Financing Sources for the period ending June 30 of the 2018-2019 City Fiscal Year. By October 1 of each year during the DDA Term, the Port and Developer will meet and confer on an Annual Port Budget and a Port FY Budget for the next City Fiscal Year.

(ii) To aid the Port in preparing its Port FY Budget, Developer will provide its estimates of Horizontal Development Costs for the next City Fiscal Year by quarter. By March 1 of each City Fiscal Year, the Port will advise Developer of Advances of Port Capital that the Port intends to include in its proposed Port FY Budget as a Project Payment Source, subject to the City's annual budget approval process.

(iii) In each Port FY Budget, the Port will budget the Allocated Project Tax Increment necessary to: (1) offset the Potential Facilities Special Tax Levy of each Current Parcel under **Subsection 6.5(h)** (Application of Tax Increment to Special Debt Service) and **Subsection 11.1(b)** (Application of HB Tax Increment to Special Debt Service); (2) pay debt service and other costs associated with any Mello-Roos Bonds or Tax Increment Bonds for which Allocated Project Tax Increment was pledged; (3) provide funds to pay Capital Costs for which Project Tax Increment will be a source; and (4) otherwise satisfy the Project Payment Obligation.

(c) Contents of Annual Budgets. The Port's preliminary budgets will provide quarterly estimates of projected Public Financing Sources, Port Costs, and Other City Costs for allocated Port and City staff by department and category and include estimated fees payable to third-party professionals that the Port and other City Agencies have engaged or expect to engage. The Port will update its preliminary budget through an iterative process and discussions with Developer as the Port obtains more information. Through this process, the Port and Developer will agree on the Annual Port Budget and agree on the amount that the Port will retain from Public Financing Sources to offset Port Costs and Other City Costs and an estimate of the remaining amount that Developer will be required to pay.

(d) City and State Authority. Developer acknowledges that the Port's departmental budget and budget supplements are subject to review and approval by the Port Commission and the Board of Supervisors, each in its sole discretion. Developer also acknowledges that the Port's budget, including the Annual Port Budget, is subject to applicable requirements of AB 418, the public trust, and the Charter.

(e) Reporting.

(i) Within 90 days after the end of each quarter during the DDA Term, the Port Director will deliver to Developer a Port Quarterly Report that states the Port's Horizontal Development Costs for Port Improvements, Port Costs, Other City Costs, and Project Payment Sources for the previous quarter and in comparison to the Annual Port Budget and the Port FY Budget. The Port Director or the Port Finance Director must certify that each Port Quarterly Report is complete and complies with this Section to her knowledge. Each Port Quarterly Report will be binding on Developer in the absence of error that Developer demonstrates in six months after receipt.

(ii) The report must be in a reasonably detailed form and include copies of invoices from any third-party professionals. The Port must provide

additional information and supporting documentation about Port Costs at Developer's reasonable request. The Port and Developer agree to cooperate to develop a reporting format that satisfies Developer's reasonable informational needs without divulging any privileged or confidential information of the Port, the City, or their respective Agents.

(iii) Within six months after the Project Payment Obligation is satisfied, the Port will prepare a Final Port Report providing cumulative, detailed information about the Port's Horizontal Development Costs and Return on Port Capital spent for Port Improvements. The Final Port Report will be subject to Developer's rights under **Subsection 9.4(b)** (Developer Audit).

9.3. Audit Obligations.

(a) Phase Audit.

(i) In reference to each Phase, except as to any portion for which the DDA has been terminated or unless otherwise approved by the Port Director, Developer must submit to the Port a Phase Audit prepared by a CPA that updates all financial matters included in previously submitted Developer Quarterly Reports through the Phase Audit Date. The CPA must prepare the report according to a scope of review agreed upon by the Port and the Developer. The cost of a Phase Audit will be a Soft Cost recorded on the Developer Capital Schedule.

(ii) Subject to **clause (iii)** of this Subsection, the Phase Audit Date for each Phase will be six months after the later of the date that the Port has: (1) conveyed the last Option Parcel to be conveyed in the Phase; or (2) issued the Certificate of Completion.

(iii) The Phase Audit Date for any Terminated Phase will be six months after the Termination Date.

(iv) The Port will have two months to review and accept each Phase Audit without prejudice to its rights under **Subsection 9.4(a)** (Port Audit).

(b) Final Audit.

(i) The Final Audit Date for the Horizontal Improvements will be six months after the Port has satisfied the Project Payment Obligation for the Developer Balance and all Development Parcels have been conveyed to Vertical Developers. Developer must submit to the Port the Final Audit prepared by a CPA, except as to any terminated Phase, which updates all of the matters included in all Phase Audits through the Final Audit Date. The CPA will prepare the report according to a scope of review approved by the Port.

(ii) The Final Audit will provide the basis for determining: (1) whether a Project Surplus exists; and (2) the final distribution of Land Proceeds under **Section 3.10** (Distribution of Project Surplus).

(iii) The Port will have two months to review and accept the Final Audit without prejudice to its rights under **Subsection 9.4(a)** (Port Audit).

9.4. Audit Rights

(a) Port Audit. The Port will have the right to conduct a Port Audit of Books and Records pertaining to a Phase Audit and of the Final Audit. Such audit will be conducted during normal business hours upon no less than 10 business days' notice at the principal place of business of Developer in San Francisco or other places where Books and Records are kept. Port will provide Developer with copies of any audit performed. The Port must notify Developer of the Port's intent to conduct a Port Audit no more than two years after receiving the Phase Audit or Final Audit that the Port intends to review.

(i) Port Costs. The Port will bear its own audit costs unless a Port Audit reveals that Developer's Capital Costs for any category are overstated by 5% or more from those stated in the Phase Audit or Final Audit under review. In that case, the costs of the Port Audit will be reimbursable Port Costs under the DDA.

(ii) Dispute Resolution. The Parties may agree to submit disputes over whether any of Developer's Capital Costs for any category are overstated by 5% or more to nonbinding arbitration under *DDA § 10.3* (General Arbitration Procedures).

(b) Developer Audit. Developer will have the right to conduct a Developer Audit of the Port's Horizontal Development Costs as reported in the Final Port Report. Such audit will be conducted during normal business hours upon no less than 10 business days' notice at the Port's administrative offices in San Francisco. Developer will provide Port with copies of any audit performed. Developer must notify the Port of Developer's intent to conduct a Developer Audit no more than two years after receiving the Final Port Report.

(i) Developer Costs. Developer will bear its own audit costs unless a Developer Audit reveals that the Port's Horizontal Development Costs for any category are overstated by 5% or more from those stated in the Final Port Report. In that case, the costs of the Developer Audit will be will be a Soft Cost recorded on the Developer Capital Schedule.

(ii) Dispute Resolution. The Parties may agree to submit disputes over whether any of the Port's Horizontal Development Costs for any category are overstated by 5% or more to nonbinding arbitration under *DDA Section 10.3* (General Arbitration Procedures).

9.5. Books and Records.

(a) Books and Records. Developer must keep in its San Francisco office Books and Records of all: (i) Developer Capital spent on Horizontal Development Costs; (ii) application of Project Payment Sources and any other sources to pay Developer's Capital Costs, organized by Phase; and (iii) Phase Accounts, Developer Quarterly Reports, Phase Audits, and the Final Audit, under generally accepted accounting principles consistently applied, or in another format approved by the Port. Developer must maintain Books and Records for each Phase for the longer of two years after the applicable date that the Port accepts a Phase Audit under **Subsection 9.3(a)** (Phase Audit) and the date on which any Port Audit is final or any litigation or dispute resolution proceeding relating to Developer's Books and Records or any Port Audit is finally concluded. After reasonable notice, Developer will make its Books and Records available to the Port during regular business hours.

(b) Port Books and Records. The Port agrees to provide copies of its annual Statement of Indebtedness and financial statements (audited, if available) relating to each of the Sub-Project Area's Appendices to Developer as soon as practicable following their public filing or release, until the Final Audit Date. The Port must retain and make its Books and Records related to Promissory Note-LP and Promissory Note-X available for Developer's review and audit until the Final Audit Date.

9.6. Consultants.

(a) Port Consultants. The Port, following consultation with Developer, will select any consultants that the Port deems reasonably necessary to form the CFDs and the Sub-Project Areas, prepare Appendix G-2 and the RMAs, issue Bonds, and otherwise implement the DDA. The Port currently anticipates engaging special tax consultants, tax increment fiscal consultants, appraisers, financial advisors, bond underwriters, absorption consultants, Bond Counsel, bond trustees, escrow agents, and escrow verification agents, without prejudice to its right to engage other consultants as the need arises. Under **Subsection 4.5(b)** (Priority Administrative Costs) and **Subsection 6.3(c)** (IFD Administrative Costs), the Port's reasonable out-of-pocket costs for financing consultants will be reimbursed from the proceeds of Public Financing Sources to the extent permitted under Governing Law and Policy. Any unreimbursed consultant costs will be Port Costs. But the Port will not be entitled to payment of any third-party costs or Other City Costs: (A) that are billed to the Port more than 12 months after the services were provided; and (B) any invoice for third-party costs or Other City Costs that the Port timely receives, if the Port does not forward it to Developer within four months after the Port receives it.

(b) Developer Consultants. Developer may engage its own consultants to advise it on matters related to the DDA, the Financing Plan, the implementation of any Public Financing Sources, or the issuance of any Bonds, and its reasonable out-of-pocket costs that are not reimbursed from Public Financing Sources will be will be Soft Costs recorded on the Developer Capital Schedule.

10. ARTS BUILDING

10.1. Arts Program.

(a) Purpose. Developer's agreement to provide affordable arts space on Parcel E-4 is an Associated Public Benefit.

10.2. Arts Building Funding.

(a) Port Subsidy. The Port will subsidize the Arts Building by providing a no-cost lease to the Arts Master Tenant.

(b) Use of Arts Building Proceeds.

(i) Based on reasonably expected interest rates, the Arts Building Special Taxes have been established to be sufficient to generate approximately $20 million in Arts Building Proceeds.

(ii) Regardless of the actual amount of Arts Building Proceeds, the funds will be used to finance the following improvements in the following order of priority and in the following amounts. In no case may Developer use Arts

Building Proceeds to finance Noonan Replacement Space in a location other than Parcel E4.

(1) If the Noonan Replacement Space is not located within the Arts Building but is located in a Stand-Alone Noonan Building under Parcel E4 Option 2 or Parcel E4 Option 3 (as described in *DDA § 7.12(b) (Development Options))* or, subject to prior authorization by the Port Commission and the Board of Supervisors and the agreement of Developer and the Port, each in its sole discretion, is located in Building 11 after it has been relocated outside the 28-Acre Site (as described in *DDA § 7.23(b) (Potential Relocation of Building 11)*):

(A) the first $13.5 million of the Arts Building Proceeds will be available to finance the hard and soft costs of the Noonan Replacement Space;

(B) if a Vertical Developer constructing a separate Arts Building on the remainder of Parcel E4 demonstrates that it has raised $17.5 million in private or philanthropic capital, the next $4 million of the Arts Building Proceeds will be available to finance the hard and soft costs of the Arts Building;

(C) subject to satisfying the CF Conditions, the next $2.5 million of the Arts Building Proceeds will be available to finance community facilities; and

(D) any remaining Arts Building Proceeds will be available to match private or philanthropic capital raised by the Vertical Developer to finance additional hard and soft costs of the Arts Building.

(2) If the Noonan Replacement Space is incorporated into a larger Arts Building under Parcel E4 Option 1 (as described in *DDA § 7.12(b)(i) (Development Options)*):

(A) if the Vertical Developer constructing the Arts Building demonstrates that it has raised $17.5 million in private or philanthropic capital, up to $17.5 million of the Arts Building Proceeds will be available to finance the hard and soft costs of the Arts Building;

(B) subject to satisfying the CF Conditions, the next $2.5 million of the Arts Building Proceeds will be available to finance community facilities; and

(C) Arts Building Proceeds will be available to match private or philanthropic capital raised by the Vertical Developer to finance additional hard and soft costs of the Arts Building.

(3) The use of Arts Building Proceeds to implement the Building 11 Relocation Plan is a permitted use in accordance with *DDA § 7.23 (Potential Relocation of Building 11)*.

(4) Subject to the foregoing, the Port may use any remaining Arts Building Proceeds to finance a public building on Parcel E4.

11. HISTORIC BUILDINGS

11.1. Subsidy for Historic Buildings 12 and 21. The Parties agreed to this Section after concluding that payment of the Historic Building Feasibility Gap would meet the requirements for use of Allocated Tax Increment under the IFD Law and, assuming that the City's Special Tax Financing Law is amended as the Port has requested, Special Taxes under the CFD Law. The Historic Building Feasibility Gap will be determined and financed separately for each of Historic Building 12 and Historic Building 21. References in this Article to Historic Buildings exclude Historic Building 2, and references to a Current Parcel mean either Historic Building if ad valorem taxes are current.

(a) Financing for Historic Building Feasibility Gap.

(i) The Pier 70 Leased Property CFD will not issue Mello-Roos Bonds secured by the Facilities Special Taxes in Zone 3 of the Pier 70 Leased Property CFD except to finance the Historic Building Feasibility Gap for each Historic Building.

(ii) The Parties have agreed to establish the levy of Facilities Special Taxes on each Historic Building at rates that are based on the sum of projected Project Tax Increment and Port Tax Increment that each Historic Building will generate, using the same buffer applied to all other Taxable Parcels in the Pier 70 Leased Property CFD.

(iii) Prior to construction of a Historic Building, the Parties will estimate its Historic Building Feasibility Gap and, if allowed by the RMA, determine if the Facilities Special Tax rates applicable to the Historic Building should be reduced to reflect the estimated gap. In determining the amount of the reduction, the Parties will assume that the Project Tax Increment from the Historic Building will be applied first before any Port Tax Increment from the Historic Building. The Parties will use the same buffer as the buffer applied when setting the Facilities Special Tax rates initially.

(b) Application of HB Tax Increment to Special Debt Service. This Subsection describes how HB Tax Increment will be credited to Assessed Parcels in Zone 3 of the Pier 70 Leased Property CFD to offset the levy of Facilities Special Taxes needed for debt service on the applicable issue of HB Bonds issued on behalf of the CFD for financing the Historic Building Funding Gap. This Subsection will be calculated for, and applied separately to, each Historic Building, and the Parties acknowledge that the amount of Project Tax Increment and Port Tax Increment used to pay the Special Debt Service on the applicable issue of HB Bonds issued to finance the Historic Building Funding Gap may differ between Historic Building 12 and Historic Building 21.

(i) *Step 1.* By May 30 in each City Fiscal Year, the Treasurer-Tax Collector will prepare a Payment Report that specifies the HB Tax Increment for each Taxable Parcel of a Historic Building.

(ii) *Step 2.* At the beginning of the next City Fiscal Year, the CFD Administrator will:

(1) advise the Treasurer-Tax Collector of the Potential Facilities Special Tax Levy on each Taxable Parcel of the Historic Building; and

(2) deliver to the Treasurer-Tax Collector and the Controller an Assessed Parcel Credit Report that specifies the amount of the Facilities Special Tax Credit available to offset the Potential Facilities Special Tax Levy for each Current Parcel of the Historic Building.

(iii) *Step 3*: The following will apply to the current City Fiscal Year:

(1) Based on the Assessed Parcel Credit Report, the Controller will direct the disbursement of the HB Tax Increment to the applicable Mello-Roos Bond debt service account designated by the CFD Administrator in the following order of priority: (i) the Project Tax Increment from the Historic Building; and (ii) if needed, the Port Tax Increment from the Historic Building.

(2) The CFD Administrator will apply the specific Parcel Increment Amount to each Current Parcel of the Historic Building that generated it.

(3) The CFD Administrator will levy Facilities Special Taxes in the City Fiscal Year on each Current Parcel of the Historic Building in the amount equal to the Current Parcel's Potential Facilities Special Tax Levy after applying the amounts under **paragraph (2)** above.

(4) The CFD Administrator will levy the Potential Facilities Special Tax Levy on every Taxable Parcel of the Historic Building other than the Current Parcels according to the RMA.

11.2. Determining Whether Feasibility Gap Exists. The Historic Building Feasibility Gap for each Historic Building will be calculated separately in two steps as follows.

(a) Preliminary Determination and Financing.

(i) As soon as practicable after a Vertical Developer Affiliate obtains a building permit for either Historic Building, it will submit a detailed proforma with revised Historic Building Costs and projected revenues, along with a projected Historic Building Feasibility Gap.

(ii) Within 30 days after the submittal, the Port and the Vertical Developer Affiliate will meet to review the Facilities Special Tax rate established by the RMA for the Pier 70 Leased Property CFD for the Historic Building and the projected amount of Project Tax Increment and Port Tax Increment that will be generated by the Historic Building.

(iii) After this meeting, the Port will use commercially reasonable efforts to issue a Mello-Roos Bond secured by Facilities Special Taxes levied on the Historic Building to fund its projected Historic Building Feasibility Gap. If issuing a Mello-Roos Bond for this purpose is not commercially reasonable or insufficient, the Parties will consider other financing options, including issuing Tax Increment Bonds secured by Tax Increment generated by the Historic Building.

(iv) The Port will use the proceeds of Mello-Roos Bonds issued under **clause (iii)** of this Subsection pay the amount of the projected Historic Building Feasibility Gap to the applicable Vertical Developer Affiliate for use in construction.

(v) As a condition to applying Public Financing Sources to the Historic Building Feasibility Gap, the Port will have the right to approve construction drawings for the Historic Building. The applicable Vertical Developer Affiliate will maintain a Historic Building Schedule in a format approved by the Port to account for eligible costs and application of Public Financing Sources to the applicable Historic Building Feasibility Gap in accordance with the CFD Law.

(b) Final Determination. At the earlier of one year after receipt of a TCO or 90% occupancy of space in the applicable Historic Building, the Historic Building Feasibility Gap will be finally determined using the formula in this Subsection based on actual revenues, Historic Building Cost, and Historic Tax Credits received.

(i) The Vertical Developer Affiliate will provide documentation for the Historic Building Cost of the Historic Building in form and substance reasonably satisfactory to the Port.

(ii) The Port will determine the capitalized value of the actual net operating income of the Historic Building, defined as gross income less real estate taxes, insurance and other operating expenses as documented by the Vertical Developer Affiliate and reasonably approved by the Port, assuming a 7% capitalization rate, accounting for the net present value of guaranteed participation rent to the Port of 3.5% of modified gross revenues starting on the 31st anniversary of the issuance of a Temporary Certificate of Occupancy for the applicable Historic Building.

(iii) The final Historic Building Feasibility Gap will be the Historic Building Cost less: (1) the capitalized value determined in **clause (ii)**; (2) actual contributions made by Historic Tax Credit investors; and (3) Bond Proceeds received by the Vertical Developer Affiliate for the applicable Historic Building.

(c) True Up.

(i) If the final Historic Building Feasibility Gap is less than $0, the Vertical Developer Affiliate will repay the deficit to the Port as Additional Rent under the Parcel Lease for that Historic Building. The Port will deposit the Additional Rent into the Pier 70 Leased Property CFD Capital Account for use as a Project Payment Source under this Financing Plan.

(ii) If the final Historic Building Feasibility Gap is greater than $0, then the Port will use the next available Public Financing Sources in accordance with **Subsection 2.4(f)** (Priorities for Payment) to apply to the shortfall until the final Historic Building Feasibility Gap is fully paid.

12. HOUSING TAX INCREMENT

12.1. IRFD Formation. The Port is requesting that the Board of Supervisors take the following actions in the IRFD Formation Proceedings.

(a) Agreement to Allocate Housing Tax Increment. The City will agree to allocate to the IRFD the Allocated Housing Tax Increment as set forth in MOHCD's annual budget for use in the 28-Acre Site in accordance with the IRFD Financing Plan and this Financing Plan.

(b) Appointment of Port as Agent. The City will appoint the Port as the IRFD Agent with the authority to act on behalf of the IRFD to implement this Financing Plan, including:

(i) disbursing Allocated Housing Tax Increment as provided in the IRFD Financing Plan;

(ii) determining in collaboration with the Public Finance Division of the Controller's Office whether and in what amounts the IRFD will issue Housing Tax Increment Bonds;

(iii) directing the Indenture Trustees' disbursement of Bond Proceeds; and

(iv) preparing on behalf of the IRFD an annual report for posting on the Board of Supervisors' webpage in compliance with section 53369.26 of the IRFD Law.

12.2. Tax Allocation MOU. The Board of Supervisors will authorize the Controller and the Treasurer-Tax Collector to enter into the Tax Allocation MOU with the Port under Charter section B7.320 in furtherance of the Financing Documents with respect to the IRFD.

(a) Authorized Actions. The Board of Supervisors will authorize and direct the following actions by approving the Tax Allocation MOU.

(i) The Treasurer-Tax Collector will levy and collect in a segregated fund Allocated Housing Tax Increment from the IRFD as directed by the Port as IRFD Agent to the extent consistent with the Financing Documents.

(ii) The Controller will disburse Allocated Housing Tax Increment that the City has allocated from the IRFD for affordable housing in the 28-Acre Site as directed by the Port as IRFD Agent to the extent consistent with the IRFD Financing Plan, the other Financing Documents, and the Port's approved budget.

(b) Required Cooperation and Consultation. The Port will consult with the Public Finance Division of the Controller's Office on timing, amounts, and other matters relating to Bonds. The Port, the Treasurer-Tax Collector and the Controller will cooperate to ensure that the objectives of the Financing Documents will be fulfilled.

12.3. Housing Tax Increment Bonds. The IRFD Financing Plan authorizes the IRFD to issue Bonds secured and payable by Hoedown Yard Facilities Special Taxes, Housing Tax Increment, or both in compliance with Governing Law and Policy.

12.4. Validation. Developer agrees to cooperate with any City or Port judicial validation actions relating to the formation of the IRFD and matters authorized under the IRFD Financing Plan and this Financing Plan. Attorneys' fees associated with these validation actions will be Port Costs or City Costs that are reimbursable under **Section 9.2** (Port Accounting and Budget).

Developer and the Port have executed this Financing Plan as of the last date written below.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

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: _____

Authorized by Port Resolution No. 17-43 and Board of Supervisors Resolution No. 401-17.

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

FINANCING PLAN EXHIBIT A

CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR

ACQUISITION AND REIMBURSEMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO,
OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

FC PIER 70, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

[REFERENCE DATE]

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ACQUISITION AND REIMBURSEMENT AGREEMENT

This **ACQUISITION AND REIMBURSEMENT AGREEMENT** (this "**Acquisition Agreement**"), dated for reference purposes only as of the Reference Date, is between the **CITY AND COUNTY OF SAN FRANCISCO** (the "**City**"), acting by and through the **PORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO** (the "**Port**"), and **FC PIER 70, LLC**, a Delaware limited liability company ("**Developer**"). Developer and the Port are each a "**Party**" to this Acquisition Agreement.

Standard provisions and rules of interpretation in Part A of the Appendix to Transaction Documents for the Pier 70 Mixed-Use Project (the "**Appendix**") apply to this Acquisition Agreement. Terms used but not defined in this Acquisition Agreement are defined in Part B of the Appendix.

RECITALS

A. The Port and Developer have entered into the DDA, which includes the Financing Plan.

1. The DDA obligates Developer to construct Horizontal Improvements at the 28-Acre Site. **AA Exhibit A** (Horizontal Improvements) lists the Horizontal Improvements for the Project. The Port will meet its Project Payment Obligation under the Financing Plan, in part, by reimbursing Developer for the Capital Costs of Horizontal Improvements that are approved by this Acquisition Agreement. The Port will direct the disbursement of payments to Developer on behalf of the Acquiring Parties to acquire the Horizontal Improvements from Developer.

B. The Port and the City have entered into the Tax Allocation MOU under which the City agrees to take actions necessary to make the Public Financing Sources available for the Acquisition Prices of Horizontal Improvements as described in the Financing Plan. In addition to the Public Financing Sources, the Port will satisfy the Project Payment Obligation with: (1) Advances of Land Proceeds; (2) at its election, Port Capital Advances; and (3) other sources described in *FP § 1.6 (Other Sources and Costs)*.

C. This Acquisition Agreement describes the procedures by which, at Developer's request, the Port will:

1. inspect on its own behalf, or cause authorized representatives of Other Acquiring Agencies to inspect, the Horizontal Improvements listed in **AA Exhibit A** (Horizontal Improvements), as amended from time to time;

2. review and amend the Phasing and Components of the Horizontal Improvements, as set forth in **AA Exhibit B** (Cost Estimates of Components by Phase); and

3. authorize the payment to the Developer of the Acquisition Price of Horizontal Improvements as Project Payment Sources become available to the Port in accordance with the Financing Plan.

AGREEMENT

1. PURPOSE AND INTENT.

1.1. Implementation.

(a) Purpose. This Acquisition Agreement: (i) implements and is subject to all limitations of the DDA and the Financing Plan; (ii) will become effective on the date this Acquisition Agreement is fully executed and delivered; and (iii) describes the procedures by which the Horizontal Improvements are authorized for payment under the Financing Plan. The

estimated Horizontal Development Costs of the Horizontal Improvements by Component and Phase are set forth in **AA Exhibit B** (Cost Estimates of Components by Phase). The Payment Request will set forth only the actual Horizontal Development Costs of the Horizontal Improvement or Component, and will not set forth the Developer Return on such costs. However, the term "**Acquisition Price**" for a Horizontal Improvement or Component shall include both (i) the actual Horizontal Development Costs of the Horizontal Improvement set forth in the Payment Request completed pursuant to this Acquisition Agreement and (ii) Developer Return on such actual Horizontal Development Costs of the Horizontal Improvement, payable from Project Payment Sources under the Financing Plan.

(b) Relationship to Other Documents. Procedures in this Acquisition Agreement are intended to complement and implement procedures in *DDA art. 3 (Phase Approval)*, *DDA art. 13 (Improvement Plans)*, *DDA art. 15 (Horizontal Development)*, *ICA art. 4 (Review Procedures for Streetscape Master Plan; Improvement Plans; Inspections; and Acceptance)*, and the Financing Plan. Procedures in this Acquisition Agreement will never override requirements or conflicting provisions in any other Transaction Document.

1.2. Horizontal Improvements List.

(a) Construction Phasing. The Parties intend **AA Exhibit A** (Horizontal Improvements) to be a complete list of all Horizontal Improvements for which Developer could incur Horizontal Development Costs.

(b) Exclusive List. Under this Acquisition Agreement, Developer may submit revisions to **AA Exhibit A** (Horizontal Improvements) from time to time to reflect proposed changes in the scope of Horizontal Improvements for the Project. The Port will consider Developer's proposal under *DDA § 3.2(i) (Amendments to Phase Approvals)*. Unless the changes are Material Modifications, the proposed changes will not require approval by the Board of Supervisors. The Port will not be required to use any Project Payment Source to pay the Acquisition Price of any Horizontal Improvement that is not listed in **AA Exhibit A** (Horizontal Improvements), as revised and approved. **AA Exhibit A** (Horizontal Improvements) does not limit the financing of other costs under the DDA and the Financing Plan.

1.3. Horizontal Development Costs of Horizontal Improvements.

(a) Horizontal Development Cost Estimates. **AA Exhibit B** (Cost Estimates of Components by Phase) lists preliminary estimates of the Horizontal Development Costs of the Horizontal Improvements by Components and Phase. Notwithstanding any estimates set forth on **AA Exhibit B** (Cost Estimates of Components by Phase), the estimated Horizontal Development Costs of Horizontal Improvements on **AA Exhibit B** (Cost Estimates of Components by Phase) are for informational purposes only and shall not determine the actual Acquisition Price, which shall be the actual Horizontal Development Costs of the Horizontal Improvements or Components plus Developer Return.

(b) Exclusive List. The Parties intend **AA Exhibit B** (Cost Estimates of Components by Phase) to be a list of all Components of the Horizontal Improvements and the estimated Horizontal Development Costs thereof. **AA Exhibit B** (Cost Estimates of Components by Phase) will not be complete at execution of this Acquisition Agreement, but Developer will provide a description of Components and Acquisition Cost Updates through information provided under *DDA § 3.2(h) (Periodic Updates of Phase Budget)* and *DDA § 14.4(b) (Change Orders)*. Each Acquisition Cost Update will supersede the prior version.

1.4. Project Payment Sources.

(a) Limitations. The Port will not be obligated to pay Developer any amounts due under the Financing Plan except from Project Payment Sources. The Port and Developer acknowledge that:

(i) Public Financing Sources may be applied to the Acquisition Price of a

Horizontal Improvement approved on a Payment Request only to the extent that the Acquisition Price is eligible for payment under Governing Law and Policy, including the Interest Cost Limitation, even if the costs were included in **AA Exhibit A** (Horizontal Improvements) or **AA Exhibit B** (Cost Estimates of Components by Phase) and Acquisition Cost Updates;

(ii) limitations on the use of Public Financing Sources for the payment of the Acquisition Price of a Horizontal Improvement or Component do not limit the Port's application of other Project Payment Sources for the payment of the Acquisition Price of a Horizontal Improvement or Component; and

(iii) Developer will make commercially reasonable efforts to provide the Port timely with updated information on Horizontal Development Costs of Horizontal Improvements so that the Port is able to budget for the availability of Project Payment Sources to pay the Acquisition Prices of Horizontal Improvements and Components in **AA Exhibit B** (Cost Estimates of Components by Phase) and Acquisition Cost Updates.

(b) Escrow Bonds. Developer acknowledges that if the Port and Developer agree to issue escrow bonds for the Project, and bond proceeds are deposited in an escrow fund, escrowed amounts will become Project Payment Sources: (i) only after satisfaction of all escrow requirements and release from the escrow fund; and (ii) in the amounts specified in the applicable Indenture. The Port agrees to take all reasonable actions necessary to cause the release of funds from an escrow fund after all conditions for their release have been satisfied.

(c) No Payment Guarantee. The Port makes no warranty, express or implied, that Project Payment Sources will be sufficient to pay the Acquisition Price of the Horizontal Improvements.

1.5. Deposits of Project Payment Sources.

(a) Bond Proceeds. The proceeds of any Mello-Roos Bonds and Tax Allocation Bonds will be deposited, held, invested, reinvested, and disbursed as provided in the respective Indenture, all in a manner consistent with the Financing Plan. The portion of Bond proceeds that is used to fund reserves for debt service, to capitalize interest on the Bonds, and to pay costs of issuance and administration will not be available to make payments to Developer.

(b) Tax Revenues. Mello-Roos Taxes and Project Tax Increment will be deposited in the Special Fund Trust Account (including the Revenue Account of the Land Proceeds Fund) subject to a Special Fund Administration Agreement and held and disbursed as specified in the Financing Plan.

(c) Land Proceeds. Land Proceeds will be deposited into Escrow Accounts established in accordance with the Vertical DDAs between the Port and Vertical Developers or the Land Proceeds Account (including the Revenue Account) and disbursed in accordance with escrow instructions at the Close of Escrow for each Port conveyance or as otherwise specified in the Financing Plan.

(d) Investment Policy. Developer acknowledges that Port, in its proprietary capacity and as CFD Agent and IFD Agent, will direct the investment of Project Payment Sources in accordance with the Port's and the City's investment policies, all Applicable Laws, and any applicable Indentures. The Port will have no responsibility to Developer with respect to any investment of Project Payment Sources before their use under this Acquisition Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment so long as the investments were made in accordance with all Applicable Laws and any applicable Indenture, even if a loss diminishes the amount of available Project Payment Sources.

2. CONSTRUCTION OF HORIZONTAL IMPROVEMENTS.

2.1. Obligation to Construct. The obligation to construct the Horizontal Improvements is governed solely by the DDA. This Acquisition Agreement does not obligate Developer to construct or pay for any Horizontal Improvement.

2.2. Relationship to Public Works Contracting. This Acquisition Agreement provides for the Port's acquisition of Horizontal Improvements from time to time from Project Payment Sources and is not intended to be a public works contract. In that regard, the Port and Developer agree to all of the following statements.

(a) Local Concern. Developer's construction of Horizontal Improvements and Components is of local, not statewide, concern.

(b) Private Work. Neither the California Public Contract Code nor the City's public works requirements apply to Developer's construction of the Horizontal Improvements.

(c) Private Contracts. Developer will award all contracts for the construction of the Horizontal Improvements.

(d) No Advantage. Requiring Developer to comply with the Public Contract Code and the City's public works requirements would be incongruous and would not produce an advantage to the City, the Port, or the Project.

(e) Compliance with DDA. Developer agrees that *DDA § 14.5 (Contracting Procedures)* will apply to all contracts for construction of the Horizontal Improvements, including Deferred Infrastructure under *DDA § 15.6 (Deferred Infrastructure)*.

(f) Consultation with Port. Developer agrees to conduct construction progress meetings in accordance with *DDA § 14.6 (Progress Meetings)*.

(g) Third-Party Work. Construction of the Horizontal Improvements may be performed by Developer, by contractors employed by Developer, or by a third-party (including a Vertical Developer or contractor) that constructs the Horizontal Improvements on behalf of Developer.

2.3. Independent Contractor.

(a) No Obligation to Contractors. In performing under the DDA, Developer is an independent contractor and not the agent or employee of the Port, the City, the CFD, or the IFD. Except as otherwise provided in this Acquisition Agreement, none of the Port, the City, the CFD, or the IFD has any obligation to make payments to any contractor, subcontractor, agent, consultant, employee, or supplier of Developer.

(b) Port Determination. The Port has determined that it would obtain no advantage by directly undertaking the construction of the Horizontal Improvements, and that the DDA requires that the Horizontal Improvements be constructed by Developer as if they had been constructed under the direction and supervision, or under the authority, of the applicable Acquiring Party.

3. ACQUISITION OF HORIZONTAL IMPROVEMENTS.

3.1. Purchase and Sale. Developer agrees to sell Horizontal Improvements at their Acquisition Prices to the Acquiring Parties, and the Port agrees to use Project Payment Sources to pay Developer the Acquisition Prices of Horizontal Improvements, as Project Payment Sources become available as described in the Financing Plan.

3.2. Component Financing.

(a) Horizontal Improvements Valued at $1 Million or Less. Section 53313.51(a) of the CFD Law and section 53395.8(g)(12)(A) of the IFD Law authorize the use of Public Financing Sources to purchase a Component of a Horizontal Improvement with estimated Horizontal Development Costs of $1 million or less so long as the Component is capable of

serviceable use. Subject to the availability of Project Payment Sources, the Port agrees to pay to Developer the Acquisition Price of any such Component capable of serviceable use under this Section before Developer has:

(i) completed the Horizontal Improvement of which the Component is a part, unless it is the final Component of the Horizontal Improvement; or

(ii) transferred title to the Horizontal Improvement to the Acquiring Party.

(b) Horizontal Improvements Valued Over $1 Million. If the estimated Horizontal Development Costs of a Horizontal Improvement is over $1 million ("**Qualifying Facility**"), section 53313.51(b) of the CFD Law and section 53395.8(g)(12)(B) of the IFD Law authorize the purchase of Components of that Qualifying Facility *whether or not* such Components are capable of serviceable use. Subject to the availability of Project Payment Sources, the Port agrees to pay to Developer the Acquisition Price of Components of Qualifying Facilities before Developer has:

(i) completed the Qualifying Facility of which the Component is a part, unless it is the final Component of a Qualifying Facility; or

(ii) transferred title to the Qualifying Facility to the Acquiring Party.

(c) Progress Payments. As authorized by the CFD Law and the IFD Law, the Port may make progress payments for Horizontal Improvements. **AA Exhibit B** (Cost Estimates of Components by Phase) will specify the Components that qualify under **Subsection 3.2(a)** (Horizontal Improvements Valued at $1 Million or Less) or **Subsection 3.2(b)** (Horizontal Improvements Valued Over $1 Million). The Port will pay for either:

(i) Components that are segments of a Horizontal Improvement (e.g., a segment of a water line); or

(ii) incremental completion of a Component (i.e., progress payments) (e.g., percent completion of earthwork).

(d) Payment of Soft Costs. Soft Costs may be paid as part of the Acquisition Price of any Component. In addition, Soft Costs for more than one Horizontal Improvement may be submitted for approval as they occur in advance of construction of such Horizontal Improvements provided that the Soft Costs apply to Horizontal Improvements listed in **AA Exhibit A** (Horizontal Improvements).

(e) Acceptance Not A Condition. A Component does not have to be accepted by the Acquiring Party as a condition precedent to the payment of its Acquisition Price.

3.3. Defective or Nonconforming Work. This Section will apply if an Acquiring Party finds any of the work done or materials furnished for a Horizontal Improvement or Component to be defective or nonconforming to approved Improvement Plans and Applicable Laws. If the finding is made before the Port has paid the entire Acquisition Price for the Horizontal Improvement to Developer, the Port may withhold the payment until the defect or nonconformity is corrected to the Acquiring Party's satisfaction. If the finding is made after the Port has paid the Acquisition Price to Developer, then the DDA will govern the Port's rights and remedies.

4. PAYMENT REQUESTS.

4.1. Initiating Payment.

(a) Delivery to Chief Harbor Engineer. To initiate the process for authorizing payment, Developer must deliver to the Chief Harbor Engineer a Payment Request in the form of **AA Exhibit C** (Form of Payment Request) that contains all relevant information in an organized manner.

(b) Completeness Determination. The Chief Harbor Engineer will have 10 days after

Developer delivers a Payment Request to review it for completeness. During the 10-day period, the Chief Harbor Engineer will have the right to request additional information and documentation reasonably necessary to complete the review, and will have an additional 10 days after Developer delivers the requested information or documentation to make a completeness determination.

(c) Required Attachments. Required attachments to each Payment Request include:

(i) an inspection report signed by the authorized representative of each applicable Acquiring Agency validating that the Horizontal Improvement or Component for which payment is requested complies with Project Requirements and Regulatory Requirements;

(ii) acceptable forms of proof of payment for the Horizontal Development Costs of the Horizontal Improvement to be reimbursed by the payment;

(iii) other documents specified in **AA Exhibit C** (Form of Payment Request) to the extent applicable;

(iv) a completed copy of **AA Exhibit C1** (Components Covered by Payment Request) specifying each contractor, subcontractor, materialman, and other person with whom Developer or its contractor has entered into contracts with respect to any Component included in the Payment Request;

(v) the contract amount for each contract; and

(vi) signed and acknowledged unconditional or conditional lien releases and waivers (in the required statutory form) from all contractors, subcontractors, materialmen, consultants, and other persons that Developer retained in connection with the Component, in each instance unconditionally or conditionally waiving all lien and stop notice rights with respect to the pending payment.

(d) Cost Allocation. The Developer's Cost Allocation Proposal in a Payment Request, if any, will be presumed to be reasonable and will be accepted for all purposes of this Acquisition Agreement and payment pursuant to the Financing Plan unless the Chief Harbor Engineer notifies the Developer of the Port's good faith reasonable objection to the Cost Allocation Proposal within five (5) days after the Developer delivers the Payment Request to the Port. If costs are allocated, each Payment Request must include Developer's Cost Allocation Proposal for the following categories of Horizontal Development Costs in the calculation of Acquisition Prices:

(i) Horizontal Development Costs that apply to more than one Horizontal Improvement or Component (e.g., Soft Costs such as design fees and Hard Costs such as Site Preparation) (provided, however, that Soft Costs may be paid in progress payments without allocating to a specific Horizontal Improvement as set forth in **Section 3.2(d)** (Payment of Soft Costs));

(ii) costs that apply to both Horizontal Improvements and Vertical Improvements (e.g., trunk utility infrastructure up to the lateral demarcation of a Development Parcel (Horizontal Development Cost) and connections from the building to the trunk infrastructure (vertical cost)); and

(iii) for Horizontal Improvements to be purchased in Components, the amount of the Acquisition Price allocated to each Component if not previously stated, or a reasonable, objective method to be used to allocate among Components.

(e) Final Payment. The final Payment Request for a Horizontal Improvement also must include:

(i) a copy of the Chief Harbor Engineer's SOP Compliance Determination for the Horizontal Improvement under *DDA § 15.7* (SOP Compliance);

(ii) Developer's signed assignment of warranties and guaranties for the Horizontal Improvement, in a form acceptable to the Acquiring Party;

(iii) as-built drawings and an executed assignment of the Construction Documents, to the extent reasonably obtainable; and

(iv) an executed assignment of reimbursements, if any, from third parties payable with respect to the Horizontal Improvements, such as utility or other reimbursements, which the Port will tender to the Special Fund Trustee for deposit into the Land Proceeds Fund, unless the Parties agree to apply the funds to the Payment Request.

4.2. Processing Payment Requests.

(a) Port Review of Payment Request.

(i) The Chief Harbor Engineer will have 30 days after the Payment Request is complete to:

(1) determine whether it meets all applicable conditions of **Section 4.1** (Initiating Payment); and

(2) provide notice of his determination to Developer under **Subsection 4.2(b)** (Notice to Developer).

(ii) During the 30-day period, the Chief Harbor Engineer will have the right to request additional information and documentation reasonably necessary to complete the review. In that case, the Chief Harbor Engineer will have an additional 15 days to provide notice of his determination after Developer delivers the requested information or documentation.

(b) Notice to Developer.

(i) If the Chief Harbor Engineer approves the Payment Request he will deliver a countersigned copy of the Payment Request to Developer simultaneously with delivery of the original under **Subsection 4.3(a)** (Port Finance Director).

(ii) If the Chief Harbor Engineer does not approve the Payment Request, he must specify in writing the reasons for his disapproval. If the Payment Request is disapproved, Developer may revise and resubmit it for approval, and the Chief Harbor Engineer will review it within the amount of time that is reasonable in light of the materiality of the reasons for the disapproval, not to exceed the greater of 10 days and the remaining number of days in the 30-day period under **Subsection 4.2(a)** (Port Review of Payment Request).

(c) Deemed Approval. If the Chief Harbor Engineer fails to notify Developer within the 30-day period under **Subsection 4.2(a)** (Port Review of Payment Request) that a Payment Request is approved or disapproved, and the failure continues after the expiration of the electronic notice period under *App ¶ 2.2(c) (No Deemed Consent Without Notice)*, the Payment Request will be deemed approved.

4.3. Processing Payments.

(a) Port Finance Director. Within five days after approving a Payment Request, the Chief Harbor Engineer must forward the original signed Approved Payment Request to the Port Finance Director. If the Chief Harbor Engineer has not forwarded the Approved Payment Request within that period, or the Payment Request is deemed approved under **Subsection 4.2(c)** (Deemed Approval), Developer will have the right to deliver directly to the

Port Finance Director a Deemed Approved Payment Request, consisting of the Payment Request, together with proof of its delivery and later electronic notice under **Subsection 4.2(c)** (Deemed Approval) to the Chief Harbor Engineer, with a copy to the Chief Harbor Engineer.

Disbursements. As Project Payment Sources become available, the Port Finance Director will apply Project Payment Sources to pay the Acquisition Prices of the Horizontal Improvements and their Components, subject to (i) any limitations under Governing Law and Policy, and (ii) any priorities established in the Financing Plan. In addition to the Horizontal Development Costs of Horizontal Improvements that are the subject of the Approved Payment Request, the Port Finance Director will authorize payment of Developer Return on such costs, as provided in the Financing Plan. The Port Finance Director will direct disbursements by written delivery instructions to the Escrow Agent, the Indenture Trustee, or the Special Fund Trustee, as applicable, with copies to Developer, the CFD Agent, and the IFD Agent if applicable for their files. The Port Finance Director will make payment to the extent of available Project Payment Sources at the times and in the manner set forth in the Financing Plan.

4.4. Priority of Payment Requests.

(a) Numbering and Priority. For identification purposes only, Developer must number each Payment Request consecutively in the order in which it is submitted to the Port. The Port Finance Director will number consecutively each Approved Payment Request, along with any Payment Requests made under the Financing Plan. Except as provided under the DDA with respect to a Major Breach, the priority of Developer's right to payment under each unsatisfied Payment Request will be in ascending numerical order assigned by the Port Finance Director.

(b) Phase-Specific. Each Payment Request must be limited to Horizontal Development Costs for Horizontal Improvements that Developer incurred in a single Phase. Developer must identify the Phase to which the Payment Request pertains.

(c) Public Financing. The Port and Developer acknowledge that Public Financing Sources may be applied to a Payment Request only to the extent that the Horizontal Development Costs for Horizontal Improvements are eligible for payment under Governing Law and Policy, including the Interest Cost Limitation.

(d) No Deadline to Pay. The Port will honor Payment Requests: (i) in any number of installments as Project Payment Sources become available; and (ii) until fully paid, subject only to limitations on the amount of Project Payment Sources available for the Project.

(e) All Undisputed Amounts Paid. Except as provided under the DDA with respect to a Major Breach, the Port agrees not to withhold payment on any undisputed portion of a Payment Request.

4.5. Vesting. Developer's right to payment under a Payment Request will vest when it is approved or deemed approved under **Section 4.2** (Processing Payment Requests). If Project Payment Sources are not available to pay the full amount of a Payment Request when approved, then the Port will direct payment to the extent Project Payment Sources are available and notify Developer of the amount of the remaining unpaid portion. Developer will have a vested right to the payment of the unsatisfied portion of the Payment Request as Project Payment Sources become available.

5. MISCELLANEOUS.

5.1. Communications and Notices.

(a) Manner of Certain Communications. The following communications may be made in any written form for which receipt may be confirmed, including facsimile, electronic mail, and certified first class mail, return receipt requested:

(i) updates to **AA Exhibit A** (Horizontal Improvements) or **AA Exhibit B**

(Cost Estimates of Components by Phase);

(ii) requests for information or clarification regarding a Payment Request; and

(iii) any Port notice regarding a Payment Request.

(b) Effective Date. Communications covered by this Subsection will be effective upon receipt, or, if delivered after 5 p.m. or on a weekend or holiday, the next business day.

(c) Additional Information. In connection with processing any request under this Acquisition Agreement (including Payment Requests), the Port agrees that any additional information request by the Port or the Chief Harbor Engineer to Developer must be submitted as soon as practicable following the submission of the original materials, but in any event prior to applicable deadlines required by this Acquisition Agreement. The Chief Harbor Engineer will use good faith efforts to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use good faith efforts to provide a through, organized, and complete response to each request. Developer is authorized to communicate directly with the Port to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues.

(d) Submittals. Developer must submit proposed Payment Requests to the Port for review and processing in writing by certified first class mail - return receipt requested, personal delivery, or receipted overnight delivery. Payment Requests must be clearly marked: "*Payment Request No. _____; Pier 70; Attn: Chief Harbor Engineer* or *Port Finance Director*." Communications covered by this Subsection will be effective on the actual date of delivery, or, if delivered after 5 p.m. or on a weekend or holiday, the next business day. Copies of communications covered by this Subsection must be delivered in the same manner as the original.

(e) Notices. All other notices must be given in the manner specified in *App ¶ A.5* to the addresses for notice provided below, or as changed in accordance with *App ¶ A.5*.

Port:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Telephone: (415) 274-0400

Att'n: Chief Harbor Engineer
Facsimile:
Email:

Or

Att'n: Deputy Director, Finance/Admin.
Facsimile:
Email:

Or:

Att'n: [Port project manager]
Facsimile:
Email:

With a copy to:	City Attorney's Office Port of San Francisco Pier 1 San Francisco, CA 94111 Att'n: General Counsel Telephone: (415) 274-0485 Facsimile: (415) 274-0494 Email: eileen.malley@sfgov.org
Developer:	FC Pier 70, LLC 949 Hope Street, Suite 200 Los Angeles, California 90015 Attention: Mr. Kevin Ratner Facsimile: (213) 488-0039 Email: kevinratner@forestcity.net
With a copy to:	Forest City Enterprises, Inc. 50 Public Square 1360 Terminal Tower Cleveland, Ohio 44113 Attention: Amanda Seewald, Esq. Facsimile: (216) 263-6206 Email: amandaseewald@forestcity.net

(f) Day-to-Day Communications. Developer and the Port agree that day-to-day communications will be directed as follows.

(i) Developer: Jack Sylvan, 875 Howard Street, Suite 330, San Francisco, California 94103, jacksylvan@forestcity.net.

(ii) Port: [ ], Port Project Manager, (415) 274-xxxx, [ ]@sfport.com.

5.2. Amendment. The Parties may amend this Acquisition Agreement from time to time by agreement. Changes to the forms of the Payment Requests as needed to make adjustments to clarify and expedite the payment process under this Acquisition Agreement are ministerial in nature and will not amend this Acquisition Agreement. Changes to **AA Exhibit A** (Horizontal Improvements) and **AA Exhibit B** (Cost Estimates of Components by Phase) may be approved by the Port and the Developer without formal amendment of this Acquisition Agreement.

5.3. Successors and Assigns. This Acquisition Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, as governed by the DDA. This Acquisition Agreement may be assigned only in connection with an assignment of the DDA that is permitted in accordance with its terms.

5.4. Other Agreements. The obligations of Developer under this Acquisition Agreement will be those of a Party and not as an owner of property in the 28-Acre Site. Nothing in this Acquisition Agreement may be construed as affecting the Port's or Developer's rights, or duties to perform their respective obligations under the DDA. If this Acquisition Agreement creates ambiguity in relation to or conflicts with any provision of the Financing Plan, the Financing Plan will prevail.

5.5. Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other Party, or the failure by a Party to exercise its rights upon the

default of the other Party, will not constitute a waiver of such Party's right to later insist upon and demand strict compliance by the other Party with the terms of this Acquisition Agreement.

5.6. Parties in Interest. Nothing in this Acquisition Agreement, expressed or implied, is intended to or will be construed to confer upon or to give to any person or entity other than the Port and Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions, or stipulations of this Acquisition Agreement; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the Port or Developer will be for the sole and exclusive benefit of the Port and Developer.

5.7. Counterparts. This Acquisition Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

Executed as of the last date set forth below.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

By: _____
Kevin Ratner,
authorized signatory

Date: _____

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: _____

Authorized by Port Resolution No. 17-43
and Board of Supervisors Resolution No. 401-17.

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

[Page intentionally left blank.]

[Page intentionally left blank.]

AA EXHIBIT C

Form of Payment Request

PAYMENT REQUEST NO. _____

PHASE: _____

PRINCIPAL AMOUNT REQUESTED: $_____ for actual costs of Horizontal Improvements.

To the Chief Harbor Engineer and the Port:

1. I am authorized to execute this Payment Request on behalf of Developer.

2. The costs for which payment is requested:

(a) have not been inflated in any respect;

(b) have not been previously paid;

(c) are not the subject of any previously submitted Payment Requests; and

(d) have been calculated in conformance with the DDA, including the Financing Plan, and the Acquisition Agreement.

3.

[ ] The Acquiring Party has inspected the Horizontal Improvements or Components for which payment is requested (described in **AA Exhibit C1** (Form: Components or Costs Covered by Payment Request)) and determined that they have been constructed in accordance with the DDA. The Horizontal Development Costs of Horizontal Improvements or Components for which payment is requested are not the subject of dispute with any contractor, subcontractor, materialman, or other person who supplied goods or labor, as evidenced by the attached lien releases.

[ ] The Chief Harbor Engineer has inspected the Horizontal Improvements for which payment is requested and determined that they have been constructed in accordance with the DDA. The costs for which payment is requested are not the subject of dispute with any contractor, subcontractor, materialman, or other person who supplied goods or labor, as evidenced by the attached lien releases.

4. Developer is in compliance with the DDA and the Acquisition Agreement.

5. Neither Developer nor any Vertical Developer Affiliate is:

(a) delinquent in the payment of ad valorem real property taxes, possessory interest taxes, Mello-Roos Special Taxes, or special assessments levied on any of the Taxable Parcels it owns or ground leases in the 28-Acre Site; or

(b) in Material Breach of the DDA.

6. When this Payment Request is approved or deemed approved, payments are to be made as follows:

[ ] To Developer, the amount of $ _____ to its deposit account at the following financial institution by wire, according to the following instructions:

[Insert wiring instructions.]

[ ] Developer pass-throughs in the following amounts to any third party listed below at the specified address:

Name	Amount ($)	Address

By signing below, I certify that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the best of my knowledge based on reasonable investigation and inquiry.

By: _____
Authorized Representative of
FC Pier 70, LLC

Date: _____

Attachments:
[ ] Notice of approval
[ ] Unconditional lien releases from:
[ ] Conditional lien releases from:
[ ] For Completed Horizontal Improvement:
Copy of Chief Harbor Engineer Approval or
Record of Deemed Approval
[ ] AA Exhibit C1

NOTICE TO CHIEF HARBOR ENGINEER

Under section 4.2(c) of the Acquisition Agreement, if you fail to notify Developer that this Payment Request is approved or disapproved within 30 days after you determine that this Payment Request is complete, and the failure continues after the expiration of the electronic notice period under *App ¶ 2.2(c) (No Deemed Consent Without Notice)*, this Payment Request will be **deemed approved**.

Payment Request approved on _____

By: _____
Chief Harbor Engineer

AA EXHIBIT C1

Form: Components or Costs Covered by Payment Request

PAYMENT REQUEST NO. _____
PHASE: _____

1. The Components (descriptions must match **AA Exhibit B**) or other costs for which payment is requested under this Payment Request are:

_____

_____

_____

_____

_____

_____

2. Information for each contractor, subcontractor, materialman, and other contract for which payment is requested under this Payment Request is shown below.

Name	Contract Amount ($)	Date Paid by Developer	Requested Amount ($)	Previously Paid ($)
Total Requested:				

Attachments:
[ ] Proof of Payment for each amount specified above

FP EXHIBIT B
Form of Requisition

REQUISITION NO. _____

AMOUNT REQUESTED: $_____ .

To the Port Finance Director:

1. I am authorized to execute this Requisition on behalf of Developer.

2. Proof of payment of the amount requested is attached.

3. Developer is in compliance with the DDA and the Acquisition Agreement.

4. Neither Developer nor any Vertical Developer Affiliate is:

(a) delinquent in the payment of ad valorem real property taxes, possessory interest taxes, Mello-Roos Special Taxes, or special assessments levied on any of the Taxable Parcels it owns or ground leases in the 28-Acre Site; or

(b) in Material Breach of the DDA.

5. When this Requisition is approved, payments are to be made as follows:

[ ] To Developer, the amount of $ _____ to its deposit account at the following financial institution by wire, according to the following instructions:

[Insert wiring instructions.]

[ ] Developer pass-throughs in the following amounts to any third party listed below at the specified address:

Name	Amount ($)	Address

By signing below, I certify that the above representations and warranties and all information provided in this Requisition, including attachments and exhibits, are true and correct to the best of my knowledge based on reasonable investigation and inquiry.

By: _____
Authorized Representative of
FC Pier 70, LLC

Date: _____

Attachments:

[ ] Proof of payment

[ ] Update to the most recent Developer Quarterly Report, reflecting accrual of Allowed Return and Excess Return to the date of the Payment Request and daily accrual rate.

FOR PORT USE ONLY:

Approved Payment No. _____
Date of calculation: _____

Project Payment Sources	**Authorized Uses** **[Insert description of Developer Capital Costs to be paid]**	**Amount to be disbursed ($) for HDCs**	**Developer Return accrued to date & daily accrual**
Advance of Land Proceeds by Credit Bid			
Advance of Land Proceeds in Cash			
Port Capital Advance			
Pay-as-you-go Facilities Special Taxes			
Bonds secured by Facilities Special Taxes and Special Debt Service			
Bonds secured by Facilities Special Taxes only			
Pay-as-you-go Project Tax Increment			
Tax Allocation Bonds			
Subtotals			
Totals			

Payment Agents are authorized to disburse Project Payment Sources consistent with the authorized uses and amounts specified above, with Developer Return accrued up to the date of disbursement.

By: _____
Port Finance Director

FP EXHIBIT C

Form of Promissory Note-LP

This **PROMISSORY NOTE-LP** (this "**Note**") is made by **CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 LEASED PROPERTIES)** (the "**Pier 70 Leased Property CFD**") and **CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 CONDOMINIUMS)** ("**Pier 70 Condo CFD**") (each, a "**CFD**"), acting through the Port Commission of San Francisco, as the agent acting on behalf of either or both CFDs (the "**CFD Agent**") as of the last date set forth below.

This Note evidences the CFDs' joint and several promise to pay to the **PORT COMMISSION OF SAN FRANCISCO**, acting in its proprietary capacity (the "**Port**"), the principal amount of each Advance of Land Proceeds (each, an "**Advance**") that the Port will from time to time deliver into the Land Proceeds Fund held by the Special Fund Trustee in accordance with the Financing Plan (the "**Financing Plan**") to the Disposition and Development Agreement between the Port and FC Pier 70, LLC ("**Developer**"), dated as of May 2, 2018 (the "**DDA**"). Initially capitalized and other terms are defined in the Appendix to the DDA, which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents and this Note.

1. **Application of Advances of Land Proceeds.** Within one business day after the Port delivers each Advance, the CFD Agent will provide the following information to the Port for its records and entry on the allonge to this Note:

   (a) the date of the Advance;
   (b) the Phase to which the Advance applies;
   (c) each Approved Payment Request to which funds from the Advance were applied;
   (d) amounts applied to pay the Developer Balance, accounting separately for amounts applied to:
      i. the Entitlement Costs;
      ii. Allowed Developer Return on Entitlement Costs accrued up to the Reference Date;
      iii. Excess Return on Entitlement Costs accrued up to the Reference Date;
      iv. Developer Capital spent on Horizontal Development Costs after the Reference Date;
      v. Allowed Developer Return accrued on the Entitlement Sum and Developer Capital under **clause (iv)** after the Reference Date; and
      vi. Excess Return accrued on the Entitlement Sum and Developer Capital under **clause (iv)** after the Reference Date;
   (e) amounts applied to pay the Port Balance, accounting separately for amounts applied to:
      i. Port Capital spent on Horizontal Development Costs;
      ii. Allowed Return on Port Capital accrued after the Reference Date; and
      iii. Excess Return on Port Capital accrued after the Reference Date;
   (f) amounts applied to pay directly for Horizontal Development Costs; and
   (g) any balance of the Advance remaining in the Land Proceeds Fund.

2. **Principal Balance and Interest**. The principal balance of this Note will be the sum of the Advances, less the sum of amounts applied to Excess Return and the portion of payments made by the CFDs that are applied to the principal balance. Interest will accrue on the unpaid principal amount of each Advance from the date the Advance is made until the principal amount is paid in full, at an annual rate of XXXX percent, compounded quarterly. [*Note: Port and Developer will agree on the interest rate for Advances of Land Proceeds, which will not exceed the bond buyer index rate on the Reference Date, before the parties seek Board of Supervisors approval of the resolutions approving the CFD Formation Proceedings.*]

3. **Sources of Repayment**. The CFD Agent will instruct the Special Fund Trustee or the Indenture Trustee, as applicable, to make payments to the Port under this Note from available Public Financing Sources according to the priorities established under the Financing Plan. The Port will make entries on the allonge to reflect the date and application of each payment, including amounts paid to Developer and the Port.

4. **Wiring Instructions**. Unless the Port directs otherwise, the CFD Agent must tender each payment to be applied to this Note by wire to the Land Proceeds Fund as follows:

[Insert wiring instructions.]

5. **Annual Payments**. In accordance with the Financing Plan, the CFD Agent must make annual payments on this Note, subject to the Interest Cost Limitation. The first payment date under this Paragraph will be 10 business days after the Controller's next disbursement of Mello-Roos Special Taxes or Allocated Tax Increment to the Special Fund Trustee. Until the principal balance and accrued interest on this Note have been paid in full, additional payments will be due annually.

6. **Prepayments**. The CFD Agent may prepay the principal balance and accrued interest on this Note without penalty.

Executed at San Francisco, California on ___ _____, 2018.

PIER 70 LEASED PROPERTY CFD:

CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018- __ (PIER 70 LEASED PROPERTIES)

By: City and County of San Francisco, through the San Francisco Port Commission
Its: Agent

By: _____
Elaine Forbes
Port Director

Executed at San Francisco, California on ___ _____, 2018.

PIER 70 CONDO CFD:

CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018- __ (PIER 70 CONDOMINIUMS)

By: City and County of San Francisco, through the San Francisco Port Commission
Its: Agent

By: _____
Elaine Forbes
Port Director

Authorizcd by the Port Resolution No. 17-43 and Board Resolution No. _____

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

Authorized by the Port Resolution No. 17-43 and Board Resolution No. _____

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

ALLONGE TO PROMISSORY NOTE-LP

USES OF PORT ADVANCES

Date & Phase	Amount of Port Advance	Entitlement Sum	Developer's Phase Horiz Dev Costs	Developer's Allowed Return	Port Phase Horiz Dev Costs	Port's Allowed Return

PAYMENTS APPLIED TO HORIZONTAL DEVELOPMENT COSTS AND ALLOWED RETURN

Date	Amount Paid	Source of Payment	Principal balance on payment date	Accrued interest on payment date	Applied to principal balance	Applied to interest

FORM OF PARTIAL ASSIGNMENT

The Port Commission of San Francisco hereby:

1. assigns to FC Pier 70, LLC, or its designee ("Assignee"), the Developer Share of all amounts as they become due and payable under Promissory Note-LP, made by City and County of San Francisco Special Tax District No. 2018- __ (Pier 70 Leased Properties) and City and County of San Francisco Special Tax District No. 2018- __ (Pier 70 Condominiums) (the "Note"); and
2. irrevocably waives any right to receive the Developer Share of amounts due and payable under the Note.

This Partial Assignment will be effective immediately upon delivery to Assignee.

City and County of San Francisco,
through the San Francisco Port Commission

By: _____
Elaine Forbes
Port Director

Date:

FP EXHIBIT D

Form of Promissory Note-X

This **PROMISSORY NOTE-X** (this "**Note**") is made by **CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 LEASED PROPERTIES)** (the "**Pier 70 Leased Property CFD**") and **CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018-__ (PIER 70 CONDOMINIUMS)** ("**Pier 70 Condo CFD**") (each, a "**CFD**"), acting through the Port Commission of San Francisco, as the agent acting on behalf of either or both CFDs (the "**CFD Agent**") as of the last date set forth below.

This Note evidences the CFDs' joint and several promise to pay to the **PORT COMMISSION OF SAN FRANCISCO**, acting in its proprietary capacity (the "**Port**") the amounts described in Paragraph 2. Initially capitalized and other terms are defined in the Appendix to the DDA, which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents and this Note.

1. **Relationship to Promissory Note-LP**. This Note is a companion to Promissory Note-LP, which the CFDs delivered to the Port in connection with each Advances of Land Proceeds (each, an "**Advance**") that the Port will from time to time deliver into the Land Proceeds Fund held by the Special Fund Trustee in accordance with the Financing Plan (the "**Financing Plan**") to the Disposition and Development Agreement between the Port and FC Pier 70, LLC ("**Developer**"), dated as of XXXX (the "**DDA**"). The allonge to Promissory Note-LP will serve as the allonge to this Note.

2. **Principal Balance and Interest**. The principal balance of this Note will be the sum of the portion of each Advance that is applied to Excess Return, as shown on the allonge from time to time. Interest will accrue on the unpaid principal balance at an annual rate of XXXX percent, compounded quarterly, until paid in full.

3. **Sources of Repayment**. The CFD Agent will instruct the Special Fund Trustee or the Indenture Trustee, as applicable, to make payments to the Port under this Note from available Public Financing Sources, subject to the Interest Cost Limitation.

4. **Wiring Instructions**. Unless the Port directs otherwise, the CFD Agent must tender each payment to be applied to this Note by wire as follows:

   [Insert wiring instructions.]

   The Port will make entries on the allonge to reflect the date and application of each CFD payment.

5. **Annual Payments**. After all Project Payment Obligations and Promissory Note-LP have been paid in accordance with the Financing Plan, the CFD Agent must make annual payments on this Note. The first payment date under this Paragraph will be 10 business days after the Controller's next disbursement of Mello-Roos Special Taxes to the Special Fund Trustee. Until the principal balance and accrued interest on this Note have been paid in full, additional payments will be due annually.

6. **Prepayments**. The CFD Agent may prepay the principal balance and accrued interest on this Note without penalty.

Executed at San Francisco, California on ___ _____, 20___.

PIER 70 LEASED PROPERTY CFD:

CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018- __ (PIER 70 LEASED PROPERTIES)

By: City and County of San Francisco, through the San Francisco Port Commission
Its: Agent

By: _____
Elaine Forbes
Port Director

Authorized by the Port Resolution No. 17-43 and Board Resolution No. _____

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

Executed at San Francisco, California on ___ _____, 20___.

PIER 70 CONDO CFD:

CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2018- __ (PIER 70 CONDOMINIUMS)

By: City and County of San Francisco, through the San Francisco Port Commission
Its: Agent

By: _____
Elaine Forbes
Port Director

Authorized by the Port Resolution No. 17-43 and Board Resolution No. _____

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

FP EXHIBIT E

Term Sheet: Rate and Method of Apportionment for Pier 70 Leased Property, Pier 70 Condo Property CFD, and Hoedown Yard CFD

The Port and Developer have agreed that the RMAs for the Pier 70 Leased Property CFD, the Pier 70 Condo CFD, and the Hoedown Yard CFD shall be drafted consistent with the provisions below, subject to the approval by the Board of Supervisors. Capitalized terms used herein that are not defined shall have the meanings given such terms in the Appendix.

Under Financing Plan Section 4.13, Concurrent with the CFD Formation Proceedings, the Port and Developer in consultation with the City will negotiate in good faith regarding amendments to the DDA, Financing Plan, and Master Lease as required to address orderly foreclosure processes for both the Pier 70 Leased Property CFD and the Pier 70 Condo CFD. If the revisions would be a material change to the approved transaction documents, the Port and Developer will seek Port Commission and Board of Supervisors approval of the agreed amendments to the DDA, Financing Plan, and Master Lease in the Board of Supervisor's resolution approving the CFD Formation Proceedings (or companion legislation to be approved at the same time), and in a separate Port Commission resolution.

A. For Pier 70 Leased Properties CFD

1. Classes of Property:
   - "Developed Property" defined as follows:
     - *For levy of the Facilities Special Tax and Arts Building Special Tax*: all Taxable Parcels for which the 24-month anniversary of the date of the Vertical DDA has occurred during the previous Fiscal Year, regardless of whether or not a Building Permit has been issued.
     - *For levy of the Shoreline Special Tax and Services Special Tax*: all Taxable Parcels for which a TCO was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.
   - "Undeveloped Property" defined as
     - all Taxable Parcels that are not Developed Property.

2. Preliminary Special Tax Rates per gross square foot for Developed Property (subject to review):

Land Use	Facilities Special Tax	Shoreline Special Tax		Arts Building Special Tax	Services Special Tax
		Zone 1	Zone 2		
Non-Residential	$3.60	$0.55	$0.82	$0.51	$1.00

Rental less than 70 Feet	$3.59	$0.55	$0.80	$0.41	$0.81
Rental greater than or equal to 70 Feet	$3.80	$0.58	$0.87	$0.41	$0.81
Building 12	$3.38	Exempt	Exempt	Exempt	Exempt
Building 21	$3.50	Exempt	Exempt	Exempt	Exempt

3. Escalators:

- Facilities Special Tax: 2% annually.
- Shoreline Special Tax: 2% annually.
- Arts Building Special Tax: 2% annually.
- Services Special Tax: the lesser of the following: (i) the annual increase, if any, in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region (base years 1982-1984=100) published by the Bureau of Labor Statistics of the United States Department of Labor, or, if such index is no longer published, a similar escalator that is determined by the Port and City to be appropriate, and (ii) five percent (5%).

4. Uses of Special Taxes: See the Financing Plan, including Schedule 4.

5. Commencement of Special Taxes:

- Facilities Special Tax: on Developed Property, at the maximum special tax, regardless of debt service; no levy on Undeveloped Property unless bonds issued.
- Shoreline Special Tax: on Developed Property only at the maximum special tax, regardless of debt service; no levy on Undeveloped Property at any time.
- Arts Building Special Tax: on Developed Property only at the maximum special tax, regardless of debt service; no levy on Undeveloped Property at any time.
- Services Special Tax: on Developed Property only; no levy on Undeveloped Property at any time.

6. Terms of Special Taxes:

- The Facilities Special Tax shall be levied and collected on a Taxable Parcel until the earlier of: (i) the Fiscal Year in which the Port determines that all Authorized Expenditures that will be funded by the Leased Property CFD have been funded and all Bonds have been fully repaid, (ii) the Fiscal Year in which Tax Increment is no longer collected within the Sub-Project Area within which the Parcel is located, as determined by the Administrator with direction from the Deputy Director, and (iii) a Fiscal Year in the future to be determined at the time of formation of the Leased Property CFD.
- The Shoreline Special Tax shall be levied on and collected from each Taxable Parcel for 120 Fiscal Years.

- The Arts Building Special Tax shall be levied and collected until the earlier of: (i) the Fiscal Year in which $20 million in Arts Building Costs have been funded and all Arts Building Bonds have been fully repaid, and (ii) Fiscal Year 2080-81.

- The Services Special Tax shall be levied and collected in perpetuity.

7. Initial Parcels and Annexation:

   - Initial Parcels:

     - Zone 1 will initially include all Development Parcels to be developed as NOI Property in Phase 1 other than Historic Building 12.

     - Zone 2 will initially include all Development Parcels to be developed as NOI Property in future phases except Historic Building 21 and the Future Annexation Area.

     - Zone 3 will include Historic Building 12 and Historic Building 21.

   - RMA will provide for the future annexation of additional Leased Property from among the Future Annexation Area parcels (i.e., E1, F, G, H1, H2, E4, PKS and C1A).

8. Administrative Reduction of Taxes
   - Applies only to Facilities Special Tax and Shoreline Special Tax.
   - The Port and Developer will have the opportunity prior to issuance of first series of Bonds in the Pier 70 Leased Property CFD to agree to reduce special tax rates to reflect then-current valuation estimates, if lower (assuming a 20% buffer). If the special tax rates for one or more Zones are not pledged to Bonds, then, subject to the Port's approval, the special tax rates in such Zones may be reduced until Bonds secured by such special tax rates are issued.

9. Credit for Tax Increment
   - A parcel shall be entitled to a credit against the Facilities Special Tax from the tax increment received from that parcel (and from any tax increment generated in City and County of San Francisco Infrastructure Financing District No. 2, Sub-Project Areas G-2, G-3, and G-4 that is available after satisfying higher-priority items as set forth in the Financing Plan should the amount of tax increment received from the parcel not be sufficient to offset the Facilities Special Tax on that parcel), but only under the following circumstances:
     - The parcel has paid its ad valorem and Facilities Special Taxes (if any) in the previous year (i.e., delinquent parcels are not entitled to any credit); and
     - The parcel is an Assessed Parcel.

   - The term "Assessed Parcel" means NOI Property that meets all four of the following conditions: (i) the NOI Property has one or more buildings that have

been constructed or rehabilitated on the NOI Property and a TCO has been granted for such newly-constructed or newly-rehabilitated building(s); (ii) the newly-constructed or newly-rehabilitated building(s) have been fully-assessed by the County Assessor; (iii) the County Assessor has levied ad valorem taxes on the NOI Property based on the full value of the newly-constructed or newly-rehabilitated building(s); and (iv) the NOI Property has paid in full at least one year of these ad valorem taxes based upon the full value of the newly-constructed or newly-rehabilitated building(s).

- The mechanics and timing of the application of the credit will be determined in the Financing Plan and in connection with the drafting of the RMAs.

- The RMA will determine the establishment of appropriate tax increment and backup funds and the priority of funding of the accounts. In addition, the Parties will determine in the RMA how the Leased Properties Backup Fund will be replenished.

10. Miscellaneous

- Definition of Special Tax Requirement applicable to the Facilities Special Tax should **exclude** Administrative Expenses, which shall be collected from Arts Building Special Tax, Shoreline Special Tax, and/or Services Special Tax.

- Prepayment shall not be provided for any of the special taxes.

- The Shoreline Special Tax, the Arts Building Special Tax, and the Services Special Tax shall **not** be levied on Historic Buildings 12 and 21.

- The 10% delinquency limitation shall be applicable to all property in the Leased Property CFD (i.e., residential and non-residential property).

B. For Pier 70 Condo CFD

1. Classes of Property:
For Zone 1:

- "Developed Property" defined as follows:
  - *For levy of the Facilities Special Tax*: on a Taxable Parcel, at the earliest of:

    (i) the Fiscal Year commencing when the 36 month anniversary of the date that the Vertical DDA has occurred, or will occur, during the Fiscal Year; and

    (ii) the Fiscal Year commencing after the date the Port first issues a Temporary Certificate of Occupancy (TCO) for a building on the parcel on or prior to June 30 of the preceding Fiscal Year.

  - *For levy of the Services Special Tax*: all Taxable Parcels for which a TCO was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

- "Building Permit Property" defined as follows:
  - all Taxable Parcels that are not Developed Property for which a Building Permit was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

- Vertical DDA Property" defined as follows:
  - any Parcel that is not yet Developed Property or Building Permit Property against which a Vertical DDA has been recorded, and for which the Developer or the Vertical Developer has, by June 30 of the prior Fiscal Year, notified the Administrator of such recording.

- "Undeveloped Property" defined as
  - all Taxable Parcels that are not Developed Property, Building Permit Property, or Vertical DDA Property.

For Zone 2, unless Port and Developer, each in their sole discretion, agree to create the Building Permit Property class and treat Developed Property in the same manner as Zone 1:

- "Developed Property" defined as follows:
  - *For levy of the Facilities Special Tax and Arts Building Special Tax*: all Taxable Parcels (i) for which a Building Permit was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018, or (ii) Vertical DDA Property that has not pulled a Building Permit if the 36

month anniversary of the date of the Vertical DDA has occurred, or will occur, during the Fiscal Year.

- *For levy of the Services Special Tax*: all Taxable Parcels for which a TCO was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

- "Vertical DDA Property" defined as follows:
  - any Parcel that is not yet Developed Property against which a Vertical DDA has been recorded, and for which the Developer or the Vertical Developer has, by June 30 of the prior Fiscal Year, notified the Administrator of such recording.

- "Undeveloped Property" defined as
  - all Taxable Parcels that are not Developed Property or Vertical DDA Property.

2. Preliminary Special Tax Rates per net square foot for Developed Property (subject to review):

Zone	**Land Use**	**Facilities Special Tax**	**Arts Building Special Tax**	**Services Special Tax**
Zone #1	Parcel K North	$5.02	Exempt	$1.57
Zone #2	Condominiums	$4.70	$0.64	$1.25

3. Escalators:

- Facilities Special Tax: 2% annually.

- Arts Building Special Tax: 2% annually.

- Services Special Tax: the lesser of the following: (i) the annual increase, if any, in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region (base years 1982-1984=100) published by the Bureau of Labor Statistics of the United States Department of Labor, or, if such index is no longer published, a similar escalator that is determined by the Port and City to be appropriate, and (ii) five percent (5%).

4. Uses of Special Taxes: See the Financing Plan, including Schedule 4.

5. Commencement of Special Taxes:

- Facilities Special Tax: on all land use classes in accordance with the apportionment section; levy at maximum assigned tax rates on Developed Property regardless of

debt service; no levy on Building Permit Property, Vertical DDA Property, or Undeveloped Property unless bonds issued.

- Arts Building Special Tax: on Developed Property only, regardless of debt service; no levy on Building Permit Property, Vertical DDA Property, or Undeveloped Property at any time.

- Services Special Tax: on Developed Property only; no levy on Building Permit Property, Vertical DDA Property, or Undeveloped Property at any time.

6. Terms of Special Taxes:

- The Facilities Special Tax shall be levied on and collected from each Taxable Parcel for 120 Fiscal Years.

- The Arts Building Special Tax shall be levied, collected and applied to Arts Building Costs until the Fiscal Year in which $20 million in Arts Building Costs have been funded and all Arts Building Bonds have been fully repaid. Thereafter, the Arts Building Special Tax shall convert to a Services Special Tax and shall be levied and collected in perpetuity.

- The Services Special Tax shall be levied and collected in perpetuity.

7. Initial Parcels and Annexation:

- Initial Parcels:
  - Zone 1: Parcel K North
  - Zone 2: Parcels C1C, C2B, and D.

- RMA will provide for the future annexation of additional Condo Property from among the Future Annexation Area parcels (i.e., E1, F, G, H1, H2, E4, PKS and C1A).

8. Administrative Reduction of Taxes

- Applies only to the Facilities Special Tax.

- Special tax rates reduced prior to issuance of first series of Bonds so as to be consistent with the agreed-upon overall tax rate.

9. Miscellaneous

- The Arts Building Special Tax shall **not** be levied on Parcel K North.

- The 10% delinquency limitation shall be applicable to all property in the Pier 70 Condo CFD (i.e., residential and non-residential property).

- When Bonds are issued, capitalized interest will be allocated after the apportionment of the Special Tax to Developed Property but before the apportionment of Special Tax on any Building Permit Property, Vertical DDA Property, and Undeveloped Property.

C. For Hoedown Yard CFD

1. Classes of Property:
The Port may elect to create the Building Permit Property class and treat Developed Property in the Hoedown Yard CFD the same as Zone 1 of the Pier 70 Condo CFD.

"Developed Property" defined as follows:

- *For levy of the Facilities Special Tax*: all Taxable Parcels (i) for which a Building Permit was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018, or (ii) Vertical DDA Property that has not pulled a Building Permit if the 36 month anniversary of the date of the Vertical DDA has occurred, or will occur, during the Fiscal Year.

- *For levy of the Services Special Tax*: all Taxable Parcels for which a TCO was issued on or prior to June 30 of the preceding Fiscal Year, but not prior to January 1, 2018.

- "Vertical DDA Property" defined as follows:
  - any Parcel that is not yet Developed Property against which a Vertical DDA has been recorded, and for which the Developer or the Vertical Developer has, by June 30 of the prior Fiscal Year, notified the Administrator of such recording

- "Undeveloped Property" defined as
  - all Taxable Parcels that are not Developed Property or Vertical DDA Property.

2. Preliminary Special Tax Rates per net square foot for Developed Property (subject to review):

Land Use	**Facilities Special Tax**	**Services Special Tax**
Condominiums	$4.96	$1.56

3. Escalators:

- Facilities Special Tax: 2% annually.

- Services Special Tax: the lesser of the following: (i) the annual increase, if any, in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region (base years 1982-1984=100) published by the Bureau of Labor Statistics of the United States Department of Labor, or, if such index is no longer published, a similar escalator that is determined by the Port and City to be appropriate, and (ii) five percent (5%).

4. Uses of Special Taxes: See the Financing Plan, including Schedule 4.

5. Commencement of Special Taxes:

- Facilities Special Tax: on all land use classes in accordance with the apportionment section; levy at maximum assigned tax rates on Developed Property regardless of debt service; no levy on Vertical DDA Property or Undeveloped Property unless bonds issued.

- Services Special Tax: on Developed Property only; no levy on Vertical DDA Property or Undeveloped Property at any time.

6. Terms of Special Taxes:

- The Facilities Special Tax shall be levied on and collected from each Taxable Parcel for 120 Fiscal Years.

- The Services Special Tax shall be levied and collected in perpetuity.

7. Initial Parcels:

- Initial Parcels: HDY1, HDY2, and HDY3.

8. Miscellaneous

- The 10% delinquency limitation shall be applicable to all property in the Hoedown Yard CFD (i.e., residential and non-residential property).

FP SCHEDULE 1 - SUMMARY PRO-FORMA UNDERWRITING (a)

A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES		
Upfront Project Entitlement Expenditures	$	33,440,730
Phase I Infrastructure	$	149,544,813
Phase II Infrastructure	$	87,162,871
Phase III Infrastructure	$	60,771,977
Total Horizontal Infrastructure Uses	$	330,920,391
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES		
CFD/IFD Bonds - Debt Service Paid by Tax Increment		
Phase I IFD Bonds	$	62,680,685
Phase II IFD Bonds	$	40,679,584
Phase III IFD Bonds	$	65,063,440
Total CFD/IFD Bonds - Debt Service Paid by Tax Increment	$	168,423,709
Pay Go Tax Increment Applied to Project	$	195,734,586
Condominium CFD Facilities Tax Proceeds	$	42,149,125
Project Reserve Proceeds from Sea Level Rise CFD Tax	$	8,844,121
Total Horizontal Infrastructure Investment Sources	$	415,151,541
C.) MASTER DEVELOPER PEAK EQUITY (b)		
Phase I	$	80,556,347
Phase II	$	27,653,165
Phase III	$	20,127,914
D.) PREPAID AND ANNUAL GROUND RENT		
A-1 (Office)	$	13,334,094
KN (Resi)	$	27,204,716
E2 (Resi)	$	10,451,777
C-2B (Resi)	$	7,971,138
2 (Resi)	$	15,768,039
D-1 (Resi)	$	16,811,510
F-G (Office)	$	32,775,048
E1 (Resi)	$	18,940,015
E3 (Resi)	$	3,837,644
B-1 - B-2 (Office)	$	50,427,349
C-1A (Office)	$	214,055,803
C-1C (Resi)	$	9,492,272
H-1 (Resi)	$	11,822,625
H-2 (Resi)	$	31,277,816
Total Prepaid and Annual Ground Rent	$	464,169,846

E.) PROJECT NET CASH FLOW		
Horizontal Infrastructure Costs	$	(330,920,391)
Buildings 12 and 21 Feasibility Gap	$	(9,034,622)
CFD/IFD Bonds - Debt Service Paid by Tax Increment	$	168,423,709
Pay Go Tax Increment	$	195,734,586
Condominium CFD Facilites Tax Proceeds	$	42,149,125
Project Reserve from Sea Level Rise Tax Proceeds	$	8,844,121
Ground Rent Payments	$	464,169,846
Total Project Profit	$	539,366,375
F.) DISTRIBUTION OF PROFIT		
Master Developer Return on Investment	$	165,645,152
Profit Sharing:		
Master Developer Profit Participation - Prepaid Annual Ground Rent	$	-
Master Developer Profit Participation - Prepaid Ground Rent	$	71,849,439
Port of San Francisco Profit Participation - Annual Ground Rent	$	214,055,803
Port of San Francisco Profit Participation - Prepaid Ground Rent	$	87,815,981
Total Master Developer Profit	$	237,494,591
Total Port of San Francisco Profit	$	301,871,784
Total Project Profit	$	539,366,375
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT		
Port Annual Ground Rent (Including Parcel C-1A)	$	214,055,803
Port Share of Prepaid Ground Rent	$	87,815,981
1.5% of Net Proceeds from Refinancings	$	193,711,186
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenues	$	1,769,224,499
Condominium Resale Transfer Fees	$	1,684,030,812
Total Port of San Francisco Net Economic Benefit	$	3,948,838,281
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION		
Port's 8 Cents of Tax Increment	$	144,713,432
Unused Tax Increment to Port after Project is Complete	$	549,601,901
Total Tax Increment to Port for Pier 70 Wide Facilities and City Shoreline Protection	$	694,315,333
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION		
Available Sea Level Rise CFD Tax Proceeds	$	281,732,886
Available Condominium CFD Facilites Tax Proceeds	$	1,387,454,026
Unused Project Reserve Proceeds from Sea Level Rise CFD Tax	$	489,137,236
Unused Condominium CFD Facilities Tax Proceeds Applied to Project	$	1,696,025
Total CFD Tax Revenues for City Shoreline Protection	$	2,160,020,173

Notes:

**** All numbers are preliminary estimates and subject to further change. ****

(a) Numerical estimates are expressed in nominal terms unless otherwise denoted.

(b) Estimated peak equity assuming development of each phase on a stand-alone basis.

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UND ERWRITING (a)	TOTAL	2011 YEAR 1	2012 YEAR 2	2013 YEAR 3	2014 YEAR 4	2015 YEAR 5	2016 YEAR 6	2017 YEAR 7	2018 YEAR 8	2019 YEAR 9	2020 YEAR 10	2021 YEAR 11	2022 YEAR 12	2023 YEAR 13	2024 YEAR 14	2025 YEAR 15	2026 YEAR 16	2027 YEAR 17	2028 YEAR 18
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Project Entitlement Expenditure	$ 33,440,730	$ 1,334,232	$ 2,489,322	$ 2,982,397	$ 4,588,563	$ 5,653,196	$ 10,313,000	$ 6,070,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ 149,544,813	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 13,781,753	$ 41,137,323	$ 58,862,964	$ 35,962,773	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ 67,162,871	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 12,879,376	$ 43,257,250	$ 31,026,245	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ 60,771,977	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,938,653	$ 13,937,032	$ 18,788,379	$ 20,127,914
Total Horizontal Infrastructure Uses	$ 330,924,391	$ 1,334,232	$ 2,489,322	$ 2,982,397	$ 4,588,563	$ 5,653,196	$ 10,313,000	$ 6,070,000	$ 13,781,753	$ 41,137,323	$ 58,862,964	$ 35,962,773	$ 12,879,376	$ 43,257,250	$ 31,026,245	$ 7,938,653	$ 13,937,032	$ 18,788,379	$ 20,127,914
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Incremen																			
Phase I CFD/IFD Bonds	$ 82,580,685	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 16,882,139	$ 13,832,839	$ -	$ 17,276,277	$ -	$ 14,589,429	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ 40,879,584	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 29,567,890	$ -	$ -	$ -	$ 11,111,695	$ -
Phase III CFD/IFD Bonds	$ 65,063,440	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 5,588,434	$ -	$ 35,531,464	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Incremen	$ 188,523,709	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 16,882,139	$ 13,832,839	$ -	$ 17,276,277	$ 29,567,890	$ 20,275,862	$ -	$ 35,531,464	$ 11,111,695	$ -
Pay Go Tax Increment Applied to Proje	$ 195,734,586	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,239,731	$ 1,015,807	$ 480,080	$ 1,040,838	$ 4,584,814	$ 2,527,111	$ 2,124,718	$ 6,841,884
Condominium CFD Facilities Tax Proceed	$ 42,149,125	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,749,956	$ 2,748,134	$ 5,735,497	$ -	$ 59,581	$ 6,351,064	$ 108,632	$ 110,805	$ 13,231,506	$ 149,589	$ 152,561
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 8,844,121	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 451,545	$ 298,365	$ 304,333	$ 821,780	$ 902,625	$ 953,527
Total Horizontal Infrastructure Investment Source	$ 435,251,541	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,749,956	$ 19,628,274	$ 19,568,336	$ 1,239,731	$ 18,351,665	$ 36,850,578	$ 21,723,696	$ 4,999,951	$ 52,111,862	$ 14,288,607	$ 7,947,971
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	$ 80,958,347	$ 1,334,232	$ 3,823,554	$ 6,805,951	$ 11,404,534	$ 17,057,730	$ 27,370,730	$ 33,440,730	$ 33,440,730	$ 30,102,772	$ 55,260,850	$ 80,556,347	$ 87,192,422	$ 44,482,947	$ 29,187,979	$ 21,715,724	$ -	$ -	$ -
Phase II	$ 27,853,165	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 12,879,378	$ 22,846,959	$ 27,853,165	$ 27,853,165	$ 27,853,165	$ 27,853,165	$ 27,853,165
Phase III	$ 20,127,914	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,938,653	$ -	$ -	$ 20,127,914
D.) PREPAID AND ANNUAL GROUND RENT																			
A-1 (Office)	$ 13,334,084	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,666,819	$ 10,667,275	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Resi)	$ 27,204,718	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 27,204,718	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ 10,451,777	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 10,451,777	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ 7,971,138	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,971,138	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ 15,768,039	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 15,768,039	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ 18,811,510	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 18,811,510	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ 32,775,048	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 8,555,010	$ 29,220,038	$ -	$ -	$ -	$ -
E1 (Resi)	$ 18,940,015	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 18,940,015	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ 3,837,844	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 3,837,844	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ 50,427,349	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 10,085,470	$ 40,341,879	$ -
C-1A (Office)	$ 214,055,803	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 383,652	$ 374,561	$ 385,798	$ 397,372
C-1C (Resi)	$ 9,492,272	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 9,492,272	$ -	$ -
H-1 (Resi)	$ 11,822,625	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 11,822,625	$ -	$ -
H-2 (Resi)	$ 31,277,816	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 31,277,816	$ -	$ -
Total Prepaid and Annual Ground Ren	$ 464,160,846	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 27,204,718	$ 34,190,954	$ 19,478,329	$ 10,667,275	$ -	$ 29,332,869	$ 29,220,038	$ 383,652	$ 63,052,745	$ 40,727,677	$ 397,372
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Cash	$ (330,920,391)	$ (1,334,232)	$ (2,489,322)	$ (2,982,397)	$ (4,588,563)	$ (5,653,196)	$ (10,313,000)	$ (6,070,000)	$ (13,781,753)	$ (41,137,323)	$ (58,862,964)	$ (35,962,773)	$ (12,879,376)	$ (43,257,250)	$ (31,026,245)	$ (7,938,653)	$ (13,937,032)	$ (18,788,379)	$ (20,127,914)
Buildings 12 and 21 Feasibility Gap	$ (9,034,672)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (4,314,837)	$ -	$ -	$ (4,719,785)	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ 188,423,709	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 16,882,139	$ 13,832,839	$ -	$ 17,276,277	$ 29,567,890	$ 20,275,862	$ -	$ 35,531,464	$ 11,111,695	$ -
Pay Go Tax Incremen	$ 195,734,586	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,239,731	$ 1,015,807	$ 480,080	$ 1,040,838	$ 4,584,814	$ 2,527,111	$ 2,124,718	$ 6,841,884
Condominium CFD Facilities Tax Proceed	$ 42,149,125	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,749,956	$ 2,748,134	$ 5,735,497	$ -	$ 59,581	$ 6,351,064	$ 108,632	$ 110,805	$ 13,231,506	$ 149,589	$ 152,561
Project Reserve from Sea Level Rise Tax Proceed	$ 8,844,121	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 451,545	$ 298,365	$ 304,333	$ 821,780	$ 902,625	$ 953,527
Ground Rent Payments	$ 464,160,846	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 27,204,718	$ 34,190,954	$ 19,478,329	$ 10,667,275	$ -	$ 29,332,869	$ 26,220,038	$ 383,652	$ 63,052,745	$ 40,727,677	$ 397,372
Total Project Profit	$ 539,366,375	$ (1,334,232)	$ (2,489,322)	$ (2,982,397)	$ (4,588,563)	$ (5,653,196)	$ (10,313,000)	$ (6,070,000)	$ 21,172,919	$ 12,681,805	$ (19,816,299)	$ (24,055,767)	$ 5,472,289	$ 18,811,161	$ 16,917,432	$ (2,575,060)	$ 96,507,789	$ 36,247,926	$ (11,782,771)
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investmen	$ 165,645,152	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 21,172,919	$ 9,343,947	$ 5,541,778	$ 1,239,731	$ 4,987,740	$ 9,826,267	$ 2,408,730	$ 1,547,686	$ 68,659,135	$ 18,322,747	$ 1,480,147
Profit Sharing.																			
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ 71,848,439	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Annual Ground Ren	$ 214,055,803	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 383,652	$ 374,561	$ 385,798	$ 397,372
Port of San Francisco Profit Participation - Prepaid Ground Ren	$ 87,815,981	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Master Developer Prof	$ 237,494,591	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 21,172,919	$ 9,343,947	$ 5,541,778	$ 1,239,731	$ 4,987,740	$ 9,826,267	$ 2,408,730	$ 1,547,686	$ 68,659,135	$ 18,322,747	$ 1,480,147
Total Port of San Francisco Profit	$ 301,871,784	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 383,652	$ 374,561	$ 385,798	$ 397,372
Total Project Profit	$ 539,366,375	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 21,172,919	$ 9,343,947	$ 5,541,778	$ 1,239,731	$ 4,987,740	$ 9,826,267	$ 2,408,730	$ 1,911,338	$ 69,033,696	$ 18,708,545	$ 1,877,519
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT																			
Port Annual Ground Rent (including Parcel C-1A	$ 214,055,803	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 383,652	$ 374,561	$ 385,798	$ 397,372
Port Share of Prepaid Ground Ren	$ 87,815,981	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% of Net Proceeds from Refinancing:	$ 193,711,186	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% (Yrs 30-69) & 2.5% (Yrs 60-99) of Modified Gross Revenue	$ 1,769,224,495	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium Resale Transfer Fee:	$ 1,894,030,812	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 77,427	$ 180,604	$ 334,209	$ 496,869	$ 668,986	$ 900,784
Total Port of San Francisco Economic Benef	$ 3,948,838,281	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 77,427	$ 180,604	$ 697,861	$ 871,430	$ 1,054,784	$ 1,298,156
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	$ 144,713,432	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 202,961	$ 383,505	$ 708,353	$ 727,520	$ 736,970	$ 1,260,574
Unused Tax Increment to Port after Project is Complet	$ 549,601,901	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protection	$ 694,315,333	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 202,961	$ 383,505	$ 708,353	$ 727,520	$ 736,970	$ 1,260,574
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceed	$ 281,732,886	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 53,010	$ 97,505	$ 99,455	$ 101,444	$ 273,927	$ 343,815	$ 317,842
Available Condominium CFD Facilities Tax Proceed	$ 1,387,454,026	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 469,137,236	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ 1,894,075	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 2,140,000,123	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 53,010	$ 97,505	$ 99,455	$ 101,444	$ 273,927	$ 343,815	$ 317,842

Notes:

*** All numbers are preliminary estimates and subject to further change ***

(a) Numerical estimates are expressed in nominal terms unless otherwise denoted.

(b) Estimated peak equity assuming development of each phase s stand-alone basis

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2029 YEAR 19	2030 YEAR 20	2031 YEAR 21	2032 YEAR 22	2033 YEAR 23	2034 YEAR 24	2035 YEAR 25	2036 YEAR 26	2037 YEAR 27	2038 YEAR 28	2039 YEAR 29	2040 YEAR 30	2041 YEAR 31	2042 YEAR 32	2043 YEAR 33	2044 YEAR 34	2045 YEAR 35	2046 YEAR 36	2047 YEAR 37
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Project Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Incremen																			
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ 23,945,542	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Increme	$ -	$ 23,945,542	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Proje	$ 4,011,127	$ 4,171,153	$ 6,337,138	$ 6,588,045	$ 6,843,970	$ 7,105,013	$ 7,371,278	$ 7,642,867	$ 7,919,888	$ 8,202,451	$ 8,490,664	$ 8,784,641	$ 9,084,498	$ 9,390,352	$ 9,247,744	$ 9,311,913	$ 9,033,333	$ 9,320,109	$ 9,612,621
Condominium CFD Facilities Tax Proceed	$ 155,612	$ 230,404	$ 235,012	$ 239,712	$ 244,506	$ 249,397	$ 254,384	$ 259,472	$ 264,662	$ 269,955	$ 275,354	$ 280,861	$ 286,478	$ 292,208	$ 298,052	$ 304,013	$ 310,093	$ 316,295	$ 322,621
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 1,587,095	$ 1,518,837	$ 1,403,246	$ 502,787	$ (0)	$ 0	$ (0)	$ 0	$ (0)	$ 0	$ (0)	$ 0	$ (0)	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ 5,753,834	$ 29,865,936	$ 7,975,396	$ 7,330,524	$ 7,088,476	$ 7,354,410	$ 7,625,662	$ 7,902,338	$ 8,184,550	$ 8,472,405	$ 8,766,018	$ 9,065,502	$ 9,370,976	$ 9,682,560	$ 9,545,795	$ 9,615,926	$ 9,343,426	$ 9,636,404	$ 9,935,242
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ 27,653,165	$ 27,653,165	$ 27,653,165	$ 27,653,165	$ 27,653,165	$ 27,653,165	$ 27,579,197	$ 21,177,384	$ 14,210,487	$ 8,647,509	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127914	$ 20,127 914	$ 20,127,914	$ 20,127,914	$ 20,127,914	$ 20,127,914
D.) PREPAID AND ANNUAL GROUND REN																			
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ 409,293	$ 421,572	$ 434,219	$ 447 246	$ 460,663	$ 474,483	$ 488,717	$ 503 379	$ 518,480	$ 534,035	$ 550,056	$ 566,557	$ 583,554	$ 601,061	$ 619,092	$ 637,665	$ 656,795	$ 676,499	$ 696,794
C-1C (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Ren	$ 409,293	$ 421,572	$ 434,219	$ 447 246	$ 460,663	$ 474,483	$ 488,717	$ 503,379	$ 518,480	$ 534,035	$ 550,056	$ 566,557	$ 583,554	$ 601,061	$ 619,092	$ 637,665	$ 656,795	$ 676,499	$ 696,794
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Cash	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 17 and 21 Feasibility Gai	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ 23,945,542	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment	$ 4,011,127	$ 4,171,153	$ 6,337,138	$ 6,588,045	$ 6,843,970	$ 7,105,013	$ 7,371,278	$ 7,642,867	$ 7,919 888	$ 8,202,451	$ 8,490,664	$ 8,784,641	$ 9,084 498	$ 9,390 352	$ 9,247,744	$ 9,311913	$ 9,033,333	$ 9,320,109	$ 9,612,621
Condominium CFD Facilities Tax Proceed	$ 155,612	$ 230,404	$ 235,012	$ 239,712	$ 244,506	$ 249 397	$ 254,384	$ 259 472	$ 264,662	$ 269,955	$ 275,354	$ 280,861	$ 286,478	$ 292 208	$ 298,052	$ 304,013	$ 310,093	$ 316,295	$ 322,621
Project Reserve from Sea Level Rise Tax Proceed	$ 1,587,095	$ 1,518,837	$ 1,403 246	$ 502,787	$ (0)	$ 0	$ (0)	$ 0	$ (0)	$ 0	$ (0)	$ 0	$ (0)	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ 409,293	$ 421572	$ 434,219	$ 447 248	$ 460,663	$ 474,483	$ 488,717	$ 503,379	$ 518,480	$ 534,035	$ 550,056	$ 566,557	$ 583,554	$ 601,061	$ 619,092	$ 637,665	$ 656,795	$ 676,499	$ 696,794
Total Project Profit	$ 6,163,127	$ 30,387,508	$ 8,409,615	$ 7,777,770	$ 7,549,139	$ 7,828,893	$ 8,114,379	$ 8,405 718	$ 8,703,031	$ 9,006,440	$ 9,316,073	$ 9,632,059	$ 9,954,530	$ 10,283,820	$ 10,164,888	$ 10,253 581	$ 10,000 221	$ 10,312,903	$ 10,632,036
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investmer	$ 3,909,025	$ 3,476,815	$ 8,399,951	$ 7,330,524	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:																			
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ -	$ -	$ -	$ -	$ 3,189,614	$ 3,309,484	$ 3,431,548	$ 3,556,053	$ 3,683,048	$ 3,812,582	$ 3,944,708	$ 4,079,476	$ 4 218,939	$ 4,357,152	$ 4,295,608	$ 4,377,187	$ 4,204,542	$ 4,336,362	$ 4,470,859
Port of San Francisco Profit Participation - Annual Ground Ren	$ 409,293	$ 421,572	$ 434,219	$ 447,246	$ 460,663	$ 474,483	$ 488,717	$ 503.379	$ 518 480	$ 534,035	$ 550,056	$ 566,557	$ 583,554	$ 601,061	$ 619 092	$ 637 605	$ 656,795	$ 676,499	$ 696,794
Port of San Francisco Profit Participation - Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ 3,886,862	$ 4,044,925	$ 4 194 114	$ 4,346,267	$ 4,501503	$ 4,659,823	$ 4 821,310	$ 4,986,026	$ 5,154,037	$ 5,325408	$ 5,250,188	$ 5,288 758	$ 5,138,884	$ 5,300,022	$ 5 464,383
Total Master Developer Prof	$ 3 909,025	$ 3,476,815	$ 8 305,951	$ 7,330,524	$ 3,189,614	$ 3,309,484	$ 3 431,548	$ 3,566 053	$ 3,683 048	$ 3,812 582	$ 3 944,708	$ 4,079,476	$ 4,216,930	$ 4,357,152	$ 4,295,608	$ 4,327,167	$ 4 204,542	$ 4,336,362	$ 4,470,859
Total Port of San Francisco Profi	$ 409,293	$ 421,572	$ 434219	$ 447,248	$ 4,359,325	$ 4,519,408	$ 4,682,831	$ 4,849 666	$ 5,019,983	$ 5,193,858	$ 5,371 365	$ 5,552,583	$ 5,737591	$ 5,926 469	$ 5,869 280	$ 5 926 424	$ 5,795 680	$ 5,976,521	$ 6 161177
Total Project Profi	$ 4,318,318	$ 3,900 387	$ 8 830,170	$ 7,777 770	$ 7,549,139	$ 7 828,893	$ 8,114,379	$ 8 405 718	$ 8,703,031	$ 9,006,440	$ 9,316,073	$ 9,632,059	$ 9,954,530	$ 10 283,820	$ 10,164 888	$ 10,253 581	$ 10,000 221	$ 10 312,903	$ 10,632,036
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFI																			
Port Annual Ground Rent (including Parcel C-1A	$ 409,293	$ 421,572	$ 434,219	$ 447,248	$ 460,663	$ 474,483	$ 488,717	$ 503,379	$ 518,480	$ 534,035	$ 550 056	$ 566,557	$ 583 554	$ 601,061	$ 619,092	$ 637,665	$ 656,795	$ 676,499	$ 696,794
Port Share of Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ 3 886,662	$ 4,044,925	$ 4 194 114	$ 4,346,267	$ 4,501,503	$ 4,659 823	$ 4,821,310	$ 4,986,026	$ 5,154,037	$ 5,325,408	$ 5,250,188	$ 5,288,758	$ 5,138,884	$ 5,300,022	$ 5,464,383
1 5% of Net Proceeds from Refinancing	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,056,688	$ 985,153	$ -	$ -	$ 2,521,244	$ 485,078	$ -	$ 3,038,208	$ -	$ -	$ -	$ -	$ -
1 5% (Yrs 30-50) & 2.5% (Yrs 50-99) of Modified Gross Revenue	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium Resale Transfer Fee	$ 1,145,887	$ 1,309,659	$ 1,563 589	$ 1,777,083	$ 2,001,979	$ 2,238,768	$ 2,476,718	$ 2 823 929	$ 2,830 788	$ 2,915,713	$ 3 003 184	$ 3,093,280	$ 3,186 078	$ 3 281,861	$ 3,380 111	$ 3,481,514	$ 3,585 959	$ 3,693,538	$ 3,804,344
Total Port of San Francisco Economic Benef	$ 1,555,180	$ 1,731,231	$ 1 997,808	$ 2,224,328	$ 6,361,303	$ 6 758 177	$ 8,206,237	$ 8 456 748	$ 7 850,772	$ 8,109,571	$ 10 885 794	$ 9,130,942	$ 8,973,688	$ 12,246,337	$ 9,249,391	$ 9,407 938	$ 8,381,638	$ 9,670,059	$ 9,565,531
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	$ 1 357,265	$ 1,384 410	$ 2,148 039	$ 2,191,000	$ 2,234,820	$ 2,279,517	$ 2 325,107	$ 2,371,609	$ 2,419 041	$ 2,467,422	$ 2,516,771	$ 2,567,106	$ 2,618,448	$ 2,670,817	$ 2,724,233	$ 2,778,718	$ 2 834,292	$ 2,890 978	$ 2,948,798
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protection	$ 1,357,265	$ 1,384,410	$ 2,148,039	$ 2,191,000	$ 2,234,820	$ 2,279,517	$ 2 325,107	$ 2,371,609	$ 2,419 041	$ 2,467,422	$ 2,516,771	$ 2,567,106	$ 2,618,448	$ 2,670,817	$ 2,724,233	$ 2,778 718	$ 2 834,292	$ 2,890 978	$ 2,948 798
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceed	$ 529 032	$ 539,612	$ 798,372	$ 814,338	$ 830,626	$ 847,239	$ 864,183	$ 881,467	$ 899 096	$ 917,078	$ 935420	$ 954,128	$ 973,211	$ 992,675	$ 1 012,529	$ 1,032,779	$ 1,053,435	$ 1,074,503	$ 1,095,993
Available Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Project Reserve Proceeds from Sea Level Rise CFD Tr	$ -	$ -	$ -	$ 938,544	$ 1,458,938	$ 1,489,136	$ 1,518,919	$ 1,549,297	$ 1,580,283	$ 1,611,889	$ 1,844,127	$ 1,677,009	$ 1,710,550	$ 1,744,761	$ 1,779,656	$ 1,815,249	$ 1,851,554	$ 1,888,585	$ 1,926,357
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 529,032	$ 539,612	$ 798,372	$ 1,742,884	$ 2,290,564	$ 2 336,375	$ 2,383 102	$ 2,430,764	$ 2,479,380	$ 2,528,967	$ 2 579 547	$ 2,631,138	$ 2,683,760	$ 2 737,436	$ 2,792 184	$ 2,848,028	$ 2,904,989	$ 2 963,088	$ 3,022,350

Notes:

**** All numbers are preliminary estimates and subject to further change. ****

(a) Numerical estimates are expressed in nominal terms unless otherwis denoted.

(b) Estimated peak equity assuming development of each phase o stand-alone basis.

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2048 YEAR 38	2049 YEAR 39	2050 YEAR 40	2051 YEAR 41	2052 YEAR 42	2053 YEAR 43	2054 YEAR 44	2055 YEAR 45	2056 YEAR 46	2057 YEAR 47	2058 YEAR 48	2059 YEAR 49	2060 YEAR 50	2061 YEAR 51	2062 YEAR 52	2063 YEAR 53	2064 YEAR 54	2065 YEAR 55	2066 YEAR 56
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Project Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Increment																			
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Increme	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Projec	$ 9,114,433	$ 8,301,299	$ 8,995,267	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ 329,073	$ 335,655	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ 9,443,506	$ 9,636,954	$ 8,995,267	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ 19,183,297	$ 10,745,247	$ 1,641,624	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D.) PREPAID AND ANNUAL GROUND REN																			
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ 717,698	$ 739,229	$ 761,406	$ 784,248	$ 807,775	$ 832,008	$ 856,969	$ 882,678	$ 909,158	$ 936,433	$ 964,526	$ 993,462	$ 1,023,265	$ 1,053,963	$ 1,085,582	$ 1,118,150	$ 1,151,694	$ 1,186,245	$ 1,221,832
C-1C (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Rer	$ 717,698	$ 739,229	$ 761,406	$ 784,248	$ 807,775	$ 832,008	$ 856,969	$ 882,678	$ 909,158	$ 936,433	$ 964,526	$ 993,462	$ 1,023,265	$ 1,053,963	$ 1,085,582	$ 1,118,150	$ 1,151,694	$ 1,186,245	$ 1,221,832
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Gap	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Increme	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment	$ 9,114,433	$ 9,301,299	$ 8,995,267	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ 329,073	$ 335,655	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve from Sea Level Rise Tax Proceec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ 717,698	$ 739,229	$ 761,406	$ 784,248	$ 807,775	$ 832,008	$ 856,969	$ 882,678	$ 909,158	$ 936,433	$ 964,526	$ 993,462	$ 1,023,265	$ 1,053,963	$ 1,085,582	$ 1,118,150	$ 1,151,694	$ 1,186,245	$ 1,221,832
Total Project Profi	$ 10,161,204	$ 10,376,182	$ 9,756,672	$ 784,248	$ 807,775	$ 832,008	$ 856,969	$ 882,678	$ 909,158	$ 936,433	$ 964,526	$ 993,462	$ 1,023,265	$ 1,053,963	$ 1,085,582	$ 1,118,150	$ 1,151,694	$ 1,186,245	$ 1,221,832
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investmer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:																			
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ 4,249,578	$ 4,336,629	$ 4,047,870	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Annual Ground Rer	$ 717,698	$ 739,229	$ 761,406	$ 784,248	$ 807,775	$ 832,008	$ 856,969	$ 882,678	$ 909,158	$ 936,433	$ 964,526	$ 993,462	$ 1,023,265	$ 1,053,963	$ 1,085,582	$ 1,118,150	$ 1,151,694	$ 1,186,245	$ 1,221,832
Port of San Francisco Profit Participation - Prepaid Ground Rer	$ 5,193,929	$ 5,300,324	$ 4,947,397	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Master Developer Prof	$ 4,249,578	$ 4,336,629	$ 4,047,870	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Port of San Francisco Profi	$ 5,911,626	$ 6,039,553	$ 5,708,802	$ 784,248	$ 807,775	$ 832,008	$ 856,969	$ 882,678	$ 909,158	$ 936,433	$ 964,526	$ 993,462	$ 1,023,265	$ 1,053,963	$ 1,085,582	$ 1,118,150	$ 1,151,694	$ 1,186,245	$ 1,221,832
Total Project Profi	$ 10,161,204	$ 10,376,182	$ 9,756,672	$ 784,248	$ 807,775	$ 832,008	$ 856,969	$ 882,678	$ 909,158	$ 936,433	$ 964,526	$ 993,462	$ 1,023,265	$ 1,053,963	$ 1,085,582	$ 1,118,150	$ 1,151,694	$ 1,186,245	$ 1,221,832
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT																			
Port Annual Ground Rent (including Parcel C-1A	$ 717,698	$ 739,229	$ 761,406	$ 784,248	$ 807,775	$ 832,008	$ 856,909	$ 882 678	$ 909,158	$ 936,433	$ 964 526	$ 993,462	$ 1 023,265	$ 1,053 963	$ 1 085,582	$ 1,118,150	$ 1,151,694	$ 1,186,245	$ 1,221 832
Port Share of Prepaid Ground Ren	$ 5,193,929	$ 5,300,324	$ 4,947,397	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% of Net Proceeds from Refinancings	$ -	$ -	$ 1,708,804	$ 1,534,836	$ -	$ -	$ 3,926,016	$ 755,735	$ -	$ 4,733,429	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,661,949	$ 2,391,225
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	$ -	$ 641,735	$ 1,228,414	$ 1,265,267	$ 1,303,225	$ 2,911,918	$ 3,319,546	$ 3,419,132	$ 5 437,238	$ 5,600,356	$ 5,768,368	$ 5,941,417	$ 6 119,659	$ 6,303,249	$ 6,492,348	$ 6,687,117	$ 6,887,730	$ 7,094,362	$ 7,307,193
Condominium Resale Transfer Fee	$ 3,918,474	$ 4,036,029	$ 4,157,110	$ 4,281,823	$ 4,410278	$ 4,542,586	$ 4,678,863	$ 4,819,229	$ 4,963,806	$ 5,112,720	$ 5,266,102	$ 5 424 085	$ 5,586,808	$ 5,754,412	$ 5,927,044	$ 6,104,856	$ 6,288 001	$ 6 476 641	$ 6 670,941
Total Port of San Francisco Expenses Benef	$ 9,830,101	$ 10,817,317	$ 12,802,930	$ 7,866,173	$ 6,521,277	$ 8,286,513	$ 12,763,395	$ 9,876,776	$ 11,310,202	$ 16 382,937	$ 11,868,993	$ 12,358,963	$ 12,729,732	$ 13,111,824	$ 13 504,973	$ 13,910 122	$ 14,327 426	$ 17,419,197	$ 17,561,190
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	$ 3,007,774	$ 3,057,929	$ 3,129,268	$ 3,191,874	$ 3,255,711	$ 3,320,825	$ 3,387,242	$ 3,454,987	$ 3,524,086	$ 3,594,568	$ 3,666,459	$ 3,739,788	$ 3,814,584	$ 3,890 879	$ 3,968,694	$ 4,048 068	$ 4,129,029	$ 4,211,609	$ 4,295,842
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ 591,892	$ 8,642,808	$ 12,244,686	$ 16,198 463	$ 13,476 969	$ 18 107,142	$ 21,863,181	$ 20,101,296	$ 21,881,234	$ 28,988,053	$ 25,837,114	$ 29,934,381	$ 29,216,942	$ 28,842,481	$ 29,419331	$ 30 007,717	$ 30,607,872
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protection	$ 3,007,774	$ 3,057,929	$ 3,721,179	$ 11,834,682	$ 15,500,402	$ 19,519 288	$ 16,864 211	$ 19 562,129	$ 25,207,268	$ 23,695,864	$ 25,327,693	$ 32,737,841	$ 29,451,698	$ 33,825,257	$ 33,245,636	$ 32,890,548	$ 33,548,360	$ 34 219,327	$ 34,903,713
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceed	$ 1,117,913	$ 1,140272	$ 1,163,077	$ 1,186,339	$ 1,210,065	$ 1,234,267	$ 1,258,952	$ 1 284,131	$ 1,309 814	$ 1,336,010	$ 1,362,730	$ 1,389,985	$ 1 417,784	$ 1,446 140	$ 1,475 063	$ 1,504,564	$ 1,534,655	$ 1,565,349	$ 1,596,656
Available Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ 1,652,808	$ 2,483,660	$ 3,560,485	$ 3,631,695	$ 3,704,329	$ 4,902,236	$ 5,000,380	$ 5,100,388	$ 7,551,638	$ 7,702,671	$ 7,856,725	$ 8,013,859	$ 8,174,136	$ 8,337,619	$ 8,504,371	$ 8,674,458
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 1,964,884	$ 2,004 181	$ 2,044,265	$ 2,085,150	$ 2,126,853	$ 2,169,390	$ 2,212,778	$ 2,257,034	$ 2 302,174	$ 2,348 218	$ 2,395,182	$ 2,443,086	$ 2,491,948	$ 2,541,787	$ 2,592,622	$ 2,644,475	$ 2,697,364	$ 2,751,312	$ 2 806 338
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ 342,368	$ 243409	$ 221,830	$ 170 410	$ 173,818	$ 177 295	$ 119,950	$ 172 348	$ 124,796	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protecto	$ 3,082,797	$ 3 144,453	$ 3,549,710	$ 5 467,706	$ 6,042,210	$ 7,134,552	$ 7,277,243	$ 7,422,788	$ 8,634174	$ 8,906,957	$ 8,982,984	$ 11,384,709	$ 11,612,403	$ 11,844,651	$ 12,081,544	$ 12,323,175	$ 12 569,836	$ 12,821,002	$ 13,077,452

Notes:

*** All numbers are preliminary estimates and subject to further change ***

(a) Numerical estimates are expressed in nominal terms unless otherwi denoted.

(b) Estimated peak equity assuming development of each phase i stand-alone basis

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2067 YEAR 57	2068 YEAR 58	2069 YEAR 59	2070 YEAR 60	2071 YEAR 61	2072 YEAR 62	2073 YEAR 63	2074 YEAR 64	2075 YEAR 65	2076 YEAR 66	2077 YEAR 67	2078 YEAR 68	2079 YEAR 69	2080 YEAR 70	2081 YEAR 71	2082 YEAR 72	2083 YEAR 73	2084 YEAR 74	2085 YEAR 75
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Prepaid Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Incremen																			
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Increme	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Projec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ -	$ -	$ -	$ -	$ -	$ 0	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D.) PREPAID AND ANNUAL GROUND REN																			
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ 1,258,487	$ 1,296,242	$ 1,335,129	$ 1,375,183	$ 1,416,439	$ 1,458,932	$ 1,502,700	$ 1,547,781	$ 1,594,214	$ 1,642,041	$ 1,691,302	$ 1,742,041	$ 1,794,302	$ 1,848,131	$ 1,903,575	$ 1,960,682	$ 2,019,503	$ 2,080,088	$ 2,142,491
C-1C (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Rer	$ 1,258,487	$ 1,296,242	$ 1,335,129	$ 1,375,183	$ 1,416,439	$ 1,458,932	$ 1,502,700	$ 1,547,781	$ 1,594,214	$ 1,642,041	$ 1,691,302	$ 1,742,041	$ 1,794,302	$ 1,848,131	$ 1,903,575	$ 1,960,682	$ 2,019,503	$ 2,080,088	$ 2,142,491
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Cos	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve from Sea Level Rise Tax Proceec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ 1,258,487	$ 1,296,242	$ 1,335,129	$ 1,375,183	$ 1,416,439	$ 1,458,932	$ 1,502,700	$ 1,547,781	$ 1,594,214	$ 1,642,041	$ 1,691,302	$ 1,742,041	$ 1,794,302	$ 1,848,131	$ 1,903,575	$ 1,960,682	$ 2,019,503	$ 2,080,088	$ 2,142,491
Total Project Profi	$ 1,258,487	$ 1,296,242	$ 1,335,129	$ 1,375,183	$ 1,416,439	$ 1,458,932	$ 1,502,700	$ 1,547,781	$ 1,594,214	$ 1,642,041	$ 1,691,302	$ 1,742,041	$ 1,794,302	$ 1,848,131	$ 1,903,575	$ 1,960,682	$ 2,019,503	$ 2,080,088	$ 2,142,491
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investme	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:																			
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Annual Ground Rer	$ 1,258,487	$ 1,296,242	$ 1,335,129	$ 1,375,183	$ 1,416,439	$ 1,458,932	$ 1,502,700	$ 1,547,781	$ 1,594,214	$ 1,642,041	$ 1,691,302	$ 1,742,041	$ 1,794,302	$ 1,848,131	$ 1,903,575	$ 1,960,682	$ 2,019,503	$ 2,080,088	$ 2,142,491
Port of San Francisco Profit Participation - Prepaid Ground Rei	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Master Developer Prof	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Port of San Francisco Profi	$ 1,258,487	$ 1,296,242	$ 1,335,129	$ 1,375,183	$ 1,416,439	$ 1,458,932	$ 1,502,700	$ 1,547,781	$ 1,594,214	$ 1,642,041	$ 1,691,302	$ 1,742,041	$ 1,794,302	$ 1,848,131	$ 1,903,575	$ 1,960,682	$ 2,019,503	$ 2,080,088	$ 2,142,491
Total Project Profi	$ 1,258,487	$ 1,296,242	$ 1,335,129	$ 1,375,183	$ 1,416,439	$ 1,458,932	$ 1,502,700	$ 1,547,781	$ 1,594,214	$ 1,642,041	$ 1,691,302	$ 1,742,041	$ 1,794,302	$ 1,848,131	$ 1,903,575	$ 1,960,682	$ 2,019,503	$ 2,080,088	$ 2,142,491
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFI																			
Port Annual Ground Rent (including Parcel C-1A	$ 1,258,487	$ 1,296,242	$ 1,335,129	$ 1,375,183	$ 1,416,439	$ 1,458,932	$ 1,502,700	$ 1,547,781	$ 1,594,214	$ 1,642,041	$ 1,691,302	$ 1,742,041	$ 1,794,302	$ 1,848,131	$ 1,903,575	$ 1,960,682	$ 2,019,503	$ 2,080,088	$ 2,142,491
Port Share of Prepa eGround Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% of Net Proceeds from Refinancings	$ -	$ -	$ 6,118,722	$ 1,177,413	$ -	$ 7,374,526	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 4,147,230	$ 3,725,450	$ -	$ -	$ 9,534,327	$ 1,834,371
1.5% (Yrs 30-59) & 2.5% (Yrs 60-89) of Modified Gross Revenue	$ 7,526,408	$ 7,752,201	$ 7,984,767	$ 8,224,310	$ 8,471,030	$ 8,725,171	$ 8,986,926	$ 9,256,533	$ 9,534,229	$ 9,820,256	$ 10,114,864	$ 10,418,310	$ 11,607,481	$ 13,040,574	$ 13,431,791	$ 13,834,745	$ 18,788,670	$ 17,811,613	$ 18,345,962
Condominium Resale Transfer Fee	$ 6,871,068	$ 7,077,201	$ 7,289,517	$ 7,508,202	$ 7,733,448	$ 7,965,452	$ 8,204,415	$ 8,450,548	$ 8,704,064	$ 8,965,186	$ 9,234,142	$ 9,511,166	$ 9,796,501	$ 10,090,396	$ 10,393,108	$ 10,704,901	$ 11,026,048	$ 11,356,830	$ 11,697,535
Total Port of San Francisco Economic Benef	$ 15,655,965	$ 16,125,644	$ 22,729,135	$ 18,785,108	$ 17,620,926	$ 25,524,082	$ 18,694,041	$ 19,254,862	$ 19,832,508	$ 20,427,483	$ 21,040,308	$ 21,671,517	$ 23,198284	$ 29,126,331	$ 29,453,924	$ 28,500,329	$ 29,835,221	$ 40,782,868	$ 34,020,367
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES ANI CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	$ 4,381,758	$ 3,974,805	$ 3,623,853	$ 2,923,097	$ 2,981,556	$ 3,041,190	$ 1,861,475	$ 1,724,449	$ 1,758,938	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Tax Increments to Port after Project is Complet	$ 31,220,029	$ 28,319,059	$ 25,819,855	$ 20,827,063	$ 21,243,604	$ 21,668,476	$ 13,263,011	$ 12,286,699	$ 12,532,433	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide, Facilities an City Shoreline Protection	$ 35,601,788	$ 32,293,864	$ 29,443,808	$ 23,750 160	$ 24,225,163	$ 24,709,666	$ 15,124,486	$ 14,011,148	$ 14,291,371	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceed	$ 1,628,589	$ 1,681,160	$ 1,694 384	$ 1,728,271	$ 1,762,837	$ 1,798,093	$ 1,834,055	$ 1,870 736	$ 1,908,151	$ -1,946,314	$ 1,985,240	$ 2,024,945	$ 2,065 444	$ 2,106,753	$ 2,148 888	$ 2,191,866	$ 2,235,703	$ 2,280,417	$ 2,326,026
Available Condominium CFD Facilities Tax Proceed	$ 8,847,948	$ 9 024,907	$ 9,205,405	$ 9 389,513	$ 9,577,304	$ 9 768 850	$ 9,964,227	$ 10,163,511	$ 10,366,781	$ 10,574,117	$ 10,785,599	$ 11,001,311	$ 11,221,338	$ 11,445,764	$ 11,874 680	$ 11,908,173	$ 12,146,337	$ 12,389,263	$ 12,637,049
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 2,662,485	$ 2,919,714	$ 2,978,108	$ 3,037,670	$ 3,098,424	$ 3,160,392	$ 3,223,600	$ 3,288,072	$ 3,353,833	$ 3,420,910	$ 3,489,328	$ 3,559,115	$ 3,630,297	$ 3,702,903	$ 3,776,961	$ 3,852,500	$ 3,929,550	$ 4,008,141	$ 4,088,304
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protecto	$ 13,339,001	$ 13,605 781	$ 13,877,897	$ 14,155 455	$ 14,438,564	$ 14,727,335	$ 15 021,882	$ 15,322,320	$ 15,628,766	$ 15,941,341	$ 16,260,168	$ 16 585,371	$ 16,917,079	$ 17,256,420	$ 17,600,579	$ 17,952,539	$ 18,311,590	$ 18,677,822	$ 19,051,378

Notes:

*** *All numbers are preliminary estimates, and subject to further change* ***

(a) Numerical estimates are expressed in nominal terms unless otherwis denoted.

(b) Estimated peak equity assuming development of each phase i stand-alone ba is

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2066 YEAR 76	2067 YEAR 77	2068 YEAR 78	2069 YEAR 79	2090 YEAR 80	2091 YEAR 81	2092 YEAR 82	2093 YEAR 83	2094 YEAR 84	2095 YEAR 85	2096 YEAR 86	2097 YEAR 87	2098 YEAR 88	2099 YEAR 89	2100 YEAR 90	2101 YEAR 91	2102 YEAR 92	2103 YEAR 93	2104 YEAR 94
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Project Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Incremen																			
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Increme	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D.) PREPAID AND ANNUAL GROUND REN'																			
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ 2,208,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
C-1C (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Ren	$ 2,208,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Cos	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve from Sea Level Rise Tax Proceec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ 2,208,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
Total Project Profi	$ 2,208,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investmer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:																			
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Annual Ground Rer	$ 2,208,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
Port of San Francisco Profit Participation - Prepaid Ground Rer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Master Developer Prof	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Port of San Francisco Profi	$ 2,208,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
Total Project Profi	$ 2,208,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFI																			
Port Annual Ground Rent (Including Parcel C-1A	$ 2,208,765	$ 2,272,968	$ 2,341,157	$ 2,411,392	$ 2,483,734	$ 2,558,246	$ 2,634,993	$ 2,714,043	$ 2,795,464	$ 2,879,328	$ 2,965,708	$ 3,054,679	$ 3,146,320	$ 3,240,709	$ 3,337,931	$ 3,438,069	$ 3,541,211	$ 3,647,447	$ 3,756,870
Port Share of Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% of Net Proceeds from Refinancing	$ -	$ 11,489,274	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 8,481,248	$ 5,804,130	$ -	$ -	$ 14,854,171	$ 2,857,890	$ -	$ 17,899,914	$ -	$ -
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	$ 21,996,006	$ 22,656,886	$ 23,336,562	$ 24,035,629	$ 24,756,698	$ 25,499,399	$ 26,264,381	$ 27,052,312	$ 27,863,882	$ 28,699,798	$ 29,560,792	$ 30,447,616	$ 31,361,044	$ 32,301,876	$ 33,270,932	$ 34,269,060	$ 35,297,132	$ 36,356,046	$ 37,446,727
Condominium Resale Transfer Fee	$ 12,048,481	$ 12,409,914	$ 12,782,212	$ 13,165,678	$ 13,560,648	$ 13,967,468	$ 14,386,492	$ 14,818,087	$ 15,262,629	$ 15,720,508	$ 16,192,124	$ 16,677,887	$ 17,178,224	$ 17,693,571	$ 18,224,378	$ 18,771,100	$ 19,334,242	$ 19,914,270	$ 20,511,698
Total Port of San Francisco Economic Benef	$ 36,251,231	$ 48,828,042	$ 38,458,931	$ 39,612,699	$ 40,801,080	$ 42,025,113	$ 43,285,866	$ 44,584,442	$ 45,921,975	$ 53,780,883	$ 54,527,753	$ 50,180,182	$ 51,685,588	$ 68,050,326	$ 57,691,130	$ 56,478,237	$ 76,072,439	$ 59,917,762	$ 61,715,295
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protection	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceed	$ 2,372,546	$ 2,419,997	$ 2,468,387	$ 2,517,755	$ 2,568,120	$ 2,619,483	$ 2,671,872	$ 2,725,310	$ 2,779,816	$ 2,835,412	$ 2,892,120	$ 2,949,983	$ 3,008,982	$ 3,069,141	$ 3,130,534	$ 3,193,135	$ 3,256,997	$ 3,322,137	$ 3,388,580
Available Condominium CFD Facilities Tax Proceed	$ 12,888,780	$ 13,147,585	$ 13,410,537	$ 13,678,748	$ 13,952,323	$ 14,231,368	$ 14,515,997	$ 14,806,317	$ 15,102,443	$ 15,404,492	$ 15,712,582	$ 16,026,833	$ 16,347,370	$ 16,674,317	$ 17,007,804	$ 17,347,960	$ 17,694,919	$ 18,048,817	$ 18,409,794
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 4,170,070	$ 4,253,472	$ 4,338,541	$ 4,425,312	$ 4,513,818	$ 4,604,095	$ 4,696,176	$ 4,790,100	$ 4,885,902	$ 4,983,620	$ 5,083,292	$ 5,184,958	$ 5,288,657	$ 5,394,431	$ 5,502,319	$ 5,612,366	$ 5,724,613	$ 5,839,105	$ 5,955,887
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 19,432,405	$ 19,821,054	$ 20,217,475	$ 20,621,825	$ 21,034,261	$ 21,454,946	$ 21,884,045	$ 22,321,726	$ 22,768,161	$ 23,223,524	$ 23,687,995	$ 24,161,754	$ 24,644,990	$ 25,137,889	$ 25,640,647	$ 26,153,460	$ 26,676,529	$ 27,210,060	$ 27,754,261

Notes:

**** All numbers are preliminary estimates and subject to further change. ****

(a) Numerical estimates are expressed in nominal terms unless otherwise denoted.

(b) Estimated peak equity assuming development of each phase on stand-alone basis

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2105 YEAR 95	2106 YEAR 96	2107 YEAR 97	2108 YEAR 98	2109 YEAR 99	2110 YEAR 100	2111 YEAR 101	2112 YEAR 102	2113 YEAR 103	2114 YEAR 104	2115 YEAR 105	2116 YEAR 106	2117 YEAR 107	2118 YEAR 108	2119 YEAR 109	2120 YEAR 110	2121 YEAR 111	2122 YEAR 112	2123 YEAR 113
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES																			
Upfront Project Entitlement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES																			
CFD/IFD Bonds - Debt Service Paid by Tax Increment																			
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Increme	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C.) MASTER DEVELOPER PEAK EQUITY (b)																			
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D.) PREPAID AND ANNUAL GROUND REN																			
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
KN (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
C-1C (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Res)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Ren	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
E.) PROJECT NET CASH FLOW																			
Horizontal Infrastructure Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Ga	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Increme	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve from Sea Level Rise Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
Total Project Profi	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
F.) DISTRIBUTION OF PROFIT																			
Master Developer Return on Investmer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:																			
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Annual Ground Ren	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
Port of San Francisco Profit Participation - Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Master Developer Prof	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Port of San Francisco Profi	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
Total Project Profi	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFI																			
Port Annual Ground Rent (Including Parcel C-1A	$ 3,869,576	$ 3,985,664	$ 4,105,234	$ 4,228,391	$ 4,355,242	$ 4,485,900	$ 4,620,477	$ 4,759,091	$ 4,901,864	$ 5,048,920	$ 5,200,387	$ 5,356,399	$ 5,517,091	$ 5,682,603	$ 5,853,081	$ 6,028,674	$ 6,209,534	$ 6,395,820	$ 6,587,695
Port Share of Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% of Net Proceeds from Refinancing	$ -	$ -	$ -	$ -	$ -	$ 10,066,415	$ 9,042,845	$ -	$ -	$ 23,142,314	$ 4,452,499	$ -	$ 27,887,483	$ -	$ -	$ -	$ -	$ -	$ -
1.5% (Yrs 30-59) & 2.5% (Yrs 60-89) of Modified Gross Revenue	$ 38,570,129	$ 39,727,233	$ 40,919,050	$ 42,148,621	$ 43,411,020	$ 44,713,350	$ 46,054,751	$ 47,436,393	$ 48,859,485	$ 50,325,270	$ 51,835,028	$ 53,390,079	$ 54,991,781	$ 56,641,534	$ 51,191,849	$ 43,880,396	$ 45,196,808	$ 46,552,713	$ 27,236,311
Condominium Resale Transfer Fee	$ 21,127,049	$ 21,760,860	$ 22,413,686	$ 23,086,096	$ 23,778,679	$ 24,492,040	$ 25,226,801	$ 25,983,605	$ 26,763,113	$ 27,566,006	$ 28,392,987	$ 29,244,776	$ 30,122,120	$ 31,025,783	$ 31,956,557	$ 32,915,253	$ 33,902,711	$ 34,919,792	$ 35,967,386
Total Port of San Francisco Economic Benef	$ 63,566,754	$ 65,473,756	$ 67,437,968	$ 69,461,108	$ 71,544,941	$ 83,757,704	$ 84,944,073	$ 78,179,089	$ 80,524,462	$ 106,082,510	$ 89,880,900	$ 87,991,254	$ 118,518,474	$ 93,349,921	$ 89,001,487	$ 82,824,324	$ 85,309,053	$ 87,868,325	$ 69,791,392
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES ANC CITY SHORELINE PROTECTION																			
Port's 8 Cents of Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protection	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION																			
Available Sea Level Rise CFD Tax Proceeds	$ 3,456,352	$ 3,575,479	$ 3,595,988	$ 3,687,908	$ 3,741,266	$ 3,816,092	$ 3,892,413	$ 3,970,262	$ 4,049,667	$ 4,130,660	$ 4,213,273	$ 4,297,539	$ 4,383,490	$ 4,471,159	$ 4,560,583	$ 4,651,794	$ 4,744,830	$ 4,839,727	$ 4,936,521
Available Condominium CFD Facilities Tax Proceed	$ 18,777,890	$ 19,153,548	$ 19,536,620	$ 19,927,353	$ 20,325,000	$ 20,732,418	$ 21,147,066	$ 21,570,007	$ 22,001,408	$ 22,441,436	$ 22,890,264	$ 23,348,070	$ 23,815,031	$ 24,291,332	$ 24,777,158	$ 25,272,700	$ 25,778,156	$ 26,293,719	$ 26,819,593
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 6,075,005	$ 6,196,505	$ 6,320,435	$ 6,446,844	$ 6,575,781	$ 6,707,298	$ 6,841,442	$ 6,978,271	$ 7,117,837	$ 7,260,193	$ 7,405,397	$ 7,553,505	$ 7,704,575	$ 7,858,667	$ 8,015,840	$ 8,176,157	$ 8,339,680	$ 8,506,474	$ 8,676,603
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 28,309,248	$ 28,875,533	$ 29,453,044	$ 30,042,105	$ 30,642,847	$ 31,255,808	$ 31,880,922	$ 32,518,540	$ 33,168,911	$ 33,832,289	$ 34,508,935	$ 35,199,114	$ 35,903,096	$ 36,621,158	$ 37,353,581	$ 38,100,653	$ 38,862,666	$ 39,639,919	$ 40,432,716

Notes:

**** All numbers are preliminary estimates and subject to further change. ***

(a) Numerical estimates are expressed in nominal terms unless otherwise denoted.

(b) Estimated peak equity assuming development of each phase i stand-alone basis

FP SCHEDULE 1 - ANNUAL SUMMARY PRO-FORMA UNDERWRITIN	2124 YEAR 114	2125 YEAR 115	2126 YEAR 116	2127 YEAR 117	2128 YEAR 118	2129 YEAR 119	2130 YEAR 120	2131 YEAR 121	2132 YEAR 122	2133 YEAR 123	2134 YEAR 124	2135 YEAR 125
A.) HORIZONTAL INFRASTRUCTURE INVESTMENT USES												
Upfront Project Enablement Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase I Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III Infrastructure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Uses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B.) HORIZONTAL INFRASTRUCTURE INVESTMENT SOURCES												
CFD/IFD Bonds - Debt Service Paid by Tax Increment												
Phase I CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III CFD/IFD Bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Increment Applied to Projec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve Proceeds from Sea Level Rise CFD Ta	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Horizontal Infrastructure Investment Source	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C.) MASTER DEVELOPER PEAK EQUITY (b)												
Phase I	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase II	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Phase III	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D.) PREPAID AND ANNUAL GROUND REN												
A-1 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
IQ1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-2B (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
D-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F-G (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E3 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
B-1 - B-2 (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1A (Office)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
C-1C (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-1 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
H-2 (Resi)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Prepaid and Annual Ground Rer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
E.) PROJECT NET CASH FLOW												
Horizontal Infrastructure Cash	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Buildings 12 and 21 Feasibility Cat	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CFD/IFD Bonds - Debt Service Paid by Tax Incremer	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pay Go Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium CFD Facilities Tax Proceed	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Project Reserve from Sea Level Rise Tax Proceec	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ground Rent Payments	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Project Profi	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F.) DISTRIBUTION OF PROFI												
Master Developer Return on Investmen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Profit Sharing:												
Master Developer Profit Participation - Prepaid Annual Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Master Developer Profit Participation - Prepaid Ground Re	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Annual Ground Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port of San Francisco Profit Participation - Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Master Developer Profi	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Port of San Francisco Profi	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Project Profi	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
G.) PORT OF SAN FRANCISCO NET ECONOMIC BENEFIT												
Port Annual Ground Rent (Including Parcel C-1A	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Port Share of Prepaid Ground Ren	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% of Net Proceeds from Refinancings	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.5% (Yrs 30-59) & 2.5% (Yrs 60-99) of Modified Gross Revenue	$ 23,826,898	$ 24,541,605	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Condominium Resale Transfer Fee	$ 37,046,506	$ 38,157,800	$ 39,302,534	$ 40,481,610	$ 41,696,058	$ 42,946,940	$ 44,235,348	$ 45,562,408	$ 46,929,281	$ 48,337,159	$ 49,787,274	$ 51,280,892
Total Port of San Francisco Economic Benef	$ 60,873,404	$ 62,699,606	$ 39,302,534	$ 40,481,610	$ 41,696,058	$ 42,946,940	$ 44,235,348	$ 45,562,408	$ 46,929,281	$ 48,337,159	$ 49,787,274	$ 51,280,892
H.) TAX INCREMENT TO PORT FOR PIER 70 WIDE FACILITIES AND CITY SHORELINE PROTECTION												
Port's 8 Cents of Tax Incremen	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Unused Tax Increment to Port after Project is Complet	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Tax Increment to Port for Pier 70 Wide Facilities an City Shoreline Protection	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
I.) CFD TAX REVENUES FOR CITY SHORELINE PROTECTION												
Available Sea Level Rise CFD Tax Proceed	$ 5,035,252	$ 5,135,957	$ 5,238,676	$ 5,343,448	$ 5,450,318	$ 5,559,325	$ 5,670,511	$ 5,783,922	$ 5,899,600	$ 6,017,592	$ 6,137,944	$ 6,260,703
Available Condominium CFD Facilities Tax Proceed	$ 27,355,985	$ 27,903,105	$ 28,481,187	$ 29,030,390	$ 29,610,998	$ 30,203,218	$ 30,807,282	$ 31,423,428	$ 32,051,896	$ 32,692,934	$ 33,346,793	$ 34,013,729
Unused Project Reserve Proceeds from Sea Level Rise CFD Ta	$ 8,850,135	$ 9,027,138	$ 9,207,681	$ 9,391,834	$ 9,579,671	$ 9,771,264	$ 9,966,690	$ 10,166,023	$ 10,369,344	$ 10,576,731	$ 10,788,265	$ 11,004,031
Unused Condominium CFD Facilities Tax Proceeds Applied to Proje	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CFD Tax Revenues for City Shoreline Protectio	$ 41,241,372	$ 42,066,199	$ 42,907,523	$ 43,765,674	$ 44,640,987	$ 45,533,807	$ 46,444,483	$ 47,373,373	$ 48,320,840	$ 49,287,257	$ 50,273,002	$ 51,278,462

Notes:

*** All numbers are preliminary estimates and subject to further change **

(a) Numerical estimates are expressed in nominal terms unless otherwise denoted

(b) Estimated peak equity assuming development of each phase on stand-alone basis

FP SCHEDULE 2

Sample Cumulative IRR Calculation

[see attached]

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J
4	FP Schedule 2 - Sample Calculation for Cumulative IRR								
5		Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6	Qtr 7	Qtr 8
6	Developer Capital	(27,000,000)	(3,000,000)	-	-	-	-	-	-
7	Distribution of Developer Return	-	-	500,000	1,000,000	1,500,000	2,000,000	2,500,000	50,000
8	Return of Developer Capital	-	-	-	-	-	-	-	30,000,000
9	Developer Share of Interim Satisfaction Balance	-	-	-	-	-	-	-	3,000,000
10	**Net Cash Flow**	**(27,000,000)**	**(3,000,000)**	**500,000**	**1,000,000**	**1,500,000**	**2,000,000**	**2,500,000**	**33,050,000**
11	**IRR**	NA	NA	NA	-99%	-94%	-83%	-69%	21%

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G
1	FP Schedule 2 - Sample Calculation for Cumulative IRR - Formulas					
2		Qtr 1		Qtr 3	Qtr 4	Qtr 5
3	Developer Capital	-27000000	-3000000	0	0	0
4	Distribution of Developer Return	0	0	500000	1000000	1500000
5	Return of Developer Capital	0	0	0	0	0
6	Developer Share of Interim Satisfaction Balance	0	0	0	0	0
7	Net Cash Flow	=SUM(C6:C9)	=SUM(D6:D9)	=SUM(E6:E9)	=SUM(F6:F9)	=SUM(G6:G9)
8	IRR	=IFERROR((1+IRR($C10:C10))^4-1, "NA")	=IFERROR((1+IRR($C10:D10))^4-1, "NA")	=IFERROR((1+IRR($C10:E10))^4-1, "NA")	=IFERROR((1+IRR($C10:F10))^4-1, "NA")	=IFERROR((1+IRR($C10:G10))^4-1, "NA")

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H	I	J
1				
2		Qtr 6	Qtr 7	Qtr 8
3	Developer Capital	0	0	0
4	Distribution of Developer Return	2000000	2500000	50000
5'	Return of Developer Capital	0	0	30000000
6	Developer Share of Interim Satisfaction Balance	0	0	=3000000
7	Net Cash Flow	=SUM(H6:H9)	=SUM(I6:I9)	=SUM(J6:J9)
8	IRR	=IFERROR((1+IRR($C10:H10))^4-1, "NA")	=IFERROR((1+IRR($C10:I10))^4-1, "NA")	=IFERROR((1+IRR($C10.J10))^4-1, "NA")

FP Schedule 3
Preliminary Entitlement Cost Statement

Quarter Cost Incurred	Preliminary Entitlement Costs (Preliminary Cost Statement) General Expenses	Travel & Expenses	Total	Return[1]
Q3 2011	$ 471,041	$ 3,327	$ 474,367	$ 1,015,468
Q4 2011	$ 753,214	$ 989	$ 754,204	$ 1,512,506
Q1 2012	$ 161,769	$ 262	$ 162,030	$ 303,971
Q2 2012	$ 92,001	$ 1,618	$ 93,619	$ 164,037
Q3 2012	$ 284,836	$ 1,015	$ 285,851	$ 466,981
Q4 2012	$ 637,920	$ -	$ 637,920	$ 969,793
Q1 2013	$ 292,529	$ 934	$ 293,463	$ 414,286
Q2 2013	$ 419,104	$ -	$ 419,104	$ 548,129
Q3 2013	$ 167,438	$ -	$ 167,438	$ 202,345
Q4 2013	$ 627,402	$ 447	$ 627,848	$ 699,032
Q1 2014	$ 731,903	$ 3,217	$ 735,120	$ 751,565
Q2 2014	$ 533,415	$ 880	$ 534,295	$ 499,716
Q3 2014	$ 224,431	$ 883	$ 225,313	$ 191,954
Q4 2014	$ 665,397	$ 2,892	$ 668,289	$ 516,050
Q1 2015	$ 524,575	$ -	$ 524,575	$ 365,042
Q2 2015	$ 869,862	$ 455	$ 870,317	$ 542,080
Q3 2015	$ 863,417	$ 5,275	$ 868,692	$ 480,360
Q4 2015	$ 1,362,933	$ 3,084	$ 1,366,017	$ 664,014
Q1 2016	$ 1,320,265	$ 9,935	$ 1,330,200	$ 561,478
Q2 2016	$ 1,016,873	$ 4,802	$ 1,021,675	$ 368,683
Q3 2016	$ 1,127,579	$ 1,270	$ 1,128,848	$ 341,206
Q4 2016	$ 3,001,988	$ 14,513	$ 3,016,501	$ 742,608
Q1 2017	$ 1,432,566	$ 17,800	$ 1,450,366	$ 279,222
Q2 2017	$ 391,499	$ 1,368	$ 392,866	$ 55,459
Total	**$ 17,973,954**	**$ 74,965**	**$ 18,048,920**	**$ 12,655,987**

Notes:

1. Assumes 18 percent return on entitlement costs, compounded quarterly

FP SCHEDULE 4

OVERVIEW OF PROJECT PAYMENT SOURCES (OTHER THAN PORT CAPITAL)[1]

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
Parcel K North	Land Proceeds[3]	o 20th/Illinois Plaza o FC Project Area Capital Costs[4] o Revenue-sharing[5]
28-Acre Site parcels	Land Proceeds[3]	o FC Project Area Capital Costs[4] o Revenue-sharing[5]
Sub-Project Areas G-2, G-3, and G-4, IFD Project Area G (28-Acre Site, Parcel K North)	Project Tax Increment[6] (91.11%)	o Special Debt Service o FC Project Area Capital Costs, except certain Public Benefit Costs and Excess Return under current law o Leased Property Backup Fund o PNLP Payments o Historic Building Feasibility Gap o Debt service on Bonds secured by Project Tax Increment o Pier 70 Shoreline Protection Facilities
	Port Tax Increment[7] (8.89%)	o Irish Hill Park o Port Improvements o Special Debt Service for Historic Building Feasibility Gap solely on the conditions specified in **Financing Plan Article 11** (Historic Buildings) o Debt service on Bonds secured by Port Tax Increment
Pier 70 Leased Property CFD (28-Acre Site) ***Zone 1***: Phase 1 except Historic Bldg. 12 ***Zone 2***: All Later Phase NOI Property except Historic Bldg. 21	Facilities Special Taxes levied on All[8] **Special Debt Service credit available on Bonds**	o FC Project Area Capital Costs o PNLP Payments o Historic Building Feasibility Gap if Zone 3 Special Taxes are insufficient o Debt service on Bonds secured by Pier 70 Leased Property CFD Special Taxes o Shoreline Adaption Studies and Shoreline Protection Facilities o Pier 70 Shoreline Protection Facilities

1 Capitalized terms used but not defined have the meanings given in the Appendix.

2 Application of funds described in this Schedule is subject to all priorities and limitations specified in the Financing Plan and are subject to compliance with Governing Law and Policy. Certain costs may be paid from Pier 70 CFD Proceeds only if the San Francisco Special Tax Financing Law is amended.

3 The Port may use Advances of Land Proceeds for all Capital Costs.

4 FC Project Area includes public facilities adjacent to the 28-Acre Site that are Developer Construction Obligations under the DDA.

5 By distributions at Interim Satisfaction or from Project Surplus, which includes PNLP Payments.

6 Use of funds to the extent qualified under IFD Law.

7 Use of funds to the extent qualified under IFD Law

8 Use of funds to the extent qualified under IFD Law if Special Debt Service applies.

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
Zone 3: Historic Bldg. 12 and Historic Bldg. 21 ***All***: Zones 1, 2, and 3	Facilities Special Taxes levied in Zone 3, allocated by HB **Special Debt Service credit available on Bonds from Project Tax Increment generated in Zone 3 before Port Tax Increment, allocated by HB**	o Historic Building Feasibility Gap o FC Project Area Capital Costs o PNLP Payments o Debt service on Bonds secured by Pier 70 Leased Property CFD Special Taxes
	Shoreline Special Taxes levied on Zones 1 and 2 only	o Project Reserve Account[9] o Shoreline Account[10] o Debt service on Bonds secured by Shoreline Special Taxes

	Arts Building Special Tax levied on Zones 1 and 2 only
	(in combination with Pier 70 Condo CFD Arts Building Special Taxes)
		o Match up to:
		  o $13.5M for Stand-Alone Noonan Building or relocated Building 11 and $4M for Arts Building (subject to conditions), or
		  o $17.5M for Arts Building if Noonan Replacement Space is in Arts Building
		o $2.5M for community facilities subject to the CF Conditions
		o Any public building on Parcel E4
		o Debt service on Bonds secured by Arts Building Special Taxes

	Services Special Taxes levied on Zones 1 and 2 only	o FC Project Area Maintained Facilities, consisting of:
		  o Public Spaces and Public ROWs in the FC Project Area; and
		  o Shoreline Improvements in and adjacent to the FC Project Area

9 Pays for Capital Costs and Historic Building Feasibility Gap.

10 Pays for Shoreline Adaption Studies, Shoreline Protection Facilities, and Pier 70 Shoreline Protection Facilities.

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
Pier 70 Condo CFD (28-Acre Site, Parcel K North) ***Zone 1***: Parcel K North ***Zone 2***: Residential Condo Projects in 28-Acre Site ***All***: Zone 1 and Zone 2	Facilities Special Taxes levied on All **NO Special Debt Service credit on Bonds**	o Michigan Street segment o FC Project Area Capital Costs o PNLP Payments o Historic Building Feasibility Gap if Special Taxes from Zone 3 of the Pier 70 Leased Property CFD are insufficient o Debt service on Bonds secured by Pier 70 Condo Special Taxes o Pier 70 Shoreline Protection Facilities o Promissory Note-X o Shoreline Adaption Studies and Shoreline Protection Facilities
	Arts Building Special Tax levied on Zone 2 only (in combination with Pier 70 Leased Property CFD Arts Building Special Taxes)	o Match up to: o $13.5M for Stand-Alone Noonan Building or relocated Building 11 and $4M for Arts Building (subject to conditions); or o $17.5M for Arts Building if Noonan Replacement Space is in Arts Building o $2.5M for community facilities subject to the CF Conditions o Any public building on Parcel E4 o Debt service on Bonds secured by Arts Building Special Taxes
	Services Special Taxes levied on Zone 1 only	o Parcel K North Maintained Facilities, consisting of: o Public Spaces and Public ROWs in Zone 1; o Public Spaces outside of the FC Project Area and the 20th Street CFD; o Public ROWs in Pier 70 north of 20th Street and outside of 20th Street CFD; and o Shoreline Protection Facilities.
	Services Special Taxes levied on Zone 2 only	o FC Project Area Maintained Facilities, consisting of: o Public Spaces and Public ROWs in the FC Project Area; and o Shoreline Improvements in and adjacent to the FC Project Area.
Hoedown Yard CFD (Hoedown Yard)	Facilities Special Taxes	o Irish Hill Park o Acquisition of shoreline space near former Hunters Point Power Plant o Other Port Capital Costs, including Shoreline Protection Studies and Shoreline Protection Facilities o Debt service on Bonds secured by Hoedown Yard Special Taxes

DISTRICT NAME or AREA INCLUDED	FUND CATEGORY	USES[2]
	Services Special Taxes	o HDY Maintained Facilities, consisting of: o Public Spaces and Public ROWs in the Hoedown Yard CFD; o Public Spaces outside of the FC Project Area and the 20th Street CFD; o Public ROWs in Pier 70 north of 20th Street and outside of 20th Street CFD; and o Shoreline Protection Facilities.
IRFD No. 2 (Hoedown Yard)	Housing Tax Increment	o Affordable Housing Parcels in the AHP Housing Area o IRFD Bond Debt Service

FP SCHEDULE 5

Sample Credit Bid Calculations

[see attached]

FP Schedule 5 - Sample Credit Bid Calculations

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
5	**FP Schedule 5 - Sample Credit Bid Calculations**		
6	Land Proceeds		10,000,000
7			
8	Developer Balances		
9	Entitlements Sum and Accrued Developer Return		2,000,000
10	Pre Existing Developer Balance		1,000,000
11	Developer Balance		7,080,000
12	Total Developer Balances		10,080,000
13			
14	Port Balance		2,200,000
15			
16	Step 1 - Pay Entitlement Sum and Accrued Developer Return		
17	Pay Entitlement Sum and Accrued Developer Return via Credit Bid		2,000,000
18			
19	Remaining Land Proceeds		8,000,000
20			
21	Step 2 - Pay Pre Existing Developer Balance		
22	Pay Pre Existing Developer Balance via Credit Bid		1,000,000
23			
24	Remaining Land Proceeds		7,000,000
25			
26	Step 3 - Pay Post Approval Developer Return and Port Return Balances		
27	Pay Allowed and Excess Return on Developer Capital via Credit Bid	76%	5,340,517
28	Pay Allowed and Excess Return on Port Capital	24%	1,659,483
29			
30	Remaining Land Proceeds		-
31			
32	**Credit Bid Amount by Developer**		8,340,517
33	Required Cash Payment to Port		1,659,483

FP Schedule 5 - Sample Credit Bid Calculations - Formulas

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
5	**FP Schedule 5 - Sample Credit Bid Calculations - Formulas**		
6	Land Proceeds		10000000
7			
8	Developer Balances		
9	Entitlements Sum and Accrued Developer Return		2000000
10	Pre Existing Developer Balance		1000000
11	Developer Balance		7080000
12	Total Developer Balances		=SUM(D9:D11)
13			
14	Port Balance		2200000
15			
16	Step 1 - Pay Entitlement Sum and Accrued Developer Return		
17	Pay Entitlement Sum and Accrued Developer Return via Credit Bid		=MIN(D6,D9)
18			
19	Remaining Land Proceeds		=D6-D17
20			
21	Step 2 - Pay Pre Existing Developer Balance		
22	Pay Pre Existing Developer Balance via Credit Bid		=MIN(D19,D10)
23			
24	Remaining Land Proceeds		=D19-D22
25			
26	Step 3 - Pay Post Approval Developer Return and Port Return Balances		
27	Pay Allowed and Excess Return on Developer Capital via Credit Bid	=(D11)/(D11+D14)	=MIN(C27*D24,D11)
28	Pay Allowed and Excess Return on Port Capital	=D14/(D11+D14)	=MIN(C28*D24,D14)
29			
30	Remaining Land Proceeds		=D24-D27-D28
31			
32	**Credit Bid Amount by Developer**		=D17+D22+D27
33	Required Cash Payment to Port		=D28

FP SCHEDULE 6

Sample Pro Rata Payments Calculations

[see attached]

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
	Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero									
	Annual Developer Return Rate	18%								
	Annual Return on Port Capital Rate	10%								
			Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6	Qtr 7	Qtr 8
1	Amount Available to be Distributed		-	-	(1,000,000)	(2,000,000)	(1,000,000)	-	(2,000,000)	(1,000,000)
2										
3	Developer Return on Pre-Existing Developer Balance									
4	Beginning Balance*	Quarterly	-	-	-	-	-	-	-	-
5	Developer Return Accrual	4.2%	-	-	-	-	-	-	-	-
6	Distributions		-	-	-	-	-	-	-	-
7	Ending Balance		-	-	-	-	-	-	-	-
8										
9	Pre Existing Developer Balance		5,000,000	-	-	-	-	-	-	-
10	Distribution from Amount Available		-	-	-	-	-	-	-	-
11	Distribution from Advances of Port Capital		(5,000,000)	-	-	-	-	-	-	-
12	Ending Balance		-	-	-	-	-	-	-	-
13										
14	Horizontal Development Costs		11,000,000	-	-	-	-	-	-	-
15	Funded by Developer Capital		(5,500,000)	-	-	-	-	-	-	-
16	Funded by Remaining Advances of Port Capital		(5,500,000)	-	-	-	-	-	-	-
17	Remaining Horizontal Development Costs		-	-	-	-	-	-	-	-
18										
19	Remaining Amount Available to be Distributed		-	-	(1,000,000)	(2,000,000)	(1,000,000)	-	(2,000,000)	(1,000,000)
20										
21	Developer Return									
22	Beginning Balance	Quarterly	-	-	-	232,356	117,366	-	-	197,247	-
23	Developer Return Accrual	4.2%	-	232,356	242,173	231,436	205,580	197,247	205,580	180,088
24	Distributions		-	-	(357,163)	(348,801)	(205,580)	-	(402,828)	(180,088)
25	Ending Balance		-	232,356	117,366	-	-	197,247	-	-
26	**Pro Rata Developer Return Percentage**		**34%**	**35%**	**36%**	**35%**	**35%**	**35%**	**35%**	**35%**
27										
28	Return on Port Capital									
29	Beginning Balance	Quarterly	-	-	253,194	-	-	-	216,256	-
30	Return on Port Capital Accrual	2.4%	-	253,194	-	247,154	225,225	216,256	221,470	198,091
31	Distributions		-	-	(253,194)	(247,154)	(225,225)	-	(437,726)	(198,091)
32	Ending Balance		-	253,194	-	-	-	216,256	-	-
33	**Pro Rata Port Return Percentage**		**66%**	**65%**	**64%**	**65%**	**65%**	**65%**	**65%**	**65%**
34										
35	Remaining Amount Available to be Distributed		-	-	(389,643)	(1,404,045)	(569,195)	-	(1,159,446)	(621,821)
36										
37	Developer Capital									
38	Beginning Balance		-	5,500,000	5,500,000	5,360,834	4,866,176	4,668,950	4,668,950	4,262,776
39	Developer Capital Contributions		5,500,000	-	-	-	-	-	-	-
40	Distributions		-	-	(139,166)	(494,658)	(197,226)	-	(406,174)	(214,896)
41	Ending Balance		5,500,000	5,500,000	5,360,834	4,866,176	4,668,950	4,668,950	4,262,776	4,047,880
42	**Pro Rata Developer Capital Percentage**		**34%**	**35%**	**36%**	**35%**	**35%**	**35%**	**35%**	**35%**
43										
44	Port Capital									
45	Beginning Balance		-	10,500,000	10,500,000	10,249,523	9,340,137	8,968,167	8,968,167	8,214,895
46	Advances of Port Capital Contributions		10,500,000	-	-	-	-	-	-	-
47	Distributions		-	-	(250,477)	(909,387)	(371,969)	-	(753,272)	(406,925)
48	Ending Balance		10,500,000	10,500,000	10,249,523	9,340,137	8,968,167	8,968,167	8,214,895	7,807,970
49	**Pro Rata Port Capital Percentage**		**66%**	**65%**	**64%**	**65%**	**65%**	**65%**	**65%**	**65%**
50										
51	Remaining Amount Available to be Distributed		-	-	-	-	-	-	-	-
52										
53	**Pre Existing Developer Balance**		-	-	-	-	-	-	-	-
54	**Developer Balance**		5,500,000	5,732,356	5,478,200	4,866,176	4,668,950	4,866,197	4,262,776	4,047,880
55	**Port Balance**		10,500,000	10,753,194	10,249,523	9,340,137	8,968,167	9,184,423	8,214,895	7,807,970
56										
57	**Net Quarterly Developer Cash Flow**		(500,000)	-	496,329	843,460	402,806	-	809,002	394,983

* Beginning Balance included in beginning Pre Existing Developer Balance.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4			Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	0.18	
6	Annual Return on Port Capital Rate	0.1	
7			Qtr 1
8	Amount Available to be Distributed		0
9			
10	Developer Return on Pre-Existing Developer Balance		
11	Beginning Balance*	Quarterly	0
12	Developer Return Accrual	=(1+C5)^(1/4)-1	0
13	Distributions		=MAX(D8,-SUM(D11:D12))
14	Ending Balance		=SUM(D11:D13)
15			
16	Pre Existing Developer Balance		5000000
17	Distribution from Amount Available		=-MIN(D16,-(D8-D13))
18	Distribution from Advances of Port Capital		=-MIN(D16,D53)
19	Ending Balance		=SUM(D16:D18)
20			
21	Horizontal Development Costs		11000000
22	Funded by Developer Capital		=-D46
23	Funded by Remaining Advances of Port Capital		=-(D53+D18)
24	Remaining Horizontal Development Costs		=SUM(D21:D23)
25			
26	Remaining Amount Available to be Distributed		=D8-D13-D17
27			
28	Developer Return		
29	Beginning Balance	Quarterly	0
30	Developer Return Accrual	=(1+C5)^(1/4)-1	0
31	Distributions		=MAX(D26*D33,-SUM(D29:D30))
32	Ending Balance		=SUM(D29:D31)
33	Pro Rata Developer Return Percentage		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D29+D30+D45+D46)/(D29+D30+D36+D37+D45+D46+D52+D53))
34			
35	Return on Port Capital		
36	Beginning Balance	Quarterly	0
37	Return on Port Capital Accrual	=(1+C6)^(1/4)-1	0
38	Distributions		=MAX(D26*D40,-SUM(D36:D37))
39	Ending Balance		=SUM(D36:D38)
40	Pro Rata Port Return Percentage		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D36+D37+D52+D53)/(D29+D30+D36+D37+D45+D46+D52+D53))
41			
42	Remaining Amount Available to be Distributed		=D26-D31-D38
43			
44	Developer Capital		
45	Beginning Balance		0
46	Developer Capital Contributions		5500000
47	Distributions		=MAX(D42*D49,-SUM(D45:D46))
48	Ending Balance		=SUM(D45:D47)
49	Pro Rata Developer Capital Percentage		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D29+D30+D45+D46)/(D29+D30+D36+D37+D45+D46+D52+D53))
50			
51	Port Capital		
52	Beginning Balance		0
53	Advances of Port Capital Contributions		10500000
54	Distributions		=MAX(D42*D56,-SUM(D52:D53))
55	Ending Balance		=SUM(D52:D54)
56	Pro Rata Port Capital Percentage		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D36+D37+D52+D53)/(D29+D30+D36+D37+D45+D46+D52+D53))
57			
58	Remaining Amount Available to be Distributed		=D42-D47-D54
59			
60	Pre Existing Developer Balance		=D14+D19
61	Developer Balance		=D32+D48
62	Port Balance		=D39+D55
63			
64	Net Quarterly Developer Cash Flow		=-SUM(D13,D17,D18,D31,D46,D47)

* Beginning Balance included in beginning Pre Existing Developer Balance.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	E
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr2
8	Amount Available to be Distributed	0
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=D14
12	Developer Return Accrual	=$C12*(E11+E16)
13	Distributions	=MAX(E8,-SUM(E11:E12))
14	Ending Balance	=SUM(E11:E13)
15		
16	Pre Existing Developer Balance	=D19
17	Distribution from Amount Available	=-MIN(E16,-(E8-E13))
18	Distribution from Advances of Port Capital	=-MIN(E16,E53)
19	Ending Balance	=SUM(E16:E18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-E46
23	Funded by Remaining Advances of Port Capital	=-(E53+E18)
24	Remaining Horizontal Development Costs	=SUM(E21:E23)
25		
26	Remaining Amount Available to be Distributed	=E8-E13-E17
27		
28	Developer Return	
29	Beginning Balance	=D32
30	Developer Return Accrual	=$C30*(E29+E45)
31	Distributions	=MAX(E26*E33,-SUM(E29:E30))
32	Ending Balance	=SUM(E29:E31)
33	Pro Rata Developer Return Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E29+E30+E45+E46)/(E29+E30+E36+E37+E45+E46+E52+E53))
34		
35	Return on Port Capital	
36	Beginning Balance	=D39
37	Return on Port Capital Accrual	=$C37*(E36+E52)
38	Distributions	=MAX(E26*E40,-SUM(E36:E37))
39	Ending Balance	=SUM(E36:E38)
40	Pro Rata Port Return Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E36+E37+E52+E53)/(E29+E30+E36+E37+E45+E46+E52+E53))
41		
42	Remaining Amount Available to be Distributed	=E26-E31-E38
43		
44	Developer Capital	
45	Beginning Balance	=D48
46	Developer Capital Contributions	0
47	Distributions	=MAX(E42*E49,-SUM(E45:E46))
48	Ending Balance	=SUM(E45:E47)
49	Pro Rata Developer Capital Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E29+E30+E45+E46)/(E29+E30+E36+E37+E45+E46+E52+E53))
50		
51	Port Capital	
52	Beginning Balance	=D55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(E42*E56,-SUM(E52:E53))
55	Ending Balance	=SUM(E52:E54)
56	Pro Rata Port Capital Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E36+E37+E52+E53)/(E29+E30+E36+E37+E45+E46+E52+E53))
57		
58	Remaining Amount Available to be Distributed	=E42-E47-E54
59		
60	Pre Existing Developer Balance	=E14+E19
61	Developer Balance	=E32+E48
62	Port Balance	=E39+E55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(E13,E17,E18,E31,E46,F47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	F
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 3
8	Amount Available to be Distributed	-1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=E14
12	Developer Return Accrual	=$C12*(F11+F16)
13	Distributions	=MAX(F8,-SUM(F11:F12))
14	Ending Balance	=SUM(F11:F13)
15		
16	Pre Existing Developer Balance	=E19
17	Distribution from Amount Available	=-MIN(F16,-(F8-F13))
18	Distribution from Advances of Port Capital	=-MIN(F16,F53)
19	Ending Balance	=SUM(F16:F18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-F46
23	Funded by Remaining Advances of Port Capital	=-(F53+F18)
24	Remaining Horizontal Development Costs	=SUM(F21:F23)
25		
26	Remaining Amount Available to be Distributed	=F8-F13-F17
27		
28	Developer Return	
29	Beginning Balance	=E32
30	Developer Return Accrual	=$C30*(F29+F45)
31	Distributions	=MAX(F26*F33,-SUM(F29:F30))
32	Ending Balance	=SUM(F29:F31)
33	Pro Rata Developer Return Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F29+F30+F45+F46)/(F29+F30+F36+F37+F45+F46+F52+F53))
34		
35	Return on Port Capital	
36	Beginning Balance	=E39
37	Return on Port Capital Accrual	0
38	Distributions	=MAX(F26*F40,-SUM(F36:F37))
39	Ending Balance	=SUM(F36:F38)
40	Pro Rata Port Return Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F36+F37+F52+F53)/(F29+F30+F36+F37+F45+F46+F52+F53))
41		
42	Remaining Amount Available to be Distributed	=F26-F31-F38
43		
44	Developer Capital	
45	Beginning Balance	=E48
46	Developer Capital Contributions	0
47	Distributions	=MAX(F42*F49,-SUM(F45:F46))
48	Ending Balance	=SUM(F45:F47)
49	Pro Rata Developer Capital Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F29+F30+F45+F46)/(F29+F30+F36+F37+F45+F46+F52+F53))
50		
51	Port Capital	
52	Beginning Balance	=E55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(F42*F56,-SUM(F52:F53))
55	Ending Balance	=SUM(F52:F54)
56	Pro Rata Port Capital Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F36+F37+F52+F53)/(F29+F30+F36+F37+F45+F46+F52+F53))
57		
58	Remaining Amount Available to be Distributed	=F42-F47-F54
59		
60	Pre Existing Developer Balance	=F14+F19
61	Developer Balance	=F32+F48
62	Port Balance	=F39+F55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(F13,F17,F18,F31,F46,F47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 4
8	Amount Available to be Distributed	-2000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=F14
12	Developer Return Accrual	=$C12*(G11+G16)
13	Distributions	=MAX(G8,-SUM(G11:G12))
14	Ending Balance*	=SUM(G11:G13)
15		
16	Pre Existing Developer Balance	=F19
17	Distribution from Amount Available	=-MIN(G16,-(G8-G13))
18	Distribution from Advances of Port Capital	=-MIN(G16,G53)
19	Ending Balance	=SUM(G16:G18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-G46
23	Funded by Remaining Advances of Port Capital	=-(G53+G18)
24	Remaining Horizontal Development Costs	=SUM(G21:G23)
25		
26	Remaining Amount Available to be Distributed	=G8-G13-G17
27		
28	Developer Return	
29	Beginning Balance	=F32
30	Developer Return Accrual	=$C30*(G29+G45)
31	Distributions	=MAX(G26*G33,-SUM(G29:G30))
32	Ending Balance	=SUM(G29:G31)
33	Pro Rata Developer Return Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G29+G30+G45+G46)/(G29+G30+G36+G37+G45+G46+G52+G53))
34		
35	Return on Port Capital	
36	Beginning Balance	=F39
37	Return on Port Capital Accrual	=$C37*(G36+G52)
38	Distributions	=MAX(G26*G40,-SUM(G36:G37))
39	Ending Balance	=SUM(G36:G38)
40	Pro Rata Port Return Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G36+G37+G52+G53)/(G29+G30+G36+G37+G45+G46+G52+G53))
41		
42	Remaining Amount Available to be Distributed	=G26-G31-G38
43		
44	Developer Capital	
45	Beginning Balance	=F48
46	Developer Capital Contributions	0
47	Distributions	=MAX(G42*G49,-SUM(G45:G46))
48	Ending Balance	=SUM(G45:G47)
49	Pro Rata Developer Capital Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G29+G30+G45+G46)/(G29+G30+G36+G37+G45+G46+G52+G53))
50		
51	Port Capital	
52	Beginning Balance	=F55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(G42*G56,-SUM(G52:G53))
55	Ending Balance	=SUM(G52:G54)
56	Pro Rata Port Capital Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G36+G37+G52+G53)/(G29+G30+G36+G37+G45+G46+G52+G53))
57		
58	Remaining Amount Available to be Distributed	=G42-G47-G54
59		
60	Pre Existing Developer Balance	=G14+G19
61	Developer Balance	=G32+G48
62	Port Balance	=G39+G55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(G13,G17,G18,G31,G46,G47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		**Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas**
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 5
8	Amount Available to be Distnbuted	1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=G14
12	Developer Return Accrual	=$C12*(H11+H16)
13	Distributions	=MAX(H8,-SUM(H11:H12))
14	Ending Balance	=SUM(H11:H13)
15		
16	Pre Existing Developer Balance	=G19
17	Distribution from Amount Available	=-MIN(H16,-(H8-H13))
18	Distribution from Advances of Port Capital	=-MIN(H16,H53)
19	Ending Balance	=SUM(H16:H18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-H46
23	Funded by Remaining Advances of Port Capital	=-(H53+H18)
24	Remaining Horizontal Development Costs	=SUM(H21:H23)
25		
26	Remaining Amount Available to be Distributed	=H8-H13-H17
27		
28	Developer Return	
29	Beginning Balance	=G32
30	Developer Return Accrual	=$C30*(H29+H45)
31	Distributions	=MAX(H26*H33,-SUM(H29:H30))
32	Ending Balance	=SUM(H29:H31)
33	Pro Rata Developer Return Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H29+H30+H45+H46)/(H29+H30+H36+H37+H45+H46+H52+H53))
34		
35	Return on Port Capital	
36	Beginning Balance	=G39
37	Return on Port Capital Accrual	=$C37*(H36+H52)
38	Distributions	=MAX(H26*H40,-SUM(H36:H37))
39	Ending Balance	=SUM(H36:H38)
40	Pro Rata Port Return Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H36+H37+H52+H53)/(H29+H30+H36+H37+H45+H46+H52+H53))
41		
42	Remaining Amount Available to be Distributed	=H26-H31-H38
43		
44	Developer Capital	
45	Beginning Balance	=G48
46	Developer Capital Contributions	0
47	Distributions	=MAX(H42*H49,-SUM(H45.H46))
48	Ending Balance	=SUM(H45:H47)
49	Pro Rata Developer Capital Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H29+H30+H45+H46)/(H29+H30+H36+H37+H45+H46+H52+H53))
50		
51	*Port Capital*	
52	Beginning Balance	=G55
53	Advances of Port Capital Contnbutions	0
54	Distributions	=MAX(H42*H56,-SUM(H52:H53))
55	Ending Balance	=SUM(H52:H54)
56	Pro Rata Port Capital Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H36+H37+H52+H53)/(H29+H30+H36+H37+H45+H46+H52+H53))
57		
58	Remaining Amount Available to be Distributed	=H42-H47-H54
59		
60	Pre Existing Developer Balance	=H14+H19
61	Developer Balance	=H32+H48
62	Port Balance	=H39+H55
63		
64	Net Quarterly Developer Cash Flow	= SUM(H13,H17,H18,H31,H46,H47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 6
8	Amount Available to be Distributed	0
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=H14
12	Developer Return Accrual	=$C12*(I11+I16)
13	Distributions	=MAX(I8,-SUM(I11:I12))
14	Ending Balance	=SUM(I11:I13)
15		
16	Pre Existing Developer Balance	=H19
17	Distribution from Amount Available	=-MIN(I16,-(I8-I13))
18	Distribution from Advances of Port Capital	=-MIN(I16,I53)
19	Ending Balance	=SUM(I16:I18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-I46
23	Funded by Remaining Advances of Port Capital	=-(I53+I18)
24	Remaining Horizontal Development Costs	=SUM(I21:I23)
25		
26	Remaining Amount Available to be Distributed	=I8-I13-I17
27		
28	Developer Return	
29	Beginning Balance	=H32
30	Developer Return Accrual*	=$C30*(I29+I45)
31	Distributions	=MAX(I76*I33,-SUM(I29:I30))
32	Ending Balance	=SUM(I29:I31)
33	Pro Rata Developer Return Percentage	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I29+I30+I45+I46)/(I29+I30+I36+I37+I45+I46+I52+I53))
34		
35	Return on Port Capital	
36	Beginning Balance	=H39
37	Return on Port Capital Accrual	=$C37*(I36+I52)
38	Distributions	=MAX(I26*I40,-SUM(I36:I37))
39	Ending Balance	=SUM(I36:I38)
40	Pro Rata Port Return Percentage	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I36+I37+I52+I53)/(I29+I30+I36+I37+I45+I46+I52+I53))
41		
42	Remaining Amount Available to be Distributed	=I26-I31-I38
43		
44	Developer Capital	
45	Beginning Balance	=H48
46	Developer Capital Contributions	0
47	Distributions	=MAX(I42*I49,-SUM(I45:I46))
48	Ending Balance	=SUM(I45:I47)
49	Pro Rata Developer Capital Percentage	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I29+I30+I45+I46)/(I29+I30+I36+I37+I45+I46+I52+I53))
50		
51	Port Capital	
52	Beginning Balance	=H55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(I42*I56,-SUM(I52:I53))
55	Ending Balance	=SUM(I52:I54)
56	Pro Rata Port Capital Percentage	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I36+I37+I52+I53)/(I29+I30+I36+I37+I45+I46+I52+I53))
57		
58	Remaining Amount Available to be Distributed	=I42-I47-I54
59		
60	Pre Existing Developer Balance	=I14+I19
61	Developer Balance	=I32+I48
62	Port Balance	=I39+I55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(I13,I17,I18,I31,I46,I47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 7
8	Amount Available to be Distributed	-2000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=I14
12	Developer Return Accrual	=$C12*(J11+J16)
13	Distributions	=MAX(J8,-SUM(J11:J12))
14	Ending Balance	=SUM(J11:J13)
15		
16	Pre Existing Developer Balance	=I19
17	Distribution from Amount Available	=-MIN(J16,-(J8-J13))
18	Distribution from Advances of Port Capital	=-MIN(J16,J53)
19	Ending Balance	=SUM(J16:J18)
20		
21	Hnrizontal Development Costs	0
22	Funded by Developer Capital	=-J46
23	Funded by Remaining Advancesof Port Capital	=-(J53+J18)
24	Remaining Horizontal Development Costs	=SUM(J21:J23)
25		
26	Remaining Amount Available to be Distributed	=J8-J13-J17
27		
28	Developer Return	
29	Beginning Balance	=I32
30	Developer Return Accrual	=$C30*(J29+J45)
31	Distributions	=MAX(J26*J33,-SUM(J29:I30))
32	*Ending Balance*	=SUM(J29:J31)
33	Pro Rata Developer Return Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J29+J30+J45+J46)/(J29+J30+J36+J37+J45+J46+J52+J53))
34		
35	Return on Port Capital	
36	Beginning Balance	=I39
37	Return on Port Capital Accrual	=$C37*(I36+J52)
38	Distributions	=MAX(J26*J40,-SUM(J36:I37))
39	Ending Balance	=SUM(J36:J38)
40	Pro Rata Port Return Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J36+J37+J52+J53)/(J29+J30+J36+J37+J45+J46+J52+J53))
41		
42	Remaining Amount Available to be Distributed	=J26-J31-J38
43		
44	Developer Capital	
45	Beginning Balance	=I48
46	Developer Capital Contributions	0
47	Distributions	=MAX(J42*J49,-SUM(J45:I46))
48	Ending Balance	=SUM(J45:J47)
49	Pro Rata Developer Capital Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J29+J30+J45+J46)/(J29+J30+J36+J37+J45+J46+J52+J53))
50		
51	Port Capital	
52	Beginning Balance	=I55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(J42*J56,-SUM(I57:J53))
55	Ending Balance	=SUM(J52:J54)
56	Pro Rata Port Capital Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J36+J37+J52+J53)/(J29+J30+J36+J37+J45+J46+J52+J53))
57		
58	Remaining Amount Available to be Distributed	=J42-J47-J54
59		
60	Pre Existing Developer Balance	=J14+J19
61	*Developer Balance*	=J32+J48
62	Port Balance	=J39+I55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(J13,J17,J18,J31,J46,J47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Reduced to Zero - Formulas
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 8
8	Amount Available to be Distributed	1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=J14
12	Developer Return Accrual	=$C12*(K11+K16)
13	Distributions	=MAX(K8,-SUM(K11:K12))
14	Ending Balance	=SUM(K11:K13)
15		
16	Pre Existing Developer Balance	=J19
17	Distribution from Amount Available	=-MIN(K16,-(K8-K13))
18	Distribution from Advances of Port Capital	=-MIN(K16,K53)
19	Ending Balance	=SUM(K16:K18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-K46
23	Funded by Remaining Advances of Port Capital	=-(K53+K18)
24	Remaining Horizontal Development Costs	=SUM(K21:K23)
25		
26	Remaining Amount Available to be Distributed	=K8-K13-K17
27		
28	Developer Return	
29	Beginning Balance	=J37
30	Developer Return Accrual	=$C30*(K29+K45)
31	Distributions	=MAX(K26*K33,-SUM(K29:K30))
32	Ending Balance	=SUM(K29:K31)
33	Pro Rata Developer Return Percentage	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K29+K30+K45+K46)/(K29+K30+K36+K37+K45+K46+K52+K53))
34		
35	Return on Port Capital	
36	Beginning Balance	=J39
37	Return on Port Capital Accrual	=$C37*(K36+K52)
38	Distributions	=MAX(K26*K40,-SUM(K36:K37))
39	Ending Balance	=SUM(K36:K38)
40	Pro Rata Port Return Percentage	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K36+K37+K52+K53)/(K29+K30+K36+K37+K45+K46+K52+K53))
41		
42	Remaining Amount Available to be Distributed	=K26-K31-K38
43		
44	Developer Capital	
45	Beginning Balance	=J48
46	Developer Capital Contributions	0
47	Distributions	=MAX(K42*K49,-SUM(K45:K46))
48	Ending Balance	=SUM(K45:K47)
49	Pro Rata Developer Capital Percentage	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K29+K30+K45+K46)/(K29+K30+K36+K37+K45+K46+K52+K53))
50		
51	Port Capital	
52	Beginning Balance	=J55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(K42*K56,-SUM(K52:K53))
55	Ending Balance	=SUM(K52:K54)
56	Pro Rata Port Capital Percentage	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K36+K37+K52+K53)/(K29+K30+K36+K37+K45+K46+K52+K53))
57		
58	Remaining Amount Available to be Distributed	=K42-K47-K54
59		
60	Pre Existing Developer Balance	=K14+K19
61	Developer Balance	=K32+K48
62	Port Balance	=K39+K55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(K13,K17,K18,K31,K46,K47)

* Beginning Balance included in beginning Pre Existing

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
	Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero									
5	Annual Developer Return Rate	18%								
6	Annual Return on Port Capital Rate	10%								
7			Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6	Qtr 7	Qtr 8
8	Amount Available to be Distributed		-	-	(1,000,000)	(2,000,000)	(1,000,000)	-	(2,000,000)	(1,000,000)
9										
10	Developer Return on Pre-Existing Developer Balance									
11	Beginning Balance*	Quarterly	-	-	21,123	-	-	-	-	-
12	Developer Return Accrual	4.2%	-	21,123	22,016	-	-	-	-	-
13	Distributions		-	-	(43,139)	-	-	-	-	-
14	Ending Balance		-	21,123	-	-	-	-	-	-
15										
16	Pre Existing Developer Balance		11,000,000	500,000	500,000	-	-	-	-	-
17	Distribution from Amount Available		-	-	(500,000)	-	-	-	-	-
18	Distribution from Advances of Port Capital		(10,500,000)	-	-	-	-	-	-	-
19	Ending Balance		500,000	500,000	-	-	-	-	-	-
20										
21	Horizontal Development Costs		11,000,000	-	-	-	-	-	-	-
22	Funded by Developer Capital		(11,000,000)	-	-	-	-	-	-	-
23	Funded by Remaining Advances of Port Capital		-	-	-	-	-	-	-	-
24	Remaining Horizontal Development Costs		-	-	-	-	-	-	-	-
25										
26	Remaining Amount Available to be Distributed		-	-	(456,861)	(2,000,000)	(1,000,000)	-	(2,000,000)	(1,000,000)
27										
28	Developer Return									
29	Beginning Balance	Quarterly	-	-	464,713	711,311	156,528	99,696	554,733	-
30	Developer Return Accrual	4.2%	-	464,713	484,346	494,763	462,529	455,037	474,261	440,384
31	Distributions		-	-	(237,748)	(1,049,546)	(519,361)	-	(1,028,995)	(440,384)
32	Ending Balance		-	464,713	711,311	156,528	99,696	554,733	-	-
33	**Pro Rata Developer Return Percentage**		51%	52%	52%	52%	52%	52%	52%	52%
34										
35	Return on Port Capital									
36	Beginning Balance	Quarterly	-	-	253,194	293,380	-	-	245,958	-
37	Return on Port Capital Accrual	2.4%	-	253,194	259,299	260,268	248,647	245,958	251,889	240,508
38	Distributions		-	-	(219,113)	(553,648)	(248,647)	-	(497,846)	(240,508)
39	Ending Balance		-	253,194	293,380	-	-	245,958	-	-
40	**Pro Rata Port Return Percentage**		49%	48%	48%	48%	48%	48%	48%	48%
41										
42	Remaining Amount Available to be Distributed		-	-	-	(396,806)	(231,993)	-	(473,159)	(319,108)
43										
44	Developer Capital									
45	Beginning Balance			11,000,000	11,000,000	11,000,000	10,791,767	10,671,279	10,671,279	10,424,111
46	Developer Capital Contributions		11,000,000	-	-	-	-	-	-	-
47	Distributions		-	-	-	(208,233)	(120,488)	-	(247,168)	(164,475)
48	Ending Balance		11,000,000	11,000,000	11,000,000	10,791,767	10,671,279	10,671,279	10,424,111	10,259,636
49	**Pro Rata Developer Capital Percentage**		51%	52%	52%	52%	52%	52%	52%	52%
50										
51	Port Capital									
52	Beginning Balance		-	10,500,000	10,500,000	10,500,000	10,311,427	10,199,922	10,199,922	9,973,932
53	Advances of Port Capital Contributions		10,500,000	-	-	-	-	-	-	-
54	Distributions		-	-	-	(188,573)	(111,505)	-	(225,990)	(154,634)
55	Ending Balance		10,500,000	10,500,000	10,500,000	10,311,427	10,199,922	10,199,922	9,973,932	9,819,298
56	**Pro Rata Port Capital Percentage**		49%	48%	48%	48%	48%	48%	48%	48%
57										
58	Remaining Amount Available to be Distributed		-	-	-	-	-	-	-	-
59										
60	**Pre Existing Developer Balance**		500,000	521,123	-	-	-	-	-	-
61	**Developer Balance**		11,000,000	11,464,713	11,711,311	10,948,295	10,770,975	11,226,012	10,424,111	10,259,636
62	**Port Balance**		10,500,000	10,753,194	10,793,380	10,311,427	10,199,922	10,445,880	9,973,932	9,819,298
63										
64	**Net Quarterly Developer Cash Flow**		(500,000)	-	780,887	1,257,779	639,849	-	1,276,163	604,858

* Beginning Balance included in beginning Pre Existing Developer Balance.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4			Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	0.18	
6	Annual Return on Port Capital Rate	0.1	
7			Qtr 1
8	Amount Available to be Distributed		0
9			
10	Developer Return on Pre-Existing Developer Balance		
11	Beginning Balance*	Quarterly	0
12	Developer Return Accrual	=(1+C5)^(1/4)-1	0
13	Distributions		=MAX(D8,-SUM(D11:D12))
14	Ending Balance		=SUM(D11:D13)
15			
16	Pre Existing Developer Balance		11000000
17	Distribution from Amount Available		=-MIN(D16,-(D8-D13))
18	Distribution from Advances of Port Capital		=-MIN(D16,D53)
19	Ending Balance		=SUM(D16:D18)
20			
21	Horizontal Development Costs		11000000
22	Funded by Developer Capital		=-D46
23	Funded by Remaining Advances of Port Capital		=-(D53+D18)
24	Remaining Horizontal Development Costs		=SUM(D21:D23)
25			
26	Remaining Amount Available to be Distributed		=D8-D13-D17
27			
28	Developer Return		
29	Beginning Balance	Quarterly	0
30	Developer Return Accrual	=(1+C5)^(1/4)-1	0
31	Distributions		=MAX(D26*D33,-SUM(D29:D30))
32	Ending Balance		=SUM(D29:D31)
33	Pro Rata Developer Return Percentage		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D29+D30+D45+D46)/(D29+D30+D36+D37+D45+D46+D52+D53))
34			
35	Return on Port Capital		
36	Beginning Balance	Quarterly	0
37	Return on Port Capital Accrual	=(1+C6)^(1/4)-1	0
38	Distributions		=MAX(D26*D40,-SUM(D36:D37))
39	Ending Balance		=SUM(D36:D38)
40	Pro Rata Port Return Percentage		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D36+D37+D52+D53)/(D29+D30+D36+D37+D45+D46+D52+D53))
41			
42	Remainng Amount Available to be Distributed		=D26-D31-D38
43			
44	Developer Capital		
45	Beginning Balance		0
46	Developer Capital Contributions		11000000
47	Distributions		=MAX(D42*D49,-SUM(D45:D46))
48	Ending Balance		=SUM(D45:D47)
49	Pro Rata Developer Capital Percentage		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D29+D30+D45+D46)/(D29+D30+D36+D37+D45+D46+D52+D53))
50			
51	Port Capital		
52	Beginning Balance		0
53	Advances of Port Capital Contributions		10500000
54	Distributions		=MAX(D42*D56,-SUM(D52:D53))
55	Ending Balance		=SUM(D52:D54)
56	Pro Rata Port Capital Percentage		=IF((D29+D30+D36+D37+D45+D46+D52+D53)=0,0,(D36+D37+D52+D53)/(D29+D30+D36+D37+D45+D46+D52+D53))
57			
58	Remaining Amount Available to be Distributed		=D42-D47-D54
59			
60	Pre Existing Developer Balance		=D14+D19
61	Developer Balance		=D32+D48
62	Port Balance		=D39+D55
63			
64	Net Quarterly Developer Cash Flow		=-SUM(D13,D17,D18,D31,D46,D47)

* Beginning Balance included in beginning Pre Existing Developer Balance.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	E
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 2
8	Amount Available to be Distributed	0
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=D14
12	Developer Return Accrual	=$C12*(E11+E16)
13	Distributions	=MAX(E8,-SUM(E11:E12))
14	Ending Balance	=SUM(E11:E13)
15		
16	Pre Existing Developer Balance	=D19
17	Distribution from Amount Available	=-MIN(E16,-(E8-E13))
18	Distribution from Advances of Port Capital	=-MIN(E16,E53)
19	Ending Balance	=SUM(E16:E18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-E46
23	Funded by Remaining Advances of Port Capital	=-(E53+F18)
24	Remaining Horizontal Development Costs	=SUM(E21:E23)
25		
26	Remaining Amount Available to be Distributed	=E8-E13-E17
27		
28	Developer Return	
29	Beginning Balance	=D32
30	Developer Return Accrual	=$C30*(E29+E45)
31	Distributions	=MAX(E26*E33,-SUM(E29:E30))
32	Ending Balance	=SUM(E29:E31)
33	Pro Rata Developer Return Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E29+E30+E45+E46)/(E29+E30+E36+E37+E45+E46+E52+E53))
34		
35	Return on Port Capital	
36	Beginning Balance	=D39
37	Return on Port Capital Accrual	=$C37*(E36+E52)
38	Distributions	=MAX(E26*E40,-SUM(E36:E37))
39	Ending Balance	=SUM(E36:E38)
40	Pro Rata Port Return Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E36+E37+E52+E53)/(E29+E30+E36+E37+E45+E46+E52+E53))
41		
42	Remaining Amount Available to be Distributed	=E26-E31-E38
43		
44	Developer Capital	
45	Beginning Balance	=D48
46	Developer Capital Contributions	0
47	Distributions	=MAX(E42*E49,-SUM(E45:E46))
48	Ending Balance	=SUM(E45:E47)
49	Pro Rata Developer Capital Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E29+E30+E45+E46)/(E29+E30+E36+E37+E45+E46+E52+E53))
50		
51	Port Capital	
52	Beginning Balance	=D55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(E42*E56,-SUM(E52:E53))
55	Ending Balance	=SUM(E52:E54)
56	Pro Rata Port Capital Percentage	=IF((E29+E30+E36+E37+E45+E46+E52+E53)=0,0,(E36+E37+E52+E53)/(E29+E30+E36+E37+E45+E46+E52+E53))
57		
58	Remaining Amount Available to be Distributed	=E42-F47-E54
59		
60	Pre Existing Developer Balance	=E14+E19
61	Developer Balance	=E32+E48
62	Port Balance	=E39+E55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(F13,E17,E18,L31,F46,E47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results

	B	F
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 3
8	Amount Available to be Distributed	-1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=E14
12	Developer Return Accrual	=$C12*(F11+F16)
13	Distributions	=MAX(F8,-SUM(F11:F12))
14	Ending Balance	=SUM(F11:F13)
15		
16	Pre Existing Developer Balance	=E19
17	Distribution from Amount Available	=-MIN(F16,-(F8-F13))
18	Distribution from Advances of Port Capital	=-MIN(F16,F53)
19	Ending Balance	=SUM(F16:F18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-F46
23	Funded by Remaining Advances of Port Capital	=-(F53+F18)
24	Remaining Horizontal Development Costs	=SUM(F21:F23)
25		
26	Remaining Amount Available to be Distributed	=F8-F13-F17
27		
28	Developer Return	
29	Beginning Balance	=E32
30	Developer Return Accrual	=$C30*(F29+F45)
31	Distributions	=MAX(F26*F33,-SUM(F29:F30))
32	Ending Balance	=SUM(F29:F31)
33	Pro Rata Developer Return Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F29+F30+F45+F46)/(F29+F30+F36+F37+F45+F46+F52+F53))
34		
35	Return on Port Capital	
36	Beginning Balance	=E39
37	Return on Port Capital Accrual	=$C37*(F36+F52)
38	Distributions	=MAX(F26*F40,-SUM(F36:F37))
39	Ending Balance	=SUM(F36:F38)
40	Pro Rata Port Return Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F36+F37+F52+F53)/(F29+F30+F36+F37+F45+F46+F52+F53))
41		
42	Remaining Amount Available to be Distributed	=F26-F31-F38
43		
44	Developer Capital	
45	Beginning Balance	=E48
46	Developer Capital Contributions	0
47	Distributions	=MAX(F42*F49,-SUM(F45:F46))
48	Ending Balance	=SUM(F45:F47)
49	Pro Rata Developer Capital Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F29+F30+F45+F46)/(F29+F30+F36+F37+F45+F46+F52+F53))
50		
51	Port Capital	
52	Beginning Balance	=E55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(F42*F56,-SUM(F52:F53))
55	Ending Balance	=SUM(F52:F54)
56	Pro Rata Port Capital Percentage	=IF((F29+F30+F36+F37+F45+F46+F52+F53)=0,0,(F36+F37+F52+F53)/(F29+F30+F36+F37+F45+F46+F52+F53))
57		
58	Remaining Amount Available to be Distributed	=F42-F47-F54
59		
60	Pre Existing Developer Balance	=F14+F19
61	Developer Balance	=F32+F48
62	Port Balance	=F39+F55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(F13,F17,F18,F31,F46,F47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 4
8	Amount Available to be Distributed	-2000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=F14
12	Developer Return Accrual	=$C12*(G11+G16)
13	Distributions	=MAX(G8,-SUM(G11:G12))
14	Ending Balance	=SUM(G11:G13)
15		
16	Pre Existing Developer Balance	=F19
17	Distribution from Amount Available	=-MIN(G16,-(G8-G13))
18	Distribution from Advances of Port Capital	=-MIN(G16,G53)
19	Ending Balance	=SUM(G16:G18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-G46
23	Funded by Remaining Advances of Port Capital	=-(G53+G18)
24	Remaining Horizontal Development Costs	=SUM(G21:G23)
25		
26	Remaining Amount Available to be Distributed	=G8-G13-G17
27		
28	Developer Return	
29	Beginning Balance	=F32
30	Developer Return Accrual	=$C30*(G29+G45)
31	Distributions	=MAX(G26*G33,-SUM(G29:G30))
32	Ending Balance	=SUM(G29:G31)
33	Pro Rata Developer Return Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G29+G30+G45+G46)/(G29+G30+G36+G37+G45+G46+G52+G53))
34		
35	Return on Port Capital	
36	Beginning Balance	=F39
37	Return on Port Capital Accrual	=$C37*(G36+G52)
38	Distributions	=MAX(G26*G40,-SUM(G36:G37))
39	Ending Balance	=SUM(G36:G38)
40	Pro Rata Port Return Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G36+G37+G52+G53)/(G29+G30+G36+G37+G45+G46+G52+G53))
41		
42	Remaining Amount Available to be Distributed	=G26-G31-G38
43		
44	Developer Capital	
45	Beginning Balance	=F48
46	Developer Capital Contributions	0
47	Distributions	=MAX(G47*G49,-SUM(G45:G46))
48	Ending Balance	=SUM(G45:G47)
49	Pro Rata Developer Capital Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G29+G30+G45+G46)/(G29+G30+G36+G37+G45+G46+G52+G53))
50		
51	Port Capital	
52	Beginning Balance	=F55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(G42*G56,-SUM(G52:G53))
55	Ending Balance	=SUM(G52:G54)
56	Pro Rata Port Capital Percentage	=IF((G29+G30+G36+G37+G45+G46+G52+G53)=0,0,(G36+G37+G52+G53)/(G29+G30+G36+G37+G45+G46+G52+G53))
57		
58	Remaining Amount Available to be Distributed	=G42-G47-G54
59		
60	Pre Existing Developer Balance	=G14+G19
61	Developer Balance	=G32+G48
62	Port Balance	=G39+G55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(G13,G17,G18,G31,G46,G47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr5
8	Amount Available to be Distributed	-1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=G14
12	Developer Return Accrual	=5C12*(H11+H16)
13	Distributions	=MAX(H8,-SUM(H11:H12))
14	Ending Balance	=SUM(H11:H13)
15		
16	Pre Existing Developer Balance	=G19
17	Distribution from Amount Available	=-MIN(H16,-(H8-H13))
18	Distribution from Advances of Port Capital	=-MIN(H16,H53)
19	Ending Balance	=SUM(H16:H18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-H46
23	Funded by Remaining Advances of Port Capital	=-(H53+H18)
24	Remaining Horizontal Development Costs	=SUM(H21:H23)
25		
26	Remaining Amount Available to be Distributed	=H8-H13-H17
27		
28	Developer Return	
29	Beginning Balance	=G32
30	Developer Return Accrual	=5C30*(H29+H45)
31	Distributions	=MAX(H26*H33,-SUM(H29:H30))
32	Ending Balance	=SUM(H29:H31)
33	Pro Rata Developer Return Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H29+H30+H45+H46)/(H29+H30+H36+H37+H45+H46+H52+H53))
34		
35	Return on Port Capital	
36	Beginning Balance	=G39
37	Return on Port Capital Accrual	=5C37*(H36+H52)
38	Distributions	=MAX(H26*H40,-SUM(H36:H37))
39	Ending Balance	=SUM(H36:H38)
40	Pro Rata Port Return Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H36+H37+H52+H53)/(H29+H30+H36+H37+H45+H46+H52+H53))
41		
42	Remaining Amount Available to be Distributed	=H26-H31-H38
43		
44	Developer Capital	
45	Beginning Balance	=G48
46	Developer Capital Contributions	0
47	Distributions	=MAX(H42*H49,-SUM(H45:H46))
48	Ending Balance	=SUM(H45:H47)
49	Pro Rata Developer Capital Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H29+H30+H45+H46)/(H29+H30+H36+H37+H45+H46+H52+H53))
50		
51	Port Capital	
52	Beginning Balance	=G55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(H42*H56,-SUM(H52:H53))
55	Ending Balance	=SUM(H52:H54)
56	Pro Rata Port Capital Percentage	=IF((H29+H30+H36+H37+H45+H46+H52+H53)=0,0,(H36+H37+H52+H53)/(H29+H30+H36+H37+H45+H46+H52+H53))
57		
58	Remaining Amount Available to be Distributed	=H42-H47-H54
59		
60	Pre Existing Developer Balance	=H14+H19
61	Developer Balance	=H32+H48
62	Port Balance	=H39+H55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(H13,H17,H18,H31,H46,H47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 6
8	Amount Available to be Distributed	0
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=H14
12	Developer Return Accrual	=$C12*(I11+I16)
13	Distributions	=MAX(I8,-SUM(I11:I12))
14	Ending Balance	=SUM(I11:I13)
15		
16	Pre Existing Developer Balance	=H19
17	Distribution from Amount Available	=-MIN(I16,-(I8-I13))
18	Distribution from Advances of Port Capital	=-MIN(I16,I53)
19	Ending Balance	=SUM(I16:I18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-I46
23	Funded by Remaining Advances of Port Capital	=-(I53+I18)
24	Remaining Horizontal Development Costs	=SUM(I21:I23)
25		
26	*Remaining Amount Available to be Distributed*	=I8-I13-I17
27		
28	Developer Return	
29	Beginning Balance	=H32
30	Developer Return Accrual	=$C30*(I29+I45)
31	Distributions	=MAX(I26*I33,-SUM(I29:I30))
32	Ending Balance	=SUM(I29:I31)
33	Pro Rata Developer Return Percentage	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I29+I30+I45+I46)/(I29+I30+I36+I37+I45+I46+I52+I53))
34		
35	Return on Port Capital	
36	Beginning Balance	=H39
37	Return on Port Capital Accrual	=$C37*(I36+I52)
38	Distributions	=MAX(I26*I40,-SUM(I36:I37))
39	Ending Balance	=SUM(I36:I38)
40	Pro Rata Port Return Percentage	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I36+I37+I52+I53)/(I29+I30+I36+I37+I45+I46+I52+I53))
41		
42	Remaining Amount Available to be Distributed	=I26-I31-I38
43		
44	Developer Capital	
45	Beginning Balance	=H48
46	Developer Capital Contributions	0
47	Distributions	=MAX(I42*I49,-SUM(I45:I46))
48	Ending Balance	=SUM(I45:I47)
49	Pro Rata Developer Capital Percentage	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I29+I30+I45+I46)/(I29+I30+I36+I37+I45+I46+I52+I53))
50		
51	Port Capital	
52	Beginning Balance	=H55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(I42*I56,-SUM(I52:I53))
55	Ending Balance	=SUM(I52:I54)
56	Pro Rata Port Capital Percentage	=IF((I29+I30+I36+I37+I45+I46+I52+I53)=0,0,(I36+I37+I52+I53)/(I29+I30+I36+I37+I45+I46+I52+I53))
57		
58	Remaining Amount Available to be Distributed	=I42-I47-I54
59		
60	Pre Existing Developer Balance	=I14+I19
61	Developer Balance	=I32+I48
62	Port Balance	=I39+I55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(I13,I17,I18,I31,I46,I47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages. Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr7
8	Amount Available to be Distributed	-2000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=I14
12	Developer Return Accrual	=$C12*(J11+J16)
13	Distributions	=MAX(J8,-SUM(J11:J12))
14	Ending Balance	=SUM(J11:J13)
15		
16	Pre Existing Developer Balance	=I19
17	Distribution from Amount Available	=-MIN(J16,-(J8-J13))
18	Distribution from Advances of Port Capital	=-MIN(J16,J53)
19	Ending Balance	=SUM(J16:J18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-J46
23	Funded by Remaining Advances of Port Capital	=-(J53+I18)
24	Remaining Horizontal Development Costs	=SUM(J21:J23)
25		
26	Remaining Amount Available to be Distributed	=J8-J13-J17
27		
28	Developer Return	
29	Beginning Balance	=I32
30	Developer Return Accrual	=$C30*(J29+J45)
31	Distributions	=MAX(J26*J33,-SUM(J29:J30))
32	Ending Balance	=SUM(J29:J31)
33	Pro Rata Developer Return Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J29+J30+J45+J46)/(J29+J30+J36+J37+J45+J46+J52+J53))
34		
35	Return on Port Capital	
36	Beginning Balance	=I39
37	Return on Port Capital Accrual	=$C37*(J36+J52)
38	Distributions	=MAX(J26*J40,-SUM(J36:J37))
39	Ending Balance	=SUM(J36:J38)
40	Pro Rata Port Return Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J36+J37+J52+J53)/(J29+J30+J36+J37+J45+J46+J52+J53))
41		
42	Remaining Amount Available to be Distributed	=J26-J31-J38
43		
44	Developer Capital	
45	Beginning Balance	=I48
46	Developer Capital Contributions	0
47	Distributions	=MAX(J42*J49,-SUM(J45:J46))
48	Ending Balance	=SUM(J45:J47)
49	Pro Rata Developer Capital Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J29+J30+J45+J46)/(J29+J30+J36+J37+J45+J46+J52+J53))
50		
51	Port Capital	
52	Beginning Balance	=I55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(J42*I56,-SUM(J52:J53))
55	Ending Balance	=SUM(J52:J54)
56	Pro Rata Port Capital Percentage	=IF((J29+J30+J36+J37+J45+J46+J52+J53)=0,0,(J36+J37+J52+J53)/(J29+J30+J36+J37+J45+J46+J52+J53))
57		
58	Remaining Amount Available to be Distributed	=J42-J47-J54
59		
60	Pre Existing Developer Balance	=J14+J19
61	Developer Balance	=J32+J48
62	Port Balance	=J39+J55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(J13,J17,J18,J31,J46,J47)

* Beginning Balance included in beginning Pre Existing Develo

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		Section 2.4(g) - Sample Calculation of Pro Rata Percentages, Pre-Existing Developer Balance Not Reduced to Zero
5	Annual Developer Return Rate	
6	Annual Return on Port Capital Rate	
7		Qtr 8
8	Amount Available to be Distributed	-1000000
9		
10	Developer Return on Pre-Existing Developer Balance	
11	Beginning Balance*	=J14
12	Developer Return Accrual	=$C12*(K11+K16)
13	Distributions	=MAX(K8,-SUM(K11:K12))
14	Ending Balance	=SUM(K11:K13)
15		
16	Pre Existing Developer Balance	=J19
17	Distribution from Amount Available	=-MIN(K16,-(K8-K13))
18	Distribution from Advances of Port Capital	=-MIN(K16,K53)
19	Ending Balance	=SUM(K16:K18)
20		
21	Horizontal Development Costs	0
22	Funded by Developer Capital	=-K46
23	Funded by Remaining Advances of Port Capital	=-(K53+K18)
24	Remaining Horizontal Development Costs	=SUM(K21:K23)
25		
26	Remaining Amount Available to be Distributed	=K8-K13-K17
27		
28	Developer Return	
29	Beginning Balance	=J32
30	Developer Return Accrual	=$C30*(K29+K45)
31	Distributions	=MAX(K26*K33,-SUM(K29:K30))
32	Ending Balance	=SUM(K29:K31)
33	Pro Rata Developer Return Percentage	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K29+K30+K45+K46)/(K29+K30+K36+K37+K45+K46+K52+K53))
34		
35	Return on Port Capital	
36	Beginning Balance	=J39
37	Return on Port Capital Accrual	=$C37*(K36+K57)
38	Distributions	=MAX(K26*K40,-SUM(K36:K37))
39	Ending Balance	=SUM(K36:K38)
40	Pro Rata Port Return Percentage	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K36+K37+K52+K53)/(K29+K30+K36+K37+K45+K46+K52+K53))
41		
42	Remaining Amount Available to be Distributed	=K26-K31-K38
43		
44	Developer Capital	
45	Beginning Balance	=J48
46	Developer Capital Contributions	0
47	Distributions	=MAX(K42*K49,-SUM(K45:K46))
48	Ending Balance	=SUM(K45:K47)
49	Pro Rata Developer Capital Percentage	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K29+K30+K45+K46)/(K29+K30+K36+K37+K45+K46+K52+K53))
50		
51	Port Capital	
52	Beginning Balance	=J55
53	Advances of Port Capital Contributions	0
54	Distributions	=MAX(K42*K56,-SUM(K52:K53))
55	Ending Balance	=SUM(K52:K54)
56	Pro Rata Port Capital Percentage	=IF((K29+K30+K36+K37+K45+K46+K52+K53)=0,0,(K36+K37+K52+K53)/(K29+K30+K36+K37+K45+K46+K52+K53))
57		
58	Remaining Amount Available to be Distributed	=K42-K47-K54
59		
60	Pre Existing Developer Balance	=K14+K19
61	Developer Balance	=K32+K48
62	Port Balance	=K39+K55
63		
64	Net Quarterly Developer Cash Flow	=-SUM(K13,K17,K18,K31,K46,K47)

* Beginning Balance included in beginning Pre Existing Develo

FP SCHEDULE 7

Sample Shoreline Reserve/Project Reserve Division of Funds

[see attached]

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
4	**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction**									
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	75%								
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	50%								
7										
8			**Qtr 1**	**Qtr 2**	**Qtr 3**	**Qtr 4**	**Qtr 5**	**Qtr 6**	**Qtr 7**	**Qtr 8**
9	Shoreline CFD Tax*		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*500,000*	*500,000*	*500,000*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*500,000*	*500,000*	*500,000*
12										
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		750,000	1,500,000	2,250,000	3,000,000	3,750,000	3,000,000	3,500,000	4,000,000
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**		-	-	-	-	(1,250,000)	-	-	-
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		NA	NA	NA	NA	-	-	-	-
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**750,000**	**1,500,000**	**2,250,000**	**3,000,000**	**2,500,000**	**3,000,000**	**3,500,000**	**4,000,000**
17										
18	**Beginning Shoreline Reserve Balance**		250,000	500,000	750,000	1,000,000	1,250,000	3,000,000	3,500,000	4,000,000
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		-	-	-	-	1,250,000	-	-	-
20	**Ending Shoreline Reserve Balance**		**250,000**	**500,000**	**750,000**	**1,000,000**	**2,500,000**	**3,000,000**	**3,500,000**	**4,000,000**
21										
22	Phase Satisfaction Achieved at End of Quarter		NA	NA	NA	NA	Yes	Yes	Yes	Yes
23	Amount Required to Reach Phase Satisfaction		NA	NA	NA	NA	-	-	-	-

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4			**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	0.75	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	0.5	
7			
8			**Qtr 1**
9	Shoreline CFD Tax*		*1000000*
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*=IF(OR(D22="NA",D22="No"),$C$5*D9,IF(AND(C22="NA",D22="Yes"),$C$5*D9,IF(D22="Yes",$C$6*D9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*=D9-D10*
12			
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		=C16+D10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**		=-IF(AND(C22="NA",D22="Yes"),MAX(D13*($C$5-$C$6)/$C$5-D23,0),IF(D22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		=IFERROR(MAX(-D13,-D23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**=SUM(D13:D15)**
17			
18	**Beginning Shoreline Reserve Balance**		=C20+D11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		=-D14
20	**Ending Shoreline Reserve Balance**		**=SUM(D18:D19)**
21			
22	Phase Satisfaction Achieved at End of Quarter		NA
23	Amount Required to Reach Phase Satisfaction		NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	E
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 2**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(E22="NA",E22="No"),$C$5*E9,IF(AND(D22="NA",E22="Yes"),$C$5*E9,IF(E22="Yes",$C$6*E9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=E9-E10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=D16+E10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(D22="NA",E22="Yes"),MAX(E13*($C$5-$C$6)/$C$5-E23,0),IF(E22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-E13,-E23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(E13:E15)**
17		
18	**Beginning Shoreline Reserve Balance**	=D20+E11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-E14
20	**Ending Shoreline Reserve Balance**	**=SUM(E18:E19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	F
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 3**
9	Shoreline CFD Tax♦	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(F22="NA",F22="No"),$C$5*F9,IF(AND(E22="NA",F22="Yes"),$C$5*F9,IF(F22="Yes",$C$6*F9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=F9-F10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=E16+F10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(E22="NA",F22="Yes"),MAX(F13*($C$5-$C$6)/$C$5-F23,0),IF(F22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-F13,-F23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(F13:F15)**
17		
18	**Beginning Shoreline Reserve Balance**	=E20+F11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-F14
20	**Ending Shoreline Reserve Balance**	**=SUM(F18:F19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

♦ Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 4**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tox Allocated to Project Reserve***	*=IF(OR(G22="NA",G22="No"),$C$5*G9,IF(AND(F22="NA",G22="Yes"),$C$5*G9,IF(G22="Yes",$C$6*G9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=G9-G10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=F16+G10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(F22="NA",G22="Yes"),MAX(G13*($C$5-$C$6)/$C$5-G23,0),IF(G22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-G13,-G23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(G13:G15)**
17		
18	**Beginning Shoreline Reserve Balance**	=F20+G11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-G14
20	**Ending Shoreline Reserve Balance**	**=SUM(G18:G19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 5**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tox Allocated to Project Reserve***	*=IF(OR(H22="NA",H22="No"),$C$5*H9,IF(AND(G22="NA",H22="Yes"),$C$5*H9,IF(H22="Yes",$C$6*H9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=H9-H10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=G16+H10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(G22="NA",H22="Yes"),MAX(H13*($C$5-$C$6)/$C$5-H23,0),IF(H22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-H13,-H23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(H13:H15)**
17		
18	**Beginning Shoreline Reserve Balance**	=G20+H11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-H14
20	**Ending Shoreline Reserve Balance**	**=SUM(H18:H19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 6**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(I22="NA",I22="No"),$C$5*I9,IF(AND(H22="NA",I22="Yes"),$C$5*I9,IF(I22="Yes",$C$6*I9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=I9-I10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=H16+I10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(H22="NA",I22="Yes"),MAX(I13*($C$5-$C$6)/$C$5-I23,0),IF(I22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-I13,-I23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(I13:I15)**
17		
18	**Beginning Shoreline Reserve Balance**	=H20+I11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-I14
20	**Ending Shoreline Reserve Balance**	**=SUM(I18:I19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	**Yes**
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 7**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve*****	*=IF(OR(J22="NA",J22="No"),$C$5*J9,IF(AND(I22="NA",J22="Yes"),$C$5*J9,IF(J22="Yes",$C$6*J9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=J9-J10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=I16+J10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(I22="NA",J22="Yes"),MAX(J13*($C$5-$C$6)/$C$5-J23,0),IF(J22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-J13,-J23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(J13:J15)**
17		
18	**Beginning Shoreline Reserve Balance**	=I20+J11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-J14
20	**Ending Shoreline Reserve Balance**	**=SUM(J18:J19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	**Yes**
23	Amount Required to Reach Phase Satisfaction	***0***

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		**Scenario 4.7 (b) (i) - No Project Reserve Funds Needed to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 8**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(K22="NA",K22="No"),$C$5*K9,IF(AND(J22="NA",K22="Yes"),$C$5*K9,IF(K22="Yes",$C$6*K9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=K9-K10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=J16+K10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (i)**	=-IF(AND(J22="NA",K22="Yes"),MAX(K13*($C$5-$C$6)/$C$5-K23,0),IF(K22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-K13,-K23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(K13:K15)**
17		
18	**Beginning Shoreline Reserve Balance**	=J20+K11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-K14
20	**Ending Shoreline Reserve Balance**	**=SUM(K18:K19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	**Yes**
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
4	**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction**									
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	75%								
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	50%								
7										
8			**Qtr 1**	**Qtr 2**	**Qtr 3**	**Qtr 4**	**Qtr 5**	**Qtr 6**	**Qtr 7**	**Qtr 8**
9	Shoreline CFD Tax*		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*500,000*	*500,000*	*500,000*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*500,000*	*500,000*	*500,000*
12										
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		750,000	1,500,000	2,250,000	3,000,000	3,750,000	3,000,000	3,500,000	4,000,000
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**		-	-	-	-	(750,000)	-	-	-
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		NA	NA	NA	NA	(500,000)	-	-	-
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**750,000**	**1,500,000**	**2,250,000**	**3,000,000**	**2,500,000**	**3,000,000**	**3,500,000**	**4,000,000**
17										
18	**Beginning Shoreline Reserve Balance**		250,000	500,000	750,000	1,000,000	1,250,000	2,500,000	3,000,000	3,500,000
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		-	-	-	-	750,000	-	-	-
20	**Ending Shoreline Reserve Balance**		**250,000**	**500,000**	**750,000**	**1,000,000**	**2,000,000**	**2,500,000**	**3,000,000**	**3,500,000**
21										
22	Phase Satisfaction Achieved at End of Quarter		NA	NA	NA	NA	Yes	Yes	Yes	Yes
23	Amount Required to Reach Phase Satisfaction		NA	NA	NA	NA	500,000	-	-	-

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated These are not actual results.

	B	C	D
4			[Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	0.75	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	0.5	
7			
8			Qtr 1
9	Shoreline CFD Tax*		1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*=IF(OR(D22="NA",D22="No"),$C$5*D9,IF(AND(C22="NA",D22="Yes"),$C$5*D9,IF(D22="Yes",$C$6*D9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*=D9-D10*
12			
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction		=C16+D10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)		=-IF(AND(C22="NA",D22="Yes"),MAX(D13*($C$5-$C$6)/$C$5-D23,0),IF(D22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction		=IFERROR(MAX(-D13,-D23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction		=SUM(D13.D15)
17			
18	Beginning Shoreline Reserve Balance		=C20+D11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction		=-D14
20	Ending Shoreline Reserve Balance		=SUM(D18:D19)
21			
22	Phase Satisfaction Achieved at End of Quarter		NA
23	Amount Required to Reach Phase Satisfaction		NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	E
4		**Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	**Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved**	
6	**Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved**	
7		
8		**Qtr 2**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve* **	*=IF(OR(F22="NA",F22="No"),$C$5*E9,IF(AND(D22="NA",E22="Yes"),$C$5*E9,IF(E22="Yes",$C$6*E9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve* **	*=E9-E10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=D16+E10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)**	=-IF(AND(D22="NA",E22="Yes"),MAX(E13*($C$5-$C$6)/$C$5-E23,0),IF(E22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-E13,-E23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(E13:E15)
17		
18	**Beginning Shoreline Reserve Balance**	=D20+E11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-E14
20	**Ending Shoreline Reserve Balance**	=SUM(E18:E19)
21		
22	**Phase Satisfaction Achieved at End of Quarter**	**NA**
23	**Amount Required to Reach Phase Satisfaction**	**NA**

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	F
4		Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		Qtr 3
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(F22="NA",F22="No"),$C$5*F9,IF(AND(E22="NA",F22="Yes"),$C$5*F9,IF(F22="Yes",$C$6*F9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=F9-F10*
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=E16+F10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)	=-IF(AND(E22="NA",F22="Yes"),MAX(F13*($C$5-$C$6)/$C$5-F23.0),IF(F22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-F13,-F23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(F13:F15)
17		
18	Beginning Shoreline Reserve Balance	=E20+F11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-F14
20	Ending Shoreline Reserve Balance	=SUM(F18:F19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
4		Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 4
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve**	*=IF(OR(G22="NA",G22="No"),$C$5*G9,IF(AND(F22="NA",G22="Yes"),$C$5*G9,IF(G22="Yes",$C$6*G9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**	*=G9-G10*
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=F16+G10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)	=-IF(AND(F22="NA",G22="Yes"),MAX(G13*($C$5-$C$6)/$C$5-G23,0),IF(G22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-G13,-G23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(G13:G15)
17		
18	Beginning Shoreline Reserve Balance	=F20+G11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-G14
20	Ending Shoreline Reserve Balance	=SUM(G18:G19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated These are not actual results.

	B	H
4		[Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 5
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve**	*=IF(OR(H22="NA",H22="No"),$C$5*H9,IF(AND(G22="NA",H22="Yes"),$C$5*H9,IF(H22="Yes",$C$6*H9,0)),*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**	*=H9-H10*
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=G16+H10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)	=-IF(AND(G22="NA",H22="Yes"),MAX(H13*($C$5-$C$6)/$C$5-H23,0),IF(H22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-H13,-H23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(H13:H15)
17		
18	Beginning Shoreline Reserve Balance	=G20+H11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-H14
20	Ending Shoreline Reserve Balance	=SUM(H18:H19)
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	500000

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		Qtr 6
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve* **	*=IF(OR(I22="NA",I22="No"),$C$5*I9,IF(AND(H22="NA",I22="Yes"),$C$5*I9,IF(I22="Yes",$C$6*I9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve* **	*=I9-I10*
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=H16+I10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)	=-IF(AND(H22="NA",I22="Yes"),MAX(I13*($C$5 $C$6)/$C$5-I23,0),IF(I22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-I13,-I23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(I13:I15)
17		
18	Beginning Shoreline Reserve Balance	=H20+I11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-I14
20	Ending Shoreline Reserve Balance	=SUM(I18:I19)
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	a	J
4		Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		Qtr 7
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(J22="NA",J22="No"),$C$5*J9,IF(AND(I22="NA",J22="Yes"),$C$5*J9,IF(J22="Yes",$C$6*J9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=J9-J10*
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=I16+J10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)	=-IF(AND(I22="NA",J22="Yes"),MAX(J13*($C$5-$C$6)/$C$5-J23,0),IF(J22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-J13,-J23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(J13:J15)
17		
18	Beginning Shoreline Reserve Balance	=I20+J11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-J14
20	Ending Shoreline Reserve Balance	=SUM(J18:J19)
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		Scenario 4.7 (b) (ii) - Less than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 8
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve* *	*=IF(OR(K22="NA",K22="No"),5C$5*K9,IF(AND(J22="NA",K22="Yes"),5C$5*K9,IF(K22="Yes",5C$6*K9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve* *	*=K9-K10*
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=J16+K10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (ii)	=-IF(AND(J22="NA",K22="Yes"),MAX(K13*($C$5-$C$6)/$C$5-K23,0),IF(K22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-K13,-K23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(K13:K15)
17		
18	Beginning Shoreline Reserve Balance	=J20+K11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-K14
20	Ending Shoreline Reserve Balance	=SUM(K18:K19)
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
4	**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction**									
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	75%								
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	50%								
7										
8			**Qtr 1**	**Qtr 2**	**Qtr 3**	**Qtr 4**	**Qtr 5**	**Qtr 6**	**Qtr 7**	**Qtr 8**
9	Shoreline CFD Tax*		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*500,000*	*500,000*	*500,000*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*500,000*	*500,000*	*500,000*
12										
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		750,000	1,500,000	2,250,000	3,000,000	3,750,000	2,750,000	3,250,000	3,750,000
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**		-	-	-	-	-	-	-	-
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		NA	NA	NA	NA	(1,500,000)	-	-	-
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**750,000**	**1,500,000**	**2,250,000**	**3,000,000**	**2,250,000**	**2,750,000**	**3,250,000**	**3,750,000**
17										
18	**Beginning Shoreline Reserve Balance**		250,000	500,000	750,000	1,000,000	1,250,000	1,750,000	2,250,000	2,750,000
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		-	-	-	-	-	-	-	-
20	**Ending Shoreline Reserve Balance**		**250,000**	**500,000**	**750,000**	**1,000,000**	**1,250,000**	**1,750,000**	**2,250,000**	**2,750,000**
21										
22	Phase Satisfaction Achieved at End of Quarter		NA	NA	NA	NA	Yes	Yes	Yes	Yes
23	Amount Required to Reach Phase Satisfaction		NA	NA	NA	NA	1,500,000	-	-	-

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4			Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	0.75	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	0.5	
7			
8			Qtr 1
9	Shoreline CFD Tax*		1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve**		*IF(OR(D22="NA",D22="No"),$C$5*D9,IF(AND(C22="NA",D22="Yes"),$C$5*D9,IF(D22="Yes",$C$6*D9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*=D9-D10*
12			
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction		=C16-D10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)		=IF(AND(C22="NA",D22="Yes"),MAX(D13*($C$5-$C$6)/$C$5-D23,0),IF(D22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction		IFERROR(MAX(-D13,-D23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction		=SUM(D13:D15)
17			
18	Beginning Shoreline Reserve Balance		=C20+D11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction		=-D14
20	Ending Shoreline Reserve Balance		=SUM(D18:D19)
21			
22	Phase Satisfaction Achieved at End of Quarter		NA
23	Amount Required to Reach Phase Satisfaction		NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Qtr

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4		Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas	
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved		
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved		
7			
8			Qtr 2
9	Shoreline CFD Tax*	1000000	
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(F22="NA",F22="No"),$C$5*E9,IF(AND(D22="NA",L22="Yes"),$C$5*F9,IF(F22="Yes",$C$6*F9,0)))*	
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=E9-E10*	
12			
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=D16-E10	
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)	=IF(AND(D22="NA",E22="Yes"),MAX(E13*($C$5-$C$6)/$C$5-E23,0),IF(L22="NA",0))	
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-E13,-E23),"NA")	
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(E13:E15)	
17			
18	Beginning Shoreline Reserve Balance	=D20+E11	
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-F14	
20	Ending Shoreline Reserve Balance	=SUM(E18:E19)	
21			
22	Phase Satisfaction Achieved at End of Quarter		NA
23	Amount Required to Reach Phase Satisfaction		NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	F
4		**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		**Qtr 3**
9	Shoreline CFD Tax*	100000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve**	*=IF(OR(F22="NA",F22="No"),SCS5*F9,IF(AND(F22="NA",F22="Yes"),SCS5*F9,IF(F22="Yes",SCS6*F9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**	*=F9-F10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=E16+I10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**	=IF(AND(F22="NA",I22="Yes"),MAX(I13*(SCS5-SCS6)/SCS5,F23,0),IF(I22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-I13,-I23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(F13:F15)
17		
18	**Beginning Shoreline Reserve Balance**	=E20+I11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=I14
20	**Ending Shoreline Reserve Balance**	=SUM(F18:F19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
1		Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 4
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve* **	*=IF(OR(G22="NA",G22="No"),$C$9*G9,IF(AND(F22="NA",G22="Yes"),$C$5*G9,IF(G22="Yes",$C$6*G9,0)),*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve** *	*=G9-G10*
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=F16-G10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)	=IF(AND(F22="NA",G22="Yes"),MAX(G13*($C$4-$C$6)/$C$5-G23,0),IF(G22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-G13,-G23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(G13:G15)
17		
18	Beginning Shoreline Reserve Balance	=F20+G11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-G14
20	Ending Shoreline Reserve Balance	=SUM(G18:G19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 5
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve**	*=IF(OR(H22="NA",H22="No"),$C$5*H9,IF(AND(G22="NA",H22="Yes"),$C$5*H9,IF(H22="Yes",$C$6*H9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**	*=H9-H10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=G16+H10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**	=IF(AND(G22="NA",H22="Yes"),MAX(0,3*($C$4-$C$6)/($C$5-$C$6),0),IF(H22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-H13,-H23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(H13:H15)
17		
18	**Beginning Shoreline Reserve Balance**	=G20+H11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-H14
20	**Ending Shoreline Reserve Balance**	=SUM(H18:H19)
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	1500000

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Footnotes are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		Scenario 4.7 (b) (ii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		Qtr 6
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	=IF(OR(I22="NA",I22="No"),$C$5*I9,IF(AND(H22="NA",I22="Yes"),$C$5*I9,IF(I22="Yes",$C$6*I9,0)))
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	=I9-I10
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=H16+I10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)	=-IF(AND(H22="NA",I22="Yes"),MAX(I13*($C$5-$C$6)/$C$5-I23,0),IF(I22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-I13, I23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(I13:I15)
17		
18	Beginning Shoreline Reserve Balance	=I20+I11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-I14
20	Ending Shoreline Reserve Balance	=SUM(I18:I19)
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		**Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 7**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve**	*=IF(OR(J22="NA",J22="No"),SCS5*I9,IF(AND(J22="NA",J22="Yes"),SCS5*I9,IF(J22="Yes",SCS6*I9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**	*=I9-I10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=I16-I10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)**	=IF(AND(J22="NA",J22="Yes"),MAX(J13*(SCS5-SCS6)/SCS5-I23,0),IF(J22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-J13,-J23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(J13:J15)**
17		
18	**Beginning Shoreline Reserve Balance**	=I20+I11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-I14
20	**Ending Shoreline Reserve Balance**	**=SUM(J18:J19)**
21		
22	**Phase Satisfaction Achieved at End of Quarter**	**Yes**
23	**Amount Required to Reach Phase Satisfaction**	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		Scenario 4.7 (b) (iii) - More than One-Third of Project Reserve Account Balance Required to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 8
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve**	=IF(OR(K22="NA",K22="No"),SC55*K9,IF(AND(K22="NA",K12="Yes"),SC55*K9,IF(K22="Yes",SC56*K9,0)))
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**	=K9-K10
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=J16+K10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iii)	=IF(AND(K22="NA",K12="Yes"),MAX(K13+(SC55-SC56)/SC55-K13,0),IF(K22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	-IFERROR(MAX(-K13,-K25),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(K13:K15)
17		
18	Beginning Shoreline Reserve Balance	=J20+K11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	= K14
20	Ending Shoreline Reserve Balance	=SUM(K18:K19)
21		
22	Phase Satisfaction Achieved at End of Quarter	Yes
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D	E	F	G	H	I	J	K
4	**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction**									
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	75%								
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	50%								
7										
8			**Qtr 1**	**Qtr 2**	**Qtr 3**	**Qtr 4**	**Qtr 5**	**Qtr 6**	**Qtr 7**	**Qtr 8**
9	Shoreline CFD Tax*		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***		*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*750,000*	*750,000*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***		*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*250,000*	*250,000*
12										
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****		750,000	1,500,000	2,250,000	3,000,000	3,750,000	750,000	1,500,000	2,250,000
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**		-	-	-	-	-	-	-	-
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**		NA	NA	NA	NA	(3,750,000)	-	-	-
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**		**750,000**	**1,500,000**	**2,250,000**	**3,000,000**	**-**	**750,000**	**1,500,000**	**2,250,000**
17										
18	**Beginning Shoreline Reserve Balance**		250,000	500,000	750,000	1,000,000	1,250,000	1,500,000	1,750,000	2,000,000
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**		-	-	-	-	-	-	-	-
20	**Ending Shoreline Reserve Balance**		**250,000**	**500,000**	**750,000**	**1,000,000**	**1,250,000**	**1,500,000**	**1,750,000**	**2,000,000**
21										
22	Phase Satisfaction Achieved at End of Quarter		NA	NA	NA	NA	No	No	No	No
23	Amount Required to Reach Phase Satisfaction		NA	NA	NA	NA	10,000,000	-	-	-

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	C	D
4			Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	0.75	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	0.5	
7			
8			Qtr 1
9	Shoreline CFD Tax*		1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve**		*=IF(OR(D22="NA",D22="No"),$C$5*D9,IF(AND(C22="NA",D22="Yes"),$C$5*D8,IF(D22="Yes",$C$6*D9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**		*=D9-D10*
12			
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction***		=C16+D10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)		=-IF(AND(C22="NA",D22="Yes"),MAX(D13*($C$5-$C$6)/$C$5-D23,0),IF(D22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction		=IFERROR(MAX(-D13,-D23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction		=SUM(D13:D15)
17			
18	Beginning Shoreline Reserve Balance		=C20+D11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction		=-D14
20	Ending Shoreline Reserve Balance		=SUM(D18:D19)
21			
22	Phase Satisfaction Achieved at End of Quarter		NA
23	Amount Required to Reach Phase Satisfaction		NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.
** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	E
4		Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 2
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(E22="NA",E22="No"),$C$5*E9,IF(AND(D22="NA",E22="Yes"),$C$5*E9,IF(E22="Yes",$C$6*E9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=E9-E10*
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction***	=D16+E10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)	=-IF(AND(D22="NA",E22="Yes"),MAX(F13*($C$5-$C$6)/$C$5,0),IF(E22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-E13,-E23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(E13:E15)
17		
18	Beginning Shoreline Reserve Balance	=D20+E11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-E14
20	Ending Shoreline Reserve Balance	=SUM(E18:E19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	F
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		Qtr 3
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve**	*=IF(OR(F22="NA",F22="No"),$C$5*F9,IF(AND(E22="NA",F22="Yes"),$C$5*F9,IF(F22="Yes",$C$6*F9,0)))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve**	*=F9-F10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*** **	=E16+F10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(E22="NA",F22="Yes"),MAX(F13*($C$5-$C$6)/$C$5-F23,0),IF(F22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-F13,-F23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(F13:F15)
17		
18	**Beginning Shoreline Reserve Balance**	=E20+F11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-F14
20	**Ending Shoreline Reserve Balance**	=SUM(F18:F19)
21		
22	**Phase Satisfaction Achieved at End of Quarter**	NA
23	**Amount Required to Reach Phase Satisfaction**	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	G
4		Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		Qtr 4
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(G22="NA",G22="No"),$C$5*G9,IF(AND(F22="NA",G22="Yes"),$C$5*G9,IF(G22="Yes",$C$6*G9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=G9-G10*
12		
13	Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction***	=F16+G10
14	Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)	=-IF(AND(F22="NA",G22="Yes"),MAX(G13*($C$5-$C$6)/$C$5-G23,0),IF(G22="NA",0))
15	Amount of Project Reserve Required to Reach Phase Satisfaction	=IFERROR(MAX(-G13,-G23),"NA")
16	Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction	=SUM(G13:G15)
17		
18	Beginning Shoreline Reserve Balance	=F20+G11
19	Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction	=-G14
20	Ending Shoreline Reserve Balance	=SUM(G18:G19)
21		
22	Phase Satisfaction Achieved at End of Quarter	NA
23	Amount Required to Reach Phase Satisfaction	NA

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	H
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	**Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved**	
6	*Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved*	
7		
8		**Qtr 5**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(H22="NA",H22="No"),$C$5*H9,IF(AND(G22<"NA",H22="Yes"),$C$5*H9,IF(H22="Yes",$C$6*H9,0)).*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=H9-H10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	**=G16+H10**
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	**=-IF(AND(G22="NA",H22="Yes"),MAX(H13*($C$5-$C$6)/$C$5-H23,0),IF(H22="NA",0))**
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	**=IFERROR(MAX(-H13,-H23),"NA")**
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(H13:H15)**
17		
18	**Beginning Shoreline Reserve Balance**	**=G20+H11**
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	**=-H14**
20	**Ending Shoreline Reserve Balance**	**=SUM(H18:H19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	**No**
23	Amount Required to Reach Phase Satisfaction	10000000

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	I
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formules**
5	**Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved**	
6	**Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved**	
7		
8		**Qtr 6**
9	**Shoreline CFD Tax***	1000000
10	***Amount of Shoreline CFD Tax Allocated to Project Reserve*** **	*=IF(OR(I22="NA",I22="No"),$C$5*I9,IF(AND(H22="NA",I22="Yes"),$C$5*I9,IF(I22="Yes",$C$6*I9,0))*
11	***Amount of Shoreline CFD Tax Allocated to Shoreline Reserve*** **	*=I9-I10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	=H16+I10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(H22="NA",I22="Yes"),MAX(I13*($C$5-$C$6)/$C$5-I23,0),IF(I22<"NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-I13,-I23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	=SUM(I13:I15)
17		
18	**Beginning Shoreline Reserve Balance**	=H20+I11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-I14
20	**Ending Shoreline Reserve Balance**	=SUM(I18:I19)
21		
22	**Phase Satisfaction Achieved at End of Quarter**	**No**
23	**Amount Required to Reach Phase Satisfaction**	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	J
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve If Phase Satisfaction Not Achieved	
7		
8		**Qtr 7**
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(J22="NA",J22="No"),$C$5*J9,IF(AND(J22="NA",J22="Yes"),$C$5*J9,IF(J22="Yes",$C$6*J9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=J9-J10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	=I16+J10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(J22="NA",J22="Yes"),MAX(J13*($C$5-$C$6)/$C$5-I23,0),IF(J22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-J13,-I23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(J13:J15)**
17		
18	**Beginning Shoreline Reserve Balance**	=I20+J11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-J14
20	**Ending Shoreline Reserve Balance**	**=SUM(J18:J19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	No
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction

Examples are for illustrative purposes only and are not intended to illustrate how the amounts to be distributed would be calculated. These are not actual results.

	B	K
4		**Scenario 4.7 (b) (iv) - Project Reserve Account Balance Not Sufficient to Achieve Phase Satisfaction - Formulas**
5	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Achieved	
6	Percentage of Shoreline CFD Tax Allocated to Project Reserve if Phase Satisfaction Not Achieved	
7		
8		Qtr 8
9	Shoreline CFD Tax*	1000000
10	*Amount of Shoreline CFD Tax Allocated to Project Reserve***	*=IF(OR(K22="NA",K22="No"),$C$5*K9,IF(AND(J22="NA",K22="Yes"),$C$5*K9,IF(K22="Yes",$C$6*K9,0))*
11	*Amount of Shoreline CFD Tax Allocated to Shoreline Reserve***	*=A9-K10*
12		
13	**Project Reserve Balance before Distributions to Shoreline Reserve or to Reach Phase Satisfaction*****	=J16+K10
14	**Distribution to Shoreline Reserve at Phase Satisfaction per Financing Plan Section 4.7 (b) (iv)**	=-IF(AND(J22="NA",K22="Yes"),MAX(K13*($C$5-$C$6)/$C$5-K23,0),IF(K22="NA",0))
15	**Amount of Project Reserve Required to Reach Phase Satisfaction**	=IFERROR(MAX(-K13,-K23),"NA")
16	**Project Reserve Balance after Distributions to Shoreline Reserve or to Reach Phase Satisfaction**	**=SUM(K13:K15)**
17		
18	**Beginning Shoreline Reserve Balance**	=J20+K11
19	**Distribution from Project Reserve to Shoreline Reserve at Phase Satisfaction**	=-K14
20	**Ending Shoreline Reserve Balance**	**=SUM(K18:K19)**
21		
22	Phase Satisfaction Achieved at End of Quarter	No
23	Amount Required to Reach Phase Satisfaction	0

* Funds in the Shoreline Reserve are not available to be used to reach Phase Satisfaction.

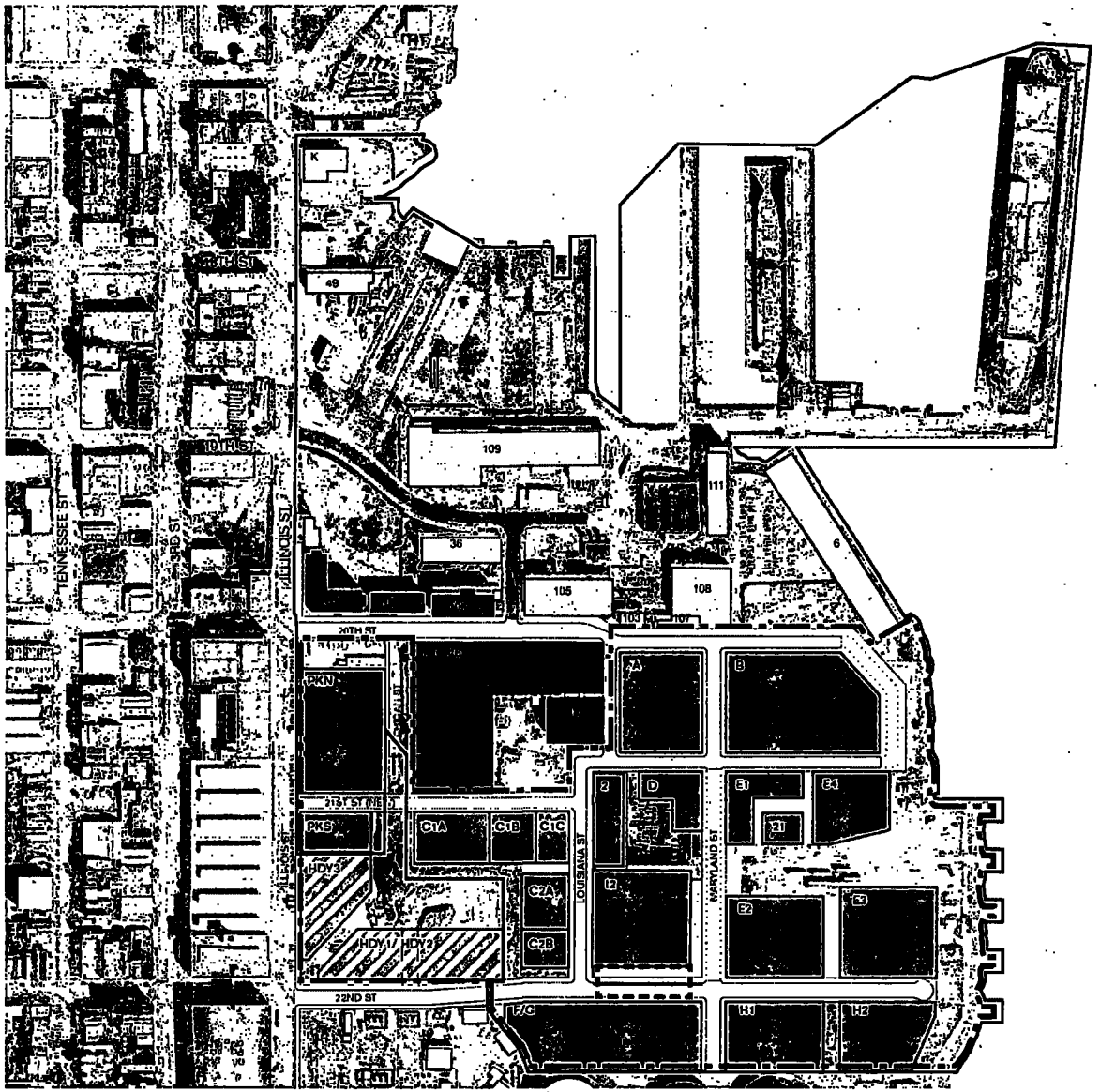
** Phase Audit Completed at End of Q4

*** Per Financing Plan, percentage of Shoreline CFD Tax allocated to Project Reserve remains at 75%.

**** Financing Plan anticipates that after Project Reserve Balance has been depleted, bonds would be issued against ongoing annual Shoreline CFD Tax allocated to Project Reserve with bond proceeds applied to reach Phase Satisfaction.

FP Maps: Pier 70 SUD Public Financing Districts

MAP 1



PIER 70 SUD

IFD/IRFD BOUNDARY

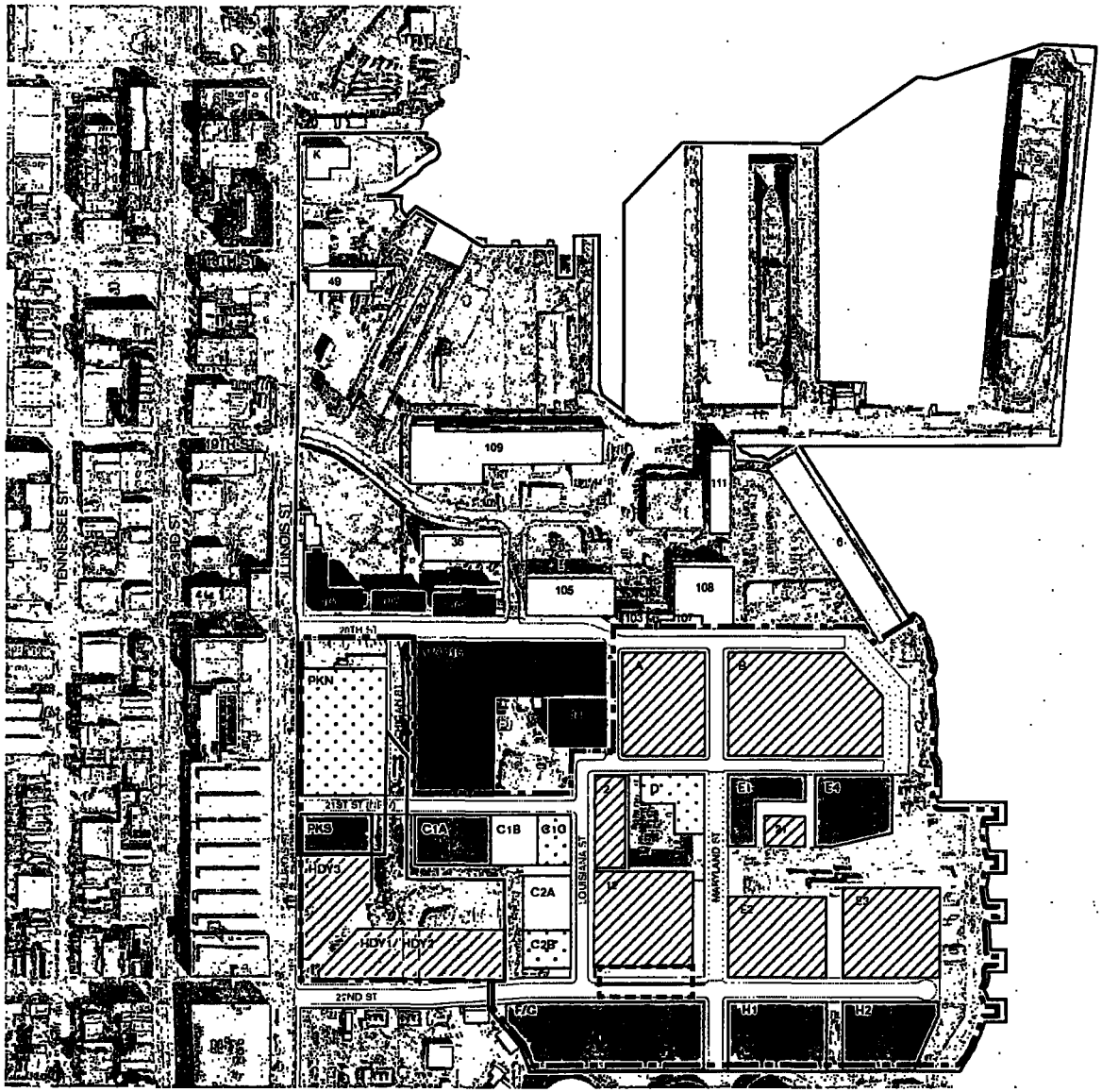
SITELAB urban studio 05/01/18

IFD/IRFD BOUNDARY

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD
- IFD Area G-1
- Hoedown Yard IRFD
- IFD Area G2-4

FP Maps: Pier 70 SUD Public Financing Districts

MAP 2



PIER 70 SUD

CFD TAX AREAS

SITELAB urban studio 05/01/18

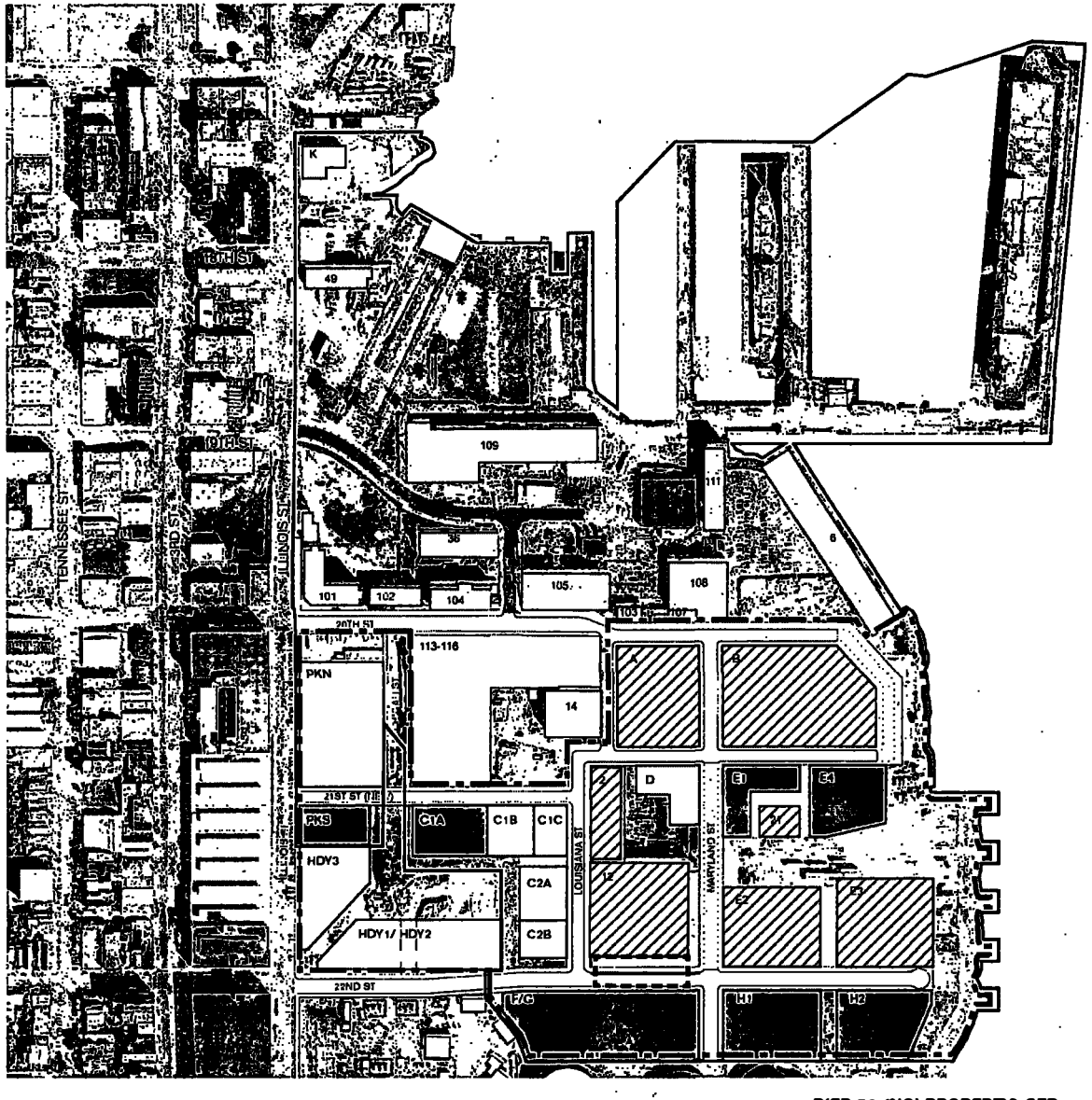
CFD TAX AREAS

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD

- Hoedown Yard CFD
- Pier 70 (Condo) CFD
- Future Annexation Area (Condo and/or Leased)
- Pier 70 (Leased Property) CFD
- 20th Street Historic Core CFD

FP Maps: Pier 70 SUD Public Financing Districts

MAP 3



PIER 70 SUD

PIER 70 (LEASED PROPERTY) CFD

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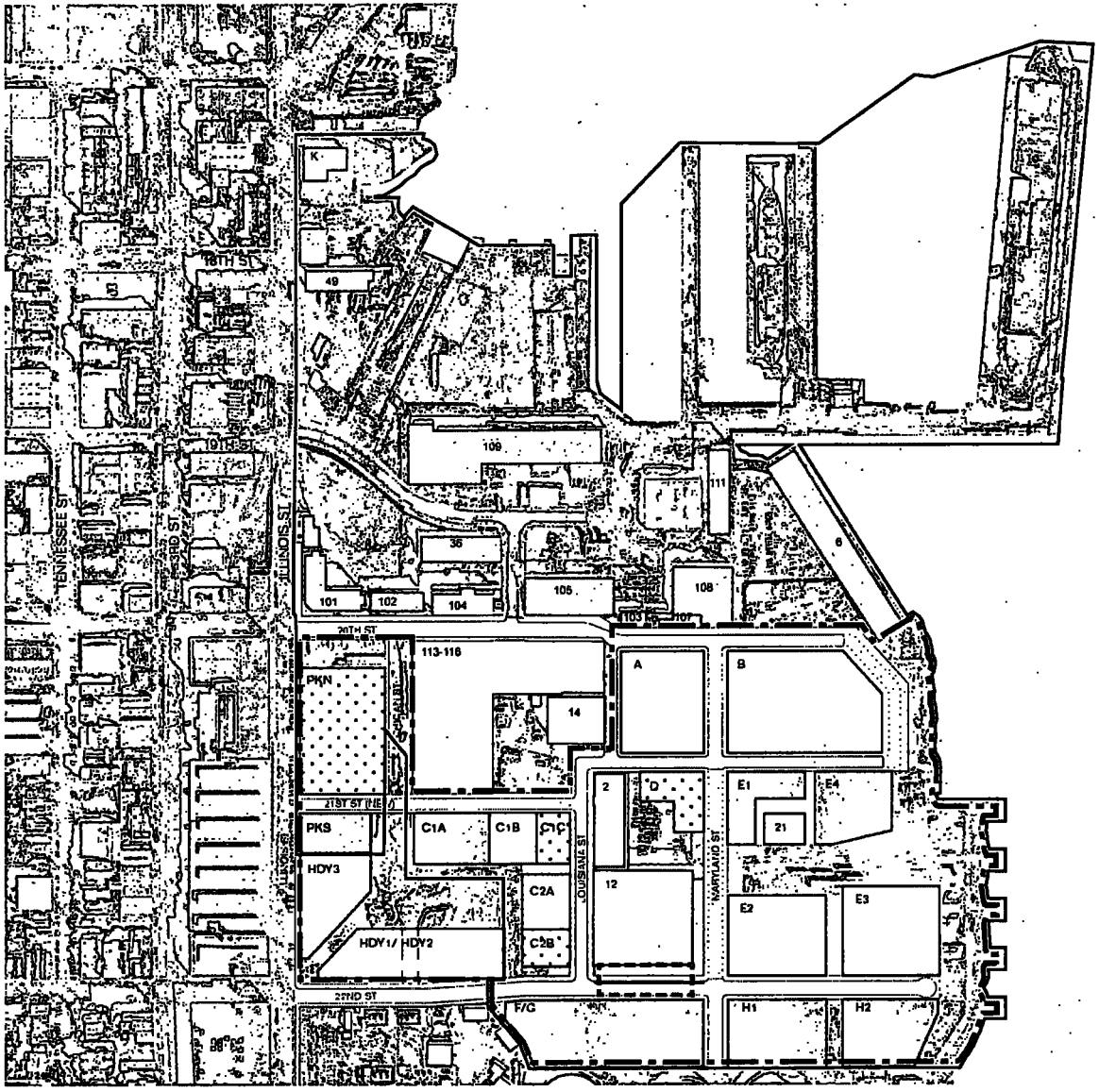
PIER 70 (NOI PROPERTY) CFD

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD
- PIER 70 (Leased Property) CFD
- Future Annexation Area (Condo and/or Leased)

FP Maps: Pier 70 SUD Public Financing Districts

MAP 4



PIER 70 SUD

PIER 70 (CONDO) CFD

SITELAB urban studio 05/01/18

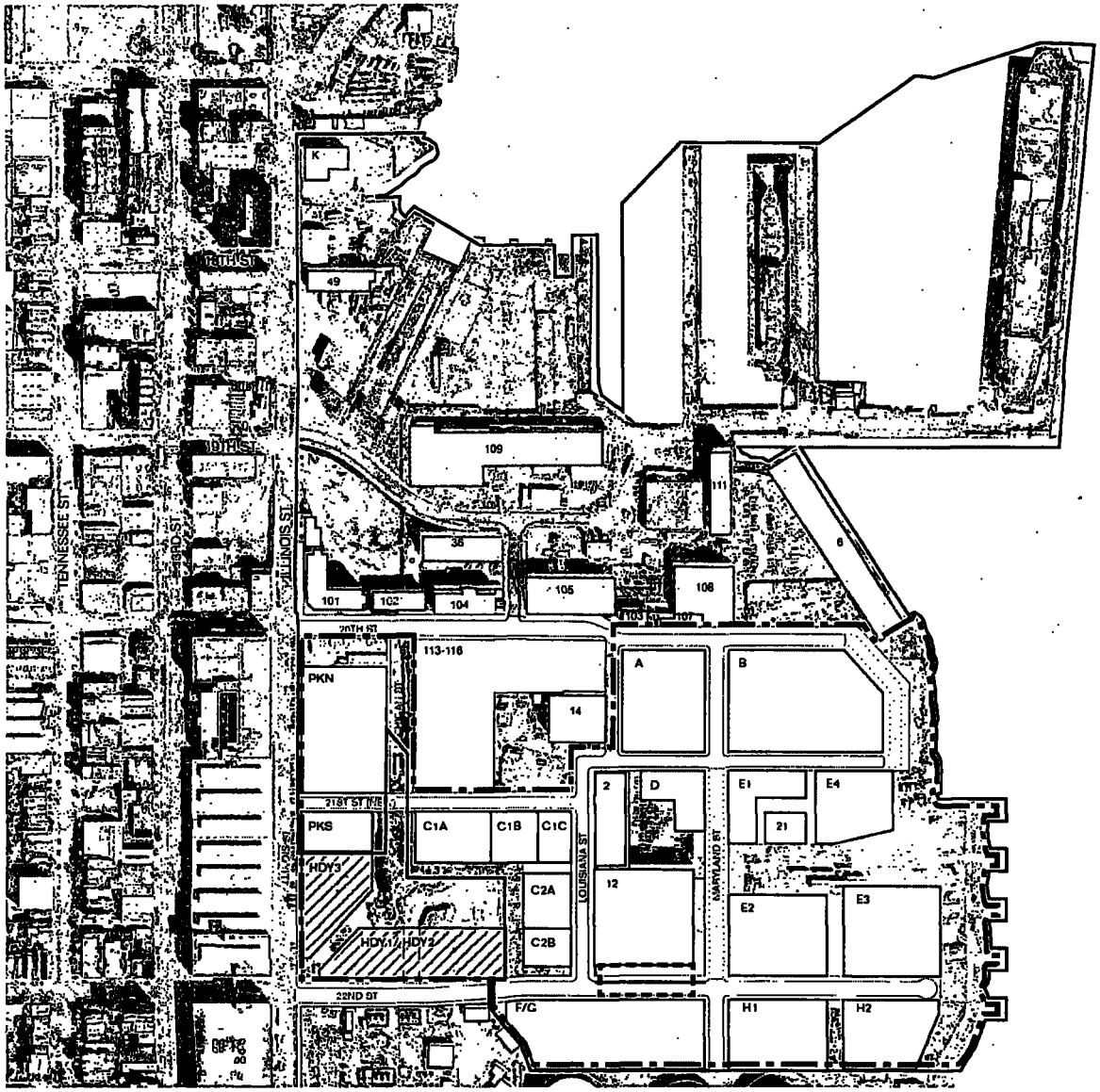
PIER 70 (CONDO) CFD

- Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)
- Pier 70 SUD

- PIER 70 (Condo) CFD
- Future Annexation Area (Condo and/or Leased)

FP Maps: Pier 70 SUD Public Financing Districts

MAP 5



PIER 70 SUD

HOEDOWN YARD CFD

SITELAB urban studio 05/01/18

HOEDOWN YARD CFD

—— Pier 70 Area Boundary (from Pier 70 Port Preferred Master Plan April 20)

—▪— Pier 70 SUD

▨ Hoedown Yard CFD

DDA Exhibit D1

Permitted Exceptions

In reference to: Chicago Title Company's 9th Amended Proforma attached hereto as ***Attachment 1.***

Schedule B:	**Document Description and Recording Data**	**Overview**	**Master Lease**	**Parcel Lease/Fee Transfers**
2.	Taxes for the fiscal year 2017-2018	None levied as the property was vested in a public entity.	N/A as of Close of Escrow	N/A as of Close of Escrow
3.	Mello Roos Community Facilities District.	Any special taxes/assessments will only affect the Property post-closing. There are no special taxes/assessments currently due on the Property because it is held by the City and County of San Francisco.	Permitted Exception	Permitted Exception
4.	Supplemental Taxes	Approved, subject to Title Company adding the phrase "*resulting from changes of ownership or completion of new construction occurring after the date of this policy.*"	Permitted Exception	Permitted Exception
5.	Any adverse claim based upon the assertion that some portion of the land is tide or submerged lands.	To be eliminated after trust exchange.	Permitted Exception	Unpermitted Exception, provided that matters disclosed by the Trust Termination Patent recorded pursuant to the Trust Exchange Agreement will be a Permitted Exception.
6.	Any adverse claim based upon the assertion that any portion of said land was not tideland that was available for	To be eliminated after trust exchange.	Permitted Exception	Unpermitted Exception, provided that matters disclosed by the Trust Termination Patent recorded pursuant to the

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
	disposition by the State of California.			Trust Exchange Agreement will be a Permitted Exception.
7.	Rights and Easements for Commerce, Navigation and Fishery.	To be eliminated after trust exchange.	Permitted Exception	Unpermitted Exception, provided that matters disclosed by the Trust Termination Patent recorded pursuant to the Trust Exchange Agreement will be a Permitted Exception.
THE FOLLOWING ITEMS AFFECT THOSE PORTIONS OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4052, LOT 1:				
9.	Easement recorded November 26, 1940 in Book 3689, Page 185.	An easement from the Columbia Steel Company ("Grantor") to the City and County of San Francisco ("Grantee") for the purpose of the construction, maintenance and operation of sewers and all appurtenances.	Permitted Exception	Not applicable; exception does not affect any Development Parcels.
10.	Covenants, Conditions and Restrictions appearing in a Quitclaim Deed recorded November 13, 1967 at 26523 in Book B192, Page 384.	Quitclaim from the United States of America ("Grantor") to the State of California acting through the San Francisco Port Authority ("Grantee"). Said quitclaim deed is subject to the following: Subject to rights of way, restrictions, reservations and easements now existing or of record. Together will all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and	Permitted Exception	Not applicable; exception does not affect any Development Parcels.

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
		profits thereof, and also all the estate, right, title, interest, property possession, claim and demand whatsoever, in law as well as equity, of the Grantor of, in or to the described premises and every part and parcel thereof, with the appurtenances. Together with those items of personal property presently located at the said Department Reserve Plant, DOD #46, 20th and Illinois Streets, San Francisco, CA. [Note: Those items of personal property are listed on Exhibit A attached to the document.] It is the intention of the Grantor to convey to the Grantee all real property, personal property and improvements of whatsoever nature owned by the Grantor and located at the facility known as Departmental Reserve Plant, DOD #46, 20th and Illinois Streets, San Francisco, CA. Said property transferred was duly determined to be surplus pursuant to the General Services Administration for disposal pursuant to the Federal Property and Administrative Services Act of 19489 (63 Stat. 377).		
11.	Conditions, restrictions, Easements, Reservations and Limitations and Rights, Powers, Duties and Trust contained in the Legislative Grants and by law as to the land or any portion thereof acquired by the City and County of San Francisco, by	To be eliminated after trust exchange.	Permitted Exception	Unpermitted Exception; provided that matters disclosed by the Trust Termination Patent recorded pursuant to the Trust Exchange Agreement will be a Permitted Exception.

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
	Chapter 1333 of the Statues of 1968, as amended by Chapters 1296 and 1400, Statutes of 1969 and by Chapter 670, Statutes of 1970, and Chapter 1253, Statues of 1971, and as may be further amended, and such Reversionary Rights and Interest as may be possessed by the State of California under the terms and provisions of said Legislative Grants, or by law.			
12.	Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded January 30, 1969 at R40413 in Book B308, Page 686.	Document sets forth the terms and conditions and obligations by and between the City and County of San Francisco (the "City") and the Director of Finance of the State of California acting for and on behalf of the State of California, and assisted by the Secretary for Agriculture and Services of the State of the State of California and the San Francisco Port Authority relating to the Transfer of the Port property to the City from the State of California. To be eliminated upon trust exchange.	Permitted Exception	Unpermitted Exception; provided that matters disclosed by the Trust Termination Patent recorded pursuant to the Trust Exchange Agreement will be a Permitted Exception.
THE FOLLOWING ITEMS AFFECT THOSE PORTION OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4111, LOT 4				
13.	Judgment Quieting Title, San	The People of the State of California vs. The Bethlehem	Permitted Exception	Permitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
	Francisco Superior Court Case No. 401394, recorded April 16, 1954 at C63570 in Book 6359, Page 235.	Pacific Coast Steel Corporation et al.		
15	Permit recorded July 25, 1967 at Q4404 in Book B162, Page 939.	Revocable permit granted by the Department of Public Works to Bethlehem Steel Corp. for the construction and maintenance of a private force main in 20th Street to serve Blocks 4111 and 4046. Permit is conditioned on a 12,000-gallon per day maximum daily flow rate, and a 150-gallon per minute maximum flow rate.	Permitted Exception	Permitted Exception for benefit of Port property; however, if required, it will be treated as an Easement Action under DDA §8.1(e).
16.	Corporation Grant Deed recorded on December 16, 1982 at D275576 in Book D464, Page 628.	A Grant Deed from Bethlehem Steel Corporation to the City and County of San Francisco. Conveyance is subject to liens for general and special county and city taxes for the fiscal year July 1, 1982, to June 30, 1983. All subject to all easements, covenants, conditions and restrictions of record. Further subject to any matters that could be ascertained by an up-to-date survey, by making inquiry of persons in possession or by an inspection of the real property. All subject to rights and easements for commerce, navigation, and fishery in favor of the public or federal or state governments. Subject, further, to the effect of the following unrecorded instrument: Grant of Right of Way dated September 30, 1966, from Bethlehem Steel Corporation to the United States of America.	Permitted Exception	Permitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
17.	Street Encroachment Agreement recorded on July 6, 1976 at Z01074 in Book C196, Page 780.	The City and County of San Francisco Department of Public Works granted a Street Encroachment Permit to Bethlehem Steel Company affecting Block 4046, Lot 1; Blk. 4110, Lot 1 & Blk. 4111, Lot 2 located on both sides of 20th Street east of Illinois Street. Encroachment affects a fence and curbside parking area with 35 foot wide unrestricted access on 20th Street.	Permitted Exception	Permitted Exception for benefit of Port property (including Parcel K North); if Parcel K North becomes an Option Parcel under DDA §7.9(b), then if required, removal of Exception 17 will be treated as an Easement Action under DDA §8.1(e).
THE FOLLOWING ITEMS AFFECT ALL OF THE HEREIN DESCRIBED LAND				
24.	Covenant and Environmental Restriction on Property recorded August 19, 2016 as Inst. No. 2016-K308328-00.	The Covenant and Environmental Restriction on property (the "Covenant") affects the property consisting of Seawall Lot 349, Seawall Lot 345 (portion), Assessors Block 4110 (portion) and Twentieth Street (portion), generally bounded by Mariposa Street, Illinois Street and 22nd Street (the "Property"). The Covenant was made by the City and County of San Francisco ("Covenantor") for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Water Board"). The Property and groundwater underlying the property contains hazardous material as defined in California Health & Safety Code Section 25260. Subdivision (d). Covenantor promises to restrict the use of the Property as follows: a. Use of native soil for growing produce for human consumption shall not be permitted on the Property;	Permitted Exception to the extent it affects the Property	Permitted Exception to the extent it affects the Property

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
		b. Uses involving regular exposure to native soil shall not be permitted on the Property; c. No hospital shall be permitted on the Property; d. No Owners or Occupants of the Property or any thereof shall conduct any excavation work on the Property, except in accordance with the July 25, 2013 Risk Management Plan prepared by Treadwell & Rollo, Inc. (the "RMP"). e. All uses, maintenance and development of the Property shall comply with the RMP at all times, including but not limited to: restoring and subsequently maintaining the integrity of any pavement or other surface described in the RMP capable of preventing exposure to the underlying soil (the "Durable Cover") following any construction, remedial measures taken, or remedial equipment installed on the Property pursuant to the requirements of the Water Board and/or the RMP, unless otherwise expressly permitted in writing by the Water Board's Executive Officer. f. Except for the dewatering during construction activities, no Owners or Occupants of the Property shall drill, bore, otherwise construct, or use a well for the purpose of extracting ground water for any use. g. The Owner shall notify the Water Board of each of the following when not performed in compliance with the RMP or any Water Board approved work plans: (1) The type, cause, location and date of any disturbance to the Durable		

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
		Cover, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Property pursuant to the requirements of the Water Board, which could affect the ability of the Durable Cover or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. h. The Covenantor, all Owners and Occupants agree that the Water Board shall have reasonable access to the Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code. i. No Owner or Occupant of the Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Property. Unless terminated the covenant shall continue in effect in perpetuity.		
25.	Any right, title or interest by reason of the record title to said Land not having been established and quieted under the provisions of the "Destroyed Land Records Relief Act of 1906, as Amended," commonly known as the "McEnerney Act".	Title Company will require evidence that a McEnerney Judgement was filed on the property. Title may offer an endorsement to the title policy if no McEnerney judgment is found.	Permitted Exception	Unpermitted Exception

Schedule B:	Document Description and Recording Data	Overview	Master Lease	Parcel Lease/Fee Transfers
27.	Easement(s) for the purpose(s) shown belowand rights incidental thereto, as set forth in the Master Lease upon the terms and conditions set forth therein.	Granting to the Port ingress and egress to and from Parcel 1 (Affordable Self-Storage), Parcel 2 (Portion of Building 21), Parcel 3 (Building No. 11 Site) and Parcel 4 (Pump Station), as shown on Exhibit B of the Master Lease.	Permitted Exception	N/A (will be released at Close of Escrow for the Parcel Lease/Fee Transfer).
28.	Development Agreement, dated May 2, by and between the City and County of San Francisco, a political subdivision and municipal corporation of the State of California, and FC Pier 70, LLC, a Delaware limited liability company	Governing certain rights and obligations of the parties for the development of the 28-acre Site	Permitted Exception	Permitted Exception
29.	Disposition and Development Agreement dated as of May 2, 2018, between the City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission, and FC Pier 70, LLC, a Delaware limited liability company		Permitted Exception	Unpermitted Exception (to be released at close of escrow for each parcel lease/fee transfer)

CLTA STANDARD COVERAGE POLICY OF TITLE INSURANCE

Issued By:

CHICAGO TITLE INSURANCE COMPANY

Policy Number:

9th AMENDED PROFORMA

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;

and in addition, as to an insured lender only:

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage, said mortgage being shown in Schedule B in the order of its priority;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule B, or the failure of the assignment shown in Schedule B to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Chicago Title Company
2150 John Glenn Drive, Suite 300
Concord, CA 94520

Chicago Title Insurance Company

By:

President

Countersigned By:

PROFORMA
Authorized Officer or Agent

Attest:

Secretary

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

SCHEDULE A

Date of Policy	Amount of Insurance	Premium
PROFORMA	$47,500,000.00	PROFORMA

1. Name of Insured:

   FC Pier 70, LLC, a Delaware limited liability company

2. The estate or interest in the land which is covered by this policy is:

   A Leasehold as created by that certain lease dated _____ ___, 2018 by and between THE CITY AND COUNTY OF SAN FRANCISCO, operating by and through the SAN FRANCISCO PORT COMMISSION, as Lessor, and FC PIER 70, LLC, a Delaware limited liability company, as Lessee, as referenced in the document entitled Memorandum of Lease which was recorded _____ ___, 2018 under Instrument No. _____, of Official Records, for the term, upon and subject to all the provisions contained in said document, and in said lease.

3. Title to the estate or interest in the land is vested in:

   FC Pier 70, LLC, a Delaware limited liability company

4. The land referred to in this policy is described as follows:

   SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED

END OF SCHEDULE A

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EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): Lot 001, Block 4052 (Portion) and Lot 004, Block 4111 (Portion)

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

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, MORE PARTICULARLY 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"

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EXHIBIT "A"
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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.

EXCEPTING THEREFROM, THE FOLLOWING PARCELS:

PARCEL 1 (AFFORDABLE SELF STORAGE):

BEGINNING AT THE POINT ON THE SOUTHERLY LINE 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, FROM WHICH THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL BEARS SOUTH 85°38'01" WEST 491.1 FEET, SAID POINT OF BEGINNING ALSO BEING ON A LINE WHICH BEARS SOUTH 04°21'59" EAST FROM THE SOUTHEAST CORNER OF A METAL BUILDING KNOWN AS BUILDING NO. 66; THENCE FROM SAID POINT OF BEGINNING, NORTH 04°21'59" WEST 220.0 FEET; THENCE NORTH 85°38'01" EAST 40.0 FEET; THENCE NORTH 04°21'59" WEST 178.0 FEET; THENCE NORTH 85°38'01" EAST 641 FEET, MORE OR LESS TO THE TO THE EASTERLY EDGE OF A CONCRETE DOCK WALL; THENCE ALONG A MEANDERING CONTOUR LINE AT AN ELEVATION OF 5.8 FEET (NAVD88 DATUM), BEING THE MEAN HIGH WATER LINE (MHW) 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, SOUTHERLY AND WESTERLY ALONG SAID DOCK TO THE SHORELINE AND CONTINUING ALONG THE SHORELINE, EDGES OF CONCRETE WALLS OF DOCKS AND SEAWALLS ALONG SAID MHW LINE, IN A GENERAL SOUTHERLY DIRECTION, 596 FEET, PLUS OR MINUS, TO A POINT ON EASTERLY PROJECTION

EXHIBIT "A"
Legal Description

OF THE SOUTHERLY LINE OF SAID B192 O.R. 384 PARCEL; THENCE ALONG SAID EASTERLY PROJECTION AND THE LINE OF B192 O.R. 384 PARCEL, SOUTH 85°38'01" WEST 594 FEET, MORE OR LESS, TO SAID POINT OF BEGINNING.

PARCEL 2 (PORTION OF BUILDING NO. 21):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 424.8 FEET; THENCE SOUTH 85°38'01" WEST 1.2 FEET TO SOUTHWESTERLY EXTERIOR CORNER OF A 2-STORY METAL BUILDING, KNOWN AS BUILDING NO. 21, ALSO BEING THE **TRUE POINT OF BEGINNING**; THENCE ALONG THE EXTERIOR WESTERLY WALL OF SAID BUILDING, MORE OR LESS, NORTH 04°21'59" WEST 45.0 FEET, MORE OR LESS, TO THE NORTHERLY FACE OF A 6 INCH WIDE CONCRETE PARTITION WALL; THENCE ALONG SAID WALL, NORTH 85°38'01" EAST 54.5 FEET, MORE OR LESS, TO NORTHEAST CORNER OF SAID WALL; THENCE ALONG THE EASTERLY FACE OF SAID WALL, SOUTH 04°21'59" EAST 45.0 FEET, MORE OR LESS, TO THE EXTERIOR SOUTHERLY WALL OF SAID BUILDING NO. 21; THENCE ALONG SAID BUILDING WALL, MORE OR LESS, SOUTH 85°38'01" WEST 54.5 FEET TO SAID TRUE POINT OF BEGINNING.

PARCEL 3 (BUILDING NO. 11 SITE):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,120.00 FEET TO THE EASTERLY LINE OF FORMER MARYLAND STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER MARYLAND STREET, SOUTH 04°21'59" EAST 327.0 FEET; THENCE NORTH 85°38'01" EAST 100.9 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 85°38'01" EAST 77.5 FEET; THENCE SOUTH 76°21'39" EAST 57.5 FEET; THENCE SOUTH 04°21'59" EAST 145.0 FEET; THENCE SOUTH 85°38'01" WEST 49.5 FEET; THENCE SOUTH 04°21'59" EAST 4.0 FEET; THENCE SOUTH 85°38'01" WEST 82.7 FEET TO A POINT ON A LINE BEARING SOUTH 04°21'59" EAST FROM SAID TRUE POINT OF BEGINNING; THENCE NORTH 04°21'59" WEST 166.8 FEET TO SAID TRUE POINT OF BEGINNING.

PARCEL 4 (PUMP STATION):
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF ILLINOIS STREET (80 FEET WIDE) AND THE SOUTHERLY LINE OF 20TH STREET (66 FEET WIDE); THENCE ALONG SAID LINE OF THE 20TH STREET AND ALONG THE SOUTHERLY LINE OF FORMER 20TH STREET (66 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO.

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EXHIBIT "A"

Legal Description

10792, DATED MARCH 30, 1914, NORTH 85°38'01" EAST 1,400.00 FEET TO THE EASTERLY LINE OF FORMER DELAWARE STREET (80 FEET WIDE), AS SAID STREET EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION NO. 1376, DATED OCTOBER 15, 1940; THENCE ALONG SAID LINE OF FORMER DELAWARE STREET, SOUTH 04°21'59" EAST 76.9 FEET; THENCE NORTH 85°38'01" EAST 37.0 FEET TO THE **TRUE POINT OF BEGINNING**, BEING A POINT ON THE EASTERLY FACE OF AN 18 INCH WIDE CONCRETE WALL; THENCE ALONG SAID FACE OF WALL, NORTH 33°06'32" WEST 38.4 FEET AND NORTH 13°01'17" WEST 57.6 FEET TO A POINT ON A CHAIN-LINK FENCE; THENCE ALONG SAID FENCE, NORTH 79°33'35" EAST 19.8 FEET TO THE WESTERLY EDGE OF A CONCRETE LOADING DOCK; THENCE ALONG SAID EDGE OF LOADING DOCK, SOUTH 36°29'34" EAST 24.7 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOADING DOCK; THENCE ALONG THE SOUTHERLY EDGE OF SAID DOCK AND ALONG THE SOUTHERLY LINE OF A 1-STORY METAL BUILDING KNOWN AS BUILDING NO. 6, NORTH 53°30'26" EAST 40.5 FEET; THENCE SOUTH 02°02'49" EAST 95.1 FEET TO A POINT ON THE NORTHERLY FACE OF SAID 18 INCH WIDE CONCRETE WALL; THENCE ALONG THE FACE OF SAID WALL, SOUTH 88°20'10" WEST 36.2 FEET TO SAID TRUE POINT OF BEGINNING.

THE BASIS OF BEARING FOR THE ABOVE PARCELS 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).

ALSO 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.

Assessor's Parcel Nos. : Portions of 4052-001 and 4111-004

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SCHEDULE B
EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

   Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matter excepted under (a), (b), or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

END OF SCHEDULE B - PART I

SCHEDULE B
EXCEPTIONS FROM COVERAGE

PART II

1. Intentionally deleted

2. There were no taxes levied for the fiscal year 2017-2018 as the property was vested in a public entity.

3. The herein described property lies within the boundaries of a Mello Roos Community Facilities District ("CFD"), as follows:

   CFD No: 90 1
   For: School Facility Repair and Maintenance

   This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

   None now due and payable

4. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring on or after the Date of Policy.

   None now due and payable

5. Any adverse claim based upon the assertion that some portion of said Land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.

6. Any adverse claim based upon the assertion that any portion of said Land was not tideland or submerged land which was available for disposition by the State of California, or that any portion thereof has ceased to be tidelands or submerged lands by reason of erosion or by reason of having become upland by accretion.

7. Rights and Easements for Commerce, Navigation, and Fishery.

8. Intentionally deleted

THE FOLLOWING ITEMS AFFECT THOSE PORTIONS OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4052, LOT 1:

9. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	City and County of San Francisco, a municipal corporation
Purpose:	Construction, maintenance and operation of sewers
Recording Date:	November 26, 1940
Recording No.:	Book 3689, Page 185, Official Records
Affects:	Portion lying within the bounds of former 20th Street, now closed, and also property other than premises described herein

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

10. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

    Recording Date: November 13, 1967
    Recording No.: 26523, Book B192, Page 384, Official Records.

11. Conditions, restrictions, Easements, Reservations and Limitations and Rights, Powers, Duties and Trust contained in the Legislative Grants and by law as to the land or any portion thereof acquired by the City and County of San Francisco, by Chapter 1333 of the Statues of 1968, as amended by Chapters 1296 and 1400, Statutes of 1969 and by Chapter 670, Statutes of 1970, and Chapter 1253, Statues of 1971, and as may be further amended, and such Reversionary Rights and Interest as may be possessed by the State of California under the terms and provisions of said Legislative Grants, or by law.

    Conditions, Restrictions, Easements, Reservations and Limitations and Rights, Powers, Duties and Trusts contained in the Legislative Grants, and by law as to the land or any portion thereof, acquired by the City and County of San Francisco by Chapter 477 of the Statutes of 2011 (AB 418) and as may be further amended, and such Reversionary Rights and Interests as may be possessed by the State of California under the terms and provisions of said Legislative Grants, or by law.

12. Matters contained in that certain document

    Entitled: Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco
    Dated: January 24, 1969
    Executed by: State of California and City and County of San Francisco
    Recording Date: January 30, 1969
    Recording No.: R40413, Book B308, Page 686, Official Records

    Reference is hereby made to said document for full particulars.

    THE FOLLOWING ITEMS AFFECT THOSE PORTION OF THE HEREIN DESCRIBED LAND LYING WITHIN ASSESSORS BLOCK 4111, LOT 4:

13. Matters as set forth in that certain document entitled "Judgment Quieting Title", San Francisco Superior Court Case No. 401394, recorded April 16, 1954, as instrument no. C63570, Book 6359, Page 235 of Official Records, pertaining to a portion of said land.

    Affects: a portion of former Lousiana Street lying within the herein described land.

    Reference is made to the record for full particulars.

14. Intentionally deleted

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

15. Matters contained in that certain document

Entitled: Order No. 76214
Dated: June 13, 1967
Recording Date: July 25, 1967
Recording No.: Q4404, Book B162, Page 939, of Official Records

Reference is hereby made to said document for full particulars.

16. Matters contained in that certain document "Corporation Grant Deed"

Grantor: Bethlehem Steel Corporation, a Delaware corporation
Grantee: City and County of San Francisco
Recording Date: December 16, 1982
Recording No.: D275576, in Book D464, Page 628 of Official Records

Reference is hereby made to said document for full particulars.

17. Matters contained in that certain document entitled "Street Encroachment Agreement"

Recording Date: July 6, 1976
Recording No.: Z01074, in Book C196, Page 780 of Official Records

Reference is hereby made to said document for full particulars.

18. Intentionally deleted

19. Intentionally deleted

20. Intentionally deleted

THE FOLLOWING ITEMS AFFECT ALL OF THE HEREIN DESCRIBED LAND:

21. Intentionally deleted

22. Intentionally deleted

23. Intentionally deleted

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

24. Matters contained in that certain document

Entitled:	Covenant and Environmental Restriction on Property
Dated:	August 11, 2016
Executed by:	The City and County of San Francisco, acting by and through the Port of San Francisco and State of California Regional Water Quality Board, San Francisco Bay Region
Recording Date:	August 19, 2016
Recording No.:	2016-K308328-00, Official Records

Reference is hereby made to said document for full particulars.

25. Any right, title or interest of persons, known or unknown, who claim or may claim adversely to the vested owners herein by reason of the record title to said Land not having been established and quieted under the provisions of the "Destroyed Land Records Relief Act of 1906, as Amended," commonly known as the "McEnerney Act."

Affects: Portion of the property

26. Intentionally deleted

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as set forth in the Master Lease upon the terms and conditions set forth therein

Granted to:	The City and County of San Francisco, operating by and through the San Francisco Port Commission, and their successors and assigns
Purpose:	Ingress and egress to and from Parcel 1 (Affordable Self Storage), Parcel 2 (Portion of Building No. 21), Parcel 3 (Building No. 11 Site) and Parcel 4 (Pump Station) as shown on Exhibit B of the Mater Lease
Recording Date:	_____, 2018
Recording No.:	2018-_____ Official Records

28. Development Agreement

Dated:	May 2, 2018
Executed by and between:	The City and County of San Francisco, a political subdivision and municipal corporation of the State of California and FC Pier 70, a Delaware limited liability company
Recording Date:	_____, 2018
Recording No.:	2018-_____, Official Records

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SCHEDULE B
EXCEPTIONS FROM COVERAGE
(continued)

29. Disposition and Development Agreement, upon the terms, covenants, conditions and provisions set forth therein

Dated:	May 2, 2018
Executed by and between:	The City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission and FC Pier 70, a Delaware limited liability company
Recording Date:	_____, 2018
Recording No.:	2018-_____, Official Records

END OF SCHEDULE B - PART II

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EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land, (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. The term "insured" also includes:

   (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

   (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

   (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

   (iv) Subject to any rights or defenses the Company would have had against the named insured, (A) the spouse of an insured who receives title to the land because of dissolution of marriage, (B) the trustee or successor trustee of a trust or any estate planning entity created for the insured to whom or to which the insured transfers title to the land after the Date of Policy or (C) the beneficiaries of such a trust upon the death of the insured.

(b) "insured claimant": an insured claiming loss or damage.

(c) "insured lender": the owner of an insured mortgage.

(d) "insured mortgage": a mortgage shown in Schedule B, the owner of which is named as an insured in Schedule A.

(e) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(f) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(g) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

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(continued)

(h) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

(i) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

(a) After Acquisition of Title by Insured Lender.

If this policy insures the owner of the indebtedness secured by the insured mortgage, the coverage of this policy shall continue in force as of Date of Policy in favor of (i) such insured lender who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) After Conveyance of Title by an Insured.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from an insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to an insured.

(c) Amount of Insurance.

The amount of insurance after the acquisition or after the conveyance by an insured lender shall in neither event exceed the least of:

(i) The amount of insurance stated in Schedule A;

(ii) The amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) The amount paid by any governmental agency or governmental instrumentality, if the agency or the instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

An insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to that insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by an insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of such insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of such insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

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(continued)

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, an insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for this purpose. Whenever requested by the Company, an insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of an insured to furnish the required cooperation, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by each insured claimant shall be furnished to the Company within ninety (90) days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of an insured claimant to provide the required proof of loss or damage, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, an insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by an insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of an insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that insured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) in case loss or damage is claimed under this policy by the owner of the indebtedness secured by the insured mortgage, to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of the option provided for in paragraph a(i), all liability and obligations to the insured under this policy, other than to make the payment required in that paragraph, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

Upon the exercise by the Company of the option provided for in paragraph a(ii) the Company's obligation to an insured Lender under this policy for the claimed loss or damage, other than the payment required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

(b) To Pay or Otherwise Settle with Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or b(ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

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(continued)

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy to an insured lender shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured lender has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The liability of the Company under this policy to an insured owner of the estate or interest in the land described in Schedule A shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(d) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, or, if applicable, to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable to an insured lender for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of insurance pro tanto. However, as to an insured lender, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of insurance afforded under this policy as to any such insured, except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company to an insured lender except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

The provisions of this Section shall not apply to an insured lender, unless such insured acquires title to said estate or interest in satisfaction of the indebtedness secured by an insured mortgage.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

(continued)

11. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) **The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated (i) as to an insured owner, to all rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss; and (ii) as to an insured lender, to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) **The Insured's Rights and Limitations.**

Notwithstanding the foregoing, the owner of the indebtedness secured by an insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of an insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) **The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of an insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is One Million And No/100 Dollars ($1,000,000) or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of One Million And No/100 Dollars ($1,000,000) shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

(continued)

15. SEVERABILITY

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at:

Chicago Title Insurance Company
P.O. Box 45023
Jacksonville, FL 32232-5023
Attn: Claims Department

END OF CONDITIONS AND STIPULATIONS

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

ENDORSEMENT - ALTA 8.2-06

COMMERCIAL ENVIRONMENTAL PROTECTION LIEN

Issued By:

CHICAGO TITLE INSURANCE COMPANY

Attached to Policy Number:

9th AMENDED PROFORMA

Charge: PROFORMA

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

ENDORSEMENT - SE 91

DELETION OF ARBITRATION

Issued By:

CHICAGO TITLE INSURANCE COMPANY

Attached to Policy Number:

9th AMENDED PROFORMA

Charge: PROFORMA

The policy is hereby amended by deleting Paragraph 14 of the Conditions, relating to Arbitration.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

ENDORSEMENT - ALTA 13-06 LEASEHOLD

Attached to Policy Number:

9th AMENDED PROFORMA

Issued By:

CHICAGO TITLE INSURANCE COMPANY

Charge: PROFORMA

1. As used in this endorsement, the following terms shall mean:
   a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
   b. "Lease": the lease described in Schedule A.
   c. "Leasehold Estate": the right of possession granted in the Lease for the Lease Term.
   d. "Lease Term": the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
   e. "Personal Property": property, in which and to the extent the Insured has rights, located on or affixed to the Land on or after Date of Policy that by law does not constitute real property because (i) of its character and manner of attachment to the Land and (ii) the property can be severed from the Land without causing material damage to the property or to the Land.
   f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted.
   g. "Tenant Leasehold Improvements": Those improvements, in which and to the extent the Insured has rights, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.
2. Valuation of Estate or Interest Insured:

   If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction of the Insured, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.
3. Additional items of loss covered by this endorsement:

   If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(ii) of the Conditions:

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

a. The reasonable cost of (i) removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, (ii) transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, (iii) repairing the Personal Property damaged by reason of the removal and relocation, and (iv) restoring the Land to the extent damaged as a result of the removal and relocation of the Personal Property and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.

4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR

FORM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

([PIER 70] – [DESCRIBE PARCEL])

BETWEEN THE

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AND

[VERTICAL DEVELOPER]

DATED AS OF _____ ____, 201[___]

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

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[Note: The VDDA for Historic Buildings 2, 12, and 21 will be revised based on the Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21 attached hereto.]

FORM VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

([Pier 70] – DESCRIBE PARCEL])

THIS VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of _____, 20____, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the San Francisco Port Commission ("**Port**"), _____, and a _____ ("**Vertical Developer**"). All Exhibits and Schedules attached hereto are hereby incorporated by reference into this Agreement and will be construed as a single instrument and referred to herein as this "**Agreement.**" Initially capitalized terms in this Agreement are defined in ***Article 22***.

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port owns certain real property located in the City and County of San Francisco consisting of approximately _____ square feet of unimproved land, as more particularly described on ***Exhibit A*** attached hereto (as may be refined and adjusted in accordance with the terms of this Agreement, the "**Property**"). The Property is located within an approximately 28-acre area located in the southeast corner of Pier 70 (the "**28-Acre Site**") as more particularly described in that certain Disposition and Development Agreement dated _____, 2018, by and between FC Pier 70, LLC, a Delaware limited liability company ("**Horizontal Developer**") and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the "**Horizontal DDA**") and that certain Master Lease dated [_____], 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the "**Master Lease**"). The boundaries of the Property may be refined and adjusted with the advancement of the 28-Acre Site development as set forth in ***Section 3.1(d)***.

B. Under the Horizontal DDA and the Master Lease, Port has agreed to convey by sale or ground lease those certain Development Parcels (as defined in the Horizontal DDA) in accordance with the terms thereof. The Property is a Development Parcel under the Horizontal DDA, within Phase [XX] of development thereunder.

C. Planning Code Section 249.79 (the Pier 70 Special Use District) (as amended from time to time, the "**SUD**") establishes the basic land use standards for vertical development within the Phase and sets forth the process and requirements for design review and approval related to Vertical Development. As authorized under the SUD, the Port and the Planning Commission approved the Pier 70 Design for Development that sets forth design standards and design guidelines that will apply to all Vertical Development within the Phase.

D. On _____, 201_, the Port approved a Phase [XX] Submittal (the "**Phase Submittal**") that set forth the approved development program for the development of Phase [XX], as described therein and consistent with the Horizontal DDA, including, among other things, (i) Horizontal Developer's obligations with respect to the construction of certain Horizontal Improvements, (ii) the development plan for Phase [XX], including affordable housing and park and open space requirements, and (iii) certain other associated public benefits to be provided in Phase [XX].

E. [Include additional Recitals that describe the parcel disposition process as provided under the Horizontal DDA, and any other relevant facts and circumstances leading up to execution of this VDDA]

F. [for commercial parcels: At Closing, Vertical Developer desires to ground lease the Property from Port and Port is willing to ground lease the Property to Vertical Developer on the terms and conditions set forth herein.]

[for residential parcels: Subject to the terms and conditions of this Agreement, Vertical Developer desires to [for fee parcels: purchase] [for ground lease parcels: ground lease] the Property and Port is willing to [for feel parcels: sell] [for ground lease parcels: ground lease] the Property on the terms and conditions set forth herein.]

G. Vertical Developer proposes to construct the project generally described in ***Exhibit B*** (as the same may be modified from time to time in accordance with the terms hereof, the "**Vertical Project**") under the terms of this Agreement. The term "**Vertical Project**" includes the Deferred Infrastructure. In connection with the Vertical Project, Vertical Developer is obligated to provide certain public benefits, as more particularly set forth herein, including [insert as appropriate: [providing Inclusionary Units]; [on-site child-care facilities]; [assuming the obligation to construct Deferred Infrastructure obligations] [other obligations]] and to comply with all applicable requirements of the Workforce Development Plan, the Mitigation Monitoring and Reporting Program and the Special Provisions.

H. The parties now desire to enter into this Agreement to set forth the terms and conditions upon which Port will deliver [for ground lease parcels: a leasehold estate] [for feel parcels: a fee interest] in the Property to Vertical Developer and Vertical Developer will develop the Vertical Project.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Port and Vertical Developer hereby agree as follows:

AGREEMENT

1. CONVEYANCE OF PROPERTY.

Subject to the terms, covenants and conditions set forth herein, Port agrees to [for fee parcels: sell] [for ground lease parcels: ground lease on the terms substantially in the form set forth in the lease attached hereto as ***Exhibit C,*** subject to mutually agreed upon modifications ("**Parcel Lease**")] to Vertical Developer, and Vertical Developer agrees to [for fee parcels: purchase] [for ground lease parcels: ground lease on the terms set forth in the Parcel Lease] from Port, Port's interest in the Property.

2. ACQUISITION PRICE.

2.1. ***Acquisition Price.*** The [for fee parcels: acquisition price for the Property] [for ground lease parcels: consideration due Port from Vertical Developer under the terms of the Parcel Lease on the Closing Date] is _____ and __/100 Dollars ($_____) (the "**Acquisition Price**").

2.2. ***Payment of Acquisition Price; Deposit.*** Vertical Developer will pay Port the Acquisition Price as follows:

(a) **[For residential parcels: Deposit.** On or prior to the Effective Date, Vertical Developer will make an earnest money deposit in an amount equal to ten percent (10%) of the Acquisition Price (the "**Deposit**").] [**for commercial parcels: Initial Deposit.** On or prior to the Effective Date, Vertical Developer will make an earnest money deposit in an amount equal to ten percent (10%) of [**for prepaid commercial leases**: the Acquisition Price][**for hybrid commercial leases**: [insert amount that is ten percent (10%) of the present value of the Premises][(the "**Initial Deposit**").]

[**for commercial leases. Additional Deposit.** If Vertical Developer elects to extend the Target Closing Date in accordance with ***Section 7.3(a)***, then on the Target Closing Date, Vertical Developer will make an additional deposit in an amount equal to ten percent (10%) of [**for prepaid commercial leases**: the Acquisition Price] [**for hybrid commercial leases:** [insert amount that is ten percent (10%) of the present value of the Premises] (the "**Additional Deposit**"). The Initial Deposit and the Additional Deposit are collectively referred to as the "**Deposit**." If there is no Additional Deposit, then the Initial Deposit may also be referred to as the "**Deposit.**"

(b) Before expiration of the Contingency Period, the Deposit will be refundable to Vertical Developer only if this Agreement is terminated in accordance with ***Section 6.2***. After expiration of the Contingency Period, the Deposit is non-refundable to Vertical Developer except as set forth in ***Sections 6.3(b), 8.1, 10.2*** or ***Section 10.4*** . The Deposit will be credited against the Acquisition Price at Closing.

[**for non-Credit Bid deals only:** Vertical Developer will deliver the Deposit into escrow with [insert name of Title Company] (the "**Title Company**" or "**Escrow Agent**"). The Deposit will be held in an interest-bearing account, and all interest thereon will be deemed a part of the Deposit.] The Deposit (including interest thereon) will be applied to the Acquisition Price payable to Port [for sale parcels: at the consummation of the purchase and sale contemplated hereunder] [for ground lease parcels: upon the mutual execution and delivery of the Parcel Lease as contemplated hereunder] (the "**Closing**" or the "**Close of Escrow**").

[**for Credit Bid deals only**: Each Deposit will be applied by Credit Bid on the date it is due. The Deposit will be refundable to Vertical Developer only if this Agreement is terminated in accordance with ***Section 6.2*** before expiration of the Contingency Period, or after expiration of the Contingency Period, in accordance with ***Section 6.3(b), 8.1,*** or ***Section 10.2*** or ***Section 10.4(a)*** The Acquisition Price less the Deposit will be applied by Credit Bid [for sale parcels: at the consummation of the purchase and sale contemplated hereunder] [for ground lease parcels: upon the mutual execution and delivery of the Parcel Lease as contemplated hereunder] (the "**Closing**" or the "**Close of Escrow**")]

(c) **Independent Consideration**. Notwithstanding any provision of this Agreement to the contrary, upon any early termination of this Agreement where Vertical Developer is entitled to a refund of the Deposit, the Escrow Agent will deduct from the Deposit the sum of One Thousand Dollars ($1,000) (the "**Independent Contract Consideration**") and deliver such Independent Contract Consideration to Port, which amount the parties bargained for and agree to as consideration for Vertical Developer's right to inspect and purchase the Property pursuant to this Agreement and for Port's execution, delivery and performance of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is nonrefundable, and is fully earned and will be retained by Port notwithstanding any other provision of this Agreement.

(d) [**For Vertical Developer Affiliates**]: **Credit Bid**. All payments to be made by Vertical Developer under this ***Section 2.2*** will be made by Credit Bid in accordance with Sections 3.3 and 3.4 of the Financing Plan and applied when due ("**Credit Bid**"), and all refunds will be applied by a reversal of the Credit Bid.

3. CONDITIONS OF TITLE.

3.1. *Permitted Encumbrances*.

(a) **Permitted Exceptions**. At the Close of Escrow Port will convey interest in and to the Property to Vertical Developer [**for fee parcels**: by quitclaim deed in the form of ***Exhibit C*** attached hereto (the "**Deed**")] [**for ground lease parcels**: by "**Parcel Lease**"], subject to the following: (i) Permitted Port Title Exceptions (as defined below); (ii) all items of which Vertical Developer had actual notice or knowledge of as of the expiration of Contingency Period (subject to the provisions of ***Section 6.3*** with respect to a Port Title Defect); (iii) this Agreement and the Memorandum of this Agreement; (iv) the TMA; (v) CFD Matters attached hereto as ***Schedule 3.1***; (vi) Development Easements, if any, (vii) the Pier 70 Master Association Documents; and (viii) [**for fee parcels**: the Deed, the Restrictive Covenant, Notice of Transfer Fee Covenant, and the Transfer Fee Covenant] [**for ground lease parcels**: the Parcel Lease] (collectively, "**Permitted Encumbrances**"), [**Note: Add others as necessary/appropriate**] and otherwise free and clear of (1) rights of possession by others and [**for fee parcels**: rights of possession of Port], and (2) liens, encumbrances, covenants, assessments, easements, leases, licenses or other use agreements, and taxes.

(b) **Permitted Port Title Exceptions.** For purposes of this Agreement, the following will constitute "**Permitted Port Title Exceptions**":

(i) Each matter affecting title to the Property disclosed by the Title Commitment and Survey, and not otherwise objected to by Vertical Developer prior to the expiration of the Contingency Period under ***Section 6.4*** hereof;

(ii) the lien of ad valorem real estate taxes, special taxes and assessments not yet delinquent as of the date of Closing, subject to proration as herein provided;

(iii) Laws, including but not limited to building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;

(iv) the customary printed exceptions and exclusions contained in title insurance policies;

(v) matters caused by or on behalf of Vertical Developer or its Agents;

(vi) Development Easements;

(vii) Matters approved by Vertical Developer prior to Close of Escrow;

(viii) The TMA;

(ix) The Pier 70 Master Association Documents;

(x) The Restrictive Covenants;

(xi) The Notice of Transfer Fee Covenant;

(xii) The Transfer Fee Covenant; and

(xiii) The CFD Matters.

(c) **Horizontal Documents.** The Property forms a part of the 28-Acre Site and until the Closing, is subject to the Horizontal DDA, the Master Lease, and other documents contemplated in such agreements (collectively, the "**Horizontal Documents**"). The Horizontal Documents require the Horizontal Developer to construct and complete the Horizontal Improvements and other improvements (other than the Deferred Infrastructure in some cases) on the 28-Acre Site, including the Property, within a certain period that includes the period after the Effective Date. The Horizontal Improvements and other improvements may be necessary for the successful construction and operation of the Vertical Project. Accordingly, Vertical Developer agrees and acknowledges that (i) Horizontal Developer or its assigns may be performing material physical changes to the Property during the period prior to Closing in connection with the construction of the Horizontal Improvements (other than the Deferred Infrastructure in some cases), (ii) Port and Horizontal Developer may amend or modify the Horizontal Documents without Vertical Developer's prior consent, (iii) subject to ***Section 3.4***, prior to Closing, Port may record or cause to be recorded, Development Easements on the Property to advance the development of the Horizontal Improvements, and (iv) subject to ***Section 3.1(d)***, prior to Closing, Port may make adjustments to the legal description of the Property to exclude any portion thereof that is or is intended to become a right-of-way as the development of the 28-Acre Site advances, Vertical Developer further agrees and acknowledges that because Port is not performing any of the Horizontal Improvements including any that may affect Vertical Developer's ability to commence and complete construction of the Vertical Project, Vertical Developer will work with the Horizontal Developer to agree on any schedule of performance for the completion of any portion of the Horizontal Improvements and other improvements that may impact Vertical Developer's ability to commence and complete construction of the Vertical Project and Vertical Developer's releases and waivers against or for the benefit of the City Parties, as described in ***Section 4.4*** include any Claims related to the Horizontal Improvements.

(d) Modifications to Legal Description of Property. Vertical Developer acknowledges and agrees that minor modifications to the boundaries of the Property may be required to accommodate existing and proposed rights-of-way as development of the 28-Acre Site advances. Accordingly, prior to the Close of Escrow, Port may request that Vertical Developer will consent to any such minor modification, such consent not to be unreasonably withheld, conditioned or delayed so long as the modification (i) will not materially and adversely affect Vertical Developer's intended development, use or operation of the Property and the Vertical Project as reasonable determined by Vertical Developer and such intended development, use or operation is consistent with the SUD and Design for Development; and (ii) is not inconsistent with the SUD, Design for Development or Phase Submittal (if submitted) in all material respects. ***Section 12.12*** (Post Closing Boundary Adjustments) addresses boundary adjustments after Close of Escrow.

3.2. ***Restrictive Covenants.*** Vertical Developer acknowledges and agrees that Port would not Deliver the Property unless Vertical Developer agreed, among other things, to comply with (a) the obligation to construct the Vertical Project in accordance with the terms of this Agreement, (b) the obligation to construct the Deferred Infrastructure in accordance with the terms of this Agreement and the VCA, (c) the CFD Matters further described in ***Section 3.3***, [**for fee parcels:** (d) those certain restrictive covenants attached hereto as ***Exhibit C-1*** pertaining to Vertical Developer's use and operation of the Property (the "**Restrictive Covenants**") including the CFD Matters described therein, (e) those certain transfer fee covenants attached hereto as ***Exhibit C2*** (the "**Transfer Fee Covenant**") [and] [**for residential condo parcels:** (f) the obligation to develop the Vertical Project that complies with the Scope of Development attached hereto as ***Exhibit B*** (the "**Scope of Development**"). and the Schedule of Performance attached hereto as Exhibit C-3.

3.3. ***CFD Matters [and Shortfall Provisions].***

(a) Prior to Close of Escrow, Vertical Developer will deliver to Port an acknowledgment (the "**Notice of Special Tax**") in the form attached hereto as ***Exhibit D*** confirming that Vertical Developer has been advised of the terms and conditions of the CFD, including that the Property is subject to the CFD assessments, as described therein.

(b) Vertical Developer will comply with all of the covenants and acknowledgements set forth in ***Schedule 3.1*** attached hereto (CFD Matters), which covenants and acknowledgements will be recorded against title to the Property and survive Close of Escrow ("**Agreement to Comply with CFD Matters**").

(c) Shortfall Provisions. [Note: Include only for fee transfers.]

(i) *Vertical Developer Waiver and Covenant.* Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Property until the IFD Termination Date. In addition, Vertical Developer covenants that should Vertical Developer initiate a Reassessment in violation of the waiver in this Section, and subject to ***Section 3.3(c)(ii)*** (Circumstances Causing Shortfall), Vertical Developer and Port will take the following measures to avoid shortfalls:

(1) Vertical Developer will pay Port the Assessment Shortfall within 20 days after Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(2) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates:

(1) the applicable IFD Termination Date; and

(2) when the Assessment Shortfall is reduced to zero.

(ii) *Circumstances Causing Shortfall.* This Section will apply if Vertical Developer initiates a Reassessment on the Property in violation of ***Section 3.3(c)(i)*** (Vertical Developer Waiver and Covenant).

(iii) *Tax Exemption.* Vertical Developer and Port do not intend for this ***Section 3.3(c)*** to affect the tax-exempt status of any bonds. Should the Tax Code change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt bonds to be deemed taxable due to the requirements under this Section, Port will release the obligations under this Section and it will be deemed severed from this Agreement.

(iv) *Mutual Expectations as to Shortfall Measures.* Neither Vertical Developer nor Port expects Port to make demand for payment under this ***Section 3.3(c)***. In light of the Parties' mutual expectations, Vertical Developer has agreed to the waiver in ***Section 3.3(c)(i)*** (Vertical Developer Waiver and Covenant).

(v) *No Negotiation.* Vertical Developer understands that Port would not be willing to enter into this Agreement without this ***Section 3.3(c)***.

3.4. ***Reservation of Easements***. Before the Close of Escrow, without limiting ***Section 3.1(d)***, in order to facilitate the development of the Horizontal Improvements, Port has the right, subject to the limitations set forth below, to grant, convey or dedicate easements, and similar rights on and over the Property to utility companies, local water and sewer districts, the City, and other entities that provide utility or similar service to the Property or properties located adjacent thereto (the types of easements and similar rights described in the foregoing are, collectively, referred to herein as "**Development Easements**"); provided, however, before Port records, grants, conveys or dedicates any Development Easements hereunder, (i) if prior to the expiration of the Contingency Period, Port will furnish Vertical Developer with a copy of the proposed Development Easements for Vertical Developer's review. and (ii) if after the expiration of the Contingency Period, Port will furnish Vertical Developer with a copy of the proposed Development Easements for Vertical Developer's review and approval which approval will not be unreasonably withheld, conditioned or delayed so long as the proposed Development Easements (A) will not materially and adversely affect Vertical Developer's intended development, use or operation of the Property or the Vertical Project as reasonably determined by Vertical Developer and such intended development, use or operation is consistent with the SUD and Design for Development, (B) are not inconsistent with the SUD, Design for Development or Phase Submittal (if submitted) in any material respect, and (C) are in form and substance reasonably acceptable to Vertical Developer. Vertical Developer will approve or disapprove any proposed Development Easement that requires Vertical Developer's prior approval within twenty (20) days following its receipt thereof; if Vertical Developer fails to approve or disapprove the applicable Development Easement within such twenty (20) day period, Port may submit to Vertical Developer a second written request for approval. If Vertical Developer fails to approve or disapprove the applicable proposed Development Easement within ten (10) days after Port's second written request for approval, Vertical Developer will be deemed to have approved the proposed applicable Development Easements.

3.5. ***Master Association and Transportation Management Association***. Without limiting the generality of the foregoing provisions of this ***Section 3.5***, Vertical Developer acknowledges that, prior to, concurrently with or after the Close of Escrow, the Property will be annexed into the Pier 70 Master Association by recording a supplemental master declaration in the Official Records incorporating the terms and conditions of the Pier 70 Master Declaration. Vertical Developer's obligations under this ***Section 3.5*** will survive the Close of Escrow **[add for fee parcels only: [and the recordation of the Quitclaim Deed]**. Vertical Developer further acknowledges that Vertical Developer is obligated to participate in a Transportation Management ~~Association (the "TMA")~~ that was formed to implement and administer the Transportation Demand Management Plan for the 28-Acre Site. Vertical Developer further acknowledges that the Property is or, prior to or concurrently with the Close of Escrow, **[if**

applicable: or subsequent to the Close of Escrow,] will be subject to the covenants, conditions and restrictions contained in the [**for commercial parcels**: Master Commercial Declaration] [**for residential parcels**: Master Residential Declaration] by the recording of a supplemental declaration, and Vertical Developer acknowledges that pursuant to the Pier 70 Master Declaration, Vertical Developer is or will be obligated to participate in the Pier 70 Master Association and TMA, and that Vertical Developer will be responsible for all assessments that may be owing with respect to the Property following the Close of Escrow with respect to the Master Association and TMA.

3.6. ***Vertical Developer's Responsibility for Title Insurance***. Vertical Developer understands and agrees that the right, title and interest in the Property will not exceed that vested in Port, and Port is under no obligation to furnish any policy of title insurance in connection with this transaction. Vertical Developer recognizes that any fences or other physical monument of the Property's boundary lines may not correspond to the legal description of the Property. Port will not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate survey or inspection might reveal. It is Vertical Developer's sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

[**For ground lease parcels**: Vertical Developer will cause to be delivered to Port at Closing, a title insurance policy insuring Port's fee interest in the Property subject to the Parcel Lease and the other Permitted Encumbrances which are applicable to the fee. Port's title insurance policy will be at Vertical Developer's sole cost.

4. INDEPENDENT INVESTIGATION; "AS IS" CONDITION; RELEASE OF PORT; PORT COVENANTS.

4.1. ***Vertical Developer's Independent Investigation***. Vertical Developer represents and warrants to Port that as of the expiration of the Contingency Period described in ***Section 6.1***, Vertical Developer will have performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through agents of Vertical Developer's choosing, including, without limitation, the following matters (collectively, the "**Property Conditions**"):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of Port's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the Property's compliance with or applicability of all Laws and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements, environmental permits and building and fire codes.

(c) The quality, nature, adequacy and physical condition in, on, around, under, and pertaining the Property, including all other physical and functional aspects in, on, around, under, and pertaining to the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition in, on, around, under, and pertaining to the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property.

(e) The suitability in, on, around, under, and pertaining to the Property for Vertical Developer's intended uses or the development of the Vertical Project. Vertical Developer represents and warrants that its intended use of the Property is [_____].

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting in, on, around, under, and pertaining to the Property, including its development and use contemplated under this Agreement.

4.2. ***Property Disclosures***. California law requires owners to disclose to buyers or lessees the presence or potential presence of certain Hazardous Materials. Accordingly, Vertical Developer is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, any chemical identified as a "constituent of concern" in the or Pier 70 Risk Management Plan, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. [IF APPLICABLE: Further, there are Hazardous Materials located on the Property, which are described in _____, copies of which have been delivered to or made available to Vertical Developer.] By execution of this Agreement, Vertical Developer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

[IF APPLICABLE: Vertical Developer acknowledges that Port has disclosed the matters relating to the Property referred to in ***Schedule 4.2*** attached hereto. Nothing contained in such schedule will limit any of the provisions of this Article or relieve Vertical Developer of its obligations to conduct a diligent inquiry hereunder, nor will any such matters limit any of the provisions of ***Section 4.3*** or ***Section 4.4.***

4.3. "As Is With All Faults"; Disclaimer of Representations and Warranties . VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT [**For Fee Parcels**: PORT IS SELLING AND VERTICAL DEVELOPER IS PURCHASING PORT'S INTEREST IN] [**For Ground Leases**: IT IS LEASING PURSUANT TO THE TERMS OF THE PARCEL LEASE] THE PROPERTY ON AN "**AS IS WITH ALL FAULTS**" BASIS. VERTICAL DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION. VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, INCLUDING ITS PORT, NOR ANY OF THE OTHER CITY PARTIES, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO ANY MATTERS CONCERNING THE PROPERTY, THE SUITABILITY OR FITNESS OF THE PROPERTY OR THE APPURTENANCES TO THE PROPERTY FOR THE VERTICAL PROJECT OR THE VERTICAL DEVELOPER'S INTENDED USES OR OPERATION OF THE PROPERTY, TITLE MATTERS, OR ANY OF THE PROPERTY CONDITIONS, THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, THE PROPERTY'S COMPLIANCE WITH LAWS, INCLUDING ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS RELATING TO THE PROPERTY, THE VERTICAL PROJECT, OR ANY MATTER AFFECTING THE USE, VALUE, OR OCCUPANCY IN THE PROJECT, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PROPERTY OR THE PROPOSED VERTICAL PROJECT.

4.4. ***Release of City and Port***. As part of its agreement to [for fee parcels: purchase] [for lease parcels: accept] the Property in its "**As Is With All Faults**" condition, Vertical Developer, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges, the California State Lands Commission, City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, and all of their respective officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns (collectively, the "**City Parties**" and individually, "**City Party**"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen (collectively, "**Claims**"), whether direct or indirect, known or unknown,

foreseen or unforeseen, that Vertical Developer may now have or that may arise on account of or in any way be connected with (i) the suitability of the Property for the development of the Vertical Project or Vertical Developer's and its Agents and customers' past, present and future use of the Property, (ii) title matters, or any of the property conditions, the legal, physical, geological or environmental condition of the Property (including soil and groundwater conditions), including, without limitation, any Hazardous Material in, on, under, above or about the Property, (iii) any Laws applicable thereto, including, without limitation, Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (v) construction impacts from the Horizontal Improvements, delay in completion of or failure to complete the Horizontal Improvements, defects in the Horizontal Improvements, and any other matter related to Horizontal Improvements, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Property or the Vertical Project, including all Claims arising from the joint, concurrent, active or passive negligence of any of City Parties, but excluding any intentionally harmful acts committed solely by Port or City.

Vertical Developer expressly acknowledges and agrees that the amount payable or expended by Vertical Developer hereunder does not take into account any potential liability of the City Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Agreement in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the City Parties, and Vertical Developer expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Vertical Developer or other waivers contained in this Agreement and as a material part of the consideration of this Agreement, Vertical Developer fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the City Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, the City Parties arising out of this Agreement or the uses authorized hereunder, including, any interference with uses conducted by Vertical Developer pursuant to this Agreement regardless of the cause, and whether or not due to the negligence of the City Parties.

Further, the City Parties will not, under any circumstance, be responsible or liable to Vertical Developer for, and Vertical Developer hereby releases the City Parties from, any Claims that may arise on account of or in any way be connected with the failure to complete any Horizontal Improvements (as defined in the Horizontal DDA) on or near the Property, or at any location within the 28-Acre Site, and Vertical Developer, its successors and assigns, assume the risk that any such Horizontal Improvements will not be completed.

Vertical Developer understands and expressly accepts and assumes the risk that any facts concerning the Claims released, waived, and discharged in this Agreement include known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the Claims released, waived, and discharged in this Agreement, Vertical Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER

WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

INITIALS: VERTICAL DEVELOPER:_____

4.5. ***Survival***. The provisions of this ***Article 4*** will survive the expiration or earlier termination of this Agreement.

5. PRE-CLOSING COVENANTS.

5.1. ***Access to Property Prior to Closing***. In connection with any entry for the purposes of performing non-invasive investigations and tests necessary to carry out the terms of this Agreement or performing visual surveys and inspections by Vertical Developer or its Agents onto the Property prior to the Close of Escrow, if the Property is not then leased to Horizontal Developer, Vertical Developer will enter into a license with Port on Port's standard form of license. If Vertical Developer desires to perform invasive testing or other due diligence on the Property, then at Port's election, the license may be adjusted by Port, in its sole discretion to account for the additional risks associated with such activities, including increased insurance coverage amounts or additional insurance coverage and broader indemnity and release provisions. If the Property is then under lease to Horizontal Developer under the Master Lease, Vertical Developer will enter into a license with Horizontal Developer in form substantially similar to Port's standard form license, as reasonably acceptable to Horizontal Developer and Vertical Developer.

5.2. ***Subdivision Maps***. From and after the expiration of the Contingency Period and prior to the Close of Escrow, Vertical Developer, at is sole cost and expense, will have the right but not the obligation to commence to process a Subdivision Map for the Property; provided, however, Vertical Developer will not cause or permit the recordation of any Final Map prior to the Close of Escrow. Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to process such Final Map in accordance with the terms of ***Section 12.9(b)***.

5.3. ***Regulatory Approvals for Vertical Project***. From and after the expiration of the Contingency Period and prior to the Close of Escrow, Vertical Development will have the right, but not the obligation, at its sole cost and expense, to pursue Regulatory Approvals for the Vertical Project including, without limitation, schematic design approval under the SUD; provided, however, Vertical Developer will not cause or permit the issuance of any such Regulatory Approval prior to the Close of Escrow if the same would be binding upon Port. Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to process such Regulatory Approvals in accordance with the terms of ***Section 12.9(b)***.

6. CONDITIONS PRECEDENT TO CLOSING OF ACQUISITION.

6.1. ***Contingency Period***.

(a) **Generally**. Vertical Developer will have until 5:00 p.m. San Francisco Time on [insert date that is forty-five (45) days after the Effective Date of Agreement] to inspect and review the Property and to elect to proceed with the Delivery of the Property on and subject to the terms of this Agreement (such period being referred to herein as the "**Contingency Period**"). If Vertical Developer elects to proceed with the purchase of the Property, then Vertical Developer will, before the expiration of the Contingency Period, notify Port and Escrow Agent in writing that Vertical Developer has approved all such matters ("**Acceptance Notice**"). If Vertical Developer elects not to proceed with the purchase of the Property, then Vertical Developer must, before the expiration of the Contingency Period, deliver notice to Port that it is exercising its right to terminate this Agreement in accordance with ***Section 6.2*** (the "**Termination Notice**"). If before the end of the Contingency Period Vertical Developer fails to give Port a Termination Notice or an Acceptance Notice, then Vertical Developer will be deemed to have elected to proceed to Closing.

(b) **Objectionable Matters.** If Vertical Developer objects to any of aspect of the Property within the Contingency Period, then Vertical Developer may (but will not be obligated to) deliver to Port written notice explaining the aspects of the Property that are objectionable to Vertical Developer ("**Objection Notice**"). Port has no obligation to remove or remedy any of the items listed in the Objection Notice objectionable to Vertical Developer ("**Objectionable Items**"). Port has ten (10) days after receipt of the Objection Notice to notify Vertical Developer whether Port will remove or remedy the Objectionable Items; provided, however, if less than ten (10) days remain before the Contingency Period expires when Port receives the Objection Notice, then Port may, at its sole discretion, extend the Contingency Period by the number of days necessary for Port to have ten (10) days to respond to the Objection Notice. If Port so extends the Contingency Period, then Vertical Developer may terminate this Agreement at any time prior to the date that is one (1) business day after the expiration of such ten (10) day period if and only if Port does not agree in writing, prior to the expiration of such ten (10) day period, to remove or remedy all of the Objectionable Items to Vertical Developer's satisfaction prior to Closing.

(c) **Port Election to Remove or Remedy Objectionable Matter.** If Port elects to remedy or remove the Objectionable Items and requires additional time beyond the Closing Date to remove or remedy any of the items, the Closing Date will be delayed for so long as Port diligently pursues such removal or remedy, not to exceed thirty (30) days unless otherwise agreed by the Parties. If and when Port elects not to remove or remedy the Objectionable Item and so notifies Vertical Developer in writing, which Port may do at any time including following an initial election to pursue remedial or corrective actions, then Vertical Developer may elect to either (i) proceed to Closing in accordance with the terms of this Agreement, in which event, Vertical Developer will be deemed to have waived any objections to the Objectionable Items Port will not remove or remedy, or (ii) terminate this Agreement in accordance with ***Section 6.2,*** in each case by delivering written notice thereof to Port not later than three (3) business days after the date Port notifies Vertical Developer in writing that Port has elected not to remove or remedy the Objectionable Item. If Vertical Developer fails to notify Port of its election within such three (3) business day period, Vertical Developer shall be deemed to have elected to proceed to Closing.

6.2. ***Vertical Developer's Right to Terminate; Return of Deposit.*** If Vertical Developer elects to terminate this Agreement in accordance with ***Section 6.1(a)***, ***Section 6.1(c)***, ***Section 6.3*** or ***Section 8.1***, or ***Section 10.2***, or ***Section 10.4(a)***, (collectively, "**VD Terminable Sections**") then[**for non-Credit Bid deals:** the Deposit will be returned promptly to Vertical Developer upon notice thereof to Escrow Agent] [**for Credit Bid deals:** the Credit Bid will be reversed], Vertical Developer will have no further remedies against Port and, except for any provisions of this Agreement which expressly state that they will survive the termination of this Agreement, this Agreement will be terminated and canceled in all respects and neither Vertical Developer nor Port will have any further rights or obligations hereunder. If Vertical Developer does not duly terminate this Agreement in accordance with and within the time periods set forth in the applicable VD Terminable Sections, or if Vertical Developer waives its right to terminate this Agreement, (i) this Agreement will remain in full force and effect and Vertical Developer will have no further right to terminate this Agreement under the applicable VD Terminable Sections, and (ii) Vertical Developer will be deemed to have waived any liability of Port and any right to refuse to consummate the Closing by reason of any condition known to Vertical Developer as of the last day of the Contingency Period, or if applicable, one (1) business day following Port's delivery of written notice to Vertical Developer that Port will not remove or remedy the Objectionable Item.

6.3. ***Title Review Following Contingency Period Expiration.***

(a) If at the time scheduled for Close of Escrow any (i) possession by others, (ii) rights of possession other than those of Vertical Developer, or (iii) lien, encumbrance, covenant, assessment, easement, lease, tax or other matter which is not a Permitted Port Title

Exception, encumbers the Property and would materially and adversely affect the development of the Property ("**Port Title Defect**"), Port will have up to thirty (30) days from the date scheduled for Close of Escrow to remove the Port Title Defect. The Close of Escrow will be extended to the earlier of seven (7) Business Days after the date on which the Port Title Defect is removed or the expiration of the thirty (30) day period. If the Port Title Defect can be removed by bonding and Port has not so bonded within the thirty (30) day period, Vertical Developer may, but will not be obligated to, cause a bond to be issued. If Vertical Developer causes a bond to be issued in accordance with this ***Section 6.3(a),*** Port will reimburse Vertical Developer for the cost of such bond within thirty (30) days of demand or, at Port's option, credit such amount against the Acquisition Price payable to Port under this Agreement.

(b) If at the Closing Date, a Port Title Defect still exists, Vertical Developer may by written notice to Port either (i) terminate this Agreement and **[for non-Credit Bid deals:** receive a return of the Deposit] **[for Credit Bid deals:** the Credit Bid will be reversed] or (ii) accept Delivery of the Property. If Vertical Developer accepts Delivery of the Property subject to a Port Title Defect, the Port Title Defect will be deemed waived. If Vertical Developer does not accept Delivery of the Property and fails to terminate this Agreement within seven (7) days after the Closing Date, or any extension as provided above, Port may terminate this Agreement upon three (3) days written notice to Vertical Developer. If the Agreement is terminated under this Section the terms of ***Section 6.2*** shall apply.

6.4. ***Port's Conditions Precedent.***

(a) **Port's Conditions Precedent.** The following are conditions precedent to Port's obligation to consummate the Close of Escrow and thereby Deliver the Property to Vertical Developer:

(i) Vertical Developer will have performed all obligations under this Agreement required to be performed on its part before the Close of Escrow, no uncured Acquisition Event of Default will exist on Vertical Developer's part under this Agreement and all of Vertical Developer's representations and warranties made in ***Section 21.3*** will have been true and correct when made and will be true and correct as of the Close of Escrow. At the Close of Escrow, Vertical Developer will deliver to Port a certificate to confirm the accuracy of such representations and warranties, substantially in the form attached hereto as ***Exhibit F***.

(ii) **[Note: For Master Developer Affiliate Deals only:** The Horizontal DDA is still in effect and there is no uncured Material Breach under the Horizontal DDA or the Horizontal DDA has not been terminated due to a Material Breach.

(iii) Vertical Developer will have deposited into Escrow, **[for non-Credit Bid deals**: the balance of the Acquisition Price], **[for ground leases**: the security deposit and all other sums, including any bonds, required to be paid to Port on or prior to the effective date of the Parcel Lease pursuant to the terms thereof] and all other sums necessary to consummate the Close of Escrow pursuant to the terms of this Agreement.

(iv) **[for Credit Bid deals**: Vertical Developer will have notified Port that it consents to the balance of the Acquisition Price being Credit Bid at Closing;

(v) Vertical Developer will have deposited into Escrow each of the documents described in ***Section 7.4(b),*** each duly executed and acknowledged by Vertical Developer.

(vi) **[for ground lease parcels:** Vertical Developer will have obtained all insurance required under the Parcel Lease and will have deposited evidence thereof into Escrow.

(vii) Vertical Developer will have satisfied the submittal requirements that Vertical Developer (or Vertical Developer's contractor) is required to make before Close of

Escrow relating to Vertical Developer's obligations to comply with the Workforce Development Plan attached hereto as ***Exhibit G*** ("**Workforce Development Plan**").

(viii) Vertical Developer and Port will have executed mutual irrevocable instructions to the Escrow Agent, all in accordance with ***Article 7***.

(ix) Vertical Developer will have executed and delivered to Port a certification of compliance with San Francisco Administrative Code Chapters 12B and 12C on the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101), together with supporting documentation, and will have secured approval of the form by the City's Human Rights Commission.

(x) Vertical Developer has deposited into Escrow such evidence of authority to enter into [the Parcel Lease], this Agreement and any other Transaction Documents, as Port and the Title Company may reasonably require (including certificates of good standing, board resolutions and certificates of incumbency).

(xi) Vertical Developer will have delivered into escrow, a reaffirmation that all the representations and warranties made in ***Section 21.3*** are and remain true and correct as of the Closing Date.

(xii) [**add as applicable**: Vertical Developer will have complied with the requirements of the Housing Plan as it pertains to the Property to the extent required at Close of Escrow.]

(xiii) Horizontal Developer will have deposited into Escrow two (2) duly executed and acknowledged counterparts of each of the Development Agreement Assignment (if applicable), DDA Release and Partial Release.

(xiv) [**For ground lease parcels only**: The Title Company is irrevocably committed to issue to Port upon payment by Vertical Developer, the title insurance policy required by ***Section 3.6*** to be delivered to Port as of the Closing Date.]

(b) Satisfaction of Port's Conditions. The conditions precedent set forth in ***Section 6.4(a)*** are intended solely for the benefit of Port. If any such condition precedent is not satisfied on or before the Closing Date, Port's Executive Director, or, if the Executive Director determines that waiver of the condition precedent materially affects the rights, obligations, or expectations of Port, the Port Commission by resolution, will have the right in its sole discretion either to waive in writing the condition precedent in question and proceed with the Close of Escrow, or, in the alternative, to terminate this Agreement. If Vertical Developer is using reasonably diligent efforts to meet or satisfy the conditions precedent to Close of Escrow, the date for the Close of Escrow will be extended for a reasonable period or periods of time specified by Vertical Developer, but such periods in the aggregate will not extend beyond the Closing Date (unless otherwise extended by mutual agreement of the Parties) to allow such conditions precedent to be satisfied, subject to Port's further right to terminate this Agreement by the Closing Date if all such conditions precedent have not been satisfied.

6.5. ***Vertical Developer's Conditions to Closing.***

(a) Vertical Developer Conditions Precedent. The following are conditions precedent to Vertical Developer's obligation to consummate the Close of Escrow and accept the Property from Port under this Agreement:

(i) Port will have performed all obligations under this Agreement which Port is required to perform before the Close of Escrow and there is no Acquisition Event of Default by Port.

(ii) The Title Company is irrevocably committed to issue to Vertical Developer, upon payment by Vertical Developer, a title insurance policy satisfactory to Vertical

Developer, insuring Vertical Developer's interest in the Property subject to Permitted Encumbrances.

(iii) Port will have deposited into escrow each of the documents described in ***Section 7.4(a)***, each duly executed and acknowledged by Port.

(iv) Horizontal Developer will have deposited into escrow two (2) duly executed and acknowledged counterparts of each of the Development Agreement Assignment (if applicable), DDA Release and Partial Release.

(v) Horizontal Developer will have deposited into escrow a ground lessee's affidavit and, if required by Title Company, a mechanic's lien indemnity, in form and substance reasonably satisfactory to Horizontal Developer and Title Company.

(b) Satisfaction of Vertical Developer's Conditions Precedent. The conditions precedent set forth in ***Section 6.5(a)*** are intended solely for the benefit of Vertical Developer. If any such condition precedent is not satisfied on or before the Close of Escrow, Vertical Developer will have the right in its sole discretion to waive in writing the condition precedent in question and proceed with the Close of Escrow and acceptance of the Property under this Agreement. If Port is using reasonably diligent efforts to meet the conditions precedent, the date for the Close of Escrow may be extended, at Vertical Developer's sole option, for a reasonable period or periods of time specified by Vertical Developer, but such periods in the aggregate will not extend beyond the Closing Date, to allow such conditions precedent to be satisfied, subject to Vertical Developer's further right to terminate this Agreement by the Closing Date.

6.6. ***Taxes and Assessments.***

(a) Ad Valorem Taxes and Assessments Before and After Close of Escrow. For any period before the Close of Escrow, Vertical Developer is responsible for the payment of any ad valorem taxes (including possessory interest and special taxes) assessed by reason of this Agreement. Ad valorem taxes and assessments levied, assessed, or imposed for any period from and after the Close of Escrow, including possessory interest and special taxes, are the sole responsibility of Vertical Developer.

(b) Possessory Interest Taxes. Vertical Developer recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Vertical Developer may be subject to the payment of property taxes levied on such interest. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City report certain information relating to this Agreement, and any renewals of this Agreement, to the County Assessor within sixty (60) days after any such transaction, and that Vertical Developer report certain information relating to any assignment under this Agreement to the County Assessor within sixty (60) days after such assignment transaction. Vertical Developer agrees to provide such information as may be requested by Port to enable Port to comply with this requirement.

(c) Right to Contest. Subject to ***Section 3.3*** and the matters described therein, Vertical Developer has the right to contest the amount, validity or applicability, in whole or in part, of any ad valorem, possessory interest or other taxes and assessments levied on Vertical Developer or the Property by reason of this Agreement (collectively, "**Taxes and Assessments**") by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, prior to commencement of such contest, Vertical Developer notifies Port of such contest. Vertical Developer must notify Port of the final determination of such contest within fifteen (15) days after such determination. Subject to ***Section 3.3,*** nothing in this Agreement requires Vertical Developer to pay any Taxes and Assessments so long as Vertical Developer contests the validity, applicability or amount of such Taxes and Assessments in good faith, and so long as it does not allow the portion of the Property affected by such Taxes and Assessments to be forfeited to the entity levying such Taxes and Assessments as a result of its

nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Vertical Developer must comply with such condition as a condition to its right to contest. Vertical Developer is responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Vertical Developer must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Property may be subjected to such lien or claim. Vertical Developer is not required to pay any Taxes and Assessments being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Property. Port will not be subjected to any liability for the payment of any fines or penalties, and except as provided in the preceding sentence, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. [**for fee parcels only**: Notwithstanding the foregoing, from and after the Close of Escrow, subject to ***Section 3.3*** and the matters described therein, Vertical Developer's right to contest Taxes and Assessments will be absolute and, without limiting the generality of the foregoing, in no event will Vertical Developer be obligated to notify or provide security to Port nor will Port have a right to participate.]

(d) Survival. This ***Section 6.6*** will survive the expiration or earlier termination of this Agreement.

7. ESCROW AND CLOSING.

7.1. ***Escrow***. Vertical Developer and Port will deposit an executed counterpart of this Agreement with the Title Company. Port and Vertical Developer will deposit escrow instructions as appropriate to enable the Escrow Agent to comply with the terms of this Agreement. In addition, Port will deposit supplementary escrow instruction instructing Escrow Agent to apply all funds received by it in accordance with the requirements of the Financing Plan. In the event of any conflict between the provisions of this Agreement and any escrow instructions or supplementary escrow instructions, the terms of this Agreement or the Financing Plan, as applicable, will control.

7.2. ***Closing***. The Closing hereunder will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of the Title Company on the date that is [**for residential parcels:** thirty (30) days] [**for commercial parcels**: six months] after the expiration of the Contingency Period before 3:00 p.m. San Francisco time or such earlier date and time as Vertical Developer and Port may mutually agree upon in writing (the "**Target Closing Date**"). [**for residential parcels only**: Such date and time may not be extended without the prior written approval of both Port and Vertical Developer, which may be withheld in each of their sole discretion.] The "**Closing Date**" is the date that the Closing or Close of Escrow occurs.

7.3. [**for commercial parcels only**: ***Extension of Closing Date.***

(a) Extension of Target Closing Date. Vertical Developer has one option to extend the Target Closing Date by an additional six (6) months (the "**Extended Closing Date**") in accordance with this ***Section 7.3(a)*** by delivering written notice to Port of its election to extend the Target Closing Date to the Extended Closing Date ("**Extension Notice**"). The Target Closing Date will be extended to the Extended Closing Date (unless an earlier Closing Date is agreed to between the Parties) only if all of the following conditions are satisfied (collectively, the "**Extended Closing Date Conditions**"):

(i) There is no Vertical Developer Acquisition Event of Default, Vertical Developer Default, or Unmatured Vertical Developer Event of Default as of the date Port receives the Extension Notice and during the period after the Target Closing Date;

(ii) Port receives at least ten (10) days before the Target Closing Date, the Extension Notice; and

(iii) [**for non-Credit Bid deals**: Port receives by wire transfer on or before the Target Closing Date, an additional deposit equaling ten percent (10%) of the Acquisition Price (the "**Additional Deposit**").] [**for Credit Bid deals affiliates**: An additional deposit equaling ten percent (10%) of the Acquisition Price (the "**Additional Deposit**") will be Credit Bid on the date Port receives the Extension Notice].

If Vertical Developer does not satisfy the Extended Closing Date Conditions within the time periods set forth in this ***Section 7.3(a)*** and Closing does not occur by the Target Closing Date, then it will be deemed an Acquisition Event of Default by Vertical Developer and Port will retain the Deposit as liquidated damages.

7.4. ***Deposit of Documents.***

(a) **By Port.** At or before the Closing, Port will deposit into escrow the following items:

(i) [**For fee parcels**: the duly executed and acknowledged Deed conveying the Property to Vertical Developer subject to the Permitted Encumbrances;]

(ii) [**For ground lease parcels**: four (4) duly executed and acknowledged counterparts of the Parcel Lease and two (2) duly executed and acknowledged counterparts of the Memorandum of Lease (in the form attached to the Parcel Lease) (the "**Memorandum of Lease**");]

(iii) [two (2) duly executed and acknowledged counterpart originals of the Release of Disposition and Development Agreement in the form attached hereto as ***Exhibit H*** (the "**DDA Release**") signed by Port and Horizontal Developer;]

(iv) [two (2) duly executed and acknowledged counterpart originals of the Partial Release of Master Lease in the form attached thereto as ***Exhibit I*** (the "**Partial Release**") signed by Port and Horizontal Developer;]

(v) two (2) duly executed and acknowledged counterparts signed by Port of a memorandum of this Agreement in the form of ***Exhibit J*** attached hereto attached hereto (the "**Memorandum of VDDA**");

(vi) three (3) duly executed and acknowledged counterparts of the Development Agreement Assignment signed by Horizontal Developer and the City's Planning Director (or his or her designee) and if required, approved as to form by the City Attorney;

(vii) a duly executed owner's title affidavit in form reasonably satisfactory to Port and Title Company; and

(viii) evidence of authority to consummate the transactions contemplated by this Agreement, as the Title Company may reasonably require (including, if applicable, Port Commission and Board of Supervisors' resolutions).

(b) **By Vertical Developer.** At or before the Closing, Vertical Developer will deposit into escrow the following items:

(i) [**For ground lease parcels**: four (4) duly executed by Vertical Developer and acknowledged counterparts of the Parcel Lease and two (2) duly executed by Vertical Developer and acknowledged counterparts of the Memorandum of Lease;]

(ii) two (2) duly executed and acknowledged counterparts of the Memorandum of VDDA;

(iii) three (3) duly executed and acknowledged counterparts of the Development Agreement Assignment;

(iv) the funds necessary to consummate the Close of Escrow [**for Credit Bid deals**: (other than the Acquisition Price which is to be Credit Bid in accordance with the terms of this Agreement)];

(v) [**For fee parcels**: two (2) duly executed counterparts by Vertical Developer of the Restrictive Covenant;]

(vi) [**For fee parcels**: two (2) duly executed counterparts by Vertical Developer of the Notice of Transfer Fee Covenant and the Transfer Fee Covenant;]

(vii) [two (2) duly executed originals by Vertical Developer of the Agreement to Comply with CFD Matters; and]

(viii) two (2) duly executed originals by Vertical Developer of the Notice of Special Tax; and

(ix) evidence of authority to consummate the transactions contemplated by this Agreement, as Port and the Title Company may reasonably require (including certificates of good standing, board resolutions and certificates of incumbency).

(c) **Further Assurances.** Port and Vertical Developer will each deposit such other instruments as are reasonably required by the Escrow Agent or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

7.5. ***Steps to Close Escrow***. Port and Vertical Developer will instruct the Escrow Agent to consummate the escrow as provided herein. Upon the Close of Escrow, the Escrow Agent will record in the Official Records, in the following and no other order, the DDA Release, the Partial Release, [**for fee parcels**: the Deed, the Notice of Transfer Fee Covenant, the Transfer Fee Covenant, the Restrictive Covenants] [**for ground lease parcels**: the Memorandum of VDDA, the Memorandum of Lease], [the Agreement to Comply with CFD Matters], and any other documents reasonably required to be recorded under the terms of Regulatory Approvals. Upon Close of Escrow, Escrow Agent will deliver a settlement statement to Port and Vertical Developer [**for non-Credit Bid deals**: and deliver to Port all funds received by Escrow Agent on account of the Acquisition Price. Port will instruct the Escrow Agent to disburse the net proceeds of the Acquisition Price to the Project Payment Obligation as defined in the Financing Plan in accordance with ***Article 2*** (Flow of Funds) of the Financing Plan]. [**for Credit Bid deals**: If the Acquisition Price will be paid by Credit Bid, Port and Vertical Developer will make entries in the Developer Capital Schedule and the Port Capital Schedule to reflect the disposition of cash, proceeds deemed to have been deposited by Credit Bid as described in the Financing Plan, and any offset to Fair Market Value by the estimated Deferred Infrastructure costs.] [**confirm process**] In addition, the Title Company will issue title policies to Vertical Developer [**for ground lease parcels**: and Port] as required under ***Section 3.6***.

7.6. ***Waiver of Pre-Delivery Conditions***. Unless the Parties otherwise expressly agree at the time of Close of Escrow, all pre-Delivery conditions of the Parties will, upon Escrow, be deemed waived by the Party benefited by such condition.

7.7. ***Merger***. Upon the Close of Escrow, the terms set forth in ***Section 1*** through ***Section 10***, inclusive, of this Agreement will be deemed to have merged with the [**for fee parcels**: Deed] [**for ground lease parcels**: Ground Lease] and will be of no further force or effect, except to the extent such term expressly survives the Close of Escrow pursuant to the terms thereof. For the avoidance of doubt, the terms of ***Section 11*** through ***Section 22***, inclusive, of this Agreement will survive the Close of Escrow.

8. RISK OF LOSS PRIOR TO CLOSING.

8.1. ***Loss***. Prior to the Closing Date, Port will give Vertical Developer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event that all or any portion of the Property is

condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then Vertical Developer may, at its option to be exercised within ten (10) days of Port's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement or consummate the Delivery of the Property for the full Acquisition Price as required by the terms hereof. If Vertical Developer elects to terminate this Agreement or fails to give Port notice within such ten (10)-day period that Vertical Developer will proceed with the purchase, then this Agreement will terminate at the end of such ten (10)-day period and the terms of ***Section 6.2*** will apply.

8.2. ***Insurance Proceeds and Awards***. Vertical Developer acknowledges that until immediately prior to Closing, the Property will be leased by Port to Horizontal Developer pursuant to the terms and condition of the Master Lease.

(a) **Insurance Proceeds.** Pursuant to the Horizontal Documents, Horizontal Developer is obligated to insure the Property until immediately prior to the Closing. Accordingly, Horizontal Developer may receive insurance proceeds arising from damage or destruction of the Property. If Vertical Developer desires to have any portion of such insurance proceeds available for Vertical Developer's use if it consummates the Delivery of the Property for the full Acquisition Price after damage or destruction of the Property, then Vertical Developer and Horizontal Developer must include the terms of any transfer of insurance proceeds arising from damage or destruction of the Property received by Horizontal Developer to Vertical Developer in the VCA. Port will not be obligated to purchase any third party commercial liability insurance or property insurance with regard to the Property and in no event, will Port be obligated to transfer to Vertical Developer any insurance proceeds Port may receive or credit against or reduce the Acquisition Price as a result of damage or destruction of the Property.

(b) **Condemnation Awards**. If Vertical Developer elects to consummate the Delivery of the Property for the full Acquisition Price after condemnation of a portion of the Property, Vertical Developer must negotiate with Horizontal Developer for the transfer to Vertical Developer of condemnation award proceeds Horizontal Developer may receive from the partial condemnation of the Property. Port will have no obligation to transfer any condemnation award proceeds to Vertical Developer or to credit any condemnation award proceeds against the Acquisition Price.

9. CLOSING EXPENSES.

9.1. ***Expenses***. Vertical Developer will pay all fees, charges, costs and other amounts necessary for the opening and Close of Escrow (collectively, the "**Closing Costs**"), including (i) real property transfer taxes applicable to the Delivery of the Property, (ii) personal property transfer taxes, (iii) the cost of any title reports, surveys, inspections and premiums for all title insurance policies obtained by Vertical Developer, [**for ground lease parcel**: Port], and if applicable, any lender, (iv) escrow fees and recording charges, and (v) any other costs and charges of the escrow for the transaction contemplated hereby. Vertical Developer will pay the Closing Costs upon the Close of Escrow. If the Title Company requires, Vertical Developer shall pay into Escrow any such fees, costs, charges or other amounts required for the Close of Escrow under this Agreement.

9.2. ***Brokers***. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction [**for non-affiliate deals only**: other than [_____] ("**Broker**")] and that there are no other claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person [**for non-affiliate deals only:** other than Broker] brings a claim for a commission or finder's fee based on any contact, dealings, or communication with either Party, then such Party will defend the other Party from such claim, and will Indemnify the City Parties or Vertical Developer and its officers, employees, directors, owners, heirs, successors, legal representatives and assigns ("**Vertical Developer Parties**"), as applicable, from, and hold the City

Parties or Vertical Developer Parties, as applicable, against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the City Parties or Vertical Developer Parties, as applicable, incur in defending against the claim. The provisions of this Section will survive the Closing, or, if the Delivery of the Property is not consummated for any reason, any termination of this Agreement.

10. ACQUISITION DEFAULTS, REMEDIES AND LIQUIDATED DAMAGES.

10.1. ***Acquisition Event of Default.*** For purposes hereof, an "**Acquisition Event of Default**" means any of the following:

(a) Vertical Developer fails to pay when due, any amount required to be paid hereunder, and such failure continues for a period of five (5) business days following Vertical Developer's receipt of notice thereof from Port;

(b) Vertical Developer causes or permits the occurrence of a Transfer not permitted under this Agreement;

(c) All conditions to the Close of Escrow in the applicable Party's favor have been satisfied or waived, and such Party fails to consummate the Closing by the Closing Date in violation of this Agreement;

(d) Vertical Developer files a petition for relief, or an order for relief is entered against Vertical Developer, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Vertical Developer are not dismissed or stayed within one hundred eighty (180) days;

(e) A writ of execution is levied on this Agreement which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Vertical Developer, which appointment is not dismissed within one hundred twenty (120) days;

(f) Vertical Developer makes a general assignment for the benefit of its creditors; or

(g) The applicable Party violates any covenant set forth in ***Sections 1*** through and including ***Section 9*** of this Agreement, or fails to perform any other obligation to be performed by the party under ***Sections 1*** through and including ***Section 9*** of this Agreement at the time such performance is due, and such violation or failure continues without cure for more than fifteen (15) days after written notice from the other party specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such fifteen (15) day period, if such party does not within such fifteen (15) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

10.2. ***Failure to Close Escrow.*** Subject to ***Section 10.3***, if due to an Acquisition Event of Default, Escrow cannot close on the date agreed to by the Parties, the non-defaulting Party may terminate this Agreement by written notice and demand the return of its money, papers or documents deposited in Escrow (including, in the case of Vertical Developer, the return of the Deposit); provided, however, the defaulting Party will have ten (10) days after delivery of such termination notice to perform any acts required of it to permit Close of Escrow. If neither Party has performed fully to enable Close of Escrow by the time established therefor, then either Party may instruct the Title Company to return all documents and funds deposited with it to the applicable Parties in ten (10) days, unless within such ten (10) day period, both Parties perform fully all their obligations to enable Close of Escrow, in which case, the Title Company will proceed to the Close of Escrow without regard to such delay.

10.3. ***Default by Vertical Developer; Liquidated Damages.*** IF THE DELIVERY OF THE PROPERTY IS NOT CONSUMMATED DUE TO AN ACQUISITION EVENT OF DEFAULT BY THE VERTICAL DEVELOPER HEREUNDER, PORT WILL BE ENTITLED, AS ITS SOLE AND EXCLUSIVE REMEDY, TO TERMINATE THIS AGREEMENT AND **[FOR NON CREDIT BID DEALS ONLY:** RETAIN THE DEPOSIT] **[FOR CREDIT BID DEALS ONLY:** MAINTAIN THE CREDIT BID OF THE DEPOSIT (IN OTHER WORDS, NOT REVERSE THE CREDIT BID)]AS LIQUIDATED DAMAGES.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THE DELIVERY OF THE PROPERTY AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: PORT: _____ VERTICAL DEVELOPER: _____

10.4. ***Port Default; Vertical Developer's Remedies.*** Upon the occurrence of an Acquisition Event of Default by Port and provided there is no Acquisition Event of Default by Vertical Developer, Vertical Developer has the exclusive remedies set forth below following the expiration of applicable cure periods:

(a) **Termination.** Vertical Developer may terminate this Agreement upon ten (10) days' written notice to Port, in which event **[for non-Credit Bid deals:** Vertical Developer will receive a return of the Deposit] **[for Credit Bid Deals:** the Credit Bid will be reversed] and the parties shall have no further rights and obligations hereunder except for the obligations that expressly survive termination of this Agreement; or

(b) **Specific Performance.** Vertical Developer may institute an action for specific performance. Port acknowledges that an Acquisition Event of Default by Port under ***Section 10.1(a)*** will be conclusively deemed to be a breach of an agreement to transfer real property that cannot be adequately relieved by pecuniary compensation as set forth in California Civil Code § 3387; or

(c) **Damages.** Port will not be liable to Vertical Developer for any monetary damages whether caused by any Acquisition Event of Default by Port and in no event will Port be liable for any actual, consequential, incidental or punitive damages; provided, however, if Port is required under the terms of this Agreement to return the Deposit to Vertical Developer and Port fails to return the Deposit in Port's possession as required under this Agreement, then Vertical Developer may institute a cause of action for monetary damages equal to the amount of Deposit that has not been returned by Port.

(d) **No Other Remedies.** Other than the remedies set forth in ***Sections 10.4(a), 10.4(b), and 10.4(c)***, Vertical Developer is not entitled to any other remedies permitted by law or at equity.

11. COMPLIANCE WITH LAWS.

During the term of this Agreement, Vertical Developer will comply with, at no cost to Port, (i) all applicable Laws (taking into account any variances or other deviations properly approved and applicable to the Vertical Project), (ii) the Pier 70 Risk Management Plan, (iii) the Mitigation Monitoring and Reporting Program, (iv) the Transportation Demand Management

Plan, [**Note: Add only for parcel leases:** (v) the Parcel Lease,] and [**Note: add other requirements imposed in connection with Project Approvals, if any**]. The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. Vertical Developer acknowledges that the description of the Vertical Project attached hereto does not limit Vertical Developer's responsibility to obtain Regulatory Approvals for the Vertical Project, nor does the Vertical Project limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Vertical Developer's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Property that may be required by any Laws relating to or affecting the Property.

12. DEVELOPMENT OF VERTICAL PROJECT AND RELATED INFRASTRUCTURE.

12.1. *Project Requirements*.

[**for commercial parcels and residential rental parcels only:** From and after the Close of Escrow, Vertical Developer will have the right, but not the obligation, to construct the Vertical Project. If Vertical Developer so elects to construct the Vertical Project, the Vertical Project will be designed, reviewed, constructed and completed in accordance with (i) ***Article 11*** (Compliance with Laws) through and including ***Article 22*** (Definitions) of this Agreement (including the terms of any exhibits referenced therein), (ii) the Vertical Development Requirements, (iii) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen sinks in any café, restaurant or other food establishment on the Property, (iv) the Mitigation Monitoring and Reporting Program, and (v) the Workforce Development Plan (sometimes collectively referred to as the "**Project Requirements**"). Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

[**Use only for residential parcels conveyed in fee:** Vertical Developer must construct the Vertical Project. The Vertical Project will be designed, reviewed, constructed and completed in accordance with (i) the Scope of Development attached hereto as ***Exhibit B***, (ii) Schedule of Performance attached hereto as ***Exhibit C-3***, (iii) ***Articles 11*** (Compliance with Laws and Regulatory Approvals) through and including ***Article 22*** (Definitions) of this Agreement (including the terms of any exhibits referenced therein), (iv) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen sinks in any café, restaurant or other food establishment on the Site, (v) the Mitigation Monitoring and Reporting Program; and (v) the Workforce Development Plan (sometimes collectively referred to as the "**Project Requirements**"). Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

12.2. ***Mitigation Monitoring and Reporting Program.*** In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the Vertical Project will be in accordance with all applicable Environmental Laws and the Mitigation Monitoring and Reporting Program attached hereto as ***Exhibit K***. Vertical Developer will incorporate the Mitigation Monitoring and Reporting Program into any contract or subcontract.

12.3. ***Amendment of Development Requirements.*** Vertical Developer will not seek any amendment to the Design for Development under Section 249.79(c) of the SUD or to the

SUD under Section 302 of the Planning Code without obtaining the prior written consent of Port (and, for any proposed amendment that may impact Horizontal Developer, the Horizontal Developer), which consent may be given or withheld in each of their sole discretion. In its application to Port or the City for a Regulatory Approval under the SUD or applicable building codes, Vertical Developer will expressly identify in writing any elements of its proposed construction that requires an amendment to the Vertical Development Requirements, and state the reason for the proposed amendment. No amendment to the Vertical Development Requirements will be effective with respect to such items if an amendment was not clearly sought by Vertical Developer in writing and such amendment was not approved by the Port in its proprietary capacity.

12.4. ***Construction of Infrastructure.***

(a) Vertical Developer will be solely responsible for developing all improvements within the Property, including, without limitation, private right of ways, pedestrian walkways, infrastructure, and landscaping and hardscaping in any open space and common areas located within the Property.

(b) **[Only for certain commercial and residential rental parcels—delete for residential parcels conveyed by fee:** If Vertical Developer elects to construct the Vertical Project, Vertical Developer will also be required to construct the Deferred Infrastructure identified on ***Schedule 12.4*** attached hereto to the extent the obligation to construct the Deferred Infrastructure was wholly transferred to, and accepted by, Vertical Developer in the VCA. Horizontal Developer (or its successors or assigns with respect to the obligation to construct Horizontal Improvements in accordance with the Pier 70 Infrastructure Plan (attached to the Horizontal DDA as ***Exhibit B8***) will cause to be constructed Horizontal Improvements serving the Property, including streets and utilities necessary to serve the Property adjacent to (but not within) the Property, in accordance with the terms of the Horizontal DDA and as between Vertical Developer and Horizontal Developer, in accordance with the VCA.

(c) If Vertical Developer requires access to any real property outside of the Property in connection with the construction of the Deferred Infrastructure that is under the control of:

(i) Port, Port will enter into a license with Vertical Developer, substantially in the form attached hereto as ***Exhibit E*** (the "**License**") with Vertical Developer; or

(ii) Horizontal Developer pursuant to the Master Lease, Vertical Developer will enter into the License with Horizontal Developer.

12.5. ***Construction Standards.*** All construction must be performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

12.6. ***Reports and Information.*** During periods of construction, Vertical Developer will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

12.7. ***Costs of Vertical Project Sole Responsibility of Vertical Developer.*** Port has no responsibility for any costs of the Vertical Project and Vertical Developer will pay (or cause to be paid) all such costs.

12.8. ***Construction Rights of Access.*** During any period of construction, Port and its Agents will have the right to enter areas in which construction is being performed, on reasonable prior written notice during customary construction hours, subject to the rights of tenants and subtenants, and any safety procedures or precautions required by Vertical Developer and/or its contractors, to inspect the progress of the work; provided, however, that Port and its Agents will conduct their activities in such a way to minimize interference with Vertical Developer and its operations to the extent feasible. Nothing in this Agreement, however, will be interpreted to

impose an obligation upon Port to conduct such inspections or any liability in connection therewith.

12.9. ***Regulatory Approvals.***

(a) **Port Acting as Owner of Property.** Vertical Developer understands and agrees that Port is entering into this Agreement in its proprietary capacity as the holder of fee title to the Property and not as a Regulatory Agency with certain police powers. Vertical Developer agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Vertical Project can be obtained. Vertical Developer agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Vertical Project will be issued by the appropriate Regulatory Agency, and Vertical Developer understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Vertical Developer will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Vertical Project and/or the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Vertical Developer, at Vertical Developer's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Vertical Project. By entering into this Agreement, Port is in no way modifying or limiting Vertical Developer's obligations to cause the Property to be developed, restored, used and occupied in accordance with all Laws. Vertical Developer further agrees and acknowledges that any time limitations on Port review or approval within this Agreement applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Vertical Developer understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Vertical Project or other matters related to this Agreement, and any such advocacy, promotion or lobbying will be done by Vertical Developer at Vertical Developer's sole cost and expense. Vertical Developer hereby waives any Claims against the City Parties, and fully releases and discharges the City Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Vertical Project; provided, however, that nothing herein is intended to affect or otherwise alter the rights, remedies and obligations of the Parties or any City Parties arising under the Development Agreement.

(b) **Regulatory Approval; Conditions.**

(i) Vertical Developer understands that construction of the Vertical Project, including the Deferred Infrastructure, and Vertical Developer's contemplated uses and activities on the Property, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, SFPW, SFDPH, BAAQMD, Cal OSHA and other Regulatory Agencies. Vertical Developer is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

(ii) Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Agreement, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if (1) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could encumber, restrict or adversely change the use of any Port property other than the Property, unless in each instance Port has previously approved, in Port's sole and

absolute discretion, such conditions or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions; or (2) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions or restrictions under such permit that could restrict or change the use of the Property in a manner not otherwise permitted under this Agreement or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees Port may be subject to as a result of such Regulatory Approval).

(iii) Port will provide Vertical Developer with its approval or disapproval thereof in writing to Vertical Developer within ten (10) business days after receipt of Vertical Developer's written request, or if Port's Executive Director reasonably determines that Port Commission or Board of Supervisors action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Vertical Developer's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Vertical Developer for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

(iv) Vertical Developer will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-site or require off-site improvements, removal, or other measures. Vertical Developer in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval. Vertical Developer will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Vertical Developer will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Vertical Developer to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Vertical Developer's obligation to pay all the costs of complying with any conditions or restrictions. Vertical Developer will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Property.

(v) Without limiting any other Indemnification provisions of this Agreement [**for ground lease parcels:** or the Parcel Lease], Vertical Developer will Indemnify the City Parties from and against any and all Losses which may arise in connection with Vertical Developer's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to develop and construct the Vertical Project, except to the extent that such Losses arise from the gross negligence or willful misconduct of any City Party.

(c) Certain City Regulatory Approvals. Horizontal Developer and the City have entered into the Development Agreement, which will govern certain land use matters under the Planning Code, including Impact Fees and Exactions. The Port and other City Agencies, with Horizontal Developer's consent, have entered into the ICA specifying certain procedures and standards that will apply when Horizontal Developer seeks Regulatory Approvals for the Horizontal Improvements from other City Agencies. A copy of the Development Agreement and the ICA have either been made available to Vertical Developer for its review at Port's offices or have been provided to Vertical Developer.

(d) **Compliance.** Vertical Developer is solely responsible for ensuring that the design and construction of the Vertical Project, including without limitation the Deferred Infrastructure (if assigned to and assumed by Vertical Developer in the VCA) comply with all Vertical Development Requirements and applicable Laws at no cost to the Port.

(e) **Noncompliance.** Vertical Developer must pay any fines and penalties and perform any corrective actions imposed for noncompliance with any applicable Laws and Indemnify the Port against any liability arising from such noncompliance, even if the Port is a co-permittee. Vertical Developer will not be entitled to reimbursement from public financing sources for any fines, penalties, and costs of corrective actions related to its construction of Deferred Infrastructure.

12.10. ***Conditions to Commencement of Construction of the Vertical Project.***

(a) **Conditions Precedent.** Unless expressly waived by Port, Vertical Developer must satisfy all of the following conditions before Commencement of Construction of the Vertical Project:

(i) *Certification.* Vertical Developer will have delivered to Port a statement certified by its officer as true, correct and complete that (1) it has obtained all Regulatory Approvals required to commence construction of the Vertical Project, (2) it has obtained sufficient financing to commence and complete the Vertical Project, and (3) it has paid the City all Impact Fees and Exactions that are required to be paid prior to commencement of construction of the Vertical Project, and (4) it has paid the Port the Master Marketing Fee in accordance with ***Section 12.16***; provided, however, without limiting any Horizontal Developer rights under ***Section 12.17***, Vertical Developer's failure to pay, or to certify that it has paid, the Master Marketing Fee will not be a Vertical Developer Default or a condition precedent to Port issuing any Regulatory Approval for the Vertical Project.

(ii) **[For ground lease parcels only:** *Insurance.* Vertical Developer has in place all insurance required during construction of the Vertical Project under the terms of the Parcel Lease and has provided Port evidence thereof.]

(iii) *Good Standing.* There will be no uncured Vertical Developer Default by Vertical Developer under this Agreement [**for ground lease parcels only:** or uncured Event of Default under the Parcel Lease].

(iv) *Security.* If any surety bond, sub-guard insurance (or other insurance product), guaranty, or other security is obtained by or for the benefit of Vertical Developer with respect to the payment of any funds or performance obligations associated with the Vertical Project, Vertical Developer will cause to have (1) Port named as a co-obligee to any bond, and (2) Port named as an additional insured or third-party beneficiary with respect to any sub-guard or other insurance product; provided, however, Port's rights under such bond, insurance product or guaranty will (x) remain subordinate to the rights of any Mortgagee and (y) not be exercised by Port before a Vertical Developer Default.

(v) **[For residential fee parcels only:** *Construction Documents.* The Construction Documents for the Vertical Project must conform to the Scope of Development. By way of example, the Vertical Project must contain the number of floors and residential units described in the Scope of Development.

(b) **Conditions for Benefit of the Port.** The conditions in ***Section 12.10(a)*** (Conditions Precedent) are solely for the benefit of Port. Only Port may waive any of those conditions, and only to the extent waivable under Law.

(c) **Effect of Failure of Condition.** Vertical Developer's failure to satisfy any condition described in ***Section 12.10(a)*** (Conditions Precedent) will not alone relieve either Party of any obligations that previously arose under this Agreement.

(d) **Commencement Estoppel.** Vertical Developer has the right, but not the obligation, to request an estoppel certificate from Port, at no cost to Port, for the benefit of Vertical Developer and any Mortgagee or other lender, stating that Vertical Developer has satisfied the conditions set forth in ***Section 12.10.*** Any such request will include a certification by Vertical Developer that (i) satisfies the requirements of ***Section 12.10(a)(i)*** and (ii) that to its actual knowledge, Port is not in default under this Agreement or the Parcel Lease. Port will have at least ten (10) business days to respond to such request.

12.11. ***Safety Matters.*** Vertical Developer will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining or nearby property, or the risk of injury to members of the public, caused by or resulting from the performance of its development of the Vertical Project. Vertical Developer will erect appropriate construction barricades to enclose the areas of such construction and maintain them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

12.12. ***Post-Closing Boundary Adjustments.*** The Parties acknowledge that, as development of the 28-Acre Site advances, the description of each parcel of real property may require further refinements, which may require minor boundary adjustments. The Parties agree to cooperate in effecting any required boundary adjustments consistent with ***Section 21.2*** (Technical Changes). Vertical Developer agrees that all conveyance agreements from Vertical Developers to any Transferees of the Property will include the obligation to cooperate with Port in boundary adjustments.

12.13. ***Vertical Developer Outreach Requirement.***. [**Note: For new construction (i.e. not for Buildings 2, 12 nor 21**] The Vertical Project is subject to the administrative design review process set forth in the Pier 70 SUD, which provides an opportunity for third parties to review and comment on an application for design review of the Vertical Project prior to approval by the City's Planning Director. Additionally, as a requirement of this Agreement, Vertical Developer will make an informational presentation regarding the consistency of its application with the Pier 70 SUD and Design for Development to the Port's Central Waterfront Advisory Group ("**CWAG**") within 30 days of its submittal to the Port Director. Port will reasonably cooperate with Vertical Developer to schedule and notice this presentation by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation. If a CWAG meeting cannot be scheduled within 30 days of the submittal, the Vertical Developer will have the option to present at the next scheduled CWAG meeting or to host a public presentation of its design and will provide a minimum of 2 weeks' notice by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation. The presentation is for informational purposes only; any third party wishing to submit a formal public comment on the design of the Vertical Project will be required do so pursuant to the process set forth in the Pier 70 SUD. However, should the Vertical Developer desire to change its design review application to incorporate any feedback received from the presentation, any such changes submitted more than 30 days after the initial submission will reset the 60-day design review period established by the Pier 70 SUD.]

12.14. ***Information Required by the County Assessor.*** The County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable transfers of property. ***Exhibit L*** lists the information that the County Assessor expects to need in order to perform the foregoing tasks (the "**Assessor Information**"). Each Party will provide to the County Assessor any Assessor Information requested in writing by the County Assessor in the format required by the County Assessor (the "**Requested Information**") within 90 days of the applicable Party's receipt of a written request for such Requested Information. Port's sole remedy with regards to a breach of this ***Section 12.14*** is specific performance, [Port hereby waiving all other rights and remedies

available at law or equity]. Tenant waives any right to confidentiality under applicable law to the extent necessary for the County Assessor to notify Port of Tenant's failure to provide the Requested Information on a timely basis and Port to exercise its right to specific performance of Tenant's obligation. Promptly following the County Assessor's request, Port may, from time to time update the information requirements set forth in ***Exhibit L*** by providing Tenant no less than ten (10) business days' prior notice and a replacement copy of ***Exhibit L***.

12.15. **[for residential fee parcels only]** ***Creation of Condominium Regime and Sales of Condominium.***

(a) In addition to its obligations to construct the Project, Vertical Developer is responsible for creating a residential condominium regime for the Project, including preparation and filing of a Condominium Map; preparing and recording a Declaration of Conditions, Covenants and Restrictions (or equivalent instrument as determined by Vertical Developer) for the Project; and preparing all materials necessary to obtain approvals from the California Department of Real Estate for sales of the Condominiums and marketing and selling the Condominiums and obtaining all necessary regulatory approvals for such matters, including without limitation approvals from the City and the California Department of Real Estate.

(b) The Parties acknowledge that the Vertical Project is located in proximity to the Pier 70 shipyard (the "**Pier 70 Shipyard**"), a working industrial facility that contains approximately 14.7 acres of improved land and 17.4 acres of submerged lands, including floating Dry Dock#2, floating Dry Dock Eureka, and an 8k ampere Shoreside Power System. Existing and future operations at the Pier 70 Shipyard may generate certain impacts such as noise, parking congestion, truck traffic, auto traffic, odors, dust, dirt, view and visual obstructions. In order to avoid interference with the Shipyard without being subject to suits by adjacent property owners or tenants against the Port for nuisance, inverse condemnation or similar causes of action, **[for residential fee parcels only:** Vertical Developer will acknowledge the foregoing facts and understandings in the Restrictive Covenants to be recorded against the Property at Close of Escrow. In addition, Vertical Developer will include as a deed restriction in each deed out to the purchaser of a Condominium Unit,] **[for lease parcels only:** Vertical Developer will include in all of its leases at the Premises,] an acknowledgment of the foregoing impacts, and a waiver of rights relating to commencing or maintaining a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard.

12.16. ***Master Marketing Fee.*** Vertical Developer acknowledges that it is obligated to contribute to marketing efforts with respect to the 28-Acre Site undertaken by Horizontal Developer by payment of the Master Marketing Fee (as defined below). Prior to issuance of the first site permit for the Vertical Project (excluding the Deferred Infrastructure), Vertical Developer will deposit the Master Marketing Fee into the Master Marketing Fee Account (as defined in the Financing Plan) pursuant to written instructions to be provided by Port. As used herein, "**Master Marketing Fee**" means a private fee collected from each Vertical Developer prior to the issuance of the first site permit for the Vertical Project (excluding the Deferred Infrastructure) that will be equal to $1.45 per gsf of space, as adjusted on each anniversary of the Reference Date by the percentage of change between the CPI (for non-residential projects) or CPI (Residential) (for primarily residential projects), subject to a floor of no change and a maximum increase of 4.5%.

12.17. ***Limited Third-Party Beneficiary for Master Marketing Fee.*** Horizontal Developer is a third-party beneficiary of the Master Marketing Fee. If Vertical Developer has not paid the Master Marketing Fee applicable to the Vertical Project on or prior to the issuance of the first site permit for the Vertical Project (excluding the Deferred Infrastructure), Horizontal Developer may enforce Vertical Developer's obligation to pay the Master Marketing Fee.

13. COMPLETION OF VERTICAL PROJECT.

13.1. ***Completion of Vertical Project; Certificates of Completion.*** The obligations of Vertical Developer set forth in this Agreement, if any, will be deemed satisfied upon the completion of the Vertical Project, as evidenced by Port's issuance of a Certificate of Completion for the Vertical Project in accordance with the following terms:

(a) **Submittals.** When Vertical Developer reasonably believes that it has Completed the Vertical Project (excluding the Deferred Infrastructure), it may submit to Port an Architect's Certificate in the form attached as ***Exhibit M*** (or such other form as approved by the Chief Harbor Engineer), and request that the Port issue a Certificate of Completion.

(b) **Deferred Items.** With respect to the Vertical Project, if there remain uncompleted (i) customary punch list items, (ii) landscaping, or (iii) exterior finishes (to the extent Vertical Developer can demonstrate to Port's reasonable satisfaction that such finishes would be damaged during the course of later construction of interior improvements) (collectively "**Deferred Items**"), Port may reasonably condition approval of the Certificate of Completion upon provision of security or other assurances in form, substance and amount satisfactory to Port that all the Deferred Items will be diligently pursued to completion.

(c) **Port Response.** With respect to the Vertical Project, Port will respond within thirty (30) days after its receipt of the Architect's Certificate. If Port does not issue a Certificate of Completion for the Vertical Project substantially in the form of ***Exhibit N*** as requested under ***Subsection 13.1(a)*** (Submittals), then Port will deliver to Vertical Developer a notice specifying the reasons it did not issue the requested Certificate of Completion and the reasonable acts or measures that Vertical Developer must take to obtain a Certificate of Completion. Vertical Developer may submit revised Architect's Certificates and a new request for a Certificate of Completion under ***Subsection 13.1(a)*** (Submittals) at any time after completing the specified acts or measures.

(d) **Effect of Certificate of Completion.** For purposes of this Agreement only, the Certificate of Completion will be the Port's conclusive determination that Vertical Developer has Completed the Vertical Project and effective upon such issuance, other than the terms and conditions of this Agreement that expressly survive termination, this Agreement will terminate. The Port's determination will not impair Vertical Developer's release as provided in ***Article 4*** (Release), Port's right to Indemnity under Vertical Developer's obligation to Indemnify the City Parties in ***Section 12.9(b)(v)*** and ***Article 18*** (Indemnification), or Port's right, to reimbursement of Port and City Costs as provided under ***Section 14.4*** (Survival), all of which expressly survive termination of this Agreement. The Port's issuance of a Certificate of Completion will not relieve Vertical Developer or any other person from the Vertical Development Requirements or compliance with applicable Laws, including applicable building, fire, or other code requirements, conditions to occupancy of any improvement, or other applicable Laws. This ***Section 13.1(d)*** will survive the expiration or earlier termination of this Agreement.

13.2. ***[add if Vertical Developer obligated to complete Deferred Infrastructure] Completion of Deferred Infrastructure; SOP Compliance Determination.*** When Vertical Developer reasonably believes that it has Completed the Deferred Infrastructure, it may submit to Port's Chief Harbor Engineer a SOP Compliance Request for such work in accordance with the procedures set forth in Section 15.7 of the Horizontal DDA. Port's Chief Harbor Engineer will process the SOP Compliance Request and issue or not issue a SOP Compliance Determination in accordance with the provisions thereof.

13.3. **[for ground lease parcels]** ***Record Drawings.***

(a) Vertical Developer will furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to the Vertical Project within ninety (90) days following completion of the Vertical Project. Record Drawings must be in the form of

full-size, hard paper copies and converted into electronic format as (1) full-size scanned TIF files, and (2) AutoCad files of the completed and updated construction documents, as further described below, and in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "Record Drawings" means drawings, plans and surveys showing the construction as built on the Property and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Vertical Developer fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following an additional written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such construction, and the actual, third-party cost of preparing such Record Drawings must be reimbursed by Vertical Developer to Port promptly after invoice of the same is delivered to Vertical Developer. Nothing in this Section will limit Vertical Developer's obligations, if any, to provide plans and specifications in connection with the construction under applicable regulations adopted by Port in its regulatory capacity. Vertical Developer will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Vertical Developer's request, Port will provide Vertical Developer with a release from liability for future use of the applicable materials, in a form acceptable to Vertical Developer and Port.

(b) Record Drawing Requirements. Record Drawings must be no less than (24" x 36"), with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing will have a Port-assigned number placed onto the title block prior to scanning. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings will be scanned as a test, prior to execution of this requirement in full.

(c) AutoCad Requirements. The AutoCad files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s) or DVD(s), as requested by Port. All X-REF, block and other referenced files must be coherently addressed within the environment of the compact disc or DVD, at Port's election. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting. A minimum of ten (10) complete drawing files, including all referenced files, is required to be transmitted to Port as a test, prior to execution of this requirement in full.

(d) Changes in Technology. Port reserves the right to revise the format of the required submittals set forth in this ***Section 13.3*** as technology changes and new engineering/architectural software is developed.

14. PORT/CITY COSTS.

14.1. ***Port Costs***. Port and the City are entitled to reimbursement for, respectively, Port Costs and City Costs incurred in connection with performing its obligations under this Agreement and any changes to this Agreement requested by Vertical Developer. Upon the request of Vertical Developer, Port and Vertical Developer will meet and confer regarding the Port Costs and City Costs likely to be incurred in connection with this Agreement. Except to the extent specifically set forth herein, Port will not be entitled to collect any other fee or reimbursement from Vertical Developer in connection with the performance of Port's obligations under this Agreement in its proprietary capacity.

14.2. ***Reporting of Port Costs***. Within ninety (90) days following the end of each calendar quarter during the term of this Agreement and within ninety (90) days following the expiration or termination of this Agreement, Port will deliver to Vertical Developer a summary of Port Costs (together with City Costs invoiced as of such date) incurred during such quarter (the "**Port Costs Report**"). The summary will be in a reasonably detailed form and will include

(i) a general description of the services performed and Port Costs incurred, (ii) cost for Port staff time and cost for the City Attorney's staff time spent on the Vertical Project, (iii) the transaction costs incurred by the City, (iv) the fees and costs incurred and paid by Port under the ICA, and (v) the fees and costs of non-City professionals and copies of invoices from such non-City professionals. Port will provide such supporting documentation as Vertical Developer may reasonably request to verify that the Port Costs were incurred in accordance with this Agreement. Port and Vertical Developer will cooperate with one another to develop a reporting format that satisfies the reasonable informational needs of Vertical Developer to justify expenditures of Port Costs in accordance with this Agreement without divulging any privileged or confidential information of Port, the City, or their respective contractors. The Port Costs Report will be binding on Vertical Developer in the absence of error demonstrated by Vertical Developer within six (6) months of Vertical Developer's receipt of the same.

14.3. ***Payment of Port Costs.*** Vertical Developer will reimburse Port for Port Costs and City Costs described in each Port Costs Report no later than thirty (30) days after its receipt of the Port Costs Report from Port. While the Parties currently anticipate the Port Cost Reports will be delivered quarterly, Port will have the right to submit monthly Port Cost Reports. The Parties will meet and confer in good faith to resolve any disputes regarding a Port Costs Report. Port will have the right to terminate or suspend any work for Vertical Developer under this Agreement upon Vertical Developer's failure to pay amounts due and owing hereunder, and continuing until Vertical Developer makes payment in full to Port.

14.4. ***Survival.*** Vertical Developer's obligation to reimburse Port for Port Costs and City Costs incurred during the term of the Agreement will survive the expiration or termination of this Agreement.

15. DEFAULTS; REMEDIES.

15.1. ***Default by Vertical Developer.*** The occurrence after the Closing Date of any one of the following events or circumstances will constitute a "**Vertical Developer Default:**"

(a) Vertical Developer causes or permits the occurrence of a Transfer not permitted under this Agreement;

(b) Vertical Developer fails to pay when due any amount required to be paid hereunder, or fails to pay any taxes or assessments on the Property when due (including CFD and IFD assessments), and such failure continues for a period of five (5) business days following Vertical Developer's receipt of notice thereof from the Port;

(c) [**for residential condo parcels**: Vertical Developer fails to cause the Commencement of Residential Construction to occur within thirty (30) months of the Closing Date, subject to Force Majeure ("**Required Construction Commencement Date**");]

(d) [**for fee parcels:** Vertical Developer is in default under the Restrictive Covenants and fails to cure the same in accordance with the terms of such documents within a reasonable period of time (or such shorter period of time as may be specified in the Restrictive Covenant, if applicable] [**for ground lease parcels**: An Event of Default (*i.e.*, after expiration of all applicable notice and cure periods) occurs under the Ground Lease];

(e) [**for ground lease parcels**: Vertical Developer files a petition for relief, or an order for relief is entered against Vertical Developer, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Vertical Developer are not dismissed or stayed within one hundred twenty (120) days;]

(f) [**for ground lease parcels**: A writ of execution is levied on this Agreement which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Vertical Developer, which appointment is not dismissed within one hundred twenty (120) days;]

(g) **[for ground lease parcels:** Vertical Developer makes a general assignment for the benefit of its creditors;]

(h) Vertical Developer fails to perform any other obligation required to be performed under this Agreement by Vertical Developer, and such failure continues beyond the period of time for cure thereof or the expiration of any grace period specified in this Agreement therefor, or if no such cure or grace period is specified, within thirty (30) days after Vertical Developer's receipt of notice thereof from the Port as appropriate, or in the case of a default that is curable but is not susceptible of cure within thirty (30) days, Vertical Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed one hundred and twenty (120) days;

(i) **[if applicable (for Deferred Infrastructure only):** Vertical Developer fails to provide Adequate Security to the extent required under ***Schedule 12.4*** (Deferred Infrastructure), or once it has provided Adequate Security fails to maintain the same as required thereunder, and such failure continues for thirty (30) days following receipt of notice from Port (provided, that Vertical Developer will immediately, upon receiving notice from Port to such effect, suspend all activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the Property during any period during which Adequate Security are not maintained as required by this Agreement); and

(j) **[if applicable (for Deferred Infrastructure only):** the obligor of any Adequate Security commits a default under the applicable security instrument or revokes or refuses to perform as required under the Adequate Security and Vertical Developer does not replace the Adequate Security within thirty (30) days following Vertical Developer's receipt of notice from Port; provided, that (i) Vertical Developer will immediately, upon receiving notice from Port to such effect, suspend all activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the Property during any period during which the Adequate Security is maintained as required by this Agreement, (ii) any cure period for a default under the Adequate Security will run concurrently with the above thirty (30) day period, and (iii) upon receipt by Port of any replacement Adequate Security Port will return, if in its possession or control, the original Adequate Security.

15.2. ***Default by Port.*** It will constitute a "**Port Default**" under this Agreement, if after the Closing Date, Port fails to perform any of its agreements or obligations under this Agreement, and such failure continues beyond the period of time for cure thereof or the expiration of any grace period specified in this Agreement therefor, or if no such cure or grace period is specified, within thirty (30) days after Port's receipt of notice thereof from Vertical Developer, or, in the case of a default that is curable but is not susceptible of cure within thirty (30) days, if the Port fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion, but in no event to exceed one hundred and twenty (120) days.

15.3. ***Port Remedies for Vertical Developer Default.***

(a) **General. [for Parcel lease parcels:** During the continuance of a Vertical Developer Default subject to ***Article 16***, and the limitations set forth in Section 25 of the Parcel Lease (including, without limitation, Section 25.4 of the Parcel Lease) Port will have all rights and remedies described in Section 25 of the Parcel Lease; provided, however, notwithstanding anything to the contrary contained in this Agreement or the Parcel Lease, any right to cure and any remedy available to Port regarding any Vertical Developer Default under the Workforce Development Plan is limited to those rights and remedies set forth in the Workforce Development Plan.

[for fee parcels: During the continuance of a Vertical Developer Default, Port will have all rights and remedies available at law or in equity, **[add for Deferred Infrastructure, if applicable:** including the right to collect on the Adequate Security] and the right to institute such

proceedings as may be necessary, including action to cure the default or to seek specific performance or other injunctive relief, and the remedies set forth in the Special Provisions; provided, however, notwithstanding anything to the contrary contained in this Agreement, any right to cure and any remedy available to Port regarding any Vertical Developer Default under the Workforce Development Plan is limited to those rights and remedies set forth in the Workforce Development Plan.

(b) [for fee parcels only: **Failure to Commence Residential Construction.** In addition to any other remedy available to Port, with respect to any Vertical Developer Default under ***Section 15.1(c)***, if Vertical Developer does not commence construction of the Vertical Project by the Required Construction Commencement Date, the provisions of ***Schedule 15.3*** will apply.

15.4. ***Vertical Developer's Remedies for Port Default.***

[For ground lease parcels: In the event of a Port Default after the Closing Date, Vertical Developer will have the remedies set forth in Section 28 of the Parcel Lease.

[For fee parcels only: In the event of a Port Default after the Closing Date, Vertical Developer's remedy is limited to an action for specific performance. Port will not be liable to Vertical Developer for any monetary damages whether caused by a Port Default and in no event will Port be liable for any actual, consequential, incidental or punitive damages.]

15.5. ***Limitation on Port Liability.*** Except as expressly set forth in ***Section 10.4(c)*** and ***Section 18.4***, Port will not have any liability whatsoever for monetary damages, and in no event, will Port be liable for any actual, consequential, incidental or punitive damages, including, but not limited to, lost opportunities, lost profits or other damages of a consequential nature under this Agreement.

15.6. ***No Implied Waivers.*** No waiver made by a waiving Party with respect to the performance or manner or time thereof (including an extension of time for performance) of any obligations of another Party, or of any condition to the waiving Party's own obligations, will be considered a waiver of the waiving Party's rights with respect to any obligation of another Party or any condition to the waiving Party's own obligations beyond those expressly waived in writing.

15.7. ***Limitation on Personal Liability.*** No natural person, including any commissioner, member, supervisor, officer, director, employee, representative, or attorney of a Party, will be personally liable to another Party in the event of any default or for any amount that may become due to a Party under this Agreement, provided the foregoing will not limit any liabilities that exist under a security instrument or that exist under applicable law.

16. FINANCING; RIGHTS OF MORTGAGEES.

[For lease parcels: The rights and obligations of each Party related to any Mortgage (as defined in the Parcel Lease) is set forth in the Parcel Lease.

[For fee parcels: The rights and obligations of each Party related to any deed of trust, mortgage, or other security instrument against the Property is set forth in ***Schedule 16.***

17. LABOR MATTERS.

17.1. ***Compliance with Workforce Development Plan.*** In connection with the construction of the Vertical Project, Vertical Developer agrees to comply with all applicable provisions of the Workforce Development Plan.

17.2. ***Prevailing Wages.*** Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Property comprise a public work if paid for in whole or part out of public funds. The terms "public work" and "paid for in whole or part out of public funds" as used in this Section are defined in California Labor

Code Section 1720 et seq., as amended. Vertical Developer agrees that any person performing labor for Vertical Developer on any public work at the Property will be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco County. Vertical Developer will include in any contract for such labor a requirement that all persons performing labor under such contract will be paid not less than the highest prevailing rate of wages for the labor so performed and a requirement that such contractor provide, and deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Property.

18. INDEMNIFICATION.

18.1. ***Indemnification by Vertical Developer.***

(a) General Indemnity.

(i) *Prior to Close of Escrow.* If Vertical Developer accesses the Property prior to the Closing Date, then Vertical Developer must Indemnify the City Parties against any and all Losses related to such access, including Losses related to Hazardous Materials, in accordance with the License. Vertical Developer's Indemnification obligation also includes the obligations described in ***Section 12.9(b)(v)*** related to Regulatory Approvals.

(ii) *Following Close of Escrow:* **[For Lease Parcels only:** Following the Close of Escrow, Vertical Developer's obligation to Indemnify the City Parties will be in accordance with the Parcel Lease]

[For Fee Parcels only: Following Close of Escrow, except to the extent caused by the gross negligence or willful misconduct of a City Party, Vertical Developer must Indemnify the City Parties against any and all Losses first arising from and after the Close of Escrow directly or indirectly from:

(1) Vertical Developer's failure to obtain any Regulatory Approval or to comply with any Regulatory Requirement for the Vertical Project or the Deferred Infrastructure as more particularly set forth in ***Section 12.9(b)(v)***;

(2) any personal injury or property damage occurring on any portion of the Property while under Vertical Developer's ownership or control;

(3) any Vertical Developer Party's acts or omissions in relation to construction, management, or operations at the Property including patent and latent defects and mechanic's or other liens to secure payment for labor, service, equipment, or material;

(4) In addition, to the foregoing, Vertical Developer will Indemnify the City Parties from and against all Losses (if a City Party has been named in any action or other legal proceeding) incurred by a City Party arising directly or indirectly out of or connected with contracts or agreements (i) to which no City Party is a party, (ii) entered into by Vertical Developer in connection with its performance under this Agreement or any Assignment and Assumption Agreement, except to the extent such Losses were caused by the gross negligence or willful misconduct of a City Party. For purposes of the foregoing sentence, no City Party will be deemed to be a "party" to a contract solely by virtue of having approved the contract under this Agreement (e.g., an Assignment and Assumption Agreement).

[For fee Parcels only: Hazardous Materials Indemnity. In addition to the Indemnity under ***Section 18.1(a)*** (General Indemnity), the terms and provisions of ***Schedule 18.1*** will apply.

18.2. ***Indemnification for Breach of Representations.*** Vertical Developer agrees to Indemnify, defend and hold harmless the City Parties from and against any and all Losses arising

from any breach of express representation, warranty or covenant by made by Vertical Developer in ***Section 21.3*** (Representations).

18.3. ***Defense of Claims***. Subject to the express terms of any Indemnity obligation hereunder, Vertical Developer's Indemnification obligations under this Agreement are enforceable regardless of the active or passive negligence of the City Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the City Parties. Vertical Developer specifically acknowledges that it has an immediate and independent obligation to defend the City Parties from any Loss that actually or potentially falls within the Indemnification obligations of Vertical Developer, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Vertical Developer and continues at all times thereafter until finally resolved. Vertical Developer's Indemnification obligations under this Agreement are in addition to, and in no way, will be construed to limit or replace, any other obligations or liabilities which Vertical Developer may have to Port in this Agreement, at common law or otherwise.

18.4. ***Limitations of Liability***. It is understood and agreed that no commissioners, members, officers, agents, or employees of the City Parties will be personally liable to Vertical Developer, nor will any direct or indirect partners, members or shareholders of Vertical Developer or its or their respective officers, directors, agents or employees (or of their successors or assigns) be personally liable to the City Parties, in the event of any default or breach of this Agreement or for any amount that may become due under the terms of this Agreement; provided, that the foregoing will not release obligations of a Person that otherwise has liability for such obligations, such as (i) the general partner of a partnership that, itself, has liability for the obligation or (ii) the obligor under any Adequate Security covering such obligation.

18.5. ***Survival of Indemnification Obligations***. The terms and provisions of this ***Article 18*** will survive the expiration or termination of this Agreement.

19. TRANSFER AND ASSIGNMENTS.

19.1. ***Before Close of Escrow***. Vertical Developer's right to [purchase the Property] [lease the Leasehold Estate] pursuant to this Agreement is personal to Vertical Developer. Accordingly, Vertical Developer may not Transfer this Agreement before Close of Escrow without the prior written consent of Port, which may be granted, withheld, or conditioned in its sole discretion and in Port's reasonable discretion for a Transfer to an Affiliate. The Parties agree that if Port consents to a Transfer, all Net Transfer Proceeds will be applied as follows:

(a) First, to pay Port's Attorneys' Fees and Costs associated with Port's review of the Transfer; and

(b) Second, all remaining proceeds to Port to be treated as Land Proceeds in accordance with Section [ ] of the Financing Plan (Exhibit C1 to the DDA)].

19.2. ***Additional Definitions***.

"**Affiliate**" means any Person directly or indirectly Controlling, Controlled by or under Common Control with the other Person in question.

"**Assignment**" means an assignment, conveyance, hypothecation, pledge (other than from and after Close of Escrow, a pledge in connection with any mezzanine financing which will not require prior Port approval), or otherwise transfer of all or any of Vertical Developer's interest in this Agreement.

"**Cash Consideration**" means (a) cash or (b) cash equivalents.

"**Control**" means with respect to any Person (a) the possession, directly or indirectly, of the power to direct or cause the direction of the day to day management, policies or activities of such Person whether through ownership of voting securities, by contract or otherwise (excluding customary limited partner or non-managing member approval rights, or (b) the ownership (direct

or indirect) of more than fifty percent (50%) of the profits or capital of another Person, or (c) the ownership (direct or indirect) of more than fifty percent (50%) of the ownership interest of such Person (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof). "**Controlled**" and "**Controlling**" have correlative meanings.

"**Excluded Transfer**" means any of the following: (a) the exercise of customary remedies under mezzanine financing of Vertical Developer or any constituent owner thereof; (b) the exercise of customary limited partner or non-managing member remedies under a partnership or limited liability company operating agreement, as applicable; (c) a change resulting from death or legal incapacity of a natural person; or (d) the sale, transfer or issuance of less than the Controlling interest of stock of Vertical Developer that is listed on a nationally or internationally recognized stock exchange in a single transaction or a related series of transactions.

"**Managing Party**" means, with respect to any Person, both (a) the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management, policies or activities of such Person (excluding customary limited partner or non-managing member approval rights) and (b) the ownership (direct or indirect) of more than ten percent (10%) of the profits or capital of such Person.

"**Net Transfer Proceeds**" means before Close of Escrow, Transfer Proceeds less the transferor Vertical Developer's reasonable Attorneys' Fees and Costs incurred by Tenant in connection with a Transfer.

"**Non-Cash Consideration**" means consideration received by Tenant in connection with a Sale that is not Cash Consideration.

"**Significant Change**" means any change in the direct or indirect ownership of Vertical Developer that results in a change in Control of Vertical Developer; provided, however, in no event will any Excluded Transfer be deemed a Significant Change.

"**Transfer**" means an Assignment or a Significant Change.

"**Transfer Proceeds**" means all consideration received by or for the account of Vertical Developer in connection with a Transfer, including Cash Consideration, the principal amount of any loan made by Vertical Developer to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price. A commitment by an owner (whether direct or indirect) of Vertical Developer to fund its share of future capital calls to construct the Project, in and of itself, will not be considered or deemed to be "**Transfer Proceeds.**"

19.3. [**for leasehold parcel:**] ***After Close of Escrow***. After the Close of Escrow, Vertical Developer will be permitted to Transfer all or any of its interest or rights in this Agreement in conjunction with a Transfer permitted by the Parcel Lease or approved by Port in accordance with the Parcel Lease. In addition, from and after an Assignment of all of the transferor's interest in this Agreement, the transferor will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Assignment. In no event will the transferor be liable for a new default first arising after the date of such Assignment. The effectiveness of any Assignment hereunder is not in any way to be construed to relieve the transferor vertical developer of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor vertical developer hereunder before the date of such Assignment.

19.4. [**for fee parcel:**] ***After Close of Escrow***.

(a) Vertical Developer's Right to Transfer Prior to Certificate of Completion.

(i) *Conditions to Transfer Before Certificate of Completion.* Subject to ***Sections 19.4(a)(iii) and 19.4(a)(vi) [if applicable: 19.4(a)(vii)]***, before Port's issuance of a Certificate of Completion, Vertical Developer will not suffer or permit any Transfer to occur,

without the prior written consent of Port, which consent may not be unreasonably withheld by Port if each of the following conditions is satisfied:

(1) In the case of an Assignment only, the proposed transferee executes and delivers an Assignment and Assumption Agreement, which Assignment and Assumption Agreement must contain:

(A) An express assumption by the proposed transferee, for itself and its successors and assigns, and expressly for the benefit of Port, of all of the obligations of Vertical Developer arising from or after the effective date of the Transfer under this Agreement and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to this Agreement directly relating to the Project, and an express agreement by the proposed transferee to be subject to all of the conditions and restrictions to which Vertical Developer is subject;

(B) A representation by the proposed transferee that it has conducted a thorough investigation and due diligence of the Property; and

(C) A release by the proposed transferee of the City Parties and the State Lands Indemnified Parties and waiver of any and all Losses against the City Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the City Parties arising prior to the effective date of the Transfer.

(2) In the case of a Significant Change only, Vertical Developer delivers to Port a certificate setting forth the purchaser or purchasers of the ownership interest resulting in the Significant Change, purchase price of such interest, any Net Transfer Proceeds owed to Port (if applicable), and a reaffirmation from Vertical Developer that it will continue to be obligated under all the terms and conditions of this Agreement, all certified by Vertical Developer's chief financial officer as true, accurate, and complete, the form of which is attached hereto as ***Exhibit O*** (**"Significant Change Certificate"**).;

(3) All instruments and other legal documents involved in effectuating the Transfer reasonably requested by Port, including all documentation necessary for Port to confirm the amount of Port's share of Transfer Proceeds (if any), has been submitted to Port for its review and reasonable approval, or at the request of Vertical Developer, such documents are made available for Port's review at Vertical Developer's office in San Francisco;

(4) There is no Event of Default or Unmatured Event of Default on the part of Vertical Developer under this Agreement or any of the other documents or obligations to be assigned to the proposed transferee where Vertical Developer or proposed transferee have not made provisions to cure the applicable default, which provisions are satisfactory to Port in its sole discretion;

(5) Subject to ***Section 19.4(a)(i)(6)***, (A) in the case of a Significant Change, Vertical Developer must be a Qualified Transferee immediately following the consummation of such Significant Change; and (2) in the case of an Assignment, the proposed transferee is a Qualified Transferee;

(6) If Vertical Developer (in the case of a Significant Change) or proposed transferee (in the case of an Assignment) does not satisfy the Net Worth Requirement, Vertical Developer or the proposed transferee, as applicable, will have the right to deliver a Net Worth Guaranty in lieu of satisfying the Net Worth Requirement. Under the Net Worth Guaranty, the Net Worth Guarantor, among other things,

(A) guaranty performance of all of Vertical Developer's obligations under this Agreement in an amount not to exceed the Net Worth Requirement;

(B) covenant that it will throughout the term of the Net Worth Guaranty, maintain the Net Worth Requirement; and

(C) provide Port as of the first day of each calendar year, a statement certified by its chief financial officer, or if the Net Worth Guarantor is an individual, a certified public accountant, that the Net Worth Guarantor continues to meet the Net Worth Requirement and that to his/her actual knowledge, he/she is not aware of any facts that would cause the Net Worth Guarantor to not meet the Net Worth Requirement.

The Net Worth Guaranty will otherwise be in form and substance reasonably satisfactory to Port. The Net Worth Guaranty will terminate when the Vertical Developer benefiting from the Net Worth Guaranty meets the Net Worth Requirement. Vertical Developer and the Net Worth Guarantor will provide Port with its financial statements and other information necessary to substantiate its position that it meets the Net Worth Requirement and that the Net Worth Guaranty should terminate.

(7) Vertical Developer provides to Port an estoppel certificate substantially in the form attached hereto as ***Exhibit P***, which estoppel certificate will be effective as of the effective date of Transfer; [and]

(8) Port receives on or prior to the effective date of Transfer sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Transfer provided, however, if Port has not delivered to Vertical Developer an invoice for Attorney's Fees and Costs prior to the effective date of Transfer, Vertical Developer will reimburse Port for same within ten (10) business days of receipt of such invoice[.] [; and]

(9) **[for Horizontal Developer Affiliate fee parcels only:** Port receives on or prior to the effective date of Transfer, (A) Port's share of Net Transfer Proceeds, as described in ***Schedule 19.4***, and (B) a settlement statement relating to the Transfer or other evidence, reasonably satisfactory to Port, of Port's share of Net Transfer Proceeds.]

(10) *Additional Definitions.*

"**Net Worth Guarantor**" means a Person satisfying the Net Worth Requirement that is the guarantor under the Net Worth Guaranty.

"**Net Worth Guaranty**" means a guaranty of performance of all the obligations under this Agreement, in an amount not to exceed the Net Worth Requirement, and otherwise in form and substance reasonably satisfactory to Port, delivered to Port by a Person satisfying the Net Worth Requirement.

(ii) *No Limitation.* It is the intent of this Agreement, to the fullest extent permitted by Law and equity, that no Transfer of this Agreement, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of the benefits under this Agreement or any rights or remedies or controls provided in or resulting from this Agreement with respect to the Premises that Port would have had, had there been no such Transfer.

(iii) *Mortgaging of Leasehold.* Notwithstanding anything herein to the contrary, at any time during the Term, Vertical Developer has the right, without Port's consent, to sell, assign, encumber or transfer its interest in this Agreement to a Lender or other purchaser in connection with the exercise of remedies under the provisions of a Mortgage, subject to the limitations, rights and conditions set forth in ***Schedule 16***.

(iv) *Limitation on Liability.* From and after an Assignment of all of the transferor's interest in this Agreement or Leasehold Estate, the transferor will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Assignment. In no event will the transferor be liable for a new default first arising after the date of such Assignment. The effectiveness of any Assignment hereunder is not in any way to be

construed to relieve the transferor tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor tenant hereunder before the date of such Assignment. In connection with any such Assignment, upon request from Transferor, Port will promptly execute documentation evidencing the foregoing release of obligations and liabilities; provided, failure to do so will not invalidate or limit the effect of the release set forth in this ***Section 19.4(a)(iv)***.

(v) *Notice of Significant Changes; Reports to Port.* Vertical Developer will promptly notify Port of any and all Significant Changes. At such time or times as Port may reasonably request, Vertical Developer must furnish Port with a statement, certified as true and correct by an officer of Vertical Developer, setting forth all of the constituent members of Vertical Developer and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Vertical Developer, their names and the extent of such interest.

(vi) *Transfers Not Requiring Port Consent Before Certificate of Completion.* Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Transfer to a Vertical Developer Affiliate or a Significant Change in which there is no change of the Managing Party of Vertical Developer, subject to all of the following conditions: (A) at least five (5) business days prior to such Transfer, Vertical Developer provides notice thereof to Port; and (B) the conditions set forth in ***Sections 19.4(a)(i)(1)—19.4(a)(i)(7) and 19.4(a)(i)(8)*** have all been met.

(vii) **[Note: Applicable for Parcels 12, 21 and 2]** *Assignment to Accommodate Sale of Historic Tax Credits or Low-Income Housing Tax Credits.* Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Transfer to an entity solely for the purpose of taking advantage of the Historic Preservation Tax Credit or Low Income Housing Tax Credit, as applicable, subject to all of the following conditions: (a) at least thirty (30) days prior to such Transfer, Tenant furnishes Port with the name of the proposed assignee, together with evidence reasonably satisfactory to Port indicating that the proposed Transfer is solely for the purpose of taking advantage of the Historic Preservation Tax Credit or Low Income Housing Tax Credit, as applicable; and (b) the conditions set forth in ***Section 19.4(a)(i)(1)-18.4(a)(1)(8)*** have all been met.

(b) **Vertical Developer's Right to Transfer After Certificate of Completion.** Notwithstanding any other provision of this Agreement, the provisions relating to Transfers will not apply from and after the issuance of a Certificate of Completion.

(c) **No Restriction on Certain Matters.** The provisions of this ***Article 19*** will not be deemed to prohibit or otherwise restrict (1) the granting of authorizations to facilitate the development, operation and use of the Property, in whole or in part, (2) the grant or creation of a Mortgage, (3) the sale or transfer of the Property or a portion thereof or any interest therein pursuant to foreclosure or the exercise of a power of sale contained in a Mortgage or any other remedial action in connection therewith, or a conveyance or transfer thereof in lieu of foreclosure or exercise of such power of sale, or (4) any Transfer to the Port, the City, City Agencies or any other Governmental Entity.

(d) **Conditions Precedent.** Vertical Developer's rights and obligations under this Agreement may be Transferred only (1) if the Close of Escrow has occurred, in conjunction with the Transfer of the portion of the Transferred Property to which the rights and obligations apply and (2) subject to ***Section 19.5***. The Transferee, upon taking title of the Transferred Property will succeed to all of Vertical Developer's rights (including without limitation the right to Transfer) and obligations under this Agreement.

19.5. ***Limitation on Liability***. From and after a Transfer, the Transferor will be released from all obligations and liability under this Agreement to the extent first arising after the date of such Transfer. In no event will Transferor be liable for a new default first arising after

the date of such Transfer. The foregoing release will not in any way to be construed to relieve the Transferor of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the Transferor hereunder before the date of such Transfer. In connection with any such Transfer, upon request from Transferor, Port will promptly execute documentation evidencing the foregoing release of obligations and liabilities; provided, failure to do so will not invalidate or limit the effect of the release set forth in this ***Section 19.5***.

19.6. ***Restrictions on Port Transfer***. This Agreement will not restrict Port's right to transfer all or any portion of the Property to which it holds title. Unless otherwise prohibited by Law, Port agrees, however, not to transfer any portion of the Property or any interest therein acquired by it to any Person where such transfer would preclude Port's or Vertical Developer's performance under this Agreement or the uses, densities, rights or intensity of development contemplated under this Agreement or the Vertical Development Requirements.

19.7. ***Sale of Individual Condominium Units***. [**Note: Only for Fee Parcels**]

(a) **Non-Applicability of Transfer Restrictions.**

(i) Notwithstanding any other provision of this Agreement, the provisions relating to Transfers will not apply to buyers of individual Condominium Units and parking spaces for which, on or before the date of sale, a certificate of occupancy has been issued.

(ii) Except with respect to Inclusionary Units, which will be handled according to the provisions set forth in the Housing Plan, Port will not: (A) require notice or assumption of obligations for sales or subsequent re-sales of any such Condominium Units; (B) require notice or assumption of obligations, if any, for the transfer of Condominium Unit project condominium common areas; nor (C) impose any obligations with respect to completion of the improvements on individual Condominium Units for which a Certificate of Occupancy has been issued.

(iii) Vertical Developer will include in each purchase and sale agreement for a Condominium Unit a full waiver and release of any and all Claims against the City Parties resulting from Vertical Developer's completion of, or failure to complete, all or any part of the Vertical Project or Deferred Infrastructure, Horizontal Developer's completion of, or failure to complete, all or any part of the Horizontal Improvements, the Port or the City's failure to complete any part of the Pier 70 Project, and the payment by the buyer or seller of any Condominium Unit of any fees set forth in the Transfer Fee Covenant.

(iv) This ***Section 19.7*** is for the express benefit of Vertical Developer, and nothing herein will be construed to: (A) confer on an individual Condominium Unit purchaser the status of Transferee or Vertical Developer or (B) provide such purchaser, as opposed to Vertical Developer, with the right to request a Certificate of Completion for an individual Condominium Unit.

(v) No buyer of any individual Condominium Unit will be subject to the obligations or have the rights of Vertical Developer under this Agreement, the Restrictive Covenants or the obligations of Horizontal Developer under the Horizontal DDA, including without limitation, obligations for construction of the Deferred Infrastructure if applicable or the right to request a Certificate of Completion. The Parties hereto acknowledge that any of the Vertical Development Requirements that are binding on Condominium Units, including any income restrictions, will be included in recorded documents that run with the applicable Condominium Units.

20. PORT AND CITY SPECIAL PROVISIONS.

Vertical Developer will comply with the Port and City Special Provisions attached hereto as ***Exhibit Q***.

21. GENERAL PROVISIONS.

21.1. ***Notices.*** Any notices required or permitted to be given under this Agreement will be in writing and will be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices will be addressed as follows:

Port:

Port of San Francisco
Port General Counsel
Office of the City Attorney
Pier 1
San Francisco, CA 941111
Re: Pier 70 **([Identify Parcel])**

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Director of Real Estate and Development
Re: Pier 70 ([Identify Parcel])

_____
_____
_____
_____

with a copy to:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: General Counsel
Re: Pier 70 ([Identify Parcel])

Vertical Developer:

with a copy to:

or such other address as either party may from time to time specify in writing to the other party. Any notice will be deemed given when actually delivered (or when delivered is refused, if applicable) if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

21.2. ***Amendments/Technical Changes.*** This Agreement may be amended or modified only by a written instrument signed by the Vertical Developer and Port. Without limiting the foregoing, Vertical Developer and the Port may correct any inadvertent error to this Agreement or any of its exhibits or implementing documents that is contrary to the Parties' 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 materially and adversely affect the Vertical Project or Deferred Infrastructure (as reasonably determined by Vertical Developer). Any agreed change will be effected by a signed memorandum or replacement pages. A memorandum or replacement sheet will not be deemed an amendment of this Agreement or the relevant 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. Any memorandum will become a part of this Agreement or the affected document when fully executed.

21.3. ***Representations and Warranties of Vertical Developer.*** Vertical Developer represents and warrants to Port as of the Effective Date and as of the Close of Escrow as follows:

(a) That Vertical Developer is a [_____], duly organized [_____], validly existing, and in good standing under the laws of the State of _____. Vertical Developer has all requisite power and authority to conduct its business as presently conducted.

(b) That Vertical Developer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Vertical Developer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it will immediately notify the Port of same and the reasons therefore together with any relevant facts or information requested by Port. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) That this Agreement and all documents executed by Vertical Developer: (i) are and at the time of Closing will be duly authorized, executed and delivered by Vertical Developer; (ii) are and at the time of Closing will be legal, valid and binding obligations of Vertical Developer; and (iii) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject. The Transaction Documents will be a legal, valid and binding obligation of Vertical Developer, enforceable against Vertical Developer in accordance with its terms.

(d) That Vertical Developer has all requisite power and authority to execute and deliver the Transaction Documents and to carry out and perform all of the terms and covenants of the Transaction Documents.

(e) None of Vertical Developer's formation documents, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Vertical Developer to enter into and perform all of the terms and covenants of the Transaction Documents. Vertical Developer is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Vertical Developer of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened lawsuits or proceedings or undischarged judgments affecting Vertical Developer before any court, governmental agency, or arbitrator that is reasonably expected to materially and adversely affect the enforceability of the Transaction Documents or the business, operations, assets or condition of Vertical Developer.

(f) The execution, delivery and performance of the Transaction Documents (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Vertical Developer or by which Vertical Developer's assets may be bound or affected, (B) any Law, or (C) [the articles of incorporation or the bylaws of Vertical Developer], and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Vertical Developer (other than the lien of a Mortgage in accordance with this Agreement or the Parcel Lease).

(g) There is no material adverse change in Vertical Developer's financial condition and Vertical Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and Vertical Developer is not in default or claimed default under any agreement for borrowed money.

(h) Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties will survive the Closing Date.

21.4. ***Governing Law***. This Agreement will be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code. All legal actions related to this Agreement will be instituted in the Superior Court of the

City and County of San Francisco, State of California, in any other appropriate court in the City or, if appropriate, in the Federal District Court in San Francisco, California.

21.5. ***Merger of Prior Agreements***. This Agreement, together with the exhibits hereto, contain any and all representations, warranties and covenants made by Vertical Developer and Port and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits hereto.

21.6. ***Parties and Their Agents***. The term "**Vertical Developer**" as used herein will include the plural as well as the singular. If Vertical Developer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Vertical Developer will be joint and several. As used herein, the term "**Agents**" when used with respect to either party will include the agents, employees, officers, contractors and representatives of such party.

21.7. ***Interpretation of Agreement***.

(a) **Exhibits**. Whenever an "Exhibit" is referenced, it means an exhibit or attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

(b) **Captions**. Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of this Agreement.

(c) **Words of Inclusion**. The use of the term "including", "include", "such as" or words of similar import when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) **No Presumption Against Drafter**. This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including California Civil Code Section 1654).

(e) **Costs and Expenses**. The Party on which any obligation is imposed in this Agreement will be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) **Agreement References**. Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered section or paragraph of this Agreement or any specific subdivision of this Agreement.

21.8. ***Attorneys' Fees***. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of the Office of

the City Attorney of the City and County of San Francisco will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

21.9. ***Time of Essence.*** Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

21.10. ***No Merger.*** The obligations contained herein that expressly survive the Closing will not merge with the transfer of title to the Property but will remain in effect until fulfilled.

21.11. ***Non-Liability of City Officials, Employees and Agents.*** Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City will be personally liable to Vertical Developer, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Vertical Developer, its successors and assigns, or for any obligation of City under this Agreement.

21.12. ***Conflicts of Interest.*** Through its execution of this Agreement, Vertical Developer acknowledges that it is familiar with the provisions of Section 15.103 or City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Vertical Developer will immediately notify the City.

21.13. ***Notification of Limitations on Contributions.*** Through its execution of this Agreement, Vertical Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Vertical Developer acknowledges that the foregoing restriction 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. Vertical Developer further acknowledges that the prohibition on contributions applies to each Vertical Developer; each member of Vertical Developer's board of directors, and Vertical Developer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Vertical Developer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Vertical Developer. Additionally, Vertical Developer acknowledges that Vertical Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Vertical Developer further agrees to provide to City the names of each person, entity or committee described above.

21.14. ***Sunshine Ordinance.*** Vertical Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City or Port hereunder are public records subject to public disclosure. Vertical Developer hereby acknowledges that the City or Port may disclose any records, information and materials submitted to the City or Port in connection with this Agreement.

21.15. ***Tropical Hardwood and Virgin Redwood Ban***. The City and County of San Francisco 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 Sections 802(b) and 803(b) of the San Francisco Environment Code.

21.16. ***MacBride Principles - Northern Ireland***. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges companies to do business with corporations that abide by the MacBride Principles. Vertical Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

21.17. ***Severability***. If any provision of this Agreement or the application thereof to any person, entity or circumstance will be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

21.18. ***Counterparts***. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

21.19. ***Further Assurances***. The parties agree to execute such instruments or to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement; provided, however, that no party will be obligated to provide such instruments and to do such further acts that would materially increase such party's liabilities hereunder or materially decrease such party's rights hereunder. The provisions of this section will survive the Closing.

21.20. . **[add if the Vertical Project will include inclusionary BMR units].** ***Enforceability Waivers***.The Horizontal DDA (including the Affordable Housing Plan), together with this Agreement, implements the California Infrastructure Financing District Law, Cal. Government Code §§ 53395 et seq. and City of San Francisco policies and includes regulatory concessions and significant public investment in the Pier 70 Project. The regulatory concessions and public investment include, without limitation, a direct financial contribution of net tax increment, the conveyance of real property without payment, and other forms of public assistance specified in California Government Code section 65915 et seq. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of [Horizontal Developer and] Vertical Developers, as contemplated by California Government Code section 65915. In light of the Port's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the Parties understand and agree that the Costa-Hawkins Act does not and will not apply to the Inclusionary Units developed at the Vertical Project under this Agreement. The Port would not enter into this Agreement without the above provisions. **[Note: TBC]**

21.21. ***Plans on Record with Port***. The most recent versions of the Exhibits, as such Exhibits may be amended or supplemented from time to time in accordance with this Agreement or the terms of such Exhibits, will not be required to be recorded but will be kept on file with the Port. Full color copies of all recorded documents are also on file with the Port. All documents on file with the Port will be made available to members of the public at reasonable times in keeping with the Port's standard practices.

21.22. ***Survival; Effect of Termination***. Any release, partial release, expiration or termination of this Agreement will not affect any provision of this Agreement that, by its express

term, is intended to survive the expiration or termination of this Agreement. Upon any termination of this Agreement before issuance of the final Certificate of Completion by reason of a Vertical Developer Default, Vertical Developer will not have the right to proceed with the Vertical Project improvements or Deferred Infrastructure and any additional construction must proceed, if at all, under the terms of a new vertical disposition and development agreement with the Port or, with the written agreement of the Port, a reinstatement of this Agreement with appropriate agreed upon revisions.

22. DEFINITIONS.

For purposes of this Agreement, initially capitalized terms will have the meanings ascribed to them in this Article:

"**28-Acre Site**" is defined in ***Recital A***.

"**Acceptance Notice**" is defined in ***Section 6.1(a)***.

"**Acquisition Price**" is defined in ***Section 2***.

"**Acquisition Event of Default**" is defined in ***Section 10.1***.

[for commercial parcels only: "**Additional Deposit**" is defined in ***Section 2.2(a)***.

[add if applicable: "**Adequate Security**" is defined in ***Schedule 12.4*** (Deferred Infrastructure).]

"**Administrative Fees**" means a fee imposed by Port or the City in their respective regulatory capacities, that is in effect at the time and payable upon the submission of an application for any permit or approval (including, without limitation, development applications submitted in accordance with the SUD or building permit applications), which is intended to cover only the estimated actual costs to City or the Port of processing that application and inspecting work undertaken pursuant to that application and to reimburse the City or the Port for its administrative costs in processing applications for any permits or approvals required under the Vertical Development Requirements.

"**Affiliate**" is defined in ***Section 19.2***.

"**Agents**" is defined in ***Section 21.6***.

"**Agreement**" means this Vertical Disposition and Development Agreement

"**Agreement to Comply with CFD Matters**" is defined in ***Section 3.3(b)***.

"**Architect**" means a design professional duly licensed by the State of California designated by Vertical Developer from time to time to issue the Architect's Certificate.

"**Architect's Certificate**" means a certificate from the Architect in the form attached hereto as ***Exhibit M***, verifying Completion of the Vertical Project (other than the Deferred Infrastructure) for purposes of the issuance of a Certificate of Completion.

[For Fee Parcel only] "**Assessment Shortfall**" means the positive difference between: (i) the amount of property taxes that would have been levied on the Property 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 Property after Reassessment.

"**Assignment**" is defined in ***Section 19.2***.

"**Assignment and Assumption Agreement**" means an assignment of this Agreement in substantially the form of ***Exhibit R*** attached hereto.

"**BAAQMD**" means the Bay Area Air Quality Management District.

[For Fee Parcel only] "**Baseline Assessed Value**" means the assessed value of the Property in the City Fiscal Year in which the Chief Harbor Engineer issues the related Final Certificate of Occupancy.

"**Board of Supervisors**" means the San Francisco Board of Supervisors.

[For Fee Parcel only] "**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.

"**Broker**" is defined in ***Section 9.2***.

"**Cal OSHA**" means the California Occupational Safety and Health Administration.

"**Certificate of Completion**" means a certificate executed by Port that Vertical Developer has Completed the construction of the Vertical Project in accordance with all the provisions of this Agreement.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**City Costs**" means the actual and reasonable costs incurred by City (other than Port) in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in ***Section 18.3***, but excluding work and fees covered by Administrative Fees.

[For Fee Parcel only] "**City Fiscal Year**" means the period beginning on July 1 of any year and ending on the following June 30.

"**City Parties**" and "**City Party**" are defined in ***Section 4.4***.

"**Claims**" 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 Vertical Project or at the Property during the Term of this Agreement.

"**Close of Escrow**" and "**Closing**" are defined in ***Section 2.2(b)***.

"**Closing Costs**" is defined in ***Section 9.1***.

"**Closing Date**" means the date when Closing occurs.

"**Commence Construction**", "**Commencement of Construction**" and any variation thereof means the commencement of substantial physical construction as part of a sustained and continuous construction plan.

"**Commencement of Residential Construction**" means the groundbreaking in connection with the commencement of physical construction of the Vertical Project (excluding the Deferred Infrastructure), or a specified portion thereof, provided that the Commencement of Residential Construction will not be deemed to have occurred until commencement of permanent foundations pursuant to a valid foundation permit (excluding the conducting of test borings or indicator piles or other excavation for pre-development testing). Vertical Developer's physical work on "site improvements", as that term is defined in California Civil Code Section 3102, without its commencement of the work described above, does not constitute Commencement of Residential Construction.

"**Complete,**" "**Completed**" or "**Completion**" means completion by Vertical Developer of all aspects of the Vertical Project in accordance with the approved Construction Documents, or provision of security satisfactory to Port for any Deferred Items, and issuance of applicable temporary certificates of occupancy for the Vertical Project, together with completion of all improvements which are specifically required as a matter of law for occupancy of the entire Vertical Project under the conditions of any Regulatory Approvals.

"**Condominium**" means an estate in real property (i) consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, and/or commercial building on such real property, such as an apartment, office, store, or residential building with ground floor retail, or (ii) as defined in California Civil Code Sections 783, California Civil Code Division 4, Part 5, Chapter 1 or any successor statute or code, intended for residential or commercial/retail use, as shown on a duly filed final subdivision map, parcel map, or condominium plan of the Property or any portion thereof, and any fractional interest thereof, including, without limitation, timeshare interests as defined in California Business and Professional Code Section 11212(x) derived therefrom, lying within the Property.

"**Condominium Unit**" means each individual unit within a Condominium.

"**Construction Documents**" means (i) schematic design documents approved by Planning or Port under the SUD, (ii) site permits and/or building permits issued by the Port for the Vertical Project, and (iii) Improvement Plans for Deferred Infrastructure approved by the Port in accordance with the ICA.

"**Contingency Period**" is defined in ***Section 6.1(a).***

"**Control**" is defined in ***Section 19.2.***

[for residential rental inclusionary projects only] "**Costa Hawkins Act**" means Cal. Gov't Code §§ 65915-65918, as amended or replaced from time to time.

"**Credit Bid**" is defined in ***Section 2.2(d)***.

[For Fee Parcel only] "**Current Assessed Value**" means the Property's Baseline Assessed Value as escalated or reassessed on the date of determination.

"**DDA Release**" is defined in ***Section 7.4(a)(iii)***.

"**Deed**" is defined in ***Section 3.1(a)***.

"**Deferred Infrastructure**" means those certain Horizontal Improvements identified in ***Schedule 12.4*** that Vertical Developer is required to construct under this Agreement.

"**Deferred Items**" is defined in ***Section 13.1(b).***

"**Deliver**" or "**Delivery**" means **[for fee parcel:** conveyance of the Property by Port to Vertical Developer by quitclaim deed] **[for ground lease parcels:** ground lease of the Property].

"**Deposit**" is defined in ***Section 2.2(a)***.

"**Design for Development**" means the Pier 70 Design for Development dated [_____, 2018], as amended from time to time.

"**Development Agreement**" means that certain Development Agreement by and between the Port and Horizontal Developer, dated as of _____ 201XX and recorded in the Official Records as Document No. _____

"**Development Agreement Assignment**" means an instrument substantially in the form attached hereto as ***Exhibit S*** entered into by the City, Horizontal Developer and Vertical Developer in accordance with the requirements of Article 10 of the Development Agreement..

"**Development Documents**" means (i) the SUD and the Subdivision Map; (ii) the Design for Development; (iii) approved Construction Documents; and (v) the Development Agreement.

"**Development Easements**" is defined in ***Section 3.4***.

"**Effective Date**" means the date on which both parties have executed this Agreement as set forth below.

"**Engineer**" means a duly licensed engineer by the State of California, designated by Vertical Developer from time to time to issue the Engineer's Certificate.

"**Engineer's Certificate**" means a certificate from the Engineer for the Deferred Infrastructure in the form verifying Completion of the Deferred Infrastructure.

"**Environmental Laws**" mean all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this Lease. "**Environmental Laws**" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**Escrow Agent**" means the Title Company acting in its capacity as the escrow agent for the transaction.

[**for commercial parcels only:** "**Extended Closing Date**" is defined in ***Section 7.3(a)***]

"**Exactions**" is defined in the Development Agreement.

[**For Fee Parcel only**] "**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.

"**Extended Closing Date Conditions**" is defined in ***Section 7.3(a).***

"**Extension Notice**" is defined in ***Section 7.3(a).***

"**Financing Plan**" means [Horizontal DDA Exhibit C1] that governs matters relating to financing the development of the 28-Acre Site and revenue sharing between Port and Horizontal Developer.

"**Final Map**" means [a final subdivision map meeting the requirements of the Subdivision Map Act of California (Calif. Gov't Code §§ 66410-66499.37) and the Subdivision Code.

"**FOG Ordinance**" means Sections 140-140.7 of Article 4.1 of the San Francisco Public Works Code, or any subsequent amendment or replacement of the same that sets forth prohibitions, limitations and requirements for the discharge of fats, oils and grease into the City's sewer system by food service establishments.

"**Force Majeure**" means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of such Party, including, but not restricted to, acts of nature or of the public enemy, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, and unusually severe weather. Force Majeure does not include (i) failure to obtain financing or failure to have adequate funds, (ii) sea level rise, or (iii) any event that does not cause an actual delay. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make additional repairs or obtain additional Regulatory Approvals that would not have otherwise been required but for the Force Majeure Event.

"**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 substance", "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 reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, and any 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 Materials**" also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"**Horizontal DDA**" means that certain Disposition and Development Agreement between the City and County of San Francisco, a municipal corporation and charter city, acting by and through the San Francisco Port Commission, and FC Pier 70, LLC, a Delaware limited liability company, dated for reference purposes only as of [_____].

"**Horizontal Developer**" is defined in ***Recital A***.

"**Horizontal Documents**" is defined in ***Section 3.1(c)***.

"**Horizontal Improvements**" means those capital facilities and infrastructure built or installed in or to serve the 28-Acre Site and adjacent areas or other public purposes that are the obligation of Horizontal Developer under the Horizontal DDA, including, Site Preparation, Shoreline Improvements, Public Spaces, Public ROWs, Utility Infrastructure and Deferred Infrastructure (as those terms are defined in the Horizontal DDA).

"**ICA**" means the Interagency Cooperation Agreement between various City agencies and departments and the Port, dated as of [_____, 201XX], establishing procedures for City review of the Project.

[For Fee Parcel only] "**IFD**" is an acronym for Infrastructure Financing District No. 2 (Port of San Francisco), formed by Ordinance No. 27-16.

[For Fee Parcel only] "**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.

"**Impact Fees**" is defined in the Development Agreement.

"**Inclusionary Units**" has the meaning set forth in the Affordable Housing Plan attached to the Horizontal DDA.

"**Indemnify**" means indemnify, protect, defend and hold harmless. "**Indemnification**" and "**Indemnity**" have correlative meanings.

"**Independent Contract Consideration**" is defined in ***Section 2.2(c)***.

[for commercial parcels only: "**Initial Deposit**" is defined in ***Section 2.2(a)***.

"**Land Use Plan**" means the map attached to the DDA as Exh A4, which consists of a map showing Horizontal Developer's proposed land uses and intensity of vertical development at the 28-Acre Site as of the Effective Date of the DDA.

"**Laws**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes,

statutes, rules, regulations, ordinances, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" will refer to any or all Laws as the context may require and includes Environmental Laws.

"**License**" is defined ***in Section 12.4(c)***.

"**Losses**" means, when used in reference to a Claim, 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 this Agreement.

[**for fee parcels only**: "**Managing Party**" is defined in ***Section 19.4(a)(i)(10)***.]

"**Master Lease**" is defined in ***Recital A***.

"**Master Marketing Fee**" is defined in ***Section 12.16***.

"**Map Act**" means the Subdivision Map Act of California (Calif. Gov't Code §§ 66410-66499.37).

"**Memorandum of Lease**" is defined in ***Section 7.4(a)(ii)***.

"**Memorandum of VDDA**" is defined in ***Section 7.4(a)(v)***.

"**Minimum Net Worth Amount**" means Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000.00), which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Effective Date and every ten (10) years thereafter. **[NOTE: $27.5 million to increase by 5% every 5 years after Horizontal DDA execution]**

"**Mitigation Monitoring and Reporting Program**" means the Mitigation Monitoring and Reporting Program adopted by the Planning Commission for the Pier 70 Project on August 24, 2017, by Motion 19977, and attached hereto as ***Exhibit K***.

"**Mortgagee**" is defined in ***Schedule 16***.

[**for fee parcels only**: "**Net Worth Guarantor**" is defined in ***Section 19.4(a)(i)(10)***.]

[**for fee parcels only**: "**Net Worth Guaranty**" is defined in ***Section 19.4(a)(i)(10)***.

"**Net Worth Requirement**" means, with respect to a proposed transferee, the proposed transferee has a net worth (inclusive of its equity in the Property) equal to at least the Minimum Net Worth Amount, less any debt to be secured by (i) the proposed transferee's interest in the Property, or (ii) a pledge of the proposed transferee's ownership

"**New Hazardous Material**" is defined in ***Section 18.1(d) of Schedule 18.1***.

"**Notice of Transfer Fee Covenant**" is that certain notice of the Transfer Fee Covenant in the form attached hereto as ***Exhibit C-2A*** and to be recorded in the Official Records.

"**Notice of Special Tax**" is defined in ***Section 3.3(a)***.

"**Objectionable Items**" is defined in ***Section 6.1(b).***

"**Objection Notice**" is defined in ***Section 6.1(b)***.

"**Official Records**" means the official records of the City and County of San Francisco.

"**Parcel Lease**" is defined in ***Section 3.1(a).***

"**Partial Release**" is defined in ***Section 7.4(a)(v)***.

"**Party**" means Port or Vertical Developer, as a party to this Agreement. "**Parties**" means both Port and Vertical Developer, as parties to this Agreement.

"**Permitted Encumbrances**" is defined in ***Section 3.1(a).***

"**Permitted Port Title Exceptions**" is defined in ***Section 3.1(b).***

"**Person**" means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

"**Phase Submittal**" means a Phase Submittal approved by the Port in accordance with Section [XX] of the Horizontal DDA.

"**Pier 70 Master Association**" means the Master Association formed in accordance with the Pier 70 Master Association Documents.

"**Pier 70 Master Association Documents**" means [*insert applicable Master Declaration reference and any other relevant documents.*]

"**Pier 70 Project**" means the development of Horizontal Improvements and Vertical Improvements within the 28-Acre Site in accordance with the Horizontal DDA and Development Documents.

"**Pier 70 Risk Management Plan**" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"**Pier 70 Shipyard**" is defined in ***Section 12.15(b)***.

"**Port**" or "**Port Commission**" means the San Francisco Port Commission.

"**Port Costs**" means the actual and reasonable costs incurred by Port in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in ***Section 18.3***, but excluding work and fees covered by Administrative Fees.

"**Port Costs Report**" is defined in ***Section 14.2***.

"**Port Default**" is defined in ***Section 15.2***.

"**Port Director**" means the Executive Director of the Port.

"**Port Title Defect**" is defined in ***Section 6.3(a)***.

"**Project Requirements**" is defined in ***Section 12.1***.

"**Property**" is defined in ***Recital A***.

"**Property Conditions**" is defined in ***Section 4.1***.

"**Qualified Transferee**" means any transferee that satisfies each of the following criterion: (1) has, or has engaged a property manager with at least ten (10) years' experience operating [**use for commercial leases:** major commercial projects] [**use for residential parcels:** residential projects]; (2) satisfies the Net Worth Requirement; and (3) is subject to jurisdiction of the courts of the State.

[**For Fee Parcel only**] "**Reassessment**" means a reduction in ad valorem taxes assessed against the Property through a proceeding under the California Revenue & Taxation Code.

"**Regulatory Agency**" means a City Agency or federal, state, or regional body, administrative agency, commission, court, or other governmental or quasi-governmental organization with jurisdiction over any aspect of the Vertical Project or the 28-Acre Site.

"**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.

"**Requested Information**" is defined in ***Section 12.14***.

[for residential condo parcels only: "**Required Construction Commencement Date**" is defined in ***Section 15.1(c)***.

"**Restrictive Covenants**" is defined in ***Section 3.2*** hereof.

[for residential fee parcels only: "**Scope of Development**" is defined in ***Section 3.2***.]

"**SFDPH**" means the San Francisco Department of Public Health.

"**SFPW**" means San Francisco Public Works.

"**Special Provisions**" means the City requirements set forth in ***Article 20*** hereof.

"**State Lands Indemnified Parties**" is defined in ***Schedule 18.1***.

"**Subdivision Code**" means the San Francisco Subdivision Code and Subdivision Regulations, subject to applicable amendments or procedures in the Board of Supervisors Ordinance No. 224-17 and the Development Agreement.

"**Subdivision Map**" means any map that Developer submits for the Property under the Map Act and the Subdivision Code.

"**Subdivision Regulations**" means subdivision regulations adopted by San Francisco Department of Public Works from time to time and any exceptions and design modifications from the standards set forth therein to the extent necessary to achieve consistency with the Infrastructure Plan and all matters previously approved in accordance with Section 4.1(a) of the ICA.

[For Fee Parcel only] "**Sub-Project Area**" means, individually or collectively, Sub-Project Area G 2, Sub-Project Area G 3, and Sub-Project Area G 4.

[For Fee Parcel only] "**Sub-Project Area G 1**" means the sub-project area of IFD Project Area G consisting of the 20th Street Historic Core.

[For Fee Parcel only] "**Sub-Project Area G 2**" means the sub-project area of IFD Project Area G described in Appendix G-2.

[For Fee Parcel only] "**Sub-Project Area G 3**" means the sub-project area of IFD Project Area G described in Appendix G-3.

[For Fee Parcel only] "**Sub-Project Area G 4**" means the sub-project area of IFD Project Area G described in Appendix G-4.

"**SUD**" means Planning Code Section 249.79 (the Pier 70 Special Use District), as amended from time to time.

"**Survey**" means a survey required by the Title Company to issue the title insurance policy described in the Title Commitment.

"**Target Closing Date**" is defined in ***Section 7.2***.

[For Fee Parcel only] "**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 (as such terms are defined in the Appendix to the DDA).

"**Taxes and Assessments**" is defined in ***Section 6.6***.

"**Tentative Map**" means a tentative subdivision map or tentative parcel map submitted by an applicant and approved by the City in accordance with procedures under the Subdivision Code and Development Documents.

"**Termination Notice**" is defined in ***Section 6.1(a).***

"**Title Commitment**" means a commitment by the Title Company that it will issue to Vertical Developer, an A.L.T.A. extended coverage title insurance policy, with such coinsurance or reinsurance and direct access agreements as Vertical Developer may request reasonably, in an amount designated by Vertical Developer which is satisfactory to the Title Company, insuring that the leasehold estate in the Property is vested in Vertical Developer subject only to the Permitted Title Exceptions, and with such C.L.T.A. form endorsements as may be requested reasonably by Vertical Developer, all at the sole cost and expense of Vertical Developer.

"**Title Company**" is defined in ***Section 2.2(b).***

"**TMA**" is defined in ***Section 3.6***.

"**Transaction Documents**" means the documents executed and delivered by Vertical Developer pursuant to ***Section 7.4(b)***.

"**Transfer**" is defined in ***Section 19.2***.

"**Transfer Fee Covenant**" is defined in ***Section 3.1(d)***.

"**Transferee**" means any Person to which Vertical Developer assigns its rights and obligations under this Agreement in accordance with ***Article 19***.

"**Transferor**" means Vertical Developer, in its capacity as a transferor of its rights and obligations under this Agreement in accordance with ***Article 19***.

"**Unmatured Vertical Developer Event of Default**" means any default that, with the giving of notice or the passage of time, or both would constitute a Vertical Developer Acquisition Event of Default or Vertical Developer Default under this Agreement.

"**VCA**" means the Vertical Cooperation Agreement to be executed between Vertical Developer and Horizontal Developer, as the same may be amended, supplemented, modified and/or assigned from time to time). [**add as applicable**: The VCA will include, among other items, a schedule of Horizontal Developer's Horizontal Improvements obligations, Vertical Developer's Deferred Infrastructure obligations, and the timing of delivery for each] The VCA may include provisions related to (i) assignment and assumption of liability for Deferred Infrastructure, including bonding and warranty, (ii) sequencing and coordination of infrastructure work as between Horizontal Developer and Vertical Developer, (iii) each party's obligations related to liability for damage and restoration thereof, (iv) repaving obligations to the extent of any underground work performed after Horizontal Developer's paving, (v) Horizontal Developer reasonable approval over changes to horizontal construction permits obtained by Vertical Developer, (vi) Horizontal Developer self-help right if Vertical Developer fails to complete Deferred Infrastructure pursuant to an agreed upon schedule of performance, (vii) soil disposal arrangement, and (viii) mechanisms for Vertical Developer to submit Deferred Infrastructure costs to Horizontal Developer for reimbursement through Financing Plan (exclusive of fines, penalties, corrective actions).

"**VD Terminable Sections**" is defined in ***Section 6.2.***

"**Vertical Developer**" is defined in the preamble to this Agreement.

"**Vertical Developer Default**" is defined in ***Section 15.1.***

"**Vertical Development Requirements**" means those certain requirements for development of the Property that are contained in: (i) the Development Documents; (ii) [for fee parcels: the

Restrictive Covenants] [for ground lease parcels: the Parcel Lease]; (ii) approved Construction Documents; and (iii) this Agreement.

"**Vertical Project**" is defined in ***Recital H***.

"**Workforce Development Plan**" is defined in ***Section 6.4(a)(vii)***.

[SIGNATURES ON FOLLOWING PAGE]

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: _____
[NAME]
Executive Director

Endorsed by Port Resolution No. 17-43 and Board Resolution No. 401-17

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

VERTICAL DEVELOPER:

_____
a _____

By: _____
[NAME]

Its: _____

EXHIBIT A

REAL PROPERTY DESCRIPTION

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

[To be attached prior to execution]

EXHIBIT B

VERTICAL PROJECT

[If ground lease parcel:

[If fee parcel: Scope of Development]

[To be attached prior to execution]

EXHIBIT C

[If ground lease parcel: **FORM OF PARCEL LEASE]**

[To be attached prior to execution using form of Parcel Lease attached as **Exhibit D3 to Horizontal DDA**]

[If fee parcel: **FORM OF QUITCLAIM DEED**

RECORDING REQUESTED BY, AND WHEN RECORDED RETURN TO: Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attn: Director of Property MAIL TAX STATEMENTS TO: _____ _____ _____ Attn: _____ The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105)	(Space above this line reserved for Recorder's use only)

Documentary Transfer Tax of $____ based upon full market value of the property without deduction for any lien or encumbrance

QUITCLAIM DEED WITH RESTRICTIONS AND EASEMENT RESERVATIONS
[(Assessor's Parcel No. _____)]

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), pursuant to [Ordinance No. _____, adopted by the Board of Supervisors on _____, 20___ and approved by the Mayor on _____, 20___], subject to the reservations in their Quitclaim Deed hereby RELEASES, REMISES AND QUITCLAIMS to

_____ ("Vertical Developer"), any and all right, title and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property").

[NOTE: ADD RESERVATIONS AND RESTRICTIONS AS APPLICABLE. IF RESTRICTIONS OR OTHER COVENANTS OR OBLIGATIONS OF GRANTEE, ADD GRANTEE AS SIGNATORY TO DEED.]

Executed as of this ____ day of _____, 20__.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through
the SAN FRANCISCO PORT COMMISSION

By: _____
[NAME]
Executive Director

Endorsed by Port Resolution No. ____

and Board Resolution No. _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

[If required: DESCRIPTION
CHECKED/APPROVED:]

By: _____
[NAME]
City Engineer

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)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, 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 _____ (Seal)

[If ground lease parcel: **RESERVED**]

[If fee parcel:

EXHIBIT C-1

RESTRICTIVE COVENANTS

[***Note to draft: The Restrictive Covenants for any Residential Condominium Parcel will be tailored to each fee conveyance of residential condo parcels, but will address the following matters as applicable. The Transfer Fee Covenant and Notice of Transfer Fee Covenant will be recorded separately.***]

1. Scope of Development: A restriction on the use of the property (residential condominium), including maximum number of residential units that will continue during the term of the DDA.

2. Parking: A restriction on the maximum number of off-street parking spaces allocated to the Property, including a requirement for the Vertical Developer to record in the Official Records a Notice of Special Restrictions against the Development Parcel at the time of the issuance of the Certificate of Occupancy that will permanently limit the number of off-street parking spaces to the lesser of the number of parking spaces allocated to the parcel in the Restrictive Covenants or the number of parking spaces actually constructed on the Property at the time of the issuance of such Certificate of Occupancy.

3. Workforce requirements: Compliance with the Construction Workforce Requirements under Section III.C of the Workforce Development Plan (**DDA Exhibit B4**).

4. Associated Public Benefits: Compliance with any Associated Public Benefits allocated to the residential condominium project pursuant to the DDA, which may include one or more of the following:

4.1. Childcare facilities (**DDA § 7.18**). Compliance with the childcare requirements of Section 7.18 if designated in accordance with the DDA on any of the residential parcels identified as potential childcare locations shown on the map attached to the DDA as **Exhibit B7**.

4.2. Priority Retail along Slipways Commons (**DDA § 7.20**). Compliance with the provisions regarding "Priority Retail" for any residential condominium buildings that are developed on Parcels E1, E2 or E3.

5. Pier 70 Shipyard Acknowledgement. An acknowledgement of Pier 70 Shipyard impacts, as provided in Section 12.15 of the Vertical DDA.

6. CFD and Assessment Matters. An acknowledgement of the CFD and Assessment Matters as described in Schedule 3.1 attached to the Vertical DDA.

7. Environmental Covenants. Compliance with 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.

8. Mitigation Monitoring and Reporting Program. Compliance with provisions of the MMRP, as may be amended or revised from time to time, as applicable to operations and subsequent construction.

9. Transportation Demand Management Plan. Compliance with applicable provisions of the Transportation Demand Management Plan, as may be amended or revised from time to time.

10. Enforcement. The Restrictive Covenants will be in favor of the City, acting by and through the Port Commission, and may not be amended or terminated without a written instrument signed by the Port.

11. Release. No buyer of any individual Condominium Unit will be subject to the obligations under the Restrictive Covenants, which will be released at close of escrow for the applicable unit; provided, however, that the matters in Section 5 (Pier 70 Shipyard Acknowledgement) and 7 (Environmental Covenants) will be included in recorded documents that run with the applicable Condominium Units. For any commercial Condominium Units, the matters in Section 4 (Associated Benefits) will also be included in recorded documents (e.g. a deed or separate notice of special restrictions) that run with each of the commercial Condominium Units.

EXHIBIT C-2

FORM OF TRANSFER FEE COVENANT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	

(SPACE ABOVE LINE FOR RECORDER'S USE)

APN:

[NOTE: Civ. Code 1098.5(b) requires legal description and assessor's parcel number for the affected real property]

PAYMENT OF TRANSFER FEE REQUIRED

DECLARATION IMPOSING TRANSFER FEE COVENANT AND LIEN

THIS DECLARATION IMPOSING TRANSFER FEE COVENANT AND LIEN (this "**Covenant**") is made as of this ___ day of _____, 20XXX (the "**Effective Date**"), by and between **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), and **[BUYER'S ENTITY NAME AND INFORMATION]** ("**Declarant**"). Port and Declarant are collectively referred to as the "**Parties**", or each individually, a "**Party**".

RECITALS

A. Port and Declarant have entered into that certain Vertical Disposition and Development Agreement, dated [_____, 20XXX], ("**VDDA**") for the property located in the City and County of San Francisco more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"). The Property is a portion of the area generally known as Pier 70 (the "**Project Site**"). It is anticipated that the Property will be developed with residential and commercial condominium units. Declarant will be the initial owner of all the residential and commercial condominium units.

B. Port is a department of the City and County of San Francisco and manages in trust for the people of the State of California, 7½ miles of San Francisco Bay shoreline stretching from Hyde Street Pier in the north to India Basin in the south. Port's responsibilities include promoting maritime commerce, navigation, and fisheries; restoring the environment; and providing public recreation and promoting the statutory trust imposed by the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, and commonly referred to as the "**Burton Act**" (collectively, the "**Public Trust**"). The Burton Act provided for the transfer from the State of California, subject to specified terms, conditions and reservations, to the City, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

C. The Property is located in the Southern Waterfront area of the Port of San Francisco's Waterfront Land Use Plan, which area stretches from Pier 70 in the north to India Basin in the south.

D. Pursuant to the VDDA, Declarant has acknowledged and agreed that as material consideration for Port's conveyance of the Property to Declarant, Port would, among other things, receive Transfer Fees in perpetuity from the sale of the Condominiums on the Property after (but not including) the first sale, as further described in this Covenant, to be evidenced by this Covenant recorded on the Property.

E. The Transfer Fees will be used by the Port to promote Public Trust purposes and uses on property within the Port's jurisdiction.

NOW THEREFORE, Declarant hereby declares the existence of a perpetual covenant to pay Transfer Fees, and imposes upon each Condominium developed on the Property a lien to secure payment of Transfer Fees in accordance with the following terms and conditions:

1. DEFINITIONS. As used herein, the following terms have the following meanings:

1.1 **"Condominium"** means an estate in real property (i) consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial, and/or retail building on such real property, such as an apartment, office, or store, or (ii) as defined in California Civil Code Sections 783, California Civil Code Division 4, Part 5, Chapter 1 or any successor statute or code, intended for residential or commercial/retail use, as shown on a duly filed final subdivision map, parcel map, or condominium plan of the Property or any portion thereof, and any fractional interest thereof, including, without limitation, timeshare interests as defined in California Business and Professional Code Section 11212(x) derived therefrom, lying within the Property.

1.2 **"Dispute"** means any disagreement between the Parties, or any Owner and Port, concerning the amount, obligation to pay or other issue concerning the Transfer Fees under this Agreement or concerning any other dispute arising under this Covenant.

1.3 **"Escrow Holder"** means any title company, trust company, or other Person serving as an escrow holder or agent for the Transfer of a Unit.

1.4 **"Foreclosure Trustee"** has the meaning given in Section 7.3 below.

1.5 **"First Mortgage"** means any Mortgage with lien priority over any other Mortgage.

1.6 **"Mortgagee"** has the meaning given in Section 5.1 below.

1.7 **"Notice of Lien"** has the meaning given in Section 7.3 below.

1.8 **"Official Records"** means the official records of the City and County of San Francisco, State of California.

1.9 **"Owner"** means the Person or Persons holding record title to the Unit.

1.10 **"Person"** means a natural individual or any entity with the legal right to hold title in real property.

1.11 **"Property"** means the property described in Exhibit A.

1.12 **"Purchase Price"** means the gross consideration given by the transferee to the transferor in connection with a Transfer (defined below), including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the Transferor that is not paid in consideration for the Transfer but is a pass-through to such third-party (*e.g.* title

insurance cost), further excluding any Transfer Fee payable hereunder, and without any other deduction or offset of any kind.

1.13 **"Recorded"** means the recordation, filing or entry of a document in the Official Records.

1.14 **"Transfer"** means the sale or exchange of a Condominium (including, without limitation, the sale or exchange of a fractional interest therein or timeshare thereof) or a lease with a term of thirty five (35) years or longer. "Transfer" shall not include:

(a) Any sale, transfer, assignment, or conveyance that is exempt from payment of the real property transfer tax under the San Francisco Business and Tax Regulations Code, Article 12-C, Sections 1105 (but only with respect to the exemption set forth in the first sentence thereof), 1106, 1108, 1108.1, 1108.2, 1108.3, 1108.4, or 1108.5.

(b) The reservation by Declarant of easements, access rights or licenses, water rights or other similar rights benefitting or encumbering any of the Units, or any subsequent transfer of any such easements or rights;

(c) Any transfer of real property to any public agency, entity or district, or any utility service provider; or

(d) Any transfer to an association (defined in Section 4080 of the California Civil Code) of common area (defined in Section 4095 of the California Civil Code);

1.15 **"Transfer Fee"** has the meaning given in ***Section 2.1 below***.

1.16 **"Unit"** has the meaning given in ***Section 2.1 below***.

2. TRANSFER FEES.

2.1 Transfer Fee Imposed and Amount. Upon each Transfer of a Condominium unit (each, a "Unit") there shall be due and payable to the Port a fee equal to one and one half percent (1½%) of the Purchase Price of the Unit (the "Transfer Fee") in perpetuity; provided, however, that no Transfer Fee shall be due and payable with respect to the initial Transfer of any Unit. Examples of the amount of the Transfer Fee that would be payable, as specifically required by Section 1098.5(b)(2)(C) of the California Civil Code, are as follows:

Purchase Price	Transfer Fee	Transfer Fee Due Port
$250,000	X 0.015	$3,750
$500,000	X 0.015	$7,500
$750,000	X 0.015	$11.250

2.2 When Due and Paid. Subject to ***Section 2.9 below***, with respect to any voluntary conveyance of a Unit, a Transfer Fee shall be due and payable upon recordation (or other delivery) of the instrument of conveyance that constitutes a Transfer. With respect to any involuntary conveyance that constitutes a Transfer or conveyance by operation of law that constitutes a Transfer, a Transfer Fee shall be due and payable upon demand by Port, or upon recordation of any instrument vesting title in the transferee(s), whichever occurs first, and the transferee(s) shall notify Port of the occurrence of such transfer within a reasonable time after such Transfer occurs, or after obtaining actual knowledge thereof. If a Transfer Fee is not paid when due hereunder, and such failure continues for ten (10) days after notice from Port to the Owner of record, Port may pursue any remedies for failure to pay as set forth in ***Sections 7.1, 7.3, 7.4, and 7.5***.

2.3 ***Port Release***. Upon receipt of a timely notice of Transfer in accordance with ***Section 2.8 below***, Port shall execute and deliver into each escrow established for delivery of the instrument of conveyance that triggers the Transfer Fee obligation, an instrument duly acknowledged and in recordable form (the "Port Release"), acknowledging the full payment and satisfaction of the Transfer Fee obligation for the applicable Unit Transfer and releasing any claims arising out of the applicable Transfer for failure to pay the Transfer Fee subject to the following conditions:

(a) Port shall have received the timely notice of Transfer in accordance with ***Section 2.8 below***;

(b) The Transfer Fee amount is verified by Port pursuant to the escrow demand procedures of ***Section 2.10 below***; and

(c) Escrow Holder has agreed that the Port Release will not be released from Escrow and recorded until the Escrow Holder has received confirmation from Port that Port has received the applicable Transfer Fee.

2.4 ***Payment by Escrow Holder/Delivery of Port Release***. The Transfer Fee shall be paid to Port directly out of escrow established for delivery of the instrument of conveyance that triggers the Transfer Fee obligation. The transferor and transferee shall, and hereby do, irrevocably instruct any Escrow Holder holding funds for a Transfer to pay the Transfer Fee to the Port at the address set forth in Section 10 below, or at Port's election upon prior notice to the Escrow Holder, by wire transfer, from the proceeds of the Transfer at the close of escrow; provided, however, the failure of the Escrow Holder to do so shall not relieve the transferor or transferee of the obligation to pay the Transfer Fee. The transferor and transferee shall execute all documents reasonably requested by the Escrow Holder to confirm this instruction and effectuate such payment on or before the close of escrow. In addition, Declarant and any subsequent Owner shall place in escrow, with any agreement by which it Transfers a Unit, escrow instructions which specifically state, among other things, that the Escrow Holder shall pay the Transfer Fee to the Port out of the proceeds of the sale at the closing. Escrow Holder is hereby instructed by Port to record and deliver to Owner the Port Release upon the sale of the applicable Unit and payment of the applicable Transfer Fee to Port. Port shall execute all documents reasonably requested by the Escrow Holder before close of escrow to confirm this instruction and effectuate such recordation and delivery of the Port Release.

2.5 ***Transferor and Transferee Jointly and Severally Liable***. The obligation to pay the Transfer Fee for each Transfer is a joint and several obligation of the transferor and the transferee in each transaction. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay in any manner they so choose.

2.6 ***Late Charges and Interest***. The Transfer Fee due Port in connection with an applicable Transfer shall be considered late if not paid within ten (10) business days after recordation of the instrument of conveyance for such applicable Transfer. A late fee of one-half of one percent (0.50%) of the Transfer Fee shall apply thereafter for each day such payment is late, up to a maximum of ten percent (10%) of the Transfer Fee. In addition, any Transfer Fee not paid within twenty-five (25) business days following recordation of the instrument of conveyance shall thereafter bear interest at the rate of ten percent (10%) per annum until paid. However, interest shall not be payable on late fees imposed or to the extent such payment would violate any applicable usury or similar law.

2.7 ***Covenant to Pay and Creation of Lien***. Each Owner of an interest in a Unit, by acceptance of a deed or other instrument of conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it is so expressed in any such deed or other instrument of conveyance, hereby covenants and agrees to pay the Transfer Fee to Port in connection with each Transfer by which an Owner acquires or conveys such Unit. The Transfer Fee, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of

collection thereof, as hereinafter provided, shall be a lien and charge upon the Unit the transfer of which gives rise to the Transfer Fee.

*2.8 **Mandatory Notice**.* Every Owner must notify Port within the earlier of: (i) twenty (20) days after execution of a contract to Transfer a Unit, or (ii) five (5) days prior to the effective date of the Transfer. Such notice shall be provided to the Port's address for notice set forth in Article 9 below, and shall be enclosed in an envelope marked prominently: "NOTICE OF UNIT TRANSFER-PIER 70." Such notice shall be substantially in the form attached hereto as Exhibit B and will include: (i) the name and address of the transferor (ii) the name and address of the transferee; (iii) an identification of the Unit being Transferred; (iv) the Purchase Price; (v) the amount of the Transfer Fee that is due and the formula for calculating the same; (vi) the proposed closing or effective date; (vii) the name, address and phone number of the Escrow Holder for the Transfer; (viii) and the name of the escrow officer. If any of the information set forth above is not available when the notice is originally sent to Port, the Owner shall notify Port as soon as such information becomes available. In addition, each Owner shall accurately update Port if any of such information provided shall change on or prior to the closing of effective date of the Transfer.

*2.9 **Exchange Transfer**.* If a particular transaction involves more than one Transfer solely because the Unit is held for an interim period by an accommodation party as part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Transfer Fee must be paid in connection therewith, and the accommodation party shall not have any liability for payment of such Transfer Fee.

*2.10 **Escrow Demand**.* The Port is hereby authorized as a third party beneficiary of any such escrow to submit a demand into escrow for payment of the Transfer Fee and for any information about the Transfer (such as the date of closing and purchase price) that has not previously been provided to the Port; provided that Port's failure to place such demand shall not affect the obligation of the parties to cause the Transfer Fee to be paid to Port or operate as a waiver of the right of Port to receive the Transfer Fees. The demand shall state (a) either the amount of the Transfer Fee that is due or the formula for calculating the amount of the Transfer Fee that is due, and (b) that the Transfer Fee is due and payable upon recordation (or other delivery) of the instrument of conveyance. The transferor and transferee shall execute any and all escrow documents reasonably requested by Port or Escrow Agent to effectuate the release and payment of Transfer Fee to Port.

BY ACQUIRING TITLE TO A UNIT, EACH OWNER OF A UNIT HEREBY IRREVOCABLY INSTRUCTS ANY ESCROW HOLDER HOLDING FUNDS FOR THE TRANSFER OF THE UNIT TO PAY THE TRANSFER FEE TO THE PORT FROM THE PROCEEDS OF SALE OF THE UNIT, AS SET FORTH HEREIN.

3. BINDING EFFECT. Declarant hereby declares that the Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the rights, reservations, restrictions, covenants, conditions and equitable servitudes contained in this Covenant. The rights, reservations, restrictions, covenants, conditions and equitable servitudes set forth in this Covenant will (1) run with and burden each Unit within the Property in perpetuity and will be binding upon all persons having or acquiring any interest in any Unit or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Property and any interest therein; (3) inure to the benefit of and be binding upon Declarant, Port, each Owner, and their respective successors-in-interest; and (4) may be enforced by Declarant, Port, each Owner, and their respective successors-in-interest. The Parties hereby acknowledge and agree that the obligation to pay a Transfer Fee upon the Transfer of any Unit is not a personal covenant or obligation of Declarant, and that where Declarant is not a transferor, Declarant shall not be obligated to pay any Transfer Fee regarding any Unit.

4. **USES OF THE TRANSFER FEES.** Port shall deposit the Transfer Fees into the Port's Harbor Fund, to be used solely for Public Trust purposes benefitting lands under Port jurisdiction. Declarant believes that the services, activities, and improvements to be provided by Port under this Section will enhance the value of and will benefit all the land in the specified area, including all Units existing or to be created on the Property. Each Owner who acquires a Unit by such acquisition agrees to and acknowledges the statements made in this Section.

5. **MORTGAGES.**

5.1 ***Rights of Mortgagees.*** Nothing in this Covenant, and no default by an Owner in payment of Transfer Fees, shall defeat or render invalid the rights of the holder of any mortgage or the beneficiary of any deed of trust appearing of record as an encumbrance on any Unit (such holder or beneficiary, collectively "Mortgagee;" and such recorded mortgage or deed of trust, collectively "**Mortgage**") made in good faith and for value, provided that after the foreclosure or transfer in-lieu of foreclosure of any such Mortgage, such Unit shall remain subject to this Covenant.

5.2 ***Subordination to First Mortgages.*** Subject to ***Section 5.1***, the rights and obligations of the Parties hereunder concerning any Unit shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Unit; provided, however, that the foregoing subordination shall not apply to Transfer Fees that are not paid when due (i) arising from the Transfer that gave rise to the Recorded First Mortgage, or (ii) described in a Notice of Lien filed at least 21 days prior to the date of recordation of the Recorded First Mortgage.

5.3 ***Effect of Foreclosure.*** No foreclosure of a Mortgage on a Unit or a transfer in lieu of foreclosure shall impair or otherwise affect Port's right to pursue payment of any Transfer Fee due in connection with the Transfer of that Unit from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Unit or the purchaser thereof from liability for any Transfer Fees thereafter becoming due or from the lien therefor.

6. **ESTOPPEL CERTIFICATE.** Within ten (10) days of the receipt of a written request of any Owner of a Unit for which no Transfer Fee is due and owing and as to which Unit Port holds no lien, Port shall deliver to such Owner an executed estoppel certificate certifying that no Transfer Fee is due and owing for such Unit and that Port holds no lien against such Unit.

7. **ENFORCEMENT.**

7.1 ***Remedies.*** Port shall be entitled to any and all rights and remedies available at law or equity in order to collect the Transfer Fees owed it, including but not limited to, specific performance.

7.2 ***Small Claims Court.*** Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Any party may submit the Dispute to such court.

7.3 ***Enforcement by Lien.*** Without limiting any other right or remedy, there is hereby created a claim of lien, with power of sale, on each and every Unit, or any fractional interest therein that is the subject of a Transfer, to secure prompt and faithful performance of each Owner's obligations under this Covenant for the payment to Port of the Transfer Fees, together with interest thereon, and all late charges, interest, and costs of collection which may be paid or incurred by the Port in connection therewith, including reasonable attorneys' fees. If payment of the Transfer Fee is not made to Port within ten (10) days after notice from Port to the Owner of record, then at any time after the delinquency unless cured, Port may elect to file and record in the Official Records a notice of default and claim of lien against the Unit of the defaulting Owner ("**Notice of Lien**"). Such Notice of Lien shall be executed and acknowledged by the Port's Executive Director or his or her designee, and shall contain substantially the following information:

(a) The name of the defaulting Owner,

(b) A legal description of the Unit;

(c) The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

(d) A statement that the Notice of Lien is made pursuant to this Covenant; and

(e) A statement that a lien is claimed against the Unit in the amount stated, and that the Port has elected to foreclose the lien against the Unit.

Upon such recordation of a duly executed original or copy of such Notice of Lien and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective.

7.4 Foreclosure of Lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) (the "Foreclosure Trustee") shall be a title company or other neutral third party with prior trustee experience appointed by Port. Port shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Unit acquired at such sale subject to the provisions of this Covenant. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

7.5 Proceeds of Sale. The proceeds of any foreclosure, trustee's or judgment sale provided for in this Covenant shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Transfer Fees hereunder or any liens, shall be paid to each Mortgagee in their respective order of priority to satisfy any outstanding lien, with any remaining balance to be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Unit free from the sums or performance claimed (except as stated in this section) but otherwise subject to the provisions of this Agreement; and no such sale or transfer shall relieve such Unit or the purchaser thereof from liability for any Transfer Fees, other payments or performance thereafter becoming due or from the lien therefore as provided for in this section. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the defaulting Owner.

7.6 Cure of Default. Upon the timely curing of any default for which a Notice of Lien was filed by Port, the Port is hereby authorized to record an appropriate release of such lien in the Official Records.

8. AMENDMENT.

8.1 The Port may record against the Property an assignment and notice in order to assign its rights hereunder to, and to specifically identify, its successor in interest in the event that the lands of the Port are transferred to the State of California or any other agency, in which event this Covenant will be deemed to be so modified.

8.2 This Covenant may be amended by Declarant and the Port to impose an equivalent system of fees in the form of a special tax, assessment or other levy pursuant to an agreement with the City and County of San Francisco; provided, however, that in no event shall any such superseding structure, covenant, lien or other arrangement (a) impose upon Declarant, the Property, or the Units any greater liability or obligation than the liabilities and obligations provided for herein, or (b) impose an obligation for payment of any amounts to an "association," as defined in California Civil Code Section 4080, or a "community service organization or

similar entity" within the meaning of California Civil Code Section 4110, unless the collection of such amounts by such entity would not constitute a violation of Civil Code Sections 4575 and 4580 or other applicable law.

9. SERIAL IMPOSITION AND RECORDATION. No Transfer Fees shall be payable with respect to any transfer of a portion of the Property that has not yet been subdivided to enable the development of the Condominiums on the Property or with respect to the recordation of the subdivision map creating the Condominiums.

10. NOTICES. All notices required or allowed hereunder shall be in writing. Notices to Declarant or notices or payment of the Transfer Fees to Port may be given at the following addresses:

Port:	San Francisco Port Commission Pier 1 San Francisco, California 94111 Attention: Director of Real Estate & Development (Reference: Pier 70) Telephone: (415) 274-0400
With a copy to:	San Francisco Port Commission Pier 1 San Francisco, California 94111 Attention: General Counsel (Reference: Pier 70) Telephone: (415) 274-0400
Declarant:	[Insert contact info]
With a copy to:	

All notices required or allowed to an Owner shall be in writing and shall be sent to the address of the Unit owned by the Owner.

Notices may be given by personal delivery, or sent by reputable overnight delivery service with charges prepaid for next-business-day delivery, or by first class certified U.S. Mail with postage prepaid and return receipt requested. Notices are effective on the earlier of the date received, one business day after transmittal by overnight delivery service, or the third day after the postmark date, as applicable. Each Owner who transfers a Unit shall give notice to the Port of the name and mailing address of the transferee.

11. MISCELLANEOUS.

11.1 Governing Law. The provisions hereof shall be construed and enforced in accordance with the laws of the State of California.

11.2 Attorneys' Fees. In any action or proceeding to seek a declaration of rights hereunder, to enforce the terms hereof or to recover damages or other relief for alleged breach, then the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs, including experts' fees, costs incurred in connection with (a) post judgment motions, (b) appeals, (c) contempt proceedings, (d) garnishments and levies, (e) debtor and third-party examinations, (f) discovery, and (g) bankruptcy litigation. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing, perfecting and executing such judgment. A party

shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment.

11.3 ***Time.*** Time is of the essence of each and every provision hereof.

11.4 ***Disclaimers.*** Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

11.5 ***Construction.*** Whenever the context of this Covenant requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Descriptive section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

11.6 ***Waiver.*** Any waiver with respect to any provision of this Covenant shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this Covenant by a party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Covenant. No waiver will be interpreted as a continuing waiver.

11.7 ***Incorporation of Recitals.*** The recitals set forth above are incorporated herein by this reference.

11.8 ***Severability.*** Invalidation of any portion or provision of this Covenant by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect to the maximum extent permitted by law.

11.9 ***No Dedication.*** The provisions of this Covenant are for the exclusive benefit of Declarant, Port and their respective successors and assigns, and, except for rights expressly conferred on Port hereunder, shall not be deemed to confer any rights upon any other person. Without limiting the generality of the foregoing, this Covenant is not intended to create any rights in the public.

[Remainder of this Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties have executed this Covenant as of the day and year first above written.

Declarant:	[BUYER'S ENTITY NAME AND STATE OF FORMATION]
Port:	**CITY AND COUNTY OF SAN FRANCISCO,** a municipal corporation, acting by the **SAN FRANCISCO PORT COMMISSION** By: _____ Name: _____ Title: _____
Approved by **CITY AND COUNTY OF SAN FRANCISCO,** Department of Real Estate _____	

Transfer Fee Covenant
Exhibit A

Property Description

[To be attached]

Transfer Fee Covenant

Exhibit B

Notice of Transfer Fee Covenant

NOTICE OF UNIT TRANSFER – PIER 70

1. **Unit Being Transferred:_____[address]_____, Unit #_____**
2. **Name of Current Owner (transferor):_____**
3. **Name of Purchaser (transferee):_____**
4. **Purchase Price:_____**
5. **Proposed Date of Closing (date deed transferring title is recorded):_____**
6. **Name, Address, and Phone Number of Escrow Agent (usually the title company providing title insurance to the purchaser):_____**
7. **Name of Escrow Officer: _____**
8. **Estimated Amount of Transfer Fee Due:_____**

Calculate Estimated Amount of Transfer Fee as follows:

Purchase Price X 0.015 = Amount of Transfer Fee

EXHIBIT C-2A

FORM OF NOTICE OF TRANSFER FEE COVENANT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN: [NOTE: Civ. Code 1098.5(b) requires legal description and assessor's parcel number for the affected real property]

PAYMENT OF TRANSFER FEE REQUIRED

This Notice of Payment of Transfer Fee Required (this "**Notice**") is made as of this ___ day of _____, 20___ , and is being recorded concurrently with that certain Declaration Imposing Transfer Fee Covenant and Lien (the "**Transfer Fee Covenant**") by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**"), and [BUYER'S ENTITY NAME AND INFORMATION] ("**Declarant**"). This Notice and the Transfer Fee Covenant relate to the development located within the City and County of San Francisco, State of California, as is more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Property**").

This Notice is being recorded pursuant to and in compliance with California Civil Code §1098.5(b). Notice is hereby given that the Transfer Fee Covenant imposes an obligation to pay Transfer Fees on certain qualifying Transfers of Units. All capitalized terms shall have the meaning set forth in Transfer Fee Covenant unless otherwise defined herein.

Name of Current Owner of the Property and APN's

(A) As of the date of recordation of this Notice, the current owner of the Property is Declarant. The assessor's parcel numbers within the Property are [_____].

The Percentage of the Sales Price Constituting the Cost of the Transfer Fee

(B) The Transfer Fee obligation is calculated as a percentage of the sales price given in exchange for a Unit. The Transfer Fee is equal to one and one half percent (1½%) of the Purchase Price of the Unit (the "Transfer Fee") in perpetuity; provided, however, that no Transfer Fee shall be due and payable with respect to the initial Transfer of any Unit.

Actual Dollar-Cost Examples of the Transfer Fee Calculations

(C) As an actual dollar cost example of the Transfer Fee percentages shown in (B) above, the following calculations show what the Transfer Fee would be for different Purchase Prices of Units within the Property:

Purchase Price	Transfer Fee	Transfer Fee Due Port
$250,000	X 0.015	$3,750
$500,000	X 0.015	$7,500
$750,000	X 0.015	$11.250

Expiration of Transfer Fee

(D) The Transfer Fee described in this Notice will not expire and lasts in perpetuity, unless amended or terminated in accordance with the Transfer Fee Covenant.

Purpose of Transfer Fee: Use of Funds

(E) The Transfer Fees shall be deposited into the Port's Harbor Fund and will be used solely for public trust purposes benefitting lands under Port jurisdiction.

Entity Receiving Transfer Fees and Contact Information

(F) The Transfer Fees shall be paid to Port with the following contact information:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Reference: Pier 70 28-Acre Site Transfer Fee
Attn: Deputy Director, Real Estate and Development

Certain Prohibition on the Federal Housing Finance Agency and the Federal Housing Administration Financing Properties Encumbered by Private Transfer Fee

The Federal Housing Finance Agency and the Federal Housing Administration are prohibited from dealing in mortgages on properties encumbered by private transfer fee covenants that do not provide a "direct benefit" to the real property encumbered by the covenant. As a result, if you purchase such a property, you or individuals you want to sell the property to may have difficulty obtaining financing.

This Notice is intended as a summary of the provisions of the Transfer Fee Covenant in compliance with California Civil Code §1098.5 and does not modify or amend the Transfer Fee Covenant or any of its provisions. In the case of any inconsistency or inaccuracy between the Transfer Fee Covenant and this Notice, the Transfer Fee Covenant controls. Please review the Transfer Fee Covenant for more details about the Transfer Fee.

The undersigned have made this Notice on the date set forth above and has caused this Notice to be recorded in the Official Records of the City and County of San Francisco, State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the Declarant has executed this Covenant as of the day and year first above written.

DECLARANT:

[insert Declarant name], a _____

By: _____
Name: _____
Title: _____

CONSENT OF PORT

The Port hereby agrees and consents to be the recipient of the Transfer Fee funds on the date first set forth above as required by California Civil Code § 1098.5(b)(2)(G).

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

Exhibit "A"

The Property

[Legal Description to be inserted]

VDDA EXHIBIT C-3
SCHEDULE OF PERFORMANCE

[To be prepared and attached prior to execution]

VDDA EXHIBIT D
NOTICES OF SPECIAL TAX

[Executed copy to be attached prior to execution]

VDDA EXHIBIT E

PIER 1
SAN FRANCISCO, CA 94111

LICENSE TO USE PROPERTY

LICENSE NO. ____

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AND

[VERTICAL DEVELOPER],

[PORTIONS OF PIER 70]

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

BASIC LICENSE INFORMATION

License Date:	
License Number:	
Port:	**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Port's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Licensee:	[Vertical Developer]
Licensee's Main Contact Person and Mailing Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Billing Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Emergency Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Insurance Contact and Address (not broker):	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:
Licensee's Parking Contact and Address:	Telephone: ( ) Cell: ( ) Facsimile: ( ) Email:

Contact Information for Licensee's Agent for Service of Process:	
License Area:	The License Area is located in the Pier 70 area of the City and County of San Francisco, as more particularly shown on *Exhibit A* attached hereto and made a part hereof, together.
Length of Term:	[_____]
Commencement Date:	[_____]
Expiration Date:	
License Fee:	This License is entered into in furtherance of Licensee's obligations under the Vertical Disposition and Development Agreement ("**VDDA**") by and between Port and Licensee, dated _____, 20[xx]. In consideration thereof, there is no License Fee due hereunder.
Environmental Security:	Environmental Oversight Deposit of $10,000. **[Note: Additional security dependent on type of activity and location.]**
Permitted Activity:	The License Area shall be used solely for the permitted activities described in ***Exhibit B*** attached hereto, as may be updated from time to time and appended hereto, for the construction of Deferred Infrastructure outside of the Property .
Additional Prohibited Uses:	In addition to, and without limiting, the Prohibited Uses specified in Section 7 below, Licensee shall be prohibited from using the License Area for any of the following activities: (a) (b) Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.
Invasive Work:	Notwithstanding the foregoing, Licensee will provide Port prior written notice before it may enter the License Area to perform any Permitted Activity that involves invasive testing, excavation or construction ("**Invasive Work**"). Each written notice will identify the scope of Invasive Work, the anticipated date for commencement and the anticipated duration for the Invasive Work.

Cure Period where applicable:	-Five (5) days after notice for failure to pay any Fees and/or all other charges hereunder. -One (1) day after notice if the Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion. -Five (5) business days after notice if Licensee defaults in its obligation to maintain insurance under the provisions of Article 21 set forth in Schedule 1 (Master Lease Provisions for Indemnity, Insurance and Hazardous Materials). -For any other non-monetary default not described above, thirty (30) days, or, if such cure cannot reasonably be completed within such 30-day period, if Licensee does not within such 30-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.
Maintenance and Repair:	See Section 9.3
Utilities and Services:	See Section 9.1 and 9.2
Location of Asbestos:	[If applicable, see *Schedule 3* attached hereto].
Workforce Development Plan and Prevailing Wages:	Licensee will comply with the Workforce Development Plan attached to the VDDA and Section 17.2 (Prevailing Wages) of the VDDA in connection with Licensee's performance in the License Area of the Permitted Activities as if such plan and section were incorporated into this License except that any reference in such plan or section, as applicable, to "Developer" or "Tenant" will mean Licensee and "Premises" or "Facility" will mean the License Area and "Project", or similar words will mean the Vertical Project.
Prepared By:	[_____]

LICENSE TO USE PROPERTY

1. BASIC LICENSE INFORMATION.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as licensor, and the party identified in the Basic License Information as licensee ("**Licensee**"). The Basic License Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this "**License.**" In the event of any conflict or inconsistency between the Basic License Information and the License provisions, the Basic License Information will control.

2. GRANT OF LICENSE.

2.1. ***License.*** In consideration of the stated conditions and agreements, Port hereby grants permission to Licensee to carry on the Permitted Activity within the License Area described in the Basic License Information and ***Exhibit A*** attached hereto.

2.2. ***Encroachment.***

(a) If Licensee or its Agents or Invitees uses or occupies space outside the License Area without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Licensee shall immediately vacate such Encroachment Area and pay as an additional charge for each day Licensee used, occupied, uses or occupies such Encroachment Area, an amount equal to the square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Encroachment Area, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Licensee uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Licensee or its Agents or Invitees, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this License (including Licensee's obligation to Indemnify Port as set forth in this Section), at law or in equity.

(b) In addition, Licensee shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Licensee has failed to vacate the Encroachment Area, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Vacate, if applicable, delivered by Port to Licensee following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area, issuance of each Notice to Vacate and survey of the Encroachment Area. Licensee's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of Section 14 below (Indemnity and Exculpation) shall also apply to Licensee's and its Agents' and Invitees' use and occupancy of the Encroachment Area as if the License Area originally included the Encroachment Area, and Licensee shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Licensee in surrendering the

Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 2.2 and the reasonableness of the amount of the charges described in this Section 2.2.

3. TERM; REVOCABILITY.

This License is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the Commencement Date and expires on the Expiration Date specified in the Basic License Information ("**Term**") unless sooner terminated pursuant to the terms of this License.

The Parties acknowledge that Licensee is undertaking the Permitted Activities hereunder to fulfill its obligations under the VDDA. Therefore, Port will not revoke or terminate this License prior to the Expiration Date unless Licensee causes an uncured event of default hereunder or under the VDDA that would otherwise permit a termination thereof.

Initials: _____
Licensee

4. FEES.

4.1. ***License Fee.*** As described in the Basic License Information, no License Fee is due hereunder. Any other sums payable by Licensee to Port hereunder shall be paid in cash or by good check to the Port and delivered to Port's address specified in the Basic License Information, or such other place as Port may designate in writing. All other sums payable by Licensee, including without limitation, any additional charges and late charges, are referred to collectively as "Fees."

4.2. ***Additional Charges.*** Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 21.3 (Tenant's Environmental Condition Notice Requirements) of the Master Lease as shown on ***Schedule 1*** attached hereto (Provisions for Indemnity, Insurance and Hazardous Materials), or Sections 15.1 (SWPPP) or 21.1(d) (CMD Form) of this License, or to provide evidence of the required insurance coverage described in Section 11 below (Insurance), then upon written notice from Port of such failure, Licensee shall pay an additional charge in the amount of Three Hundred Dollars ($300). In the event Licensee fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Licensee additional written notice requesting such document, then Licensee shall pay to Port an additional charge in the amount of Three Hundred Fifty Dollars ($350) for each additional written notice Port delivers to Licensee requesting such document. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

4.3. ***Late Charges/Habitual Late Payer.*** Licensee acknowledges that late payment by Licensee to Port of Fees or other sums due under this License will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Licensee fails to pay Fees on the date due, such failure shall be subject to a Late Charge at Port's discretion. Licensee shall also pay any costs including attorneys' fees incurred by Port by reason of Licensee's failure to timely pay Fees. Additionally, in the event Licensee is notified by Port that Licensee is considered to be a Habitual Late Payer, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Licensee's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Licensee.

4.4. ***Default Interest.*** Any Fees, if not paid within five (5) days following the due date and any other payment due under this License not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Licensee nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Licensee. Licensee shall also pay any costs, including attorneys' fees incurred by Port by reason of Licensee's failure to pay Fees or other amounts when due under this License.

4.5. ***Returned Checks.*** If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5. ENVIRONMENTAL OVERSIGHT DEPOSIT.

(a) Before the Commencement Date, Licensee must deliver to Port the Environmental Oversight Deposit in cash, in the sum specified in the Summary of Basic Information, as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Licensee's operations under this License; provided, however, that the Environmental Oversight Deposit will not be deemed an advance of any payment due to Port under this License, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

(b) Port may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("Environmental Notice") to Licensee and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Licensee has not begun to cure or comply with the Environmental Notice or is not working actively to cure the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, attorneys' fees, and collection and laboratory analysis of environmental samples.

(c) If an Environmental Notice is delivered to Licensee, and Licensee has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port may apply a maximum of $500 from the Environmental Oversight Deposit for each Environmental Notice delivered to Licensee to reimburse Port for its administrative costs.

(d) Licensee must pay to Port immediately upon demand a sum equal to any portion of the Environmental Oversight Deposit Port expends or applies.

(e) Provided that no Environmental Notices are then outstanding, Port will return the balance of the Environmental Oversight Deposit, if any, to Licensee within a reasonable time after the expiration or earlier termination of this License. Port's obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.

6. PERMITTED ACTIVITY; SUITABILITY OF LICENSE AREA.

The License Area shall be used and occupied only for the Permitted Activity specified in the Basic License Information and for no other purpose. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by Port. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By entering onto the License Area under this License, Licensee acknowledges it shall be deemed to have inspected the License Area and accepted the License Area in its "**As Is**" condition and as being suitable for the conduct of Licensee's activity thereon.

7. PROHIBITED USES.

Licensee shall use the License Area solely for Permitted Activities and for no other purpose. Any other use in, on or around the License Area or surrounding or adjacent Port property shall be strictly prohibited, including, but not limited to, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) (each, a "**Prohibited Use**").

In the event Port determines after inspection of the License Area that a Prohibited Use or Prohibited Uses are occurring in, on or around the License Area, then Licensee shall immediately cease the Prohibited Use(s) and shall pay to Port an additional charge in the amount of Three Hundred Dollars ($300) upon delivery of written notice to Licensee to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) of the License Area that Licensee has not ceased the Prohibited Use, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars ($400) for each additional Notice to Cease Prohibited Use delivered to Licensee. The parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area and Licensee's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 7 and the reasonableness of the amount of the charges described in this Section 7.

8. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.

8.1. ***Compliance with Laws.*** Licensee, at Licensee's sole cost and expense, promptly shall comply with all Laws relating to or affecting Licensee's use or occupancy of the License Area.

8.2. ***Regulatory Approval.*** Licensee understands that Licensee's activity on the License Area may require Regulatory Approvals from Regulatory Agencies. Licensee shall be solely responsible for obtaining any such Regulatory Approvals, and Licensee shall not seek any Regulatory Approval without first obtaining the prior written approval of Port, not to be unreasonably withheld, subject to this Section 8.2. Port will cooperate reasonably with Licensee in Licensee's efforts to obtain required Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with applicable Laws and to further terms and conditions of this License, including without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (i) encumber, restrict or adversely change the use of any Port property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions; or (ii) subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Licensee has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees to which Port may be subject). All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by the Port or would create obligations on the part of the Port (whether on or off of the License Area) to perform or observe, unless in each instance the Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for the fines and penalties. To the fullest extent permitted by Law, Licensee agrees to Indemnify City, Port and their Agents from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

8.3. ***Port Acting As Owner of Property.*** By signing this License, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, [if Port is licensor][(ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a Regulatory Agency of City with certain police powers], and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activity on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency [if Port is licensor][and Port's status as an agency of City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.]

8.4. ***Accessibility.*** California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related

accessibility requirements. The law does not require landlords to have the inspections performed. Licensee is hereby advised that the License Area has not been inspected by a CASp and, except to the extent expressly set forth in this License, Port shall have no liability or responsibility to make any repairs or modifications to the License Area in order to comply with accessibility standards. The following disclosure is required by law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Licensee understands and agrees that Licensee may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws. As further set forth in this Section, Licensee further understands and agrees that it is Licensee's obligation, at no cost to Port, to cause Licensee's use of the License Area to be conducted in compliance with the all federal or state disability access Laws.

9. UTILITIES, SERVICES, MAINTENANCE AND REPAIR.

9.1. ***Utilities***. Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the License Area except that the foregoing will not diminish any Port obligation under the VDDA, if any, to work cooperatively with Licensee with respect to any Licensee right to access utilities. Except as may be otherwise provided in the Basic License Information, Licensee shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the License Area or to be used by Licensee. Except as otherwise set forth in the Development Agreement, Licensee will procure all electricity for the License Area from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. Except as otherwise set forth in the Development Agreement, if the SF Public Utilities Commission determines that it cannot feasibly provide service to Licensee, Licensee may seek another provider.

9.2. ***Services***. Port has no responsibility or liability of any kind with respect to the provision of any services to Licensee or on, in, or to the License Area. Licensee shall arrangements and shall pay all charges for all services to be furnished on, in or to the Area or to be used by Licensee, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

9.3. ***Maintenance and Repairs***. Licensee shall not be obligated to make any repairs, replacement or renewals of any kind, nature of description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon (collectively, "**Repairs**"), except to the extent that Licensee, or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. In the event that Licensee or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property that is not otherwise consistent with the Vertical Project, Licensee shall be responsible and Port may, at its sole and absolute discretion, elect to repair the same itself or require Licensee to repair the same, all at Licensee's sole cost and expense. Upon receipt of any invoice from Port for costs incurred by

Port related to any repair performed by Port in accordance with this Section, Licensee shall immediately reimburse Port therefor. This provision shall survive the expiration or earlier termination of this License.

10. TAXES AND ASSESSMENTS.

Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the Licensee's possession, use, or occupancy, as distinguished from the ownership, of the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee shall report any assignment or other transfer of any interest in this License or any renewal or extension hereof to the County Assessor within 60 days after such assignment transaction or renewal or extension. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

11. INSURANCE.

Licensee shall maintain throughout the Term, at Licensee's expense, insurance in accordance with the insurance provisions set forth in Article 20 as shown on Schedule I (Provisions for Indemnity, Insurance and Hazardous Materials).

12. NOTICES.

Except as otherwise expressly provided in this License or by Law, all notices (including notice of consent or non-consent) required or permitted by this License or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic License Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by Licensee in Licensee's written response to Port's written request for such information.

All notices under this License shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

13. DEFAULT BY LICENSEE; REMEDIES.

13.1. ***Event of Default.*** The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee; or

(b) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee.

(c) An assignment, or attempted assignment, of this License by Licensee, except in connection with an assignment or other Transfer of Licensee's rights permitted or approved by Port under the VDDA;

(d) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License.

13.2. ***Port's Remedies***. Upon default by Licensee, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee's obligations.

14. INDEMNITY AND EXCULPATION.

The provisions of Article 19 (Indemnification of Port) ***Schedule 1*** (Provisions for Indemnity, Insurance and Hazardous Materials) will govern Tenant's Indemnification obligations and Tenant's waiver of various claims against the Indemnified Parties, except that "Losses" shall be payable by Licensee to Port directly and immediately upon Port's request without regard to the concept of "Additional Rent."

15. HAZARDOUS MATERIALS.

The provisions of Article 21 (Hazardous Materials) set forth in ***Schedule 3*** (Provisions for Indemnity, Insurance and Hazardous Materials) will govern.

15.1. *Storm Water Pollution Prevention.*

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. If applicable to the Permitted Activities hereunder, Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning operations in the License Area.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

15.2. ***Presence of Hazardous Materials***. California Law requires landlords to disclose to Licensees the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials (as herein defined) may be present on or near the License Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: Hazardous Materials described in the reports listed in ***Schedule 2***

attached hereto, copies of which have been delivered to or made available to Licensee. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Licensee must disclose the information contained in this Section to any sublicensee, licensee, transferee, or assignee of Licensee's interest in this License. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

16. PORT'S ENTRY ON LICENSE AREA.

16.1. ***Entry for Inspection***. Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties.

16.2. ***Emergency Entry***. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License.

16.3. ***No Liability***. Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area, or entry by the public (as Licensee has a non-exclusive right to use the License Area) onto the License Area.

17. IMPROVEMENTS AND ALTERATIONS.

Except as specified in the Basic License Information to the extent required to implement Licensee's obligations to construct the Deferred Infrastructure, Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area (including the installation of any trade fixtures affixed to the License Area or whose removal will cause injury to the License Area).

18. SURRENDER.

Upon the expiration or earlier termination of this License, Licensee shall surrender to Port the License Area and any pre-existing alterations and improvements in the same or better condition as it was in at the Commencement Date, subject to ordinary wear and tear). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by Licensee properly performing all of its obligations under this License. The License Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this License and any other encumbrances created by Port. On or before the expiration or earlier termination hereof, Licensee shall remove all of its personal property and, unless Port directs otherwise, any alterations and improvements that Licensee has installed with Port's consent, and perform all restoration made necessary by the removal of Licensee's personal property.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property and any alterations and improvements that Licensee has installed with or without Port's consent that Licensee does not remove from the License Area prior to the expiration or earlier termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing,

removing and disposing of abandoned property and repairing any damage to the License Area resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee. Licensee hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

19. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.

19.1. ***Litigation Expenses***. The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this License, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

19.2. ***City Attorney***. For purposes of this License, reasonable fees of attorneys of the City's Office of the City Attorney shall 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.

19.3. ***Limitation on Damages***. Licensee agrees that Licensee will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this License, or for any Claim based upon this License, except to the extent of the fair market value of Port's fee interest in the License Area (as encumbered by this License). Licensee's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Licensee expressly waives all such liability.

19.4. ***Non-Liability of City Officials, Employees and Agents***. No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

19.5. ***Limitation on Port's Liability Upon Transfer***. In the event of any transfer of Port's interest in and to the License Area, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this License thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or

obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

20. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Fees or otherwise relieve Licensee from any of its obligations under this License.

21. CITY AND PORT REQUIREMENTS. [NOTE: PROVISIONS OF THIS SECTION 21 WILL BE UPDATED TO INCLUDE CITY PROVISIONS REQUIRED AS OF LICENSE EXECUTION]

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this License relating to any such code provision shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance. Notwithstanding the foregoing, to the extent that any of the City and Port requirements set forth in this Section 21 have been modified or waived under the DDA or Development Agreement as applied to the Vertical Project, then the applicable provisions of the DDA or Development Agreement will prevail. Without limiting the foregoing, the Workforce Development Plan attached to the VDDA will govern Licensee's obligations hereunder with respect to any requirements of the Administrative Code with respect to First Source Hiring (Administrative Code Chapter 83) and Local Business Enterprises (Administrative Code Chapter 14B) that would otherwise be applicable hereto.

21.1. ***Nondiscrimination.***

(a) Covenant Not to Discriminate. In the performance of this License, Licensee covenants and agrees not to discriminate 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 or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapters 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapters 12B or 12C of the Administrative Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) Sublicenses and Other Contracts. Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all Sublicensees and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family

medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Licensee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of $50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

21.2. ***Resource-Efficient Facilities and Green Building Requirements***. Licensee agrees to comply with all applicable provisions of Environment Code Chapter 7 relating to resource-efficiency and green building design requirements.

21.3. ***Prohibition of Tobacco Sales and Advertising***. Licensee acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

21.4. ***Prohibition of Alcoholic Beverages Advertising***. Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

21.5. ***Graffiti Removal***. Licensee agrees to remove all graffiti from the License Area, within forty-eight (48) hours of the earlier of Licensee's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "**Graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this License or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

21.6. ***Restrictions on the Use of Pesticides.*** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee's staff or contractors. If Licensee or Licensee's contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

21.7. ***MacBride Principles Northern Ireland.*** Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

21.8. ***Tropical Hardwood and Virgin Redwood Ban.*** Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

21.9. ***Preservative-Treated Wood Containing Arsenic.*** Licensee may not preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing

preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

21.10. ***Notification of Limitations on Contributions.*** If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.10 shall apply. Through its execution of this License, Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensee acknowledges that the foregoing restriction 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. Licensee further acknowledges that, if applicable, the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that if this Section 21.10 applies, Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

21.11. ***Sunshine Ordinance.*** In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

21.12. ***Conflicts of Interest.*** Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

21.13. ***Drug-Free Workplace.*** Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

21.14. ***Public Transit Information.*** Licensee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Licensee employed on the License Area, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the License Area and encouraging use of such facilities, all at Licensee's sole expense.

21.15. ***Food Service and Packaging Waste Reduction Ordinance.*** Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging

Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Licensee agrees that the sum of one hundred dollars ($100.00) liquidated damages for the first breach, two hundred dollars ($200.00) liquidated damages for the second breach in the same year, and five hundred dollars ($500.00) liquidated damages for-subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

21.16. ***San Francisco Bottled Water Ordinance***. Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the License Area with attendance of more than 100 people.

22. WAIVER OF RELOCATION.

Licensee hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, to the extent allowed under applicable Law.

23. SIGNS.

Licensee shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices on the License Area without Port's prior written consent. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Licensee shall obtain all Regulatory Approvals required by such Laws. Licensee, at its sole cost and expense, shall remove all signs placed by it on the License Area at the expiration or earlier termination of this License.

24. MISCELLANEOUS PROVISIONS.

24.1. ***California Law***. This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and Licensee hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

24.2. ***Entire Agreement***. This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License.

24.3. ***Amendments***. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

24.4. ***Severability***. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by law.

24.5. ***Interpretation of License.***

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has 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 this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this License.

(g) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

24.6. ***Successors.*** The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

24.7. ***Real Estate Broker's Fees***. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

24.8. ***Counterparts***. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

24.9. ***Authority***. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee has and is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

24.10. ***No Implied Waiver***. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

24.11. ***Time is of Essence***. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

24.12. ***Cumulative Remedies***. All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

24.13. ***Survival of Indemnities***. Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

24.14. ***Relationship of the Parties***. Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

24.15. ***No Recording***. Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

24.16. ***Additional Written Agreement Required***. Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of

Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

25. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"**Agents**" when used with reference to either party to this License or any other person, means the officers, directors, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"**Basic License Information**" refers to the summary of basic license information attached to this License.

"**CMD**" means the Contract Monitoring Division of the City's General Services Agency.

"**Cal-OSHA**" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"**City**" is defined in Section 1.

"**Claim**" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"**Commencement Date**" means the date specified in the Basic License Information.

"**Cure Period**" means the period of time described in the Basic License Information.

"**DDA**" means that certain Disposition and Development Agreement by and between Port and FC Pier 70, LLC, dated as of _____, 2018.

"**Development Agreement**" means that certain Development Agreement by and between the City and FC Pier 70, LLC, dated

"**Encroachment Area**" is defined in Section 2.2.

"**Encroachment Area Charge**" is defined in Section 2.2.

"**Environmental Laws**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Environmental Regulatory Action**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Environmental Regulatory Agency**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Environmental Regulatory Approval**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Exacerbate**" or "**Exacerbating**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Expiration Date**" means the date specified in the Basic License Information.

"**Fees**" means all sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 4.

"**Handle**" or "**Handling**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material Claim**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Hazardous Material Condition**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Indemnified Parties**" the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, Port, the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, all other Person acting on their behalf, and each of them.

"**Indemnify**" means to indemnify, protect, defend, and hold harmless forever. "**Indemnification**" and "**Indemnity**" have correlating meanings.

"**Interest Rate**" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"**Investigate**" or "**Investigation**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Invitees**" means Licensee's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, Sublicensees, and any other person whose rights arise through them.

"**Late Charge**" means a fee equivalent to fifty dollars ($50.00).

"**Law**" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area, including Regulatory Approvals issued to Port which require Licensee's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the parties.

"**License**" is defined in Section 1.

"**License Area**" means the area described in the Basic License Information.

"**License Fee**" means the monthly usage charge for the License Area described in the Basic License Information.

"**New Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Notice to Cease Prohibited Use**" is defined in Section 7.

"**Notice to Vacate**" is defined in Section 2.2.

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**Permitted Activity**" is means the activity described in the Basic License Information.

"**Pier 70 Risk Management Plan**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Pre-Existing Hazardous Material**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Vertical Project**" means that certain development project undertaken by Licensee as more particularly described in the VDDA.

"**Port**" is defined in Section 1.

"**prevailing party**" is defined in Section 19.1.

"**Prohibited Use**" is defined in Section 7.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory

capacity), Port (in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"**Release**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**Remediate**" or "**Remediation**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**State Lands Indemnified Parties**" is defined in Section 21.6 of ***Schedule 1*** attached hereto.

"**SWPPP**" is defined in Section 15.1.

"**Term**" is defined in Section 3.

"**VDDA**" means the Vertical Disposition and Development Agreement dated as of _____, 20[xx] between the City and County of San Francisco operating by and through the San Francisco Port Commission and [Vertical Developer].

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Port and Licensee have executed this License as of the last date set forth below

Licensee: **[INSERT VERTICAL DEVELOPER]**, a
[_____]

By: _____
Name: _____
Title: _____

Date signed: _____

By: _____
Name: _____
Title: _____

Date signed: _____

Port: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: _____
Michael J. Martin,
Deputy Director, Real Estate and Development

Date signed: _____

Approved as to Form: DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

License Prepared by [INSERT NAME] , Commercial Property Manager_____(initial)

EXHIBIT B

PERMITTED ACTIVITY
(To be attached.)

SCHEDULE 1

PROVISIONS FOR INDEMNITY, INSURANCE AND HAZARDOUS MATERIALS

19. INDEMNIFICATION OF PORT.

19.1. General Indemnification of the Indemnified Parties. Subject to Section 19.4, (Exclusions from Indemnifications, Waivers and Releases). Licensee agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the License Area or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the License Area, or any acts or omissions of Licensee, its Agents, sub-licensees, or Invitees, or their respective Agents and Invitees;

(b) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the License Area or any part thereof by Licensee, its Agents, sub-licensees, or Invitees, or their respective Agents and Invitees;

(c) any latent, design, construction or structural defect relating to the Vertical Project, any other Subsequent Construction, or any other matters relating to the condition of the License Area caused directly or indirectly by Licensee or any of its Agents, Invitees, or sub-licensees;

(d) any failure on the part of Licensee or its Agents, Invitees, or sub-licensees, as applicable, to perform or comply with any of the terms, covenants, or conditions of this Lease or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the License Area or any part thereof by Licensee or any of its Agents or sub-licensees;

(f) any acts, omissions, or negligence of Licensee, its Agents, Invitees, or sub-licensees; and

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the License Area to the extent it relates to such use or occupancy.

19.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under Section 19.1 (General Indemnification of the Indemnified Parties) and subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), Licensee, for itself and on behalf of its sub-licensees, Agents, or any of their respective Agents (individually "Related Third Party" and collectively "Related Third Parties") or their respective Invitees agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition existing or occurring during the Term;

(ii) any Handling or Release of Hazardous Materials in, on, under, around or about the License Area during the Term;

(iii) any Exacerbation of any Hazardous Material Condition in, on, under, around or about the License Area during the Term; or

(iv) failure by Licensee or any Related Third Party to comply with the Pier 70 Risk Management Plan, or failure by their respective Invitees to comply with the Pier 70 Risk Management Plan within the License Area during the Term; or

(v) claims by Licensee or any Related Third Party for exposure during the Term from and after the Commencement Date to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(b) Losses under Section 19.2(a) includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the License Area or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the License Area; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this section, Licensee must reimburse Port for Port's costs, plus interest at the Interest Rate from the date of demand until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(c) Licensee understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this Section 19.2, subject to Section 19.4 (Exclusions from Indemnifications, Waivers and Releases), arises upon the earlier to occur of:

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the License Area;

(ii) the Handling or Release of Hazardous Materials in, on, under, around or about the License Area;

(iii) the Exacerbation of any Hazardous Material Condition; or

(iv) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

19.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in Section 19.4 (Exclusions from Indemnifications; Waivers and Releases), Licensee's Indemnification obligations under this Lease are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Licensee specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Licensee, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Licensee and continues at all times thereafter until finally resolved. Licensee's Indemnification obligations under this Lease are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Licensee may have to Port in this Lease, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Licensee constitute Additional Rent owing from Licensee to Port hereunder and are due and payable from time to time immediately upon Port's request, as incurred.

19.4. Exclusions from Indemnifications; Waivers and Releases.

(a) Nothing in this Article 19 (Indemnification of Port) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in Sections 19.1 (General Indemnification of Indemnified Parties), 19.2 (Hazardous Materials

Indemnification),), or the defense obligations set forth in Sections 19.3 (Scope of Indemnities) and 19.6 (Defense) extend to Losses:

(i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, or

(ii) from third parties' claims for exposure to Hazardous Materials in, on or under any portion of the License Area prior to the earlier of the (1) commencement of the License, if any, executed under the DDA for access to such portion of the License Area prior to the effective date of this Lease where Licensee has exclusive control of the License Area; or (2) effective date of this Lease with respect to such portion of the License Area; or

(iii) without limiting Licensee's Indemnification obligations under Sections 19.2(a)(ii), 19.2(a)(iv), or 19.2(a)(v), and to the extent the applicable Loss was not caused by the failure of Licensee or a Related Third Party to comply with the Pier 70 Risk Management Plan, or the failure of their respective Invitees to comply with the Pier 70 Risk Management Plan while on the License Area, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Horizontal Improvement Parcels after the Acceptance Date for such parcel (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Horizontal Improvement Parcel and is not also present in, on or around the License Area); provided, however, the foregoing limitation on Licensee's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Licensee or any of its Related Third Parties.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under Section 19.2 (Hazardous Materials Indemnification) is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Licensee in asserting a claim or claims under such insurance policy but without waiving any of its rights under Section 19.2 (Hazardous Materials Indemnification). Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Licensee, the Indemnification from Licensee under Section 19.2 (Hazardous Materials Indemnification) will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Licensee pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Licensee.

19.5. Survival. Licensee's Indemnification obligations under this Lease and the provisions of this Article 19 (Indemnification of Port) survive the expiration or earlier termination of this Lease (or, the partial termination of this Lease with respect to any portion of the License Area released in accordance with Section 1.1(b) Adjustment of License Area for Development)).

19.6. Defense. Licensee will, at its option but subject to reasonable approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Licensee's choice; provided, that in all cases Port will be entitled to participate in such defense, compromise or settlement at its own expense. If Licensee fails, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port will have the right promptly to use the City Attorney or hire outside counsel, at Licensee's sole cost, to carry out such defense, compromise or settlement which expense is due and payable to the Port within fifteen (15) days after receipt by Licensee of a detailed invoice for such expense.

19.7. Waiver. As a material part of the consideration of this Lease, Licensee hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from any Losses, including (i) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (ii) goodwill, (iii) business opportunities, (iv) any act or omission of persons occupying adjoining premises, (v) theft, (vi) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination, (vii) Building defects, (viii) inability to use all or any portion of the License Area due to sea level rise or flooding or seismic events, (ix) arising from the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard, and (x) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the License Area or the 28-Acre Site, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

Licensee expressly acknowledges and agrees that the amount payable by Licensee hereunder does not take into account any potential liability of the Indemnified Parties or State Lands Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties or State Lands Indemnified Parties, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties or State Lands Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue, or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties or State Lands Indemnified Parties arising out of this Lease or the uses authorized hereunder, including, any interference with uses conducted by Licensee pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Licensee understands and expressly accepts and assumes the risk that any facts concerning the claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the waivers and releases in this Lease will remain effective. Therefore, with respect to the claims released in this Lease, Licensee waives any rights or benefits provided by California Civil Code Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE WAIVERS AND RELEASES MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE WAIVERS AND RELEASES AT THE TIME THIS LEASE WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Licensee's Initials: _____

Licensee acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Licensee realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

20. INSURANCE.

20.1. Required Insurance Coverage. In addition to the Additional Insurance Requirements to be provided by Licensee, Licensee, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than Twenty Million Dollars ($20,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, liquor liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars ($250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Licensee is conducting any activity on or Subsequent Construction or Improvement to the License Area with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than Five Million Dollars ($5,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Licensee's activity on the License Area or the Permitted Use. If parking is a Permitted Use under this Lease, Licensee must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the License Area on a regular basis, including without limitation Licensee's Agents and Invitees.

(c) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation in statutory amounts, with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury, or illness. In the event Licensee is self-insured for the insurance required pursuant to this Section 20.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. In addition, Licensee will be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively as applicable with Employer's Liability limit not less than Five Million Dollars ($5,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) Personal Property Insurance. Licensee, at its sole cost and expense, shall procure and maintain on all of its personal property and Subsequent Construction, in, on, or about the License Area, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Licensee for the replacement of Licensee's personal property or contractors' equipment as applicable.

(e) Flood Insurance.

(i) During construction of the improvements, for any parcel located within a flood zone on the City's flood maps, flood insurance will be in an amount equal to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates.

(ii) During construction of the improvements, for any parcel not located within a flood zone on the City's flood maps, flood insurance will be in an amount to the extent available at commercially reasonable rates from recognized insurance carriers or through the NFIP equal to the maximum amount of full replacement cost of the improvements with a deductible not to

exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates

(f) Pollution Legal Liability. Licensee, at its sole cost and expense, will procure Pollution Legal Liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim, for a period of not less than five (5) years, and a subsequent policy for an additional five (5) years, for a total term of ten (10) years. Each of the State Lands Indemnified Parties will be named as additional insureds under the terms of any such policy. If Licensee procures any such policy for a period that is longer than ten (10) years, Licensee will ensure that each of THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE STATE LANDS INDEMNIFIED PARTIES are named as additional insureds for such longer period of time.

(g) Construction Activities. Insurance required in connection with construction of Vertical Project is as set forth below:

(i) Contractor Requirements. Licensee must require its contractors and subcontractors to maintain the following coverages:

(1) Commercial general liability insurance with limits of not less than $5 million each occurrence on a policy form that is at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01);

(2) Comprehensive automobile liability insurance with a policy limit of not less than $5 million each occurrence on a policy form that is at least as broad as ISO Form Number CA 0001 covering automobile liability, Code 1 (any auto);

(3) Worker's compensation insurance with statutory limits and employer's liability insurance with limits of not less than $1 million each accident, injury, or illness;

(4) Watercraft liability insurance (if operating watercraft) protection and indemnity insurance with limits not less than $1 million each occurrence, or with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, wreck removal, and damages "In Rem" (the vessel); and

(5) Marine general liability (MGL) (if operating watercraft) with limits not less than $10 million each occurrence and aggregate basis;

(6) Vessel pollution liability insurance (if operating watercraft with engines or fuel usage) with limits not less than $5 million per occurrence and $5 million in the aggregate with a deductible not to exceed $50,000 with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost; insurance should cover liability imposed under laws for any loss, damage, cost, liability or expense arising out of the sudden, accidental, and unintentional discharge, spillage, leakage, emission, or release of any substance of any kind into or on the navigable waters of the United States or the adjoining shorelines.

(7) Contractor's pollution liability insurance with limits of not less than Five Million Dollars ($5,000,000.00) per claim.

(ii) Builder's Risk Requirements. In addition, Licensee or General Contractor must carry "Builder's All Risk" insurance on a "Special Form" ("All Risk") Builder's Risk meeting the following requirements.

(1) The amount of coverage must be equal to the full replacement cost of any existing structures affected by the work and full replacement cost of all new construction, including all materials and equipment intended to become part of the permanent structures. The policy must provide coverage for "soft costs," such as design and engineering fees, code

updates, permits, bonds, insurance, and inspection costs caused by an insured peril. The Builder's Risk insurance may have a deductible clause not to exceed $100,000.

(2) The Builder's Risk policy must identify the City and County of San Francisco and the San Francisco Port Commission as loss payees, subordinate to any lender requirements.

(3) The Builder's Risk policy must include the following coverages: (A) all damages of loss to the work and to appurtenances, to materials and equipment to be incorporated into the project while the same are in transit, stored on or off the site, to construction plant and temporary structures; (B) the costs of debris removal, including demolition as may be made reasonably necessary by covered perils, resulting damage, and any applicable law; and (C) start up and testing and machinery breakdown including electrical arcing.

(iii) Professional Services Requirements. Licensee must require all providers of engineering and geotechnical professional services under contract with Licensee to provide professional liability coverage with limits not less than Five Million Dollars ($5,000,000.00) each claim. With respect to all other professional services provided to Licensee for the Vertical Project, Licensee must require all providers of such professional services under contract with Licensee to provide professional liability coverage with limits not less than Two Million Dollars ($2,000,000.00) each claim. Such insurance will provide coverage during the period when such professional services are performed and for a period of 3 years after issuance of a Certificate of Occupancy for the Vertical Project. This requirement may be met by the use of an extended reporting period. Notwithstanding anything to the contrary, the coverage required in this clause (iii) may be provided with a lower limit for subcontractors that are local business enterprises (LBEs) or are performing work under subcontracts of $100,000 or less only. Licensee shall have the right to request a waiver of the requirements of this clause (iii) by delivering written request to Port, and Port shall respond within a reasonable period of time to any such request; provided, with respect to waiver requests for LBEs and subcontracts only, so long as the waiver request was sent by electronic mail, addressed to one or more line staff responsible for administration of this License stating in the subject line "Immediate Action Required to Avoid Deemed Consent" or words to the same effect, Port will be deemed to have approved such waiver if Port does not respond to the waiver request within five (5) business days.

(h) Other Coverage. Such other insurance or different coverage amounts may change from time to time as required by the City's Risk Manager, if in the reasonable judgement of the City's Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the License Area, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Licensee determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Licensee will provide to Port evidence supporting Licensee's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(i) Substitution. Notwithstanding the foregoing, Licensee shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in this Article 20 (Insurance) with insurance coverage maintained by one or more of Licensee's Agents, Invitees or transferees as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of this Article 20 as determined by Port.

20.2. General Requirements.

(a) Insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance required hereunder, such insurance shall name the Licensee as the first named insured. As to liability insurance Licensee shall ensure that Port and the City of San Francisco are named as additional insureds under all general liability, automobile liability, vessel pollution, pollution, Public Boat Dock liability coverages. Any umbrella and/or excess liability insurance will include an endorsement through a blanket additional endorsement or equivalent naming as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) As to Commercial General Liability and automobile liability insurance, shall provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought;

(iv) Will provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 20.1(a) (General Liability Insurance), 20.1(b) (Automobile Liability Insurance), 20.1(c) (Worker's Compensation),, and 20.1(f) (Pollution Legal Liability);

(v) Will be subject to the reasonable approval of Port, which approval shall not be unreasonably withheld.

(b) Certificates of Insurance; Right of Port to Maintain Insurance. Licensee shall furnish Port certificates with respect to the policies required under this Section within thirty (30) days after the Commencement Date and, with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy, and, within sixty (60) days after Port's request, shall also provide Port with copies of each such policy, or shall otherwise make such policy available to Port for its review. If at any time Licensee fails to maintain the insurance required pursuant to Section 20.1, (Required Insurance Coverage), or fails to deliver certificates as required pursuant to this Section, then, upon thirty (30) business days' written notice to Licensee, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Licensee shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(c) Insurance of Others. To the extent Licensee requires liability insurance policies to be maintained by sub-licensees, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the License Area, Licensee shall require that such policies be endorsed to include the "CITY AND COUNTY OF SAN FRANCISCO AND THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES" as additional insureds under the terms of any such policy. Unless otherwise specified in this agreement, Licensee will ensure that all contractors and sub-contractors performing work on the License Area and all operators and subtenants of any portion of the License Area carry adequate insurance coverages.

(d) Excess Coverage. All requirements may be satisfied by any combination of umbrella and excess liability policies (including blanket policies).

20.3. Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 20.1(d) (Personal Property Insurance) to the extent that such loss is reimbursed by an insurer.

21. HAZARDOUS MATERIALS.

21.1. Compliance with Environmental Laws. Licensee will comply and cause its Agents, Invitees, and all Persons under any Sublease, to comply with all Environmental Laws, operations plans (if any), the Pier 70 Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Vertical Project. Without limiting the generality of the foregoing, Licensee covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials on, under or about the License Area, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable Laws and any reasonable conditions or limitations required by Port, (c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

21.2. Licensee Responsibility. Licensee agrees to protect its Agents and Invitees in its operations on the License Area from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the License Area:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the License Area except as permitted under Section 21.1 (Compliance with Environmental Laws);

(b) Will not cause or permit any Hazardous Material Condition; and

(c) Will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the License Area, and will not engage in or permit any activity at the License Area, or in the operation of any vehicles used in connection with the License Area in violation of any Environmental Laws;

(d) Licensee will be the "Generator" of any waste, including hazardous waste , resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the License Area;

(e) Will comply with all provisions of the Pier 70 Risk Management Plan with respect to the License Area, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually and

(f) Will comply, and will cause all of its sub-licensees that are subject to an operations plan, to comply with the operations plan applicable to Licensee or such sub-licensee, if any.

21.3. Licensee's Environmental Condition Notification Requirements. The following requirements are in addition to the notification requirements specified in the (i) operations plan(s), if any, (ii) the Pier 70 Risk Management Plan, and (iii) Environmental Laws:

(a) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 21.1 (Compliance with Environmental Laws), Handled, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during the Term or Licensee's occupancy of the License Area, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Licensee's notice to Port by oral or other means, Licensee must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Licensee's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Licensee's receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during Licensee's occupancy of the License Area that Licensee or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during the Term or Licensee's occupancy of the License Area;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use in, on, under or about the License Area during the Term or Licensee's occupancy of the License Area; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

(c) Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Port will be entitled to participate in any such meetings at its sole election.

(d) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Licensee's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any plan or procedure required to be prepared and/or filed with

any Environmental Regulatory Agency for operations on the License Area. Licensee must provide Port with copies of any of the documents within the scope of this Section 21.3(d) upon Port's request.

(e) Licensee must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area. At Licensee's request, in lieu of providing Port with copies of non-privileged communications with other persons that are not Environmental Regulatory Agencies, Licensee will (1) make available for Port's review, such non-privileged communications at Licensee's San Francisco office or at Port's office, and (2) reimburse Port for additional costs related to Port's review of such non-privileged communications at Licensee's San Francisco office (including but not limited to additional time related to travel to and from Licensee's office).

(f) Port may from time to time request, and Licensee will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

21.4. Remediation Requirement.

(a) After notifying Port in accordance with Section 21.3 (Licensee's Environmental Condition Notification Requirements) and subject to Section 21.4(d), Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License, any Hazardous Material Condition occurring during the Term or while Licensee or its Agents or Invitees otherwise occupy any part of the License Area; provided Licensee must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with Section 21.3. Except as provided in the previous sentence, Licensee must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under Section 21.4(a), before this License terminates for any reason, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License: (i) any Hazardous Material Condition caused by Licensee's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Licensee's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Licensee's use of the License Area, or due to Subsequent Construction or construction of the Vertical Project.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take actions that are reasonably necessary in Port's reasonable judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area.

(d) Unless Licensee or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, under, around or about the License Area, Licensee will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date or the date of Licensee's first use of the License Area, whichever is earlier.

21.5. Pesticide Prohibition. Licensee will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of

certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage as further described in Section 21.6 of the License (Restrictions on the Use of Pesticides).

21.6. Additional Definitions.

"Environmental Laws" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees, and all permits, licenses, approvals, or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the License Area, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety, or community right-to-know requirements related to the work being performed under this License. "Environmental Laws" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"Environmental Regulatory Action" when used with respect to Hazardous Materials 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, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

"Exacerbate" or "Exacerbating" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure 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, it being understood that the mere discovery of Hazardous Materials does not cause "Exacerbation". Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Licensee's operations, Investigations, maintenance, repair, construction of Vertical Project and Alterations under this License. "Exacerbate" also means failure to comply with the Pier 70 Risk Management Plan. "Exacerbation" has a correlative meaning.

"Handle" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "Handling" and "Handled" have correlative meanings.

"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 substance", "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 reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), PCB-containing materials, and any 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 Materials" also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"Hazardous Material Claim" means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties, the State Lands Indemnified Parties, or the License Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or other Port property, the loss or restriction of the use or any amenity of the License Area or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"Hazardous Material Condition" means the Release or Exacerbation, or threatened Release or Exacerbation, of Hazardous Materials in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use in, on, under, or about the License Area during the Term or Licensee's occupancy of the License Area.

"Investigate" or "Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the License Area, any Vertical Project or any portion of the site or the Vertical Project or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the License Area or any Vertical Project.

"New Hazardous Material" means a Hazardous Material that is not a Pre-Existing Hazardous Material.

"Pier 70 Risk Management Plan" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"Pre-Existing Hazardous Materials" means any Hazardous Material existing on, in, about or around the License Area as of the Effective Date and identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"Release" means when used with respect to Hazardous Materials any accidental, actual, imminent or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"Remediate" or "Remediation" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the License Area or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"State Lands Indemnified Parties" means the State of California, the California State Lands Commission, and all of their respective heirs, legal representatives, successors and assigns, and all other Persons acting on their behalf.

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VERTICAL DDA EXHIBIT F

REAFFIRMATION OF REPRESENTATIONS AND WARRANTIES

Pursuant to Section 6.4(a)(i) of the Vertical Disposition and Development Agreement between the **CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**") and [_____], a [_____] ("**Vertical Developer**"), dated [_____] ("**Vertical DDA**"), Vertical Developer reaffirms to Port that the representations and warranties made by Vertical Developer and set forth in Section 21.3 of the Vertical DDA were true and accurate as of the effective date of the Vertical DDA and further represents and warrants to Port as of the date below, all of the following:

(a) That Vertical Developer is a duly organized, validly existing, and in good standing under the laws of the State of _____. Vertical Developer has all requisite power and authority to conduct its business as presently conducted.

(b) That Vertical Developer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Vertical Developer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it will immediately notify the Port of same and the reasons therefore together with any relevant facts or information requested by Port. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of the Vertical DDA.

(c) That the Vertical DDA and all documents executed by Vertical Developer: (i) are duly authorized, executed and delivered by Vertical Developer; (ii) are legal, valid and binding obligations of Vertical Developer; and (iii) do not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject. The Transaction Documents will be a legal, valid and binding obligation of Vertical Developer, enforceable against Vertical Developer in accordance with its terms.

(d) That Vertical Developer has all requisite power and authority to execute and deliver the Transaction Documents and to carry out and perform all of the terms and covenants of the Transaction Documents.

(e) None of Vertical Developer's formation documents, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Vertical Developer to enter into and perform all of the terms and covenants of the Transaction Documents. Vertical Developer is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Vertical Developer of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened lawsuits or

proceedings or undischarged judgments affecting Vertical Developer before any court, governmental agency, or arbitrator that is reasonably expected to materially and adversely affect the enforceability of the Transaction Documents or the business, operations, assets or condition of Vertical Developer.

(f) The execution, delivery and performance of the Transaction Documents (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Vertical Developer or by which Vertical Developer's assets may be bound or affected, (B) any Law, or (C) [the articles of incorporation or the bylaws of Vertical Developer], and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Vertical Developer (other than the lien of a Mortgage in accordance with the Vertical DDA or the Parcel Lease).

(g) There is no material adverse change in Vertical Developer's financial condition and Vertical Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and Vertical Developer is not in default or claimed default under any agreement for borrowed money.

(h) Notwithstanding anything to the contrary in the Vertical DDA, the foregoing representations and warranties will survive the Closing Date.

All capitalized items not defined herein have the meanings give to them in the Vertical DDA.

IN WITNESS WHEREOF, the undersigned has executed this Reaffirmation of Representations and Warranties as of the [**insert closing date**: [_____], 20XX].

[INSERT VERTICAL DEVELOPER]

By: _____
Name: _____
Title: _____

VDDA EXHIBIT G

WORKFORCE DEVELOPMENT PLAN

(Pier 70 28-Acre Site)

TABLE OF CONTENTS

PIER 70 28-ACRE SITE WORKFORCE DEVELOPMENT PLAN

I. Project Background. The development plan for the 28-Acre Site under the Transaction Documents provides for the development of a new mixed-use neighborhood composed of office, retail, market rate and affordable residential uses, as well as entirely new infrastructure, utilities, parks and open space. This Workforce Development Plan sets forth the activities Developer and Vertical Developer shall undertake, and require their Construction Contractors, Consultants, Subcontractors, Subconsultants, and Commercial Tenants, as applicable, to undertake, to support workforce development in both the construction and end use phases of the 28-Acre Site Project, as set forth in this Workforce Development Plan.

The Port and Developer have entered into the DDA that provides for the development of the 28-Acre Site Project in a series of Phases. In connection with the DDA, the Port and the Developer will enter into a Master Lease providing Developer the right to construct Horizontal Improvements within the 28-Acre Site Project after Port approval of Phase Submittals and issuance of necessary Regulatory Approvals. Developer will enter into contracts with Contractors and Consultants to construct all Horizontal Improvements allowed under the Master Lease.

The DDA also sets forth a process for the conveyance of Option Parcels by Parcel Leases to Vertical Developers. This Workforce Development Plan is an attachment to the Vertical DDA between Port and Vertical Developer. The Vertical DDA provides the procedures for the Port's delivery of a Parcel Lease to the Vertical Developer and sets forth the rights and obligations for the Vertical Developer's construction of Vertical Improvements and Deferred Infrastructure. Vertical Developers will enter into contracts with Construction Contractors and Consultants to construct the Vertical Improvements allowed in the Vertical DDA. Upon completion of the Vertical Improvements, the applicable Parcel Lease, between the Port and the Vertical Developer, shall govern the operation and use of the Vertical Improvements.

II. Purpose of the Workforce Development Plan. This Workforce Development Plan sets forth the employment and contracting requirements for the construction and operation of the 28-Acre Site Project. This Workforce Development Plan has been jointly prepared by the Port and Developer (on behalf of itself and each Vertical Developer), in consultation with others including OEWD and other relevant City Agencies.

The purpose of this Workforce Development Plan is to ensure training, employment and economic development opportunities are part of the development and operation of the 28-Acre Site Project. This Workforce Development Plan creates a mechanism to provide employment and economic development opportunities for economically disadvantaged persons and San Francisco residents. The Port and Developer agree that job creation and equal opportunity contracting opportunities in all areas of employment are an essential part of the redevelopment of Pier 70. The Port and Developer agree that it is in the best interests of the 28-Acre Site Project and the City for a portion of the jobs and contracting opportunities to be directed, to the extent possible based on the type of work required, and subject to collective bargaining agreements, to local, small and economically disadvantaged companies and individuals whenever there is a qualified candidate.

This Workforce Development Plan identifies goals for achieving this objective and outlines certain measures that will be undertaken in order to help ensure that these goals and objectives are successfully met. In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project.

This Workforce Development Plan requires:

- Developer or Vertical Developers to fund certain OEWD job readiness and training programs run by CityBuild and TechSF.

- Developer or Vertical Developer shall include in all leases, subleases or other occupancy contracts provisions that require all Permanent Employers that occupy more than 25,000 gsf to enter into a First Source Hiring Agreement (in the forms attached hereto as Attachment A-1 and Attachment A-2) that will require participation in the City's Workforce System towards the hiring goals of Chapter 83 hiring goals applicable to Covered Operations for First Source referrals and, where applicable, partnership with TechSF. Developer shall also include in such leases, subleases or other occupancy contracts provisions that require Lessees and service providers to identify a single point of contact and contact OEWD's Business Services team to discuss its obligations under the First Source Hiring Agreement.

- On an annual basis, Developer shall provide First Source program and contact information to Permanent Employers that occupy less than 25,000 gsf, so they may avail themselves of referral services offered by OEWD.

- Developer and Vertical Developers of projects that are not otherwise covered by local hire requirements to enter into a First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

- Developer and Vertical Developers to meet the hiring and apprenticeship goals applicable to certain construction work for Local Residents and Disadvantaged Workers for Covered Projects as set forth in Attachment B (Local Hiring Requirements).

- Developer and Vertical Developers to meet the utilization and outreach goals applicable to certain construction work for Local Business Enterprises in accordance with the requirements set forth in Attachment C (LBE Utilization Plan).

- Developer to meet the outreach goals applicable to the initial leasing of retail space suitable for use by local diverse small businesses.

The foregoing summary is provided for convenience and for informational purposes only. In case of any conflict between this Workforce Development Plan and the ***DDA***, the provisions of this Workforce Development Plan shall control.

III. Workforce Development Plan.

A. DEFINITIONS

The following terms specific to this Workforce Development Plan have the meanings given to them below or are defined where indicated. Other initially capitalized terms are defined in the **Appendix Part B** or in other Transaction Documents. This Workforce Development Plan and all Workforce-Development Plan-specific definitions will prevail over any other Transaction Document in relation to the rights and obligations of Developer's and Vertical Developers with respect to workforce development. All references to the DDA or Vertical DDA, as applicable, include this Workforce Development Plan unless explicitly stated otherwise.[1]

"**Chapter 83**" is defined in Section III.D.2 hereof.

"**Commercial Activity**" means retail sales and services, restaurant, hotel, education and office uses, technology and biotechnology business, and any other non-profit or for-profit commercial uses permitted under the SUD that are conducted within a Vertical Improvement.

"**Commercial Lease**" is defined in Section III.D.2 hereof.

"**Commercial Tenant**" means a tenant, subtenant or other occupant that enters into a lease, sublease or other occupancy contract for a Covered Operation.

"**Construction Contractor**" means a construction contractor hired by or on behalf of Developer or a Vertical Developer who performs Construction Work on the 28-Acre Site or other construction work otherwise covered under the LBE Utilization Plan or First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

"**Construction Work**" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement.

"**Construction Workforce Requirements**" is defined in Section III.C.1 hereof.

"**Consultant**" is defined in Attachment C attached hereto.

"**Covered Operations**" means (i) Commercial Activity which results in the expansion of entry and apprentice level positions that are located within a newly constructed Vertical Improvement or an addition, or alteration thereto, where the Vertical Improvement (or addition or alteration thereto) contains more than 25,000 gross square feet in floor area, and (ii) the operation of a Residential Project containing more than 25,000 square feet or more than 10 Residential Units. Covered Operations do not include (a) any operations or activities conducted by tenants, subtenants or owners of Residential Units, (b) Residential Projects containing less than 25,000 square feet or fewer than 10 dwelling units, (c) Vertical Improvements containing less than 25,000 square feet and (d) activities or operations conducted by tenants, subtenants and other occupants of less than 25,000 gross square feet of sublease space within a Vertical Improvement.

"**Disadvantaged Worker(s)**" is defined in Attachment B attached hereto.

"**Final, Binding and Non-Appealable**" means 90-days after the subject approval, or if a third party files an action challenging the approval during such 90-day period, thirty days after the final judgment or other resolution of the action or issue.

"**FSHA**" means the City's First Source Hiring Administration.

"**FSHA Operations Agreement**" means a First Source Hiring Agreement for Business, Commercial, Operation and Lease Occupancy of the Building, for Permanent Employers or for Permanent Tech Employers, as more particularly described in Section III.D.2. hereof.

"**Internship**" shall mean a learning and career preparation method that occurs within the context of a course or program. Internships include career exploration and direct experience and include guidance by staff, mentors, employers, and peers. An intern obtains a good understanding of the requirements of the occupation and an overview of all aspects of their chosen industry, and develops college and career readiness and success skills, such as critical thinking, problem-solving, collaboration and communication.

"**Job Readiness and Training Funds**" is defined in Section III.B.1 hereof.

"**Lessee**" shall mean a Tenant, business operator and any other occupant of a commercial office building. Lessee shall include every person, tenant, subtenant, or any other entity occupying the building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

"**Local Business Enterprise(s)**" or "**LBE**" means a firm that has been certified as an LBE as set forth in Administrative Code Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance).

"**Local Resident(s)**" is defined on Attachment C attached hereto.

"**NEDO**" is a neighborhood economic development organization.

"**OEWD**" means the City's Office of Economic & Workforce Development.

"Operations Workforce Requirements" is defined in Section D.1 hereof.

"Permanent Employer" shall mean each employer in a Covered Operation.

"Permanent Tech Employer" shall mean a Permanent Employer that both (i) employs primarily Technology Occupations and Technology-Enabled Occupations, and (ii) occupies more than 25,000 gsf within the 28-Acre Site Project.

"Prevailing Rate of Wages". The Prevailing Rate of Wages as defined in Section 6.1, and established under subsections 6.22(e)(3) and 6.22(f), of the Administrative Code.

"Prevailing Wage Covered Project" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

"Referral" shall mean a member of the Workforce System who has participated in an OEWD workforce training program.

"Registered Apprenticeship" shall mean a work experience that combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at the outset of a training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Registered apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, registered apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

"Subconsultant" is defined in Attachment C attached hereto.

"Subcontractor" is defined in Attachment A3 attached hereto.

"TechSF" shall mean a program which has been established by the City and County of San Francisco and managed by the OEWD, to provide training, education and job placement assistance services to jobseekers, and connects local employers to a qualified workforce in order to help all involved benefit from the growth of the local technology industry, Technology-Enabled Occupations and Technology Occupations across all sectors. For the purposes of this document, this term will refer to any successor programs, which provide similar services.

"Technology-Enabled Occupations" shall mean occupations that require skills related to Information, Media and ICT Literacy as highlighted in California's Digital Literacy definition, "[one's capacity] for using digital technology, communications tools, and/or networks in creating, accessing, analyzing, managing, integrating, evaluating, and communicating information in order to function in a knowledge based economy and society." Technology-Enabled Occupations require the ability to analyze, access and work with common computing and communications devices, operating systems, networking systems and applications. These occupations require the ability to understand and use ICT computing, communications and information technologies; use technologies for advance research, analysis and administrative operations. These occupations also require the ability to create, interpret and work with an increasing variety of digital media.

"Technology Occupations" shall mean positions that require core competencies in information and communication technology (ICT) systems and solutions. These occupations develop and deploy technologies and infrastructures to both support their enterprise and product users. Additionally, technology occupations require skills in research, design, development and analysis of custom technological products; including but not limited to software, web, application, and cloud-based products. Technology occupations also include positions that are related to the sales, marketing and engineering of these technology-based products. Technology occupations typically occur in the major industry clusters as defined by the North American Industry Classification System (NAICS): Software Publishers; Wired Telecommunications; Wireless Telecommunications; Satellite Communications; Data Processing, Hosting and Related Services; Internet Publishing and Broadcasting and Web Search Portals; and Computer Systems Design. Major technology occupation clusters as identified by the Bureau of Labor Statistics include but are not limited to: information support and services; network systems; program and software development; and web and digital communications.

"Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

"Work Experience" shall mean any experience which combine an on-the-job learning component with related classroom instruction designed to maximize the value of on-the-job experiences. Work Experience Education is classified in the California Education Code as General, Exploratory, or Vocational. General work experience exposes students to the world of work; exploratory work experience also allows students to experience a variety of careers; and vocational work experience allows students to explore a career interest in greater depth.

"Workforce System" is defined in Attachment A1 attached hereto.

B. WORKFORCE JOB READINESS AND TRAINING FUNDS.

1. **Application**. Developer will provide OEWD with $1 Million in funding to support the job training and readiness programs run by CityBuild and TechSF as more particularly set forth in this **Section III.B.1** (all funds required under this Section III.B.1, the **"Job Readiness and Training Funds"**). The funding requirements under Sections III.B.2 and III.B.3 will be binding on Developer and its successors and assigns under the DDA. The funding requirements under Section III.B.4 will be binding on Developer or may be assigned to the applicable Vertical Developer under the terms of their Vertical DDA and/or Parcel Lease.

2. **CityBuild Program**. The 28-Acre Site Project will pay a total of **$250,000** across the three Phases of development in accordance with this Section III.B.2 that the City will use to fund CityBuild programs.

    a. Purpose and Amount. The 28-Acre Site Project will pay the City a total of $250,000 that the City will use to fund CityBuild programs run by OEWD's Workforce Development Division. Funds will be allocated by amount and program in OEWD's discretion, but such programs may include the CityBuild Academy, an 18-week pre-apprenticeship training

program that prepares citywide residents for entry into the trades; the Construction Administration & Professional Service Academy, an 18-week program offered at City College of San Francisco that prepares San Francisco residents for entry-level careers as professional construction office administrators; or the CityBuild Women's Mentorship Program, a volunteer program that connects women construction leaders with experienced professional and mentors.

b. Manner and Timing of Payment. Developer will pay the CityBuild program funds in accordance with the following schedule:

i. Phase 1: Developer will pay the City $83,333 within fifteen days after the Phase 1 Approval becomes Final, Binding and Non-Appealable.

ii. Phase 2: Developer will pay the City $83,333 within fifteen days after the Phase 2 Approval becomes Final, Binding and Non-Appealable.

iii. Phase 3: Developer will pay the City $83,334 within fifteen days after the Phase 3 Approval becomes Final, Binding and Non-Appealable.

3. **CityBuild Services.** The 28-Acre Site Project will pay a total of **$100,000** that will be used to remove barriers to permanent employment.

a. Purpose and Amount. The 28-Acre Site Project will pay $100,000 to fund the delivery of services to assist individuals, interested in entering CityBuild or the trades, with addressing barriers to employment. The services will offer case management and supportive services (driver license, housing, union dues, tools, uniform/boots). The resources will be primarily for Bayview Hunter's Point neighborhood residents and surrounding areas. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction. These funds will be distributed directly to Young Community Developers. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction.

b. Manner and Timing of Payment. Developer will make the payment directly to Young Community Developers within fifteen days after the Phase 1 Approval become Final, Binding and Non-Appealable.

4. **TechSF Bridge Training for BVHP/Dogpatch Communities & Targeted End Use Jobs.** The 28-Acre Site Project will pay $650,000 associated with commercial-office development in Phase 1 and in future Phases, in accordance with this Section.

a. Purpose and Amount. The Vertical Developers of the first commercial-office project in Phase 1 and the Vertical Developer of the first commercial-office project to be developed in any subsequent Phase will be required to pay funds to the City that will be used by OEWD to support moderate-skilled job training and education programs that prepare individuals in the Bayview Hunter's Point neighborhood residents and surrounding areas in zip codes 94124, 94107, 94103, 94102, 94110, 94134, 94115, and 94112 and other disadvantaged citywide residents for technology (e.g., IT administrator, data scientist, etc.) and technology-enabled (e.g., office administration) office skills positions for Lessee's new employee hiring and incumbent employee advancement offered through the TechSF initiative or OEWD-identified partners. Tech SF will customize technology training based on the types of Lessee leasing space within the Phase, which may include office skills, advanced manufacturing or biotech technology training.

b. Manner and Timing of Payment.

i. Phase 1: The Vertical DDA for the first office-commercial project in Phase 1 will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

ii. Phase 2 or 3: The Vertical DDA for the first office-commercial project to be proposed in Phase 2 (or the first office-commercial project to be proposed in Phase 3 if no office commercial project is proposed for Phase 2) will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

c. Accounting. Developer and Vertical Developers will have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in accordance with the provisions of this **Section III.B.4**. The Job Readiness and Training Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall maintain records as part of the City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available upon Developer's request.

d. Board Authorization. By approving the DDA and form of Vertical DDA, including this Workforce Development Plan, the Board of Supervisors authorizes the City (including OEWD) to accept and expend the Job Readiness and Training Funds paid by the Developer as set forth herein. The Board of Supervisors also agrees that any interest earned on any the Job Readiness and Training Funds shall remain in designated accounts for use by OEWD for workforce readiness and training consistent with this Exhibit G and shall not be transferred to the City's general fund.

C. CONSTRUCTION WORK

1. **Application**. Developers, Vertical Developers and Construction Contractors shall comply with the applicable provisions of this **Section** III.**C.1** (the "**Construction Workforce Requirements**") that are requirements of the DDA with respect to Developer, and of the Vertical DDA with respect to Vertical Developers.

2. **Local Hiring Requirements**. Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must comply with the Local Hiring Requirements set forth on Attachment B attached hereto with respect to Covered Projects (as defined therein).

3. **First Source Hiring Program for Construction Work**. Developer, with respect to any Horizontal Improvements that are not subject to the Local Hiring Requirements, and each Vertical Developer with respect to each Vertical Improvement that is not subject to the Local Hiring Requirements, will enter into a Memorandum of Understanding with the City's First Source Hiring Administration in the form attached hereto as Attachment A-3 under which each Developer and Vertical Developer must include in their contracts with Construction Contractors for Construction Work that is not subject to the Local Hiring Requirements, a requirement that the applicable Construction Contractor enter into a First Source Hiring Agreement in the form attached thereto as Exhibit A, and to provide a signed copy of the relevant Form exhibits to the FSHA.

4. **Local Business Enterprise Requirements**. Developer, all Vertical Developers and their respective Contractors and Consultants (as defined in Attachment C) must comply with the Local Business Enterprise Utilization Program set forth in Attachment C hereto.

5. **Obligations; Limitations on Liability**. Developer and each Vertical Developer shall use good faith efforts, working with the OEWD or its designee, to enforce the applicable Construction Workforce Requirements with respect to its Construction Contractors (as defined above), Contractors and Consultants (as defined in Attachment C), and each Construction Contractor, Contractor and Consultant, as applicable, shall use good faith efforts, working with OEWD or its designee, to enforce the Construction Workforce Requirements with respect to its Subcontractors and Subconsultants (regardless of tier). However, Developer and Vertical Developers' shall not be liable for the failure of their respective Construction Contractors, Contractors and Consultants, and Construction Contractors, Contractors and Consultants shall not be liable for the failure of their respective Subcontractors and Subconsultants.

6. **Prevailing Wages**.

   a. Prevailing Wages. Subject to any collective bargaining agreements in the building trades, Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must (A) pay, and

shall require its respective Construction Contractors (and subcontractors regardless of tier) to pay, all persons performing work on a Prevailing Wage Covered Project no less than the applicable Prevailing Rate of Wages, and (B) comply with, and require its Contractors and Subcontractors to comply with, the provisions of Administrative Code 23.61, which requires Contractors and Subcontractors to comply with Administrative Code subsections 6.22(e)(5), (6), (7) and subsection 6.22(f) for any Prevailing Wage Covered Project .

b. Enforcement. City's Office of Labor Standards Enforcement ("*OLSE*") enforces labor laws adopted by San Francisco voters and the San Francisco Board of Supervisors. The Port designates OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the Work.

D. PROJECT OPERATIONS

1. **Application**. Covered Operations within the 28-Acre Site Project will be subject to the applicable First Source Hiring Requirements (including TechSF) and Retail Marketing Requirements set forth in this **Section III.D.1** (collectively, the "**Operations Workforce Requirements**"). The Operations Workforce Requirements will be binding on Vertical Developers entering into Parcel Leases.

2. **First Source Hiring Program for Operations.**

a. First Source Hiring Agreements. Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to comply with the operational requirements of the then-current Administrative Code Chapter 83 ("**Chapter 83**") in accordance with this Workforce Development Plan (subject to limitations on Changes to Existing City Laws as provided in Section 5.3 of the Development Agreement). Compliance with Chapter 83 will be achieved by the following:

i. Vertical Developer will include in all leases, subleases or other occupancy contracts for Covered Operations (each, a "**Commercial Lease**"), a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment A-1.

ii. Vertical Developer will require the applicable party to provide a signed copy of each FSHA Operations Agreement within 10 business days of execution of the Commercial Lease.

iii. With the execution of each applicable Commercial Lease, Vertical Developer will provide information and require Lessee to notify OEWD Business Services.

b. First Source Hiring Agreements for Permanent Tech Employers. The purpose of the FSHA Tech Operations Agreement is to facilitate job training and education opportunities for participants in the TechSF Program. In addition to the First Source Hiring Agreements above, Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to :

i. If Vertical Developer is a Permanent Tech Employer, provide hiring executive(s) contact information to OEWD Business Services for itself, and enter into a FSHA Tech Operations Agreement in the form of Attachment A-2;

ii. Vertical Developer will include in all lease, subleases or other occupancy contracts for Covered Operations (each, a **"Commercial Lease"**), a requirement that the Commercial Tenant to enter into the FSHA Tech Operations Agreement in the form in Attachment A-2; and

iii. Provide contact information for any Commercial Tenant that is a Permanent Tech Employer. Vertical Developer will provide the executive(s) contact information within 10 days of execution of, or, if available, prior to execution of the applicable Commercial Lease, and will provide updated contact information annually thereafter.

iv. With the execution of each applicable Commercial Lease with a Permanent Tech Employer, Vertical Developer will provide information related to TechSF and require Lessee to notify OEWD Business Services staff. Vertical Developer will only be required to provide information as supplied to it by OEWD Business Services staff. If no information is supplied by OEWD Business Services staff, then this subsection will be deemed complete.

3. Local Diverse Small Business Retail Marketing Program.

a. Application. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 in accordance with this Section III.D.3.

b. Program Goals. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 designed to (i) attract and support diverse small businesses in retail, PDR, arts and commercial spaces within the 28-Acre Site, with a specific focus on District 10

entrepreneurs and businesses, and to (ii) leverage resources available through existing local, state and federal programs delivered through local partner organizations (e.g., OEWD, NEDOs, *etc.*). Developer, working with its Vertical Developer Affiliates, will seek to incorporate 5% local small diverse businesses within traditional retail and PDR spaces in the 28-Acre Site Project, excluding Parcel E4.

c. Marketing Program.

i. Using its best available information, Developer will provide in each Phase Submittal, the projected commercial space available in the Phase and a general overview of retail, PDR, arts and commercial spaces that could be available for sublease within the applicable Phase to local diverse small businesses. To the extent feasible, the information will include the items described below, at a conceptual level, with the understanding that the description will be based on Developer's best projections at the time, but will be subject to change as the Phase is developed:

(1) Potential type of use: retail, services, PDR, restaurant, etc.;

(2) Type of space: new construction, rehabilitated space, floor to ceiling heights, likely mechanical systems, loading access, parking availability;

(3) Approximate size of spaces;

(4) Location: building parcels and street/park frontage locations;

(5) Projected timing: timing for delivery of core and shell space availability and anticipated lease sign target date prior to the delivery of core and shell; and

(6) Contact: name of broker or Developer contact for any follow up questions.

ii. Developer will provide Port and OEWD with an update to the information described above within six to eight months after the initial Phase Submittal if the information provided with the Phase Submittal has changed materially.

iii. During each Phase, Developer will coordinate with OEWD and real estate brokers with the goal of identifying small businesses that might lease space within Vertical Improvements in the Phase by complying with the following process:

(1) From and after the applicable Phase Approval, Developer provide information on the potential leasing opportunities to OEWD. OEWD to coordinate businesses, entrepreneurs, and NEDOs about potential opportunities.

(2) OEWD/Small Business Services will provide support through during lease negotiations with local diverse small businesses identified through this marketing program and engage 1-2 NEDOs that serve small businesses with specific focus on those based in District 10. It is anticipated that OEWD will require each NEDO to provide the following services:

(a) Initial consultation to determine potential businesses and entrepreneurs to conduct outreach about potential opportunities at the 28-Acre Site.

(b) Consultation with entrepreneurs and businesses necessary to successfully locate their business at the 28-Acre Site. This could include services typically provided by NEDOs such as business plan support, small business financing, loan applications, understanding bank underwriting criteria, and training in basic financial management concepts, including, building equity, maintaining adequate working capital, managing growth and other issues critical to the growth and financial stability of the businesses.

(c) NEDOs will identify businesses/entrepreneurs that are eligible and interested in leasing space at Pier 70.

(d) NEDOs will share information on outreach events and conversations with OEWD and Developer.

(e) Provide support during lease negotiations with local diverse small businesses identified through this marketing program.

iv. Subject to restrictions on visitor-serving Priority Retail Frontages on Parcels E1, E2 and E3 set forth in Section 7.20 of the DDA, Developer, working through its Vertical Developer Affiliates, will specifically consider neighborhood-serving retail and services that could potentially sublease space subject to Parcel Leases between Port and Vertical Developer Affiliates, including grocery stores, dry cleaners, hardware, after-school programs, recreation and activity spaces, and similar neighborhood-serving businesses.

v. Developer, through its Vertical Developer Affiliates, will engage brokers to manage the overall marketing and outreach strategy for leasing of commercial, retail, and neighborhood spaces within

Option Parcels taken down by Vertical Developer Affiliates, including the Building 12 market hall. When entering into such contracts with brokers, Developer will emphasize the goals of the small business program and the marketing information prepared by Developer at the beginning of each Phase and will require the applicable broker(s) to engage with the businesses that OEWD/NEDOs have identified in clause (iii) above for the potential spaces available.

d. Sublease Commitments. Developer, working through its Vertical Developer Affiliates, will use good faith efforts to market new sublease space coming on the market with the initial opening of each Vertical Improvement to diverse local small businesses that it identifies through the marketing program described in **Subsection III.D.3.c** above, at fair market rents and subject to then-existing market conditions. In order to provide time for the small business to develop, Developer will provide a mutual option to extend after the initial lease term. The initial term and option to extend would be a minimum of 8 years. In its evaluation of potential subtenants hereunder, Developer, acting through its Vertical Developer Affiliates, will consider the history and past success of the proposed retail subtenant and its business, as well as the type of business, its ability to enhance the overall 28-Acre Site Project, and its long term viability. Each such potential subtenant must meet standard experience and financial qualifications associated with investment reporting, including (i) the proposed programmatic layout; (ii) its long term proforma and business model; and (iii) financial qualifications, which may include reasonable guarantees of performance.

E. GENERAL PROVISIONS

1. **Enforcement**. OEWD shall have the authority to enforce the Construction Workforce Requirements and the Operations Workforce Requirements. The Port and OEWD staff agree to work cooperatively to create efficiencies and avoid redundancies and to implement this Workforce Development Plan in good faith, and to work with all of the 28-Acre Site Project's stakeholders, including Developer and Vertical Developers, Construction Contractors (and Subcontractors) and Permanent Employers, in a fair, nondiscriminatory and consistent manner.

2. **Third Party Beneficiaries**. Each contract for Construction Work and Covered Operations shall provide that OEWD shall have third party beneficiary rights thereunder for the limited purpose of enforcing the requirements of this Workforce Development Plan applicable to such party directly against such party.

3. **Flexibility**. Some jobs will be better suited to meeting or exceeding the hiring goals than others, hence all workforce hiring goals under a Construction Contract will be cumulative, not individual, goals for that Construction Contract or

Permanent Employer. In addition, Developer and Vertical Developers shall have the right to reasonably spread the workforce goals, in different percentages, among separate Construction Contracts or Permanent Employers so long as the cumulative goals among all of the Construction Contracts or Permanent Employers at any given time meet the requirements of this Workforce Development Plan. The parties shall make such modifications to the applicable First Source Hiring Agreements consistent with Developer and Vertical Developers' allocation. This acknowledgement does not alter in any way the requirement that Developer, Vertical Developers, Construction Contractors and Permanent Employers comply with good faith effort obligations to meet their respective participation goals for the Construction Work and Covered Operations.

4. **Exclusivity**. In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project. Without limiting the generality of the foregoing, if the City implements or modifies any workforce development policy or requirements after the date of this Workforce Development Plan, whether relating to construction or operations, that would otherwise apply to the 28-Acre Site Project and Developer asserts that such change as applied to the 28-Acre Site Project would be prohibited by the Development Agreement (including an increase in the obligations of Developer, any Vertical Developer, or their contractors under any provisions of the DDA or any Vertical DDA), then the parties shall resolve the issue through the Dispute Resolution procedures of Section III.F below.

F. DISPUTE RESOLUTION.

1. **Meet and Confer**. In the event of any dispute under this Workforce Development Plan (including, without limitation, as to compliance with this Workforce Development Plan), the parties to such dispute shall meet and confer in an attempt to resolve the dispute. The parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Arbitration Provisions of Attachment D (Dispute Resolution) attached hereto, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction.

2. **Arbitration**. Disputes arising under this Workforce Development Plan may be submitted to the provisions of Attachment D (Dispute Resolution) hereof if the meet and confer provision of Section III.F.1 above does not result in resolution of the dispute.

Attachment A-1

Form of First Source Hiring Agreement for Operations

City and County of San Francisco First Source Hiring Program

Office of Economic and Workforce
Development Workforce
Development Division

Attachment A-1: First Source Hiring Agreement

For Business, Commercial, Operation and Lease Occupancy of a Vertical Improvement

This First Source Hiring Agreement (this "FSHA Operations Agreement"), is made as of , by and between (the "Lessee"), and the First Source Hiring Administration, (the "FSHA"), collectively the "Parties":

RECITALS

WHEREAS, Lessee has plans to occupy a portion of the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between [Developer/Vertical Developer] and the City acting through the San Francisco Port Commission;

WHEREAS, the **[Developer/Vertical Developer]** was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract");and

WHEREAS, as a material part of the consideration given by Lessee under the Contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");

[Use the following WHEREAS for Vertical Developer operations of Vertical Improvements]

WHEREAS, Lessee has plans to operate the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between Lessee and the City acting through the San Francisco Port Commission; and

[Use the following WHEREAS for subtenants of Vertical Improvements]

WHEREAS, as a material part of the consideration given by Lessee under the property contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");]

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Operations Agreement, initially capitalized terms shall be defined as follows:

a. "Entry Level Position" shall mean any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.

b. "Developer" shall mean FC Pier 70, LLC, a Delaware limited liability company, including any successor during the term of this FSHA Operations Agreement.

c. "Lessee" shall mean every commercial tenant, subtenant, or any other entity occupying a Workforce Improvement for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer required to enter into a First Source Hiring Agreement as defined in Chapter 83.

d. "Project Site" shall mean the area consisting of an approximately 28-acre site located in the Pier 70 area bounded by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east.

e. "Referral" shall mean a member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

f. "Vertical Developer" shall mean [*insert name of applicable Vertical Developer*], including any successor during the term of a FSHA Operations Agreement.

g. "Vertical Improvement" shall mean a new building that is built at the Project Site.

h. "Workforce Improvement" shall mean Vertical Improvements that are subject to Chapter 83.

i. Workforce System: The First Source Hiring Administration established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire.

Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. Notwithstanding anything to the contrary herein, nothing in this FSHA Operations Agreement precludes Lessee from immediately advertising and filling an Entry Level Position that performs essential functions of its operation prior to notifying OEWD provided, however, the obligations of this FSHA Operation Agreement to make good faith efforts to fill such vacancies permanently with Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business. If Lessee has an immediate need to fill an Entry Level Position that performs essential functions, Lessee shall provide OEWD notice of such position, and the fact that there is an immediate need to fill such position, on or before the date such position is advertised to the general public.

c. This FSHA Operations Agreement shall be in full force and effect as to each Workforce Improvement until ten (10) years following the date Lessee opens for business at the Premises, and all subsequent leases within 10 years of that date. After that date, this FSHA Operations Agreement shall terminate and be of no further force and effect on the parties hereto, but the requirements of Chapter 83 shall continue to apply.

d. Unless otherwise agreed to by the Parties, compliance with this FSHA Operations Agreement shall be determined on an individual Workforce Improvement basis and will be measured by dividing the number of new Entry Level Positions occupied by Referrals by the total number of new Entry Level Positions within the Workforce Improvement. Notwithstanding anything to the contrary, new Entry Level Positions occupied by Referrals within the Project Site, but not within the Vertical Improvement, may, at the election of Developer, be counted towards compliance of the Workforce Improvement for this Agreement.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this FSHA Operations Agreement. Determination of good faith efforts shall be based on all of the following:

a. Lessee will execute this FSHA Operations Agreement and Exhibit B-1 attached hereto upon entering into leases for the commercial space of the Workforce Improvement. Lessee will also accurately complete and submit Exhibit B-1 annually to reflect employment conditions.

b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this FSHA Operations Agreement.

c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public, subject to the provisions of Section 2 above. The Lessee must identify a single point of contact responsible for communicating Entry Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.

d. Lessee attempts to fill at least 50% of open Entry Level Positions with Referrals. Specific hiring decisions shall be the sole discretion of the Lessee.

e. Nothing in this FSHA Operations Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this FSHA Operations Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Operations Agreement.

Lessee's failure to meet the criteria set forth in this Section 3 does not impute "bad faith", but shall trigger a review of the referral process and compliance with this FSHA Operations Agreement. Failure and noncompliance with this FSHA Operations Agreement will result in penalties as defined in SF Administrative Code Chapter 83. Lessee agrees to review SF Administrative Code Chapter 83, and execution of the FSHA Operations Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this FSHA Operations Agreement shall be in writing and sent via mail or email as follows:

If to OEWD:

ATTN:

If to Lessee:

ATTN:

5. ENTIRE AGREEMENT

This FSHA Operations Agreement and the Transaction Documents contain the entire agreement between the parties and shall not be modified in any manner except by an

instrument in writing executed by the parties or their respective successors. If any term or provision of this FSHA Operations Agreement shall be held invalid or unenforceable, the remainder of this FSHA Operations Agreement shall not be affected. If this FSHA Operations Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This FSHA Operations Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Lessee, their obligations shall be joint and several.

Section titles and captions contained in this FSHA Operations Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This FSHA Operations Agreement shall be governed and construed by laws of the State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the following have executed this FSHA Operations Agreement as of the date set forth above.

Date:_____ Signature:_____

Name of Authorized Signer: _____

Company: _____

Address:_____

Phone:_____

Email: _____

Business Name: _____ **Phone:** _____

Main Contact: _____ **Email:** _____

_____ _____

Signature of authorized representative* **Date**

**By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of Exhibit B First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed Exhibit B and Exhibit B-1. Lessee will also complete and submit an Exhibit B-1 annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) If an **Entry Level Position** becomes available.

Section 1: Select your Industry

☐ Auto Repair	☐ Entertainment	☐ Personal Services
☐ Business Services	☐ Elder Care	☐ Professionals
☐ Consulting	☐ Financial Services	☐ Real Estate
☐ Construction	☐ Healthcare	☐ Retail
☐ Government Contract	☐ Insurance	☐ Security
☐ Education	☐ Manufacturing	☐ Wholesale
☐ Food and Drink	☐ I don't see my industry *(Please Describe)* _____	

Section 2: Describe Primary Business Activity

_____

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
mailto:Business.Services@sfgov.orgWebsite: www.workforcedevelopmentsf.org

Attachment A-2

Form of First Source Hiring Agreement for Tech Operations

[see attached]

Attachment A-2: Form of First Source Hiring Agreement
For Commercial Office Lease Occupancy by Permanent Tech Employers

This First Source Hiring Agreement (this "**Agreement**") for Permanent Tech Employers, is made as of , 20XX by and between (the "**Lessee**"), and the First Source Hiring Administration, (the "**FSHA**"), collectively the "Parties":

RECITALS

WHEREAS, the San Francisco Port Commission and **[insert name of master tenant under a Parcel Lease]** (the "**Port Tenant**") are parties to that certain Parcel Lease dated as of _____, 20XX (the "**Parcel Lease**") for the building at [Address] (the "**Premises**"); and

WHEREAS, the Workforce Development Plan attached as Exhibit [XX] to the Parcel Lease (the "**Workforce Development Plan**") requires all Covered Operations that are also Permanent Tech Employers (as those terms are defined in the Workforce Development Plan) to enter into a First Source Hiring Agreement for operations in the form of this Agreement, in satisfaction of the requirements of the City's First Source Hiring Program under Chapter 83 of the San Francisco Administrative Code ("**Chapter 83**"); and

WHEREAS, Lessee is a Permanent Tech Employer and is **[the Port Tenant under the Parcel Lease][a "Covered Subtenant" under that certain Sublease with the Port Tenant dated as of _____, 20XX (the "Covered Sublease")]**; and

WHEREAS, as a material part of the consideration given by Lessee under the **[Parcel Lease][Covered Sublease]**, Lessee, as a Permanent Tech Employer, has agreed to enter into this Agreement that sets forth participation and reporting requirements to participate in the Tech SF Initiative managed by the Office of Economic and Workforce Development (OEWD); and

WHEREAS, the form of this Agreement may be subject to change upon mutual agreement of the Port Tenant or Covered Subtenant, as applicable, and OEWD subject to provisions of the Workforce Development Plan.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "AMI" means unadjusted median income levels derived from the Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

b. "Disadvantaged Worker" as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).

c. Internship: A learning and career preparation method that occurs within the context of a course or program. Internships include careers exploration and direct experience and include guidance by staff, mentors, employers, and peers. An intern obtains a good understanding of the requirements of the occupation and an overview of all aspects of their chosen industry, and develops college and career readiness and success skills, such as critical thinking, problem-solving, collaboration and communication.

d. Local Resident: An individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

e. Permanent Tech Employer shall mean an employer that both (i) employs primarily Technology Occupations and Technology-Enabled Occupations, and (ii) occupies more than 25,000 gsf within the Project.

f. Referral: A member of the Workforce System who has participated in an OEWD workforce training program.

g. Registered Apprenticeship combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at outset of training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Registered Apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, Registered Apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

h. Technology-Enabled Occupations: occupations that require skills related to Information, Media and ICT Literacy as highlighted in California's Digital Literacy

definition, "[one's capacity] for using digital technology, communications tools, and/or networks in creating, accessing, analyzing, managing, integrating, evaluating, and communicating information in order to function in a knowledge based economy and society." Technology-Enabled Occupations require the ability to analyze, access and work with common computing and communications devices, operating systems, networking systems and applications. These occupations require the ability to understand and use ICT computing, communications and information technologies; use technologies for advance research, analysis and administrative operations. These occupations also require the ability to create, interpret and work with an increasing variety of digital media.

i. Technology Occupations: defined as positions that require core competencies in information and communication technology (ICT) systems and solutions. These occupations develop and deploy technologies and infrastructures to both support their enterprise and product users. Additionally, technology occupations require skills in research, design, development and analysis of custom technological products; including but not limited to software, web, application, and cloud-based products. Technology occupations also include positions that are related to the sales, marketing and engineering of these technology-based products. Technology occupations typically occur in the major industry clusters as defined by the North American Industry Classification System (NAICS): Software Publishers; Wired Telecommunications; Wireless Telecommunications; Satellite Communications; Data Processing, Hosting and Related Services; Internet Publishing and Broadcasting and Web Search Portals; and Computer Systems Design. Major technology occupation clusters as identified by the Bureau of Labor Statistics include but are not limited to: information support and services; network systems; program and software development; and web and digital communications.

j. TechSF: A program which has been established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development, to provide training, education and job placement assistance services to jobseekers, and connect local employers to a qualified workforce in order to help all involved benefit from the growth of the local technology industry, and technology-based and technology-enabled occupations across all sectors. For the purposes of this document, this term will refer to any successor programs which provide similar services.

k. TechSF Community Benefits Program: defined in Section 3 hereof.

l. Work Experience: Experience which combine an on-the-job learning component with related classroom instruction designed to maximize the value of on-the-job experiences. Work Experience Education is classified in the California Education Code as General, Exploratory, or Vocational. General work experience exposes students to the world of work; exploratory work experience also allows students to experience a variety of careers; and vocational work experience allows students to explore a career interest in greater depth.

m. Workforce System: The First Source Hiring Administrator established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee is required to hold one meeting with OEWD's Business Services Team regarding the hiring of individuals through TechSF for any available positions in Technology Occupations or Technology-Enabled Occupations. Provided Lessee utilizes nondiscriminatory screening criteria, Lessee shall have the sole discretion to interview and hire any Referrals.

b. Hiring decisions shall be entirely at the discretion of Lessee. Lessee will notify OEWD's Business Services Team of every hire who is a Referral from Tech SF..

c. Lessee will report to OEWD Business Services annually (beginning with the one-year anniversary date of its **[Parcel Lease][Covered Sublease]** on activities conducted by Lessee under this Agreement related to the compliance of good faith effort obligations enumerated in Section 3 hereof, which may include number of Referrals, hires, or other metrics covered by the TechSF Community Benefits Program.

d. This Agreement will be in full force and effect as to the **[Parcel Lease][Covered Sublease]** until the earlier of [for **Parcel Lease:** ***insert the date that is 10 years from the execution of the Parcel Lease***][for **Covered Subleases and subsequent Subleases within 10-year period:** ***insert the date that is 10 years from the date of execution]***.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Within forty-five days after the commencement of the applicable **[Parcel Lease][Covered Sublease]**, Lessee will contact OEWD as required by the Workforce Development Agreement. Within six months after the commencement of the applicable **[Parcel Lease][Covered Sublease]**, or at a later date if agreed to by OEWD, Lessee will prepare and submit to OEWD its community benefits program designed to facilitate job training and education opportunities for participants in the TechSF program or (or successor program designated by OEWD) (the "**TechSF Community Benefits Program**") and will implement the TechSF Community Benefits Program for the term of this Agreement. The TechSF Community Benefits Program shall either consist of the measures in subsections (a) through (c) of this Section 3, or the Lessee will have discretion in designing its own unique TechSF Community Benefits Program to an equal or higher qualitative standard as the measures described below. If a Lessee elects to design its own unique TechSF Community Benefits Program, such program will require approval from OWED, not to be unreasonably withheld. The TechSF Community Benefits Program may be revised annually with the consent of OEWD. The following measures (which may be in addition to other measures reasonably implemented by Lessee) will qualify as compliance with this requirement:

a. Provide indoor space to host temporary jobseeker networking, career panel and other OEWD-identified job placement assistance events related to technology or technology-

enabled occupations through the Workforce System. OEWD/Tech SF would manage the planning, coordination and marketing for events. Programming may include one of the following:

i. hosting one event per year at site location for up to 150 individuals, if requested by OEWD/Tech SF. If no such request is made, then this subsection will be deemed to have been satisfied for the year.
ii. participating in two additional TechSF activities per year.

b. Host at least 5 Work Experience and/or Internship opportunities for every 100 permanent employees per year, targeting OEWD Referrals and Bayview Hunter's Point and surrounding area neighborhood residents, and other Disadvantaged Workers.

c. Volunteer employee time for on-site training opportunities, which could include workplace tours, job shadowing, classroom lectures, mock interviews, career panels, resume workshops, mentoring, student showcases or other supportive activities.
   i. Lessee shall provide 100 employee hours per year (e.g. 25 employees at 4 hours each or other combination to be determined by the Lessee), through company's Community Social Responsibility (CSR) agenda or other policies.

d. Target creating up to five (5) Registered Apprenticeship positions (as that term is defined in the Workforce Development Plan) for every 100 permanent employees, per year, to the extent a USDOL or DAS approved training program exists within the City of San Francisco for occupations which the Lessee is currently hiring for, and interview qualified Referrals through the TechSF Initiative.

Lessee's failure to prepare and implement the TechSF Community Benefits Program set forth in this Section 3 does not impute "bad faith" but shall trigger a review of the referral process and compliance with this Agreement. Violations of this Agreement will be subject to penalties outlined in Chapter 83.

4. COLLECTIVE BARGAINING AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts ("**Collective Bargaining Agreements**"). In the event of a conflict between this Agreement and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Agreement.

5. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

6. ENTIRE AGREEMENT; MISC.

This Agreement contains the entire agreement between the parties with respect to the subject matter thereunder and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If this Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Lessee, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: _____ Signature:: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

Attachment A3: First Source Hiring Agreement For Construction

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of , by and between the City and County of San Francisco (the "City") through its First Source Hiring Administration ("FSHA") and ("Project Sponsor").

WHEREAS, Project Sponsor, as developer, proposes to construct new dwelling units, with up to square feet of commercial space and accessory, off-street spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"); and

WHEREAS, the Administrative Code of the City provides at Chapter 83 for a "First Source Hiring Program" which has as its purpose the creation of employment opportunities for qualified Economically Disadvantaged Individuals (as defined in Exhibit A); and

WHEREAS, the Project requires a building permit for a commercial activity of greater than 25,000 square feet and/or is a residential project greater than ten (10) units and therefore falls within the scope of the Chapter 83 of the Administrative Code; and

WHEREAS, Project Sponsor wishes to make a good faith effort to comply with the City's First Source Hiring Program.

Therefore, the parties to this Memorandum of Understanding agree as follows:

A. Project Sponsor, upon entering into a contract for the construction of the Project with Contractor after the date of this MOU, will include in that contract a provision requiring the Contractor to enter into a First Source Hiring Agreement in the form attached hereto as Exhibit A. It is the Project Sponsor's responsibility to provide a signed copy of Exhibit A to First Source Hiring program and CityBuild within 10 business days of execution.

B. CityBuild shall represent the First Source Hiring Administration and will provide referrals of Qualified (as defined in Exhibit A) Economically Disadvantaged Individuals for employment on the construction phase of the Project as required under

Chapter 83. The First Source Hiring Program will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent jobs located within the commercial space of the Project.

C. The owners or residents of the residential units within the Project shall have no obligations under this MOU, or the attached First Source Hiring Agreement.

D. FSHA shall advise Project Sponsor, in writing, of any alleged breach on the part of the Project's contractor and/or tenant(s) with regard to participation in the First Source Hiring Program at the Project prior to seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code.

E. As stated in Section 83.10(d) of the Administrative Code, if Project Sponsor fulfills its obligations as set forth in Chapter 83, it shall not be held responsible for the failure of a contractor or commercial tenant to comply with the requirements of Chapter 83.

F. This MOU is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code. The parties agree that this MOU shall be recorded and that it may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

G. Except as set forth in Section E, above: (1) this MOU shall be binding on and inure to the benefit of all successors and assigns of Project Sponsor having an interest in the Project and (2) Project Sponsor shall require that its obligations under this MOU shall be assumed in writing by its successors and assigns. Upon Project Sponsor's sale, assignment or transfer of title to the Project, it shall be relieved of all further obligations or liabilities under this MOU.

Signature: _____ Date:

Name of Authorized Signer: Email:

Company: Phone:

Address:

Project Sponsor:

Contact: Phone:

Address: Email:

_____ Date:

First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl. San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager, ken.nim@sfgov.org

Exhibit A:
First Source Hiring Agreement

This First Source Hiring Agreement (this "Agreement"), is made as of , by and between , the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"), and a copy of this Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.

b. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.

c. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on the Project.

d. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.

e. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.

f. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.

g. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.

h. "Entry Level Position". A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.

i. "First Opportunity". Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.

j. "Job Classification". Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

k. "Job Notification". Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.

l. "Publicize". Advertise or post available employment information, including participation in job fairs or other forums.

m. "Qualified". An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this Agreement.

n. "System". The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.

o. "System Referrals". Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.

p. "Subcontractor". A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)'s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor's employment needs under the Contract:

i. On Exhibit A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on the project for each trade.

ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.

iii. Contractor will collaborate with CityBuild staff to identify, by trade, the number of Core workers at project start and the number of workers at project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.

iv. Contractor and Subcontractors will provide documented verification that its "core" employees for this contract meet the definition listed in Section 1.a.

b.

i. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the project.

ii. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:

(A) If Contractor meets the criteria in Section 5(a) below that establishes "good faith efforts" of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and

(B) After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes "good faith efforts" of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.

c. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the first opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process, Contractor's only obligations with regards to any available Entry Level Positions subject to such collective bargaining agreement(s) during the term of the Contract shall be the following:

a. Contractor shall notify the appropriate union(s) of the Contractor's obligations under this Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).

b. Contractor shall use "name call" privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

5. CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction Exhibit A-1: CityBuild Workforce Projection Form 1; and

b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this Agreement. Such review shall be conducted by FSHA in accordance with Section 11(c) below.

c. Meet with the Project's owner, developer, general contractor, or CityBuild representative to review and discuss your plan to meet your local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.

d. Contact a CityBuild representative to review your hiring projections and goals for the Project. The Project developer and/or Contractor must take active steps to advise all of its Subcontractors of the local hiring obligations on the Project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the project

e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying your expected hiring needs during the Project's duration.

f. Notify your respective union(s) regarding your local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate your union's collective bargaining agreement(s).

g. Be sure to reserve your "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable collective bargaining agreement(s).

h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on the Project in a timely matter in order to facilitate CityBuild's notification to these unions of the Project's workforce requirements.

i. Submit a "Job Request" in the form attached hereto as Attachment A-1, Form 3, to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). You should simultaneously contact your union about the position as well, and let them know that you have contacted CityBuild as part of your local hiring obligations.

j. Developer has an ongoing, affirmative obligation and must advise each of its Subcontractors of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the project, including openings that arise from layoffs of original crew. Developer/contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the developer/contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.

k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Project developer and/or Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Project developer and/or Contractor will request a meeting with the Project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.

l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Project, source of hire, and any other pertinent information as pertain to compliance with this Agreement.

m. Maintain accurate records of your efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor and/or Project developer through a San Francisco community-based organization whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Project developer and/or Contractor on a project-by-project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and the City's online project reporting system (currently Elation), provided, however, that Contractor shall retain the primary responsibility for meeting the

requirements imposed under this Agreement. Contractor shall ensure that this Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

8. CONTRACTOR'S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this Agreement, CityBuild shall:

a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.

b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor's Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;

c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;

d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;

e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;

f. Provide Contractor with reporting forms for monitoring the requirements of this Agreement; and

g. Monitor the performance of the Agreement by examination of records of Contractor as submitted in accordance with the requirements of this Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:

(1) Applicants
(2) Job offers
(3) Hires
(4) Rejections of applicants

b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.

c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this Agreement.

12. DURATION OF THIS AGREEMENT

This Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this Agreement shall terminate and it shall be of no further force and effect on the parties hereto.

13. NOTICE

All notices to be given under this Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA: First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to CityBuild: CityBuild Compliance Manager
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to Developer:

Attn:

If to Contractor:

Attn:

a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, "Contractor Reports") shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage-paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

15. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

16. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. SUCCESSORS

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several.

18. HEADINGS

Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions

19. GOVERNING LAW

This Agreement shall be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

CONTRACTOR:

Date: _____ Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

FIRST SOURCE HIRING PROGRAM
EXHIBIT A-1 - CITYBUILD
CONSTRUCTION CONTRACTS

FORM 1: CITYBUILD WORKFORCE PROJECTION

Instructions

- *The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.*
- *All subcontractors with contracts in excess of $100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.*
- *The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.*
- *It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.*
- *All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.*

Construction Project Name:	_____	Construction Project Address:	_____
Projected Start Date:	_____	Contract Duration:	_____ *(calendar days)*
Company Name:	_____	Company Address:	_____
Main Contact Name:	_____	Main Phone Number:	_____
Main Contact Email :	_____		
Name of Person with Hiring Authority:	_____	Hiring Authority Phone Number:	_____
Hiring Authority Email:	_____		

Name of Authorized Representative	Signature of Authorized Representative*	Date

By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Table 1: Briefly summarize your contracted or subcontracted scope of work

Table 2: Complete on the following page

- *List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees.*
- *Total Number of Workers on the Project: The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.*

Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			

Table 3: List your core or existing employees projected to work on the project

- *Please provide information on your projected core or existing employees that will perform work on the jobsite.*
- *"Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.*

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
FOR CITY USE ONLY: CityBuild Staff: _____ Approved: Yes ☐ No ☐ Date: _____ Reason: _____				
		J☐ A☐		
		J☐ A☐		

FORM 3: CITYBUILD JOB NOTICE FORM

INSTRUCTIONS: To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: workforce.development@sfgov.org

2. Contact Workforce Development at 415-701-4848 or by email: local.hire.ordinance@sfgov.org

   OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

ATTENTION: Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.

Section A. Job Notice Information

Trade _____ # of Journeymen _____ # of Apprentices _____

Start Date _____ Start Time _____ Job Duration _____

Brief description of your scope of work: _____

Section B. Union Information *(Union contractors complete Section B. Otherwise, leave Section B blank)*

Local # _____ Union Contact Name _____ Union Phone # _____

Section C. Contractor Information

Project Name: _____

Jobsite Location: _____

Contractor: _____ Prime ☐ Sub ☐

Contractor Address: _____

Contact Name: _____ Title: _____

Office Phone: _____ Cell Phone: _____ Email: _____

Alt. Contact: _____ Phone #: _____

Contractor Contact Signature _____ Date _____

OEWD USE ONLY *Able to Fill* Yes ☐ No ☐

WORFORCE DEVELOPMENT PLAN – ATTACHMENT B

LOCAL HIRING PLAN FOR CONSTRUCTION

1.1 SUMMARY

A. This Attachment B to the Pier 70 28-Acre Site Workforce Development Plan ("**Local Hiring Plan**") governs the obligations of the Project to comply with the City's Local Hiring Policy for Construction pursuant to Chapter 82 of the San Francisco Administrative Code (the "**Policy**"). In the event of any conflict between Administrative Code Chapter 82 and this Attachment, this Attachment shall govern.

B. The provisions of this Local Hiring Plan are hereby incorporated as a material term of the DDA and each Vertical DDA. Under the DDA and each Vertical DDA, the Developer or Vertical Developer thereunder, as applicable, shall require any Contractor performing Construction Work to agree that (i) the Contractor shall comply with all applicable requirements of this Local Hiring Plan; (ii) the provisions of this Local Hiring Plan and the Policy are reasonable and achievable by Contractor and its Subcontractors; and (iii) they have had a full and fair opportunity to review and understand the terms of the Local Hiring Plan.

C. The Office of Economic and Workforce Development (OEWD) is responsible for administering the Local Hiring Plan and will be administering its applicable requirements. For more information on the Policy and its implementation, please visit the OEWD website at: www.workforcedevelopmentsf.org.

D. Capitalized terms not defined herein shall have the meanings ascribed to them in the DDA or the Policy, as applicable.

1.2 DEFINITIONS

A. "Apprentice" means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.

B. "Area Median Income (AMI)" means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

C. "Construction Work" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA or Parcel Lease, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable residential buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement. Work occurring prior to execution of the DDA is not subject to Local Hire.

D. "Covered Project" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

E. "Contractor" means a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs Construction Work on the 28-Acre Site

F. "Disadvantaged Worker" as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).

G. "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of 3 business days' notice.

H. "Local Resident" means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

I. "Non-Covered Project" means any construction projects not covered by the San Francisco Local Hiring Policy.

J. "Project Work". Construction Work performed as part of a Covered Project.

K. "Project Work Hours" means the total onsite work hours worked on a construction contract for a Covered Project by all Apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.

L. "Subcontractor" means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Contractor or another subcontractor to provide services to a Contractor or another subcontractor in fulfillment of the Contractor's or that other subcontractor's obligations arising from a contract for construction work on a Covered Project who performs Construction Work on the 28 Acre site.

M. "Targeted Worker" means any Local Resident or Disadvantaged Worker.

N. "Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

1.3 LOCAL HIRING REQUIREMENTS

A. Total Project Work Hours By Trade. For all construction contracts for Covered Projects, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers. The mandatory participation levels required under this Local Hire Program will be determined by OEWD for each Phase under the DDA, and in no event shall be greater than 30%; however, the Parties acknowledge that Developer intends to require each construction contract for

Covered Projects to meet the mandatory participation levels on an individual contract level.

B. Apprentices: For all construction contracts for Covered Projects, at least 30% of the Project Work Hours performed by Apprentices within each trade is required to be performed by Local Residents, with an aspirational goal of achieving 50%. Hiring preferences shall be given to Apprentices who are referred by the CityBuild program This document also establishes a goal of no less than 25% of Project Work Hours performed by Apprentices within each trade to be performed by Disadvantaged Workers.

C. Out-of-State Workers. For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to OEWD the number of Project Work Hours performed by residents of states other than California.

D. Pre-construction or other Local Hire Meeting. Prior to commencement of Construction Work on Covered Projects, Contractor and its Subcontractors whom have been engaged by contract and identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by Developer or Vertical Developer or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority. Contractor and its Subcontractors who are engaged after the commencement of Construction Work on a Covered Project shall attend a future preconstruction meeting or meetings as mutually agreed by Contractor and OEWD staff.

E. This Local Hiring Plan does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Local Hiring Plan shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

F. Construction Work for Non-Covered Projects will be subject to the First Source Hiring Program for Construction Work in accordance with Section III.C.3 of the Workforce Development Plan.

1.4 CITYBUILD WORKFORCE DEVELOPMENT PROGRAM: EMPLOYMENT NETWORKING SERVICES

A. OEWD administers the CityBuild Program. Subject to any collective bargaining agreements in the building trades and applicable law, CityBuild shall be a primary resource available for Contractor and Subcontractors to meet Contractors' local hiring requirements under this Local Hiring Plan. CityBuild has two main goals:

1. Assist with local hiring requirements under this Local Hiring Plan by connecting Contractor and Subcontractors with qualified journey-level, Apprentice, and pre-Apprentice Local Residents.

2. Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force.

B. Where a Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of this Local Hiring Plan, the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers, including the following:

1. Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.

2. Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All workers networked through CityBuild will qualify as Disadvantaged Workers under this Local Hiring Plan. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is a "Disadvantaged Worker" as defined above.

C. CONDITIONAL WAIVER FROM LOCAL HIRING REQUIREMENTS

A. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the Local Hiring Requirements of Section 1.3 on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.

1. Specialized Trades: OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of this Local Hiring Plan will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the Project Work Hours utilized in each designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade.

2. Credit for Hiring on Non-Covered Projects: Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:

a. the Targeted Workers are paid the prevailing wages or union scale for work on the Non-Covered Projects; and

b. such credit hours shall be committed to by the Contractor on future projects to satisfy any short fall the Contractor may have on a Covered Project. Such commitment shall be in writing by the Contractor, shall extend for a period of time negotiated between the contractor and OEWD, and shall commit to satisfying any assessed penalties should Contractor fail to achieve the required credit hours.

3. Sponsoring Apprentices: Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new Apprentices in trades in which noncompliance is likely and retaining those Apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California

Department of Industrial Relations that the new Apprentices are registered and active Apprentices. Contractor will be required to write a sponsorship letter on behalf of the identified candidate to the appropriate Local Union and will make the necessary arrangements with the Union to hire the candidate as soon as s/he is indentured.

4. Direct Entry Agreements: OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with the California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with this Local Hiring Plan by Contractor or its Subcontractors hiring and retaining Apprentices who are enrolled through such direct entry agreements. Contractor may also utilize OEWD-approved organizations with direct entry agreements with Local Unions, including District 10 based organizations to hire and retain Targeted Workers. To the extent that Contractor or its Subcontractors have hired Apprentices or Targeted Workers under a direct entry agreement entered into by OEWD or reasonably approved by OEWD, OEWD will not assess penalties for non-compliance with this Local Hiring Plan.

5. Corrective Actions: Should local employment conditions be such that adequate Targeted Workers for a craft, or crafts, are not available to meet the requirements and Contractor can document their efforts to achieve the requirements through the mechanisms and processes in this document, a corrective action plan must be negotiated between Contractor and OEWD.

1.5 LOCAL HIRING FORMS

A. Utilizing the City's online Project Reporting System, Contractors for Covered Projects shall submit the following forms, as applicable, to the Contracting City Agency and OEWD:

1. Form 1: Local Hiring Workforce Projection. OEWD Form 1 (Local Hiring Workforce Projection), a copy of which is attached hereto, shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

2. Form 2: Local Hiring Plan. For Covered Projects estimated to cost more than $1,000,000, Contractor shall prepare and submit to Contracting City Agency and OEWD for approval a Local Hiring Plan for the project using OEWD Form 2, a copy of which is attached hereto. This Form 2 shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

3. Job Notifications. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.

4. Form 4: Conditional Waivers. If a Contractor or a Subcontractor believes the local hiring requirements cannot be met, it will submit OEWD Form 4 (Conditional Waiver), a copy of which is attached hereto, as more particularly described in Articles 1.4 and 1.5 above.

1.6 ENFORCEMENT, RECORD KEEPING, NONCOMPLIANCE AND PENALTIES

A. Subcontractor Compliance. Each Contractor and Subcontractor shall ensure that all Subcontractors agree to comply with applicable requirements of this document. All Subcontractors agree as a term of participation on the Project that the City shall have third party beneficiary rights under all contracts under which Subcontractors are performing Project Work. Such third party beneficiary rights shall be limited to the right to enforce the requirements of this Local Hiring Plan directly against the Subcontractors. All Subcontractors on the Project shall be responsible for complying with the recordkeeping and reporting requirements set forth in this Local Hiring Plan. Subcontractors with work in excess of the of $600,000 shall be responsible for ensuring compliance with the Local Hiring Requirements set forth in Section 1.3 of this Local Hiring Plan based on Project Work Hours performed under their Subcontracts, including Project Work Hours performed by lower tier Subcontractors with work less than the Threshold Amount.

B. Reporting. Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and will monitor compliance with this Local Hiring Plan electronically.

C. Recordkeeping. Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of Construction Work, certified payroll and basic records. including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on a Covered Project.

1. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the Apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a Local Resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the Covered Project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method) as allowed by law.

2. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.

3. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the OEWD.

D. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Contractor and Subcontractors working on a Covered Project with requirements of this Local Hiring Plan. Contractor shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of Covered Projects. Contractor and all Subcontractors shall also allow representatives of OEWD to have access to employees of the Contractor and Subcontractors and the records required to be maintained under this document.

E. Noncompliance and Penalties. Failure of Contractor and/or its Subcontractors to comply with the requirements of this document and the obligations set forth in this Local Hiring Plan may subject Contractor to the consequences of noncompliance, including but not

limited to the assessment of penalties, but only if City determines that the failure to comply results from willful actions of Contractor and/or its Subcontractors, and not by reason of unavailability of sufficient qualified Local Residents and Disadvantaged Workers to meet the goals required hereunder. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled.

1. **Penalties Amount.** If any Contractor or Subcontractor fails to satisfy the Local Hiring Requirements of this Local Hiring Plan applicable to Project Work Hours performed by Local Residents, and the applicable Contractor or Subcontractor is unable to provide evidence reasonably satisfactory to the City that such failure arose solely due to unavailability of qualified Local Residents despite Contractors or Subcontractors good faith efforts in accordance with this Local Hiring Progam, then the Contractor, and in the case of any Subcontractor so failing, and Subcontractor shall jointly and severally forfeit to the City, an amount equal to the Journeyman or Apprentice prevailing wage rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under subsection 6.22(e)(3) of the Administrative Code, for the primary trade used by the Contractor or Subcontractor on the Covered Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. The assessment of penalties under this subsection shall not preclude the City from exercising any other rights or remedies to which it is entitled.

2. **Assessment of Penalties.** OEWD shall determine whether a Contractor and/or any Subcontractor has failed to comply with the Local Hire Requirement. If after conducting an investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of penalties to the Contractor and/or any Subcontractor that sets forth the basis of the assessment and orders payment of penalties in the amounts equal to the Journeyman or Apprentice prevailing wage rates, as applicable, for the primary trade used by the Contractor or Subcontractor on the Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. Assessment of penalties under this subsection shall be made only upon an investigation by OEWD and upon written notice to the Contractor or Subcontractor identifying the grounds for the penalty and providing the Contractor or Subcontractor with the opportunity to respond pursuant to the recourse procedures prescribed in this Local Hiring Plan.

3. **Recourse Procedure.** If the Contractor or Subcontractor disagrees with the assessment of penalties, then the following procedure applies:

   a. The Contractor or Subcontractor may request a hearing in writing within 15 days of the date of the final notification of assessment. The request shall be directed to the City Controller. Failure by the Contractor or Subcontractor to submit a timely, written request for a hearing shall constitute concession to the assessment and the forfeiture shall be deemed final upon expiration of the 15-day period. The Contractor or Subcontractor must exhaust this administrative remedy prior to commencing further legal action.

   b. Within 15 days of receiving a proper request, the Controller shall appoint a hearing officer with knowledge and not less than five years' experience in

labor law, and shall so advise the enforcing official and the Contractor or Subcontractor, and/or their respective counsel or authorized representative.

c. The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days of such notification unless all parties agree to an extended period.

d. Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the hearing officer shall consist of findings and a determination. The hearing officer's findings and determination shall be final.

e. The Contractor or Subcontractor may appeal a final determination under this by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure Section 1084 *et seq.*, as applicable and as may be amended from time to time.

1.8 COLLECTIVE BARGAINING AGREEMENT

Nothing in this Local Hiring Plan shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (Collective Bargaining Agreements"). In the event of a conflict between this Local Hiring Plan and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Local Hiring Plan.

END OF DOCUMENT

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 1
CONSTRUCTION CONTRACTS

FORM 1: LOCAL HIRING WORKFORCE PROJECTION

Contractor: _____ **Project Name:** _____ **Contract #:** _____

The Contractor must complete and submit this *Local Hiring Workforce Projection* (Form 1) prior to the start of construction and quarterly until all subcontracting is complete. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount.

Will you be able to meet the mandatory Local Hiring Requirements?

☐ **YES (*Please provide information for all contractors performing construction work in Table 1 below.*)**

☐ **NO (*Please complete Table 1 below and Form 4: Conditional Waivers.*)**

INSTRUCTIONS FOR COMPLETING TABLE 1:

1. Please organize the contractors' information based on their Trade Craft work.
2. For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (*i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.*)
3. If you anticipate utilizing Apprentices on this project, please note the requirement that 30% of Apprentice hours must be performed by San Francisco residents.
4. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

TABLE 1: WORKFORCE PROJECTION

Trade Craft	Contractor *List contractors by Trade Craft*		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
Example: *Laborer*	*Contractor X*	***Journey***	800	250	31%
		Apprentice	200	100	50%
Example: *Laborer*	*Contractor Y*	***Journey***	500	100	20%
		Apprentice	0	0	0
Example:	**TOTAL LABORER**	***Journey***	1300	350	**27%**
		Apprentice	200	100	**50%**
Example:		**TOTAL**	**1500**	**450**	**30%**
		Journey			
		Apprentice			
		Journey			
		Apprentice			
		Journey			
		Apprentice			

DISCLAIMER: *If the Total Work Hours for a Trade Craft are less than 5% of the Total Project Work Hours, the Trade Craft is exempt from the Mandatory Requirement. Subsequently, if the Trade Craft exceeds 5% of the Total Project Work Hours at any time during the project, the Trade Craft is subject to the Mandatory Requirement.*

Name of Authorized Representative	Signature	Date	Phone	Email

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 2
CONSTRUCTION CONTRACTS

FORM 2: LOCAL HIRING PLAN

Contractor: _____ **Project Name:** _____ **Contract #:** _____

If the Estimate for this Project exceeds **$1 million**, then Contractor must submit a *Local Hiring Plan* using this Form 2 through the City's Project Reporting System. Form 2 shall be initially submitted prior to the start of construction and include all known subcontractors. Contractor shall update this Form 2 quarterly as subcontractors are identified and shall continue with updates until all subcontracting is complete. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved *Conditional Waivers* (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.

INSTRUCTIONS:

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 30% of apprentice hours must be performed by San Francisco residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
Example: *Laborer*	*1500*	*450*	*30%*	*200*	100	50%

List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Start Date	Number of Working Days	*Contractor Signature
Contractor X Joe Smith	250	100	350	3/25/13	60	*Joe Smith*
Contractor Y Michael Lee	100	0	100	5/25/13	30	*Michael Lee*

We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.

City Use Only	
OEWD Approval	☐ Yes ☐ No
Signature and Date:	

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 4
CONSTRUCTION CONTRACTS

FORM 4: CONDITIONAL WAVIERS

Contractor: _____ **Project Name:** _____ **Contract #:** _____

Upon approval from OEWD, Contractors and Subcontractors may use one or more of the following pipeline and retention compliance mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by OEWD. If applicable, each subcontractor must submit their individual Waiver request to OEWD and copy their Prime Contractor. This form can be submitted at any time.

TRADE WAIVER INFORMATION: Please provide information on the Trades you are requesting Waivers for:

Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours	Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours
1.			3.		
2.			4.		

Please check any of the following Conditional Waivers and complete the appropriate boxes for approval:

☐ **1. SPECIALIZED TRADES** ☐ **2. SPONSORING APPRENTICES** ☐ **3. CREDIT FOR NON-COVERED PROJECTS**

1. SPECIALIZED TRADES: Will your firm be requesting Conditional Waivers for "Specialized Trades" designated by OEWD and listed on OEWD's website or project-specific Specialized Trades approved by OEWD during the bid period? ☐ Yes ☐ No

Please CHECK off the following Specialized Trades you are claiming for Condition Waiver:

☐ MARINE PILE DRIVER ☐HELICOPTER, CRANE, OR DERRICK BARGE OPERATOR ☐IRONWORKER CONNECTOR
☐ STAINLESS STEEL WELDER ☐TUNNEL OPERATING ENGINEER ☐ELECTRICAL UTILITY LINEMAN ☐MILLWRIGHT
☐ TRADE CRAFT IS LESS THAN 5% OF TOTAL WORK HOURS. ***LIST:***

a. List OEWD-approved project-specific Specialized Trades approved during the bid period:

OEWD APPROVAL: ☐ **Yes** ☐ **No** **OEWD Signature:**

2. SPONSORING APPRENTICES: Will you be able to work with OEWD to sponsor an OEWD-specified number of new apprentices in the agreeable trades into California Department of Industrial Relations' Division of Apprenticeship Standards approved apprenticeship programs? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS: Construction Trade	Est. # of Sponsor Positions	Union (Yes / No)	If Yes, Local #	Est. Start Date	Est Duration of Working Days	Est Total Work Hours Performed
		Y ☐ N ☐				
		Y ☐ N ☐				

OEWD APPROVAL: ☐ **Yes** ☐ **No** **OEWD Signature:**

3. CREDIT for HIRING on NON-COVERED PROJECTS: If your firm cannot meet the mandatory local hiring requirement, will you be requesting credit for hiring Targeted Workers on Non-covered Projects? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS: Labor Trade, Position, or Title		Est. # of Off-site Hires	Est Total Work Hours Performed	Offsite Project Name	Project Address
	Journey				
	Apprentice				

OEWD APPROVAL: ☐ **Yes** ☐ **No** **OEWD Signature:**

WORKFORCE DEVELOPMENT PLAN

ATTACHMENT C - LBE UTILIZATION PLAN

1. Purpose and Scope. This Attachment C (**"LBE Utilization Plan"**) governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Workforce Plan or Section 14B.20 as applicable. The Port and Developer will seek to, whenever practicable, conduct outreach to contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities such as the 94107, 94124, and 94134 zip codes. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.

2. Roles of Parties. In connection with the design and construction phases of all Construction Work (as defined in the Workforce Plan), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs"). Developer and each Vertical Developer shall participate in a local business enterprise program, and the City's Contract Monitoring Division will serve the roles as set forth below.

3. Definitions. For purposes of this Attachment, the definitions shall be as follows:

a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.

b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Contracting Party as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Contracting Party.

c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of an LBE Improvement.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of an LBE Improvement.

e. "Contracting Party" means a Project Sponsor, Contractor or Consultant retained to work on LBE Improvements, as the case may be.

f. "Contractor" shall mean a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs construction work on an LBE Improvement.

g. "Follow-on Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to an approved building permit or site permit/addenda issued after the building permit or site permit/addenda for the Initial Tenant Improvements.

h. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.

i. "Initial Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to the first building permit or site permit/addenda issued for such spaces after completion of building core and shell.

j. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.

k. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

l. "LBE Improvements" means, as applicable, (a) all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA and (b) Workforce Buildings.

m. "Project Sponsor" shall mean the Developer of Horizontal Improvements or the Vertical Developer under a Vertical DDA.

n. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for an LBE Improvement.

o. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for Construction Work.

p. "Workforce Buildings" means the following: (i) residential buildings, including associated residential units, common space, amenities, parking and back of house construction; (ii) commercial office, retail, parking buildings core & shell; (iii) tenant improvement for all commercial spaces in residential or commercial buildings (office, retail) which are 15,000 square feet (per square footage on building permit application) and above; and (iv) all construction related to standalone affordable housing buildings. Workforce Buildings shall expressly exclude: (i) residential owner-contracted improvements in for-sale residential units; (ii) tenant improvements for the Arts Building (E4), including core and shell and tenant improvements; and (iii) tenant improvements related to PDR spaces. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such

improvements. Such association will consider, in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.

4. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Plan and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of 17% of the total cost of all Contracts for an LBE Improvement awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A); Follow-on Tenant Improvements and services are not included in the numerical goal. Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation requirement, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. Where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, that there are not sufficient qualified Small and Micro-LBEs available, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro- LBEs, and for SBA-LBEs.

6. Project Sponsor Obligations. For each LBE Improvement, the Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns. The LBE Liaison shall be a LBE Consultant with the experience in and responsible for making recommendations on how to maximize engagement of local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. For the term of the DDA or VDDA as applicable, at least once per year, each Project Sponsor and the Port shall hold a public workshop for applicable contractor communities to publicize anticipated contracting opportunities for LBE Improvements for the succeeding year, which workshops may be held independently or in conjunction with each other; provided, that the Port's obligations hereunder shall be limited to contracting opportunities relating to operations and maintenance of publicly-owned improvements within the 28-Acre Site. Each Project Sponsor will use good faith efforts to hire Small, Micro or SBA-LBEs for ongoing service contracts including janitorial, security and parking management contracts and advertise these contracting opportunities with the CMD except to the extent impractical or infeasible (e.g., a parking management contract cannot be broken down to allow two parking operators). Each project sponsor agrees to utilize a "subguard" policy or other means (i.e., OCIP or CCIP) to provide bonding capacity or assistance for LBEs working on the Project at the developer or contractor's option, should the firm be required to bond.

If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.

b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant, in their sole discretion, may divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.

c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant may advertise for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (http://mission.sfgov.org/OCABidPublication) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As Contractor deems necessary, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals for LBEs to ask questions about the selection process and technical specifications/requirements.

d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.

e. Public Solicitation. The Project Sponsor or its prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.

f. Outreach and Other Assistance. The Project Sponsor or its prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract

information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

g. Contacts. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.

h. Good Faith/Nondiscrimination. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).

i. Incorporation into contract provisions. Project Sponsor shall include in Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including the overall LBE participation goal and any LBE percentage that may be required under such Contract (Note: Developer/applicable tenants shall follow this programs Good Faith Efforts for Follow-on Tenant Improvements and services, but such work is not subject to the numerical LBE goal).

j. Monitoring. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

k. Maintain Records and Cooperation. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;

l. Quarterly and Annual Reports. During construction, the LBE Liaison(s) shall prepare a quarterly and annual report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and

m. Meet and Confer. Attend the meet and confer process described in Section 10.

8. Good Faith Outreach. Good faith efforts shall be deemed satisfied solely by compliance with Section 7. Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 7.a, and following CMD's notice under Section 9.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

9. CMD Obligations. The following are obligations of CMD to implement this LBE Utilization Plan:

a. During the fifteen (15) business day notification period for upcoming Contracts required by Section 7.a, CMD will work with the Project Sponsor and its Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.

b. Provide assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.

c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.

d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.

e. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, CMD staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.

10. Meet and Confer Process. Commencing with the first Contract that is executed for an LBE Improvement, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation.

11. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 7 and 10 above.

12. Collective Bargaining Agreements. Nothing in this Attachment C shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Attachment C and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.

13. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding

good faith efforts as set forth in Section 7. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

a. Name/Type of Contract(s) let (e.g. civil engineering contract, environmental consulting, etc.)
b. Name of Contractors (including identifying which are LBEs and non-LBEs)
c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
d. Scope of work performed by LBEs (e.g. under an architect, an LBE could be procured to provide renderings)
e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
f. Total LBE participation is defined as a percentage of total Contract dollars.
g. Outcomes with respect to Developer's efforts to engage (hire) local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

14. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

15. Remedies. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this Attachment C. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Attachment C, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed $25,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

For all other violations of this Attachment C, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.3 of the Development Agreement.

16. Duration of this Agreement. This Attachment C shall terminate (i) as to each work of Horizontal Improvement where work has commenced under the DDA, upon issuance of a SOP Compliance Determination for the applicable Horizontal Improvement; and (ii) as to each Workforce Building where work has commenced under the applicable Vertical DDA, upon issuance of a SOP Compliance Determination for the applicable Vertical Improvements thereunder; (iii) as to all Initial Tenant Improvements and Follow-on Tenant Improvements, ten (10) years after issuance of the first Temporary Certificate of Occupancy for the Vertical Improvements in which the Initial Tenant Improvements or Follow-on Tenant Improvements are located, and (v) for any Horizontal Improvements or Workforce Building that has not commenced before the termination of the Development Agreement, upon the termination of the Development Agreement. Upon such termination, this Attachment C shall be of no further force and effect.

17. Notice. All notices to be given under this Attachment C shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD: _____
_____
_____
Attn: _____

If to Project Sponsor: _____
_____
_____
Attn: _____

If to Contractor: _____
_____
_____
Attn: _____

If to Consultant: _____
_____
_____
Attn: _____

Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

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Attachment D

Dispute Resolution

*1. **Arbitration***

Any dispute involving the alleged breach or enforcement of this Workforce Development Plan (excluding disputes relating to the First Source Hiring Agreement and the applicable City ordinances, which shall be resolved in accordance with their respective terms) shall be submitted to arbitration in accordance with this **Attachment** D.

The arbitration shall be submitted to the American Arbitration Association, San Francisco, California office ("***AAA***") which will use the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. If there is a conflict between the Commercial Rules of the AAA and the arbitration provisions in this Attachment D, the arbitration provisions of this Attachment D shall govern. The arbitration shall take place in the City and County of San Francisco.

*2. **Demand for Arbitration***

The party seeking arbitration shall make a written demand for arbitration ("***Demand for Arbitration***") in accordance with the notice procedures of Appendix Pt. A, Section 5 (Notices). The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying the entities believed to be involved in the dispute; (2) a copy of the notice of default, if any, sent from one party to the other; (3) any written response to the notice of default; and (4) a brief statement of the nature of the alleged default.

*3. **Parties' Participation***

All persons or entities affected by the dispute (including, as applicable, OEWD, the Port, Developer, Vertical Developers, Construction Contractor (and subcontractor) and Permanent Employer) and shall be made Arbitration Parties. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such affected person or entity as an Arbitration Party; provided that, upon request by any party, the arbiter may dismiss such party if it is not reasonably affected by the dispute.

*4. **OEWD Request to AAA***

Within seven (7) business days after service or receipt of a Demand for Arbitration, OEWD shall transmit to AAA a copy of the Demand for Arbitration and any written response thereto from an Arbitration Party. Such material shall be made part of the arbitration record.

*5. **Selection of Arbitrator***

One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the Arbitration Parties in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator

within seven (7) business days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be the arbitrator's agreement to: (i) submit to all Arbitration Parties the disclosure statement required under California Code of Civil Procedure Section 1281.9; and (ii) render a decision within thirty (30) days from the date of the conclusion of the arbitration hearing.

6. ***Setting of Arbitration Hearing***

A hearing shall be held within ninety (90) days of the date of the filing of the Demand for Arbitration with AAA, unless otherwise agreed by the Arbitration Parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

7. ***Discovery***

In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05 as it may be amended from time to time.

8. ***California Law Applies***

California law, including the California Arbitration Act, Code of Civil Procedure Part 3, Title 9, §§ 1280 through 1294.2, shall govern all arbitration proceedings in any Employment and Contracting Agreement.

9. ***Arbitration Remedies and Sanctions***

The arbitrator may impose only the remedies and sanctions set forth below:

a. Order specific, reasonable actions and procedures to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance with the Workforce Development Plan.

b. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the applicable sections of the Workforce Development Plan, or from granting extensions or modifications to existing contracts related to services covered by the applicable sections of the Workforce Development Plan, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract.

c. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any Arbitration Party to comply with any of the requirements in this Workforce Development Plan. Contracts may be continued upon the condition that a program for future compliance is approved by OEWD. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of the Workforce

Development Plan unless the breaching party has failed to cure after being provided written notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent uncured willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "***willful breach***" means a knowing and intentional breach.

d. Direct any Arbitration Party to produce and provide to OEWD any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

10. ***Arbitrator's Decision***

The arbitrator will normally make his or her award within twenty (20) days after the date that the hearing is completed but in no event past thirty (30) days from the conclusion of the arbitration hearing; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party and shall also copy all Arbitration Parties by email (if email addresses are provided).

11. ***Default Award; No Requirement to Seek an Order Compelling Arbitration***

The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) the person or entity received actual written notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

12. ***Arbitrator Lacks Power to Modify***

Except as expressly provided above in this Attachment D, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Workforce Development Plan or to negotiate new agreements or provisions between the parties.

13. ***Jurisdiction/Entry of Judgment***

The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The prevailing Arbitration Party(ies) shall be entitled to reimbursement for the arbitrator's fees and related costs of arbitration. If a subcontractor is the losing party and fails to pay the fees within 30 days, then the applicable Construction Contractor (for whom that subcontractor worked) shall pay the fees. Each Arbitration Party shall pay its own attorneys' fees, provided, however, those attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

14. Exculpation

Except as set forth in **Section 13** of this Attachment D, each Arbitration Party shall expressly waive any and all claims against OEWD, the Port and the City for costs or damages, direct or indirect, relating to this Workforce Development Plan or the arbitration process in this Attachment D, including but not limited to claims relating to the start, continuation and completion of construction.

VERTICAL DDA EXHIBIT H
PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Recorder's Stamp

APN: [_____]

PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

This PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Partial Release**"), dated for reference purposes only as of _____, 20____ (the "**Effective Date**"), is made by the City and County of San Francisco, a municipal corporation (the "**City**"), acting by and through the San Francisco Port Commission (the "**Port**" or the "**Port Commission**"), and FC Pier 70, LLC, a Delaware limited liability company ("**Master Developer**") with reference to the following facts and circumstances:

A. Master Developer and the Port entered into that certain Disposition and Development Agreement (28-Acre Site Project), dated for reference purposes as of [_____], 2018 , recorded in the Official Records of the City and County of San Francisco ("**Official Records**") on [_____] as Document No. [_____] (as amended, the "**DDA**").

B. Port has entered into a Vertical Disposition and Development Agreement dated as of _____, 20____ ("**Vertical DDA**") with [_____], a [_____] ("**Vertical Developer**"), pursuant to which upon satisfaction of certain conditions, Port will convey to Vertical Developer, a Development Parcel consisting of [_____], as more particularly described in Exhibit A and shown on the map attached hereto as Exhibit A-2 ("**Development Parcel**"). The Development Parcel is currently subject to the DDA.

C. In order for Port to deliver the Development Parcel at Close of Escrow free of Master Developer's interest in the Development Parcel under the DDA, the Parties must release the Development Parcel from the DDA and record this Partial Release.

NOW THEREFORE, in consideration of the foregoing facts, understandings and agreements, the Parties agree as follows:

DDA RELEASE

1. As of the Effective Date, the Development Parcel is hereby released from the DDA.

2. Other than the release of the Development Parcel from the DDA, all other terms and conditions of the DDA remain unchanged.

[Signature appears on following page]

VERTICAL DDA EXHIBIT H
PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

Master Developer and the Port have executed this Partial Release as of the last date written below.

MASTER DEVELOPER:

FC PIER 70, LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

Date: _____

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Port Commission

By: _____
Elaine Forbes
Port Director

Date: _____

Authorized by the Port Resolution No. 17-43 and Board Resolution No. 401-17

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Name _____
Deputy City Attorney

VERTICAL DDA EXHIBIT H
PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

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 _____)

On _____ before me, _____, a Notary Public, personally appeared _____, 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 _____ (Seal)

VERTICAL DDA EXHIBIT H
PARTIAL RELEASE OF DISPOSITION AND DEVELOPMENT AGREEMENT

EXHIBIT A-1

Development Parcel

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

[_____]

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Recorder's Stamp

APN:

PARTIAL RELEASE OF MASTER LEASE

This PARTIAL RELEASE OF MASTER LEASE (this "**Partial Release**"), dated for reference purposes only as of _____, 20____ (the "**Reference Date**"), is made by the CITY AND COUNTY OF SAN FRANCISCO (the "**City**"), operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**"), as landlord, and FC PIER 70, LLC, a Delaware limited liability company ("**Tenant**" or "**Master Developer**"), with reference to the following facts and circumstances:

A. Tenant and the Port entered into that certain Master Lease, dated for reference purposes as of [_____] (as amended and as may be further amended from time to time, the "**Master Lease**"). In accordance with [Section 43.10] of the Master Lease, a Memorandum of Lease was recorded in the Official Records of the City and County of San Francisco ("**Official Records**") on [_____] as Document No. [_____]. All capitalized terms used but not defined herein shall have the meanings assigned to them in the Master Lease.

B. Tenant and Port also entered into that certain Development and Disposition Agreement, dated for reference purposes as of [_____] (as amended and as may be further amended from time to time, the "**DDA**") pursuant to which Tenant, as the master developer of the 28-Acre Site, will perform certain obligations, including the construction of Horizontal Improvements. The DDA was recorded in the Official Records on [_____] as Document No. [_____]. Tenant, as master developer of the 28-Acre Site, is sometimes referred to as the Master Developer in the Master Lease.

C. [***add for Development Parcel conveyances only]*** Port and [_____], a [_____] ("**Vertical Developer**") entered into that certain Vertical Disposition and Development Agreement dated for reference purposes as of [_____] (as amended from time to time, the "**Vertical DDA**") for the Development Parcel more particularly described in ***Exhibit A-1*** and shown on the map attached hereto as

Exhibit A-2 (the "**Development Parcel**"). Port is obligated to convey the Development Parcel to the Vertical Developer upon satisfaction or waiver of various conditions, all of which have either been satisfied by Vertical Developer or waived by Port as of the date hereof. In order for Port to convey the Development Parcel to the Vertical Developer, the Development Parcel must first be released from the Premises. **Master Lease Section 1.1(b)(i)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises consisting of the Development Parcel in order to effectuate the Vertical DDA applicable to such Development Parcel. The Parties now desire to release the Development Parcel from the Premises (the "**Release Parcel**"). Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.

C. [***use if the Release Parcel is a Park Parcel or contains Phase Improvements or Deferred Infrastructure that has been Accepted by the Port Commission per DDA Section 15.8(a), (b) and (c), where all Horizontal Improvements within the Release Parcel are Accepted***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with **DDA Section 15.8** (Acceptance of Park Parcels and Phase Improvements) and **DDA Section 15.9** (Acceptance of Other Horizontal Improvements). By [**insert Port resolution No. _____**, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, Port Accepted the Park Parcels and Phase Improvements described in Resolution No. ___ that are contained within that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"), and authorized the Port Executive Director or her designee to sign and record this Partial Release after satisfaction of all conditions required by the Port Commission for acceptance. All conditions to Resolution No. ____ have been satisfied. Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.

C. [***use if the Release Parcel is a Park Parcel or contains Phase Improvements or Deferred Infrastructure that has been Accepted by the Port Commission but the Release Parcel also contains other Horizontal Improvements that have not yet been Accepted per DDA 15.8(d)***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with **DDA Section 15.8** (Acceptance of Park Parcels and Phase Improvements) and **DDA Section 15.9** (Acceptance of Other Horizontal Improvements). By **[insert Port resolution No. _____**, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, Port Accepted the Park Parcels and/or Phase Improvements described in Resolution No. ___ (collectively, the "**Port Acceptance Items**"). The Port Acceptance Items affect that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"). The Release Parcel includes sub-surface improvements for which the City has not yet accepted ownership[, as more particularly described in Port Resolution No. ____]. Tenant will continue to own such sub-surface improvements until they are accepted by the City ("**Unreleased Portion**"). The Unreleased Portion is described in ***Exhibit A-3*** and shown on the map attached hereto as ***Exhibit A-2***. As required under ***DDA Section 15.8(d)***, the Port

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

Commission conditioned its Acceptance of the Port Acceptance Items on the Tenant entering into an agreement under which Port grants to Tenant a right-of-entry upon the Release Parcel for maintenance, repair and inspection purposes and Tenant retains ownership and liability for the sub-surface improvements until such time as the sub-surface improvements are formally accepted by the City. Such condition having been satisfied, the Port Executive Director or her designee is authorized by Resolution No. _____ to sign and record this Partial Release.

C. [***use if all Horizontal Improvements within the Release Parcel have been Accepted by the Board of Supervisors per DDA Section 15.9. There are no other Horizontal Improvements within the Release Parcel that need Acceptance***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with **DDA Section 15.8** (Acceptance of Park Parcels and Phase Improvements) and **DDA Section 15.9** (Acceptance of Other Horizontal Improvements). By [**insert Board of Supervisors Motion No. _____**, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, the City Accepted all Horizontal Improvements [**add if applicable: including Utility Infrastructure**] that are described in Motion No. ___ and contained within that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"). Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.

C. [***use if the Release Parcel contains Horizontal Improvements that have been Accepted by the Board of Supervisors per DDA Section 15.9 but the Release Parcel also contains other Horizontal Improvements that have not yet been Accepted***] **Master Lease Section 1.1(b)(ii)** provides that Port and Tenant will execute and record a Partial Release of Master Lease for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with ***DDA Section 15.8*** (Acceptance of Park Parcels and Phase Improvements) and ***DDA Section 15.9*** (Acceptance of Other Horizontal Improvements). By [**insert Board of Supervisors Motion No. _____**, dated ___, 20XX], a copy of which is attached hereto as ***Exhibit B***, the City Accepted certain Horizontal Improvements [**add if applicable: including Utility Infrastructure**] that is described in Motion No. ___ and contained within that portion of the Premises described in ***Exhibit A-1*** and shown on the map attached hereto as ***Exhibit A-2*** (the "**Release Parcel**"). The Release Parcel includes Horizontal Improvements for which the City has not yet accepted ownership. Tenant will continue to own such Horizontal Improvements until they are accepted by the City ("**Unreleased Portion**"). The Unreleased Portion is described in ***Exhibit A-3*** and shown on the map attached hereto as ***Exhibit A-2***. As a condition to the Acceptance, Motion No. _____ required Tenant to provide the applicable City Agency with access rights in accordance with the Master Lease, and warranties covering the accepted improvements for a period of time as specified in the conditions to acceptance and thereafter, under the applicable Public Improvement Agreement. The Parties wish to enter into this Partial Release and record the same in the Official Records.

D. By recording this Partial Release, the Parties seek to notify third parties that the Premises described in the Master Lease will be [further] adjusted by the release of the Release Parcel [less the Unreleased Portion].

NOW THEREFORE, in consideration of the foregoing facts, understandings and agreements, the Parties agree as follows:

AGREEMENT

1. In accordance with Section [***1.1(b)(i) (Development Parcels)***] or [***1.1(b)(ii) (Horizontal Improvement Parcels)***] of the Master Lease, Port and Tenant hereby release as of the date hereof, the Release Parcel [less the Unreleased Portion] from the Master Lease and as of the date hereof, the "**Premises**" under and as defined in the Master Lease will be adjusted to exclude the Release Parcel [other than the Unreleased Portion that remains a part of the Premises].

2. Other than the adjustment of the Premises as set forth in this Partial Release, all other terms and conditions of the Master Lease remain unchanged.

[Signature appears on following page]

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

IN WITNESS WHEREOF, Port and Tenant have executed this Release as of the day and year first above written.

Tenant **FC PIER 70, LLC**, a Delaware limited liability company

By: _____
Name: _____
Title: _____

Port **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Title: _____

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

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 _____)

On _____ before me, _____, a Notary Public, personally appeared _____, 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 _____ (Seal)

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

EXHIBIT A-1

Legal Description of Release Parcel

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

[_____]

VDDA EXHIBIT I & MASTER LEASE EXHIBIT C
PARTIAL RELEASE OF MASTER LEASE

EXHIBIT A-2

Site Map of Release Parcel [and Unreleased Portion]

[see attached]

[EXHIBIT A-3]

Legal Description of Unreleased Portion

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

[_____]

VDDA EXHIBIT J
MEMORANDUM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383 RECORDING REQUESTED BY, AND WHEN RECORDED, MAIL TO:	FOR RECORDER'S USE ONLY

APN:
Lot: _____ Block: _____

[Include any required recording cover sheet]

MEMORANDUM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Memorandum**") dated for reference purposes as of [_____], 201[_] is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the "**Port**"), and [_____], a [_____] (the "**Developer**").

1. Agreement. Port and Developer have entered into a Vertical Disposition and Development Agreement dated as of [_____], 201[_] (the "**Agreement**"), under which (a) upon satisfaction or waiver of the conditions described in the Agreement, Port agrees to: **[lease][sell]** the Premises in accordance with the terms of the Agreement (the "**Premises**"); (b) upon satisfaction or waiver of the conditions described in the Agreement, Developer agrees to **[lease][purchase]** the Premises from Port; and (c) [**Add the following for affiliate deals only**: if Developer elects to develop the Vertical Project,] and governs the development of the Vertical Project. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Agreement.

2. Term: The term of the Agreement shall be from the Effective Date until recording of the Certificate of Completion, unless this Agreement is earlier terminated in accordance with its provisions (the "**Agreement Term**"). If Close of Escrow does not occur by the Target Closing Date (or if applicable, the Extended Closing Date) as such date and time may be

extended with the prior written approval of both Port and Vertical Developer, the Agreement shall automatically terminate. Recording of the Certificate of Completion by the Port will automatically terminate the Agreement, and after such recording, other than the terms and provisions that expressly survive the expiration or earlier termination of the Agreement, the Agreement will have no further force or effect.

3. Repurchase Right. If Developer fails to commence construction of the Vertical Project within forty- two (42) months following the date the Quitclaim Deed is recorded in the Recorder's Office of the City, then either Master Developer or Port may repurchase the Property, including all improvements thereon, in accordance with Section 15.3 of the Agreement.

4. Notice. The parties have executed and recorded this Memorandum to give notice of the Agreement and their respective rights and obligations under the Agreement to all third parties. The Agreement is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Agreement, the Agreement shall control.

5. Counterparts. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF the parties hereto have caused this Memorandum of Lease Disposition and Development Agreement to be executed by their duly appointed representatives as of the date first above written.

DEVELOPER: [_____], a [_____]

By: _____

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

Port Resolution No. 17 – 43 (September 26, 2017)
Board of Supervisors Resolution No. 401-17

By: _____
Name: _____,
Deputy City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

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 _____

On _____ before me, _____ personally
(insert name and title of the officer)

appeared _____
_____
_____,

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.

_____ (Seal)
Signature

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)

appeared _____
_____
_____,

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.

_____ (Seal)
Signature

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[1]
MITIGATION MEASURES FOR THE PIER 70 MIXED-USE DISTRICT PROJECT					
Cultural Resources (Archaeological Resources) Mitigation Measures					
M-CR-1a: Archeological Testing, Monitoring, Data Recovery and Reporting Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources. The project sponsors shall retain the services of an archeological consultant from rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsors shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the	Project sponsors[2] to retain qualified professional archaeologist from the pool of archaeological consultants maintained by the Planning Department. The archaeological consultant shall undertake an archaeological testing program as specified herein. Project sponsors,	Prior to the issuance of site permits, submittal of all plans and reports for approval by the ERO.	Archaeological consultant's work shall be conducted in accordance with this measure at the direction of the ERO.	Considered complete when project sponsor retains a qualified professional archaeological consultant and archeological consultant has approved scope by the ERO for the archeological testing program	Planning Department

[1] Both the City and the Port have jurisdiction over portions of the Project Site. This column identifies the agency or agencies with monitoring responsibility for each mitigation and improvement measure. The 28-Acre Site and 20th/Illinois Parcels are located within the Port's building permit jurisdiction. The Hoedown Yard parcel is located within the San Francisco Department of Building Inspection (DBI).

[2] Note: For purposes of this MMRP, unless otherwise indicated, the term "project sponsor" shall mean the party (*i.e.*, the Developer under the DDA, a Vertical Developer (as defined in the DDA) or Port, as applicable, and their respective contractors and agents) that is responsible under the Project documents for construction of the improvements to which the Mitigation Measure applies, or otherwise assuming responsibility for implementation of the mitigation measure.

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[1]
suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in State CEQA Guidelines Section 15064.5 (a) and (c). Consultation with Descendant Communities On discovery of an archeological site associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to consult with the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.	archaeological consultant shall contact the ERO and descendant group representative upon discovery of an archaeological site associated with descendant Native Americans or the Overseas Chinese. The representative of the descendant group shall be given the opportunity to monitor archaeological field investigations on the site and consult with the ERO regarding appropriate archaeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archaeological site.	For the duration of soil-disturbing activities.	Archaeological Consultant shall prepare a Final Archaeological Resources Report in consultation with the ERO (per below). A copy of this report shall be provided to the ERO and the representative of the descendant group.	Considered complete upon submittal of Final Archaeological Resources Report.	
Archeological Testing Program	Development of	Prior to any	Archaeological	Considered	Planning

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[1]
The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the Proposed Project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA. At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.	<u>ATP:</u> Project sponsors and archaeological consultant in consultation with the ERO. <u>Archeological Testing Report:</u> Project sponsors and archaeological consultant in consultation with the ERO.	excavation, site preparation or construction, and prior to testing, an ATP for a defined geographic area and/or specified construction activities is to be submitted to and approved by the ERO. A single ATP or multiple ATPs may be produced to address project phasing. At the completion of each archaeological testing program.	consultant to undertake ATP in consultation with ERO. Archaeological consultant to submit results of testing, and in consultation with ERO, determine whether additional measures are warranted. If significant archaeological	complete with approval of the ATP by the ERO and on finding by the ERO that the ATP is implemented. Considered complete on submittal to ERO of report(s) on ATP findings.	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[1]**
			resources are present and may be adversely affected, project sponsors, at its discretion, may elect to redesign a project, or implement data recovery program, unless ERO determines the archaeological resource is of greater interpretive than research significance and that interpretive use is feasible.		
Archeological Monitoring Program If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented, the AMP would minimally include the following provisions: • The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the AMP prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. A single AMP or multiple AMPs may be produced to address project phasing. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring	Project sponsors and archaeological consultant at the direction of the ERO.	The archaeological consultant, project sponsors, and ERO shall meet prior to the commencement of soil-disturbing activities for a defined geographic area and/or specified construction	If required, archaeological consultant to prepare the AMP in consultation with the ERO.	Considered complete on approval of AMP(s) by ERO; submittal of report regarding findings of AMP(s); and finding by ERO that AMP(s) is implemented.	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[1]**
because of the risk these activities pose to potential archeological resources and to their depositional context. The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource; • The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; • The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis; If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, pile driving activity that may affect the archeological resource shall be suspended until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. If the ERO determines that a significant archeological resource is present and that the resource could he adversely affected by the Proposed Project, at the		activities. The ERO in consultation with the archaeological consultant shall determine what archaeological monitoring is necessary. A single AMP or multiple AMPs may be produced to address project phasing.			

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
discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible. Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.					
Archeological Data Recovery Program If the ERO, in consultation with the archeological consultant, determines that an archeological data recovery programs shall be implemented based on the presence of a significant resource, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, shall be limited to the portions of the historical property that could be adversely affected by the Proposed Project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.	Project sponsors and archaeological consultant at the direction of the ERO.	Upon determination by the ERO that an ADRP is required.A single ADRP or multiple ADRPs may be produced to address project phasing.	If required, archaeological consultant to prepare an ADRP(s) in consultation with the ERO.	Considered complete on submittal of ADRP(s) to ERO.	

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
The scope of the ADRP shall include the following elements: • *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations. • *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures. • *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies. • *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. • *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. • *Final Report.* Description of proposed report format and distribution of results. • *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.					
<u>Human Remains and Associated or Unassociated Funerary Objects</u> The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the coroner of the City and County of San Francisco and in the event of the coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project	Project sponsors and archaeological consultant, in consultation with the San Francisco Coroner, NAHC, ERO, and MLD.	In the event human remains and/or funerary objects are encountered.	Archaeological consultant/ archaeological monitor/project sponsors or contractor to contact San Francisco County Coroner and ERO.	Ongoing during soils disturbing activity. Considered complete on notification of the San Francisco County Coroner	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[1]
sponsors, ERO, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (State CEQA Guidelines Section 15064.5(d)). The agreement shall take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such an agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.			Implement regulatory requirements, if applicable, regarding discovery of Native American human remains and associated/unassociated funerary objects. Contact archaeological consultant and ERO.	and NAHC, if necessary.	
Final Archeological Resources Report The archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report. The FARR may be submitted at the conclusion of all construction activities associated with the Proposed Project or on a parcel-by-parcel basis. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high	Project sponsors and archaeological consultant at the direction of the ERO. The ERO shall provide to the archaeological consultant(s) preparing the FARR reports and relevant data obtained through implementation of this Mitigation Measure M-CR-1a.	For Horizontal Developer-prior to determination of substantial completion of infrastructure at each sub-phase For Vertical Developer-prior to issuance of Certificate of Temporary or Final Occupancy, whichever occurs first	If applicable, archaeological consultant to submit a Draft and final FARR to ERO based on reports and relevant data provided by the ERO Archaeological consultant to distribute FARR.	Considered complete on submittal of FARR and approval by ERO. Considered complete when archaeological consultant provides written certification to the ERO that the required FARR	Planning Department

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public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.		If applicable, upon approval of the FARR by the ERO.		distribution has been completed.	
M-CR-1b: Interpretation Based on a reasonable presumption that archeological resources may be present within the project site, and to the extent that the potential significance of some such resources is premised on CRHR Criteria 1 (Events), 2 (Persons). and/or 3 (Design/Construction), the following measure shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources if significant archeological resources are discovered. The project sponsors shall implement an approved program for interpretation of significant archeological resources. The interpretive program may be combined with the program required under Mitigation Measure M-CR-4b: Public Interpretation. The project sponsors shall retain the services of a qualified archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist having expertise in California urban historical and marine archeology. The archeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. The particular program for interpretation of artifacts that are encountered within the project site will depend upon the results of the data recovery program and will be the subject of continued discussion between the ERO, consulting archeologist, and the project sponsors. Such a program may include, but is not limited to. any of the following (as outlined in the ARDTP): surface commemoration of the original location of resources; display of resources and associated artifacts (which may offer an underground view to the public); display of interpretive materials such as graphics, photographs, video, models. and public art; and academic and popular publication of the results of the data recovery. The interpretive program shall include an on-site	Project sponsors and archaeological consultant at the direction of the ERO.	Prior to issuance of final certificate of occupancy	Archaeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. All plans and recommendations for interpretation by the archaeological consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until deemed final by the ERO. The ERO to approve final interpretation program. Project sponsors to implement an approved	Considered complete upon installation of approved interpretation program, if required.	Planning Department

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component. The archeological consultant's work shall be conducted at the direction of the ERO, and in consultation with the project sponsors. All plans and recommendations for interpretation by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.			interpretation program.		
Mitigation Measure M-CR-5: Preparation of Historic Resource Evaluation Reports. Review, and Performance Criteria. Prior to Port issuance of building permits associated with Buildings 2, 12 and 21, Port of San Francisco Preservation staff shall review and approve future rehabilitation design proposals for Buildings 2, 12, and 21. Submitted rehabilitation design proposals for Buildings 2 and 12 shall include, in addition to proposed building design, detail on the proposed landscaping treatment within a 20-foot-wide perimeter of each building. The Port's review and analysis would be informed by Historic Resource Evaluation(s) provided by the project sponsors. The Historic Resource Evaluation(s) shall be prepared by a qualified consultant who meets or exceeds the Secretary of the Interior's Professional Qualification Standards in historic architecture or architectural history. The scope of the Historic Resource Evaluation(s) shall be reviewed and approved by Port Preservation staff prior to the start of work. Following review of the completed Historic Resource Evaluation(s), Port preservation staff would prepare one or more Historic Resource Evaluation Response(s) that would contain a determination as to the effects, if any, on historical resources of the proposed renovation. The Port shall not issue buildings permits associated with Buildings 2, 12, and 21 until Port preservation staff conclude that the design (1) conforms with the Secretary of the Interior's Standards for Rehabilitation; (2) is compatible with the UIW Historic District; and (3) preserves the building's historic materials and character-defining features, and repairs instead of replaces deteriorated features, where feasible. Should alternative materials be proposed for replacement of historic materials, they shall be in keeping with the size, scale, color, texture, and general appearance. The performance criteria shall ensure	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Prior to the issuance of building permits associated with Buildings 2, 12 and 21.	Qualified historian to prepare historic resource evaluation documentation and present to Port staff to determine conformance to the Secretary's Standards.	Considered complete upon approval by the Port staff.	Port

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retention of the following character-defining features of each historic building: • **Building 2**: (1) board-formed concrete construction; (2) six-story height; (3) flat roof; (4) rectangular plan and north-south orientation; (5) regular pattern of window openings on east and west elevations; (6) steel, multi-pane, fixed sash windows (floors 1-5); (7) wood sash windows (floor 6); (8) elevator/stair tower that rises above roofline and projects slightly from west façade. • **Building 12**: (1) steel and wood construction; (2) corrugated steel cladding (except the as-built south elevation which was always open to Building 15); (3) 60-foot height; (4) Aiken roof configuration with five raised, glazed monitors; (5) clerestory multi-lite steel sash awning windows along the north and south sides of the monitors; (6) multi-lite, steel sash awning widows, arranged in three bands (with a double-height bottom band) on the north and west elevations, and in four bands on the east elevation; (7) 12-bay configuration of east and west elevations; (8) north-south roof ridge from which roof slopes gently (1/4 inch per foot) to the east and west • **Building 21:** (1) steel frame construction; (2) corrugated metal cladding; (3) double-gable roof clad in corrugated metal, with wide roof monitor at each gable; (4) multi-lite, double hung wood or horizontal steel sash windows; and (5) two pairs of steel freight loading doors on the north elevation, glazed with 12 lites per door. Port staff shall not approve any proposal for rehabilitation of Buildings 2, 12, and 21 unless they find that such a scheme conforms to the Secretary's Standards as specified for each building.					
Mitigation Measure M-CR-11: Performance Criteria and Review Process for New Construction In addition to the standards and guidelines established as part of the Pier 70	Project sponsors	Prior to issuance of a building permit for new	San Francisco Preservation Planning staff, in consultation with	Considered complete when Planning and Port Preservation	Planning Department

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SUD and *Design for Development*, new construction and site development within the Pier 70 SUD shall be compatible with the character of the UIW Historic District and shall maintain and support the District's character-defining features through the following performance criteria (terminology used has definition as provided in the *Design for Development*): 1. New construction shall comply with the Secretary of the Interior's Rehabilitation Standard No. 9: "New Addition, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the integrity of the property and its environment." 2. New construction shall comply with the Infill Development Design Criteria in the Port of San Francisco's *Pier 70 Preferred Master Plan* (2010) as found in Chapter 8, pp 57-69 (a policy document endorsed by the Port Commission to guide staff planning at Pier 70). 3. New construction shall be purpose-built structures of varying heights and massing located within close proximity to one another. 4. New construction shall not mimic historic features or architectural details of contributing buildings within the District. New construction may reference, but shall not replicate, historic architectural features or details. 5. New construction shall be contextually appropriate in terms of massing, size, scale, and architectural features, not only with the remaining historic buildings, but with one another. 6. New construction shall reinforce variety through the use of materials, architectural styles, rooflines, building heights, and window types and through a contemporary palette of materials as well as those found within the District.		construction.	the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning and Port staff that confirms compliance of all proposed new construction with these guiding plans and policies. San Francisco	staff note compliance with the Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, outlined in the written memorandum.	

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7. Parcel development shall be limited to the new construction zones identified in *Design for Development* Figure 6.3.1: Allowable New Construction Zones. 8. The maximum height of new construction shall be consistent with the parcel heights identified in *Design for Development* Figure 6.4.2: Building Height Maximum. 9. The use of street trees and landscape materials shall be limited and used judiciously within the Pier 70 SUD. Greater use of trees and landscape materials shall be allowed in designated areas consistent with *Design for Development* Figure 4.8.1: Street Trees and Plantings Plan. 10. New construction shall be permitted adjacent to contributing buildings as identified in *Design for Development* Figure 6.3.2: New Construction Buffers. 11. No substantive exterior additions shall be permitted to contributing Buildings 2, 12, or 21. Building 12 did not historically have a south-facing façade; therefore, rehabilitation will by necessity construct a new south elevation wall. Building 21 shall be relocated approximately 75 feet east of its present placement, to maintain the general historic context of the resource in spatial relationship to other resources. Building 21's orientation shall be maintained. <u>Building Specific Standards</u> Each development parcel within the Pier 70 SUD has a different physical proximity and visual relationship to the contributing buildings within the UIW Historic District. For those façades immediately adjacent to or facing contributing buildings, building design shall be responsive to identified character-defining features in the manner described in the *Design for Development* Buildings chapter. All other façades shall have greater freedom in the expression of scale, color, use of material, and overall appearance, and shall be permitted if consistent with Secretary Standard No. 9 and the *Design*			Preservation Planning staff must make determination in compliance with the timelines outlined in the Pier 70 Special Use District section of the Planning Code for review of vertical design.		

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for Development.

Table M.CR.1: Building-Specific Responsiveness, indicates resources that are located adjacent to, and have the greatest influence on the design of, the noted development parcel façade.

Table M.CR.1: Building-Specific Responsiveness

Façade/Parcel Name-Number	Contributing Building (Building No.)
North and West: A	113
North and Northeast; B	113, 6
North; C1	116
East and South: C2	12
South and West; D	2, 12
East and South; E1	21
West: E2	12
West; E4	21
North; F/G	12
East; PKN	113-116

Source: ESA 2015.

Palette of Materials

In addition to the standards and guidelines pertaining to application of

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materials in the *Design for Development*, the following material performance standards would apply to the building design on the development parcels (terminology used has definition as provided in the *Design for Development*): • Masonry panels that replicate traditional nineteenth or twentieth century brick masonry patterns shall not be allowed on the east façade of Parcel PKN, north and west façades of Parcel A or on the north façade of Parcel C1. • Smooth, flat, minimally detailed glass curtain walls shall not be allowed on the façades listed above. Glass with expressed articulation and visual depth or that expresses underlying structure is an allowable material throughout the entirety of the Pier 70 SUD. • Coarse-sand finished stucco shall not be allowed as a primary material within the entirety of the UIW Historic District. • Bamboo wood siding shall not be allowed on façades listed above or as a primary façade material. • Laminated timber panels shall not be allowed on façades listed above. • When considering material selection immediately adjacent to contributing buildings (e.g., 20th Street Historic Core; Buildings 2, 12, and 21; and Buildings 103, 106, 107, and 108 located within or immediately adjacent to the BAE Systems site), characteristics of compatibility and differentiation shall both be taken into account. Material selection shall not duplicate adjacent building primary materials and treatments, nor shall they establish a false sense of historic development. • Avoid conflict of new materials that appear similar or attempt to replicate historic materials. For example, Building 12 has character-defining corrugated steel cladding. As such, the eastern					

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façade of Parcel C2, the northern façade of Parcels F and G, and the southern façade of Parcel D1 shall not use corrugated steel cladding as a primary material. As another example, Building 113 has character-defining brick-masonry construction. As such, the northern and western façades of Parcel A and the eastern façade of Parcel K North shall not use brick masonry as a primary material. • Use of contemporary materials shall reflect the scale and proportions of historic materials used within the UIW Historic District. • Modern materials shall be designed and detailed in a manner to reflect but not replicate the scale, pattern, and rhythm of adjacent contributing buildings' exterior materials. <u>Review Process</u> Prior to Port issuance of building permits associated with new construction, San Francisco Preservation Planning staff, in consultation with the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning staff that confirms compliance of all proposed new construction with these guiding plans and policies.					
Transportation and Circulation Mitigation Measures					
Mitigation Measure M-TR-5: Monitor and increase capacity on the 48 Quintara/24th Street bus routes as needed. Prior to approval of the Proposed Project's phase applications, project sponsors shall demonstrate that the capacity of the 48 Quintara/24th Street bus route has not exceeded 85 percent capacity utilization, and that future demand associated with build-out and occupancy of the phase will not cause	Developer, TMA, and SFMTA. Documentation of capacity of the 48 Quintara/24th Street	<u>Demonstration of capacity</u>: Prior to approval of the project's phase applications.	Project sponsors to demonstrate to the SFMTA that each building for which temporary certificates of occupancy are	Considered complete upon approval of the project's phase application.	Planning Department, SFMTA

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the route to exceed its utilization. Forecasts of travel behavior of future phases could be based on trip generation rates forecast in the EIR or based on subsequent surveys of occupants of the project, possibly including surveys conducted as part of ongoing TDM monitoring efforts required as part of Air Quality Mitigation Measure M-AQ-1f: Transportation Demand Management. If trip generation calculations or monitoring surveys demonstrate that a specific phase of the Proposed Project will cause capacity on the 48 Quintara/24th Street route to exceed 85 percent, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA through the following means: • At SFMTA's request, the project sponsors shall pay the capital costs for additional buses (up to a maximum of four in the Maximum Residential Scenario and six in the Maximum Commercial Scenario). If the SFMTA requests the project sponsor to pay the capital costs of the buses, the SFMTA would need to find funding to pay for the added operating cost associated with operating increased service made possible by the increased vehicle fleet. The source of that funding has not been established. Alternatively, if SFMTA determines that other measures to increase capacity along the route would be more desirable than adding buses, the project sponsors shall pay an amount equivalent to the cost of the required number of buses toward completion of one or more of the following, as determined by SFMTA: • Convert to using higher-capacity vehicles on the 48 Quintara/24th Street route. In this case, the project sponsors shall pay a portion of the capital costs to convert the route to articulated buses. Some bus stops along the route may not currently be configured to accommodate the longer articulated buses. Some bus zones could likely be extended by removing one or more parking spaces; in some locations, appropriate space may not be available. The	bus route shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using a methodology approved by SFMTA and Planning. If documentation of capacity is based on monitoring surveys, the transportation consultant shall submit raw data from such surveys concurrently to SFMTA, the Planning Department, and project sponsors.	If project sponsors demonstrate to the SFMTA that the phase would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR, further monitoring is not required during that phase. Capital Costs: Payment required after SFMTA affirms via letter to the project sponsors that mitigation funds will be	requested would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR. If the project demonstrates (using trip generation rates forecasted in the EIR or through surveys of existing travel behavior at the site) that a specific building would cause capacity to exceed 85 percent based on the Baseline scenario in the EIR or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline		

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project sponsors' contribution may not be adequate to facilitate the full conversion of the route to articulated buses; therefore, a source of funding would need to be established to complete the remainder, including improvements to bus stop capacity at all of the bus stops along the route that do not currently accommodate articulated buses. • SFMTA may determine that instead of adding more buses to a congested route, it would be more desirable to increase travel speeds along the route. In this case, the project sponsors' contribution would be used to fund a study to identify appropriate and feasible improvements and/or implement a portion of the improvements that would increase travel speeds sufficiently to increase capacity along the bus route such that the project's impacts along the route would be determined to be less than significant. Increased speeds could be accomplished by funding a portion of the planned bus rapid transit system along 16th Street for the 22 Fillmore between Church and Third streets. Adding signals on Pennsylvania Street and 22nd Street may serve to provide increased travel speeds on this relatively short segment of the bus routes. The project sponsors' contribution may not be adequate to fully achieve the capacity increases needed to reduce the project's impacts and SFMTA may need to secure additional sources of funding. Another option to increase capacity along the corridor is to add new a Muni service route in this area. If this option is selected, project sponsors shall fund purchase of the same number of new vehicles outlined in the first option (four for the Maximum Residential Alternative and six for the Maximum Commercial Alternative) to be operated along the new route. By providing an additional service route, a percentage of the current transit riders on the 48 Quintara/24th Street would likely shift to the new route, lowering the capacity utilization below the 85 percent utilization threshold. As for the first option, funding would need to be secured to pay for operating the new route.		spent on implementation of M-TR-5 through purchase of additional buses or alternative measure in accordance with M-TR-5. Capital costs for more than four buses, up to a maximum of six buses, shall only be required if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR, and if project sponsors demonstrate that the	scenario without the Proposed Project, and the SFMTA has committed to implement M-TR-5, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA.		

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		building would cause capacity to exceed 85 percent or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline scenario without the Proposed Project.			
Mitigation Measure M-TR-10: Improve pedestrian facilities on Illinois Street adjacent to and leading to the project site. As part of construction of the Proposed Project roadway network, the project sponsors shall implement the following improvements: • Install ADA curb ramps on all corners at the intersection of 22nd Street and Illinois Street • Signalize the intersections of Illinois Street with 20th and 22nd Street. • Modify the sidewalk on the east side of Illinois Street between 22nd and 20th streets to a minimum of 10 feet. Relocate	Project sponsors shall implement the improvements.	During construction of street improvements adjacent to pedestrian facilities on Illinois Street identified in Mitigation Measure M-TR-10.	SFMTA reviews signal and site plans and maps for improvements identified in Mitigation Measure M-TR-10.	Considered complete when street improvements have been built.	SFMTA, Port

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obstructions, such as fire hydrants and power poles, as feasible, to ensure an accessible path of travel is provided to and from the Proposed Project.					
Mitigation Measure M-TR-12A: Coordinate Deliveries The Project's Transportation Coordinator shall coordinate with building tenants and delivery services to minimize deliveries during a.m. and p.m. peak periods. Although many deliveries cannot be limited to specific hours, the Transportation Coordinator shall work with tenants to find opportunities to consolidate deliveries and reduce the need for peak period deliveries, where possible.	Transportation Management Agency Transportation Coordinator.	On-going.	Transportation Management Agency Transportation Coordinator to coordinate with building tenants and delivery services to consolidate deliveries and reduce the need for peak period deliveries, where possible.	On-going during project operations.	Port
Mitigation Measure M-TR-12B: Monitor loading activity and convert general purpose on-street parking spaces to commercial loading spaces, as needed. After completion of the first phase of the Proposed Project, and prior to approval of each subsequent phase, the project sponsors shall conduct a study of utilization of on- and off-street commercial loading spaces. Prior to completion, the methodology for the study shall be reviewed and approved by either: (a) Port Staff in consultation with SFMTA Staff for areas within Port jurisdiction; or (b) SFMTA Staff in consultation with Port Staff for areas within SFMTA jurisdiction. If the result of the study indicates that fewer than 15 percent of the commercial loading spaces are available during the peak loading period, the project sponsors shall incorporate measures to convert existing or proposed general purpose on-street parking spaces to commercial parking spaces in addition to the required off-street spaces.	Developer, TMA or Port.	Prior to approval of the project's phase applications after completion of the first phase.	Project sponsors or TMA to conduct a commercial loading study for the Port.	Considered complete after the Port Staff reviews and approves the study and the project sponsors, Port or TMA incorporates any additional measures necessary for commercial loading.	Port

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Mitigation Measure M-C-TR-4A: Increase capacity on the 48 Quintara/24th bus route under the Maximum Residential Scenario. The project sponsors shall contribute funds for one additional vehicle (in addition to and separate from the four prescribed under Mitigation Measure M-TR-5 for the Maximum Residential Scenario) to reduce the Proposed Project's contribution to the significant cumulative impact to not cumulatively considerable. This shall be considered the Proposed Project's fair share toward mitigating this significant cumulative impact. If SFMTA adopts a strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA and SFMTA Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	Demonstration of Capacity: If necessary, prior to approval of the project's phase applications. Capital Costs: Payment confirmed prior to issuance of building permit for building that would result in exceedance of 85 percent capacity utilization. Capital costs for more than four buses, up to a maximum of six buses, shall be paid if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial	If the Maximum Residential Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors	SFMTA

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		use, identified in Table 2.3 of the EIR.			
Mitigation Measure M-C-TR-4B: Increase capacity on the 22 Fillmore bus route under the Maximum Commercial Scenario. The project sponsors shall contribute funds for two additional vehicles to reduce the Proposed Project's contribution to the significant cumulative impact to not considerable. This shall be considered the Proposed Project's fair share toward mitigating this cumulative impact. If SFMTA adopts an alternate strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA, and SFMTA. Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	If necessary, prior to approval of the project's final phase application. <u>Funds shall be contributed</u> if the total gsf of commercial use for the Project in the final phase application exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR.	If the Maximum Commercial Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors.	SFMTA
Noise and Vibration Mitigation Measures					
Mitigation Measure M-NO-1: Construction Noise Control Plan. Over the project's approximately 11-year construction duration, project	Project sponsors.	Prior to the start of construction activities;	Project sponsors to submit the Construction Noise	Considered complete upon submittal of the	Port or DBI

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contractors for all construction projects on the Illinois Parcels and 28-Acre Site will be subject to construction-related time-of-day and noise limits specified in Section 2907(a) of the Police Code, as outlined above. Therefore, prior to construction, a Construction Noise Control Plan shall be prepared by the project sponsors and submitted to the Port. The construction noise control plan shall demonstrate compliance with the Noise Ordinance limits. Noise reduction strategies that could be incorporated into this plan to ensure compliance with ordinance limits may include, but are not limited to, the following: • Require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds). • Require the general contractor to locate stationary noise sources (such as the rock/concrete crusher or compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise by as much as 5 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, to the maximum extent practicable. • Require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which would reduce noise levels by as much as 10 dBA.		implementation ongoing during construction.	Control Plan to the Port. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Construction Noise Control Plan to the Port.	

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• Include noise control requirements for construction equipment and tools, including concrete saws, in specifications provided to construction contractors to the maximum extent practicable. Such requirements could include, but are not limited to, erecting temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses; utilizing noise control blankets on a building structure as the building is erected to reduce noise levels emanating from the construction site; the use of blasting mats during controlled blasting periods to reduce noise and dust; performing all work in a manner that minimizes noise; using equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants; and selecting haul routes that avoid residential uses. • Prior to the issuance of each building permit, along with the submission of construction documents, submit to the Port , as appropriate, a plan to track and respond to complaints pertaining to construction noise. The plan shall include the following measures: (1) a procedure and phone numbers for notifying the Port, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing permitted construction days and hours, noise complaint procedures, and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area and the American Industrial Center (AIC) at least 30 days in advance of extreme noise-generating activities (such as pile driving) about the estimated duration of the activity.	Project sponsors	Prior to the issuance of each building permit for duration of the project.	Project sponsors to submit a plan to track and respond to complaints pertaining to construction noise. A single plan or multiple plans may be produced to address project phasing.	Considered complete upon review and approval of the plan by the Port.	
Mitigation Measure M-NO-2: Noise Control Measures During Pile	Project sponsors and construction	Prior to receiving a	Project sponsors to submit to the Port	Considered complete upon	Port or DBI

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Driving. The Construction Noise Control Plan (required under Mitigation Measure M-NO-1) shall also outline a set of site-specific noise and vibration attenuation measures for each construction phase when pile driving is proposed to occur. These attenuation measures shall be included wherever impact equipment is proposed to be used on the Illinois Parcels and/or 28-Acre Site. As many of the following control strategies shall be included in the Noise Control Plan, as feasible: • Implement "quiet" pile-driving technology such as pre-drilling piles where feasible to reduce construction-related noise and vibration. • Use pile-driving equipment with state-of-the-art noise shielding and muffling devices. • Use pre-drilled or sonic or vibratory drivers, rather than impact drivers, wherever feasible (including slipways) and where vibration-induced liquefaction would not occur. • Schedule pile-driving activity for times of the day that minimize disturbance to residents as well as commercial uses located on-site and nearby. • Erect temporary plywood or similar solid noise barriers along the boundaries of each Proposed Project parcel as necessary to shield affected sensitive receptors. • Other equivalent technologies that emerge over time. • If CRF (including rock drills) were to occur at the same time as pile driving activities in the same area and in proximity to noise-sensitive receptors, pile drivers shall be set back at least 100 feet while rock drills shall be set back at least 50 feet (or vice versa)	contractor(s).	building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	submittal of documentation incorporating identified practices.	

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from any given sensitive receptor.					
Mitigation Measure M-NO-3: Vibration Control Measures During Construction. As part of the Construction Noise Control Plan required under Mitigation Measure M-NO-1, appropriate vibration controls (including pre-drilling pile holes and using smaller vibratory equipment) shall be specified to ensure that the vibration limit of 0.5 in/sec PPV can be met at adjacent or nearby existing structures and Proposed Project buildings located on the Illinois Parcels and/or 28-Acre Site, except as noted below: • Where pile driving, CRF, and other construction activities involving the use of heavy equipment would occur in proximity to any contributing building to the Union Iron Works Historic District, the project sponsors shall undertake a monitoring program to minimize damage to such adjacent historic buildings and to ensure that any such damage is documented and repaired. The monitoring program, which shall apply within 160 feet where pile driving would be used, 50 feet of where CRF would be required, and within 25 feet of other heavy equipment operation, shall include the following components: o Prior to the start of any ground-disturbing activity, the project sponsors shall engage a historic architect or qualified historic preservation professional to undertake a pre-construction survey of historical resource(s) identified by the Port within 160 feet of planned construction to document and photograph the buildings' existing conditions. o Based on the construction and condition of the resource(s), a structural engineer or other qualified entity shall establish a maximum vibration level that shall not be exceeded at each building, based on existing conditions, character-defining features, soils conditions and anticipated construction practices in use at the time (a common standard is 0.2 inch per	Project sponsors and construction contractor(s).	Prior to receiving a building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	Project sponsors to submit to Port documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Considered complete upon submittal of documentation incorporating identified practices.	Port or Planning Department

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second. peak particle velocity). o To ensure that vibration levels do not exceed the established standard. a qualified acoustical/vibration consultant shall monitor vibration levels at each structure within 160 feet of planned construction and shall prohibit vibratory construction activities that generate vibration levels in excess of the standard. Should vibration levels be observed in excess of the standard. construction shall be halted and alternative construction techniques put in practice. (For example, pre-drilled piles could be substituted for driven piles, if soil conditions allow; smaller, lighter equipment could possibly also be used in some cases.) The consultant shall conduct regular periodic inspections of each building within 160 feet of planned construction during ground-disturbing activity on the project site. Should damage to a building occur as a result of ground-disturbing activity on the site, the building(s) shall be remediated to its pre-construction condition at the conclusion of ground-disturbing activity on the site. o In areas with a "very high" or "high" susceptibility for vibration-induced liquefaction or differential settlement risks, the project's geotechnical engineer shall specify an appropriate vibration limit based on proposed construction activities and proximity to liquefaction susceptibility zones and modify construction practices to ensure that construction-related vibration does not cause liquefaction hazards at these homes.					
Mitigation Measure M-NO-4a: Stationary Equipment Noise Controls. Noise attenuation measures shall be incorporated into all stationary equipment (including HVAC equipment and emergency generators) installed on buildings constructed on the Illinois Parcels and 28-Acre Site as well as into the below-grade or enclosed wastewater pump station as necessary to meet noise limits specified in Section 2909 of the Police Code.* Interior	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for each building located on the Illinois Parcels	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port	Port or Planning Department/DBI

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noise limits shall be met under both existing and future noise conditions, accounting for foreseeable changes in noise conditions in the future (i.e., changes in on-site building configurations). Noise attenuation measures could include provision of sound enclosures/barriers, addition of roof parapets to block noise, increasing setback distances from sensitive receptors, provision of louvered vent openings, location of vent openings away from adjacent commercial uses, and restriction of generator testing to the daytime hours. * Under Section 2909 of the Police Code, stationary sources are not permitted to result in noise levels that exceed the existing ambient (L90) noise level by more than 5 dBA on residential property, 8 dBA on commercial and industrial property, and 10 dBA on public property. Section 2909(d) states that no fixed noise source may cause the noise level measured inside any sleeping or living room in a dwelling unit on residential property to exceed 45 dBA between 10:00 p.m. and 7:00 a.m. or 55 dBA between 7:00 a.m. and 10:00 p.m. with windows open, except where building ventilation is achieved through mechanical systems that allow windows to remain closed.		or the 28-Acre Site, along with the submission of construction documents, the project sponsors shall submit to the Port and the DBI plans for noise attenuation measures on all stationary equipment.			
Mitigation Measure M-NO-4b: Design of Future Noise-Generating Uses near Residential Uses. Future commercial/office and RALI uses shall be designed to minimize the potential for sleep disturbance at any future adjacent residential uses. Design approaches such as the following could be incorporated into future development plans to minimize the potential for noise conflicts of future uses on the project site: • Design of Future Noise-Generating Commercial/Office and RALI Uses. To reduce potential conflicts between sensitive receptors and new noise-generating commercial or RALI uses located adjacent to these receptors, exterior facilities such as loading areas/docks, trash enclosures, and surface parking lots shall be located on the sides of buildings facing away from existing or planned sensitive receptors (residences or passive open space). If	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for commercial, RALI, and parking uses, along with the submission of construction documents, the project sponsors shall submit to the and DBI plans to minimize	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port.	Port or Planning Department/DBI

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this is not feasible, these types of facilities shall be enclosed or equipped with appropriate noise shielding. • Design of Future Above-Ground Parking Structure. If parking structures are constructed on Parcels C1 or C2, the sides of the parking structures facing adjacent or nearby existing or planned residential uses shall be designed to shield residential receptors from noise associated with parking cars.		noise conflicts with sensitive receivers,			
Mitigation Measure M-NO-6: Design of Future Noise-Sensitive Uses Prior to issuance of a building permit for vertical construction of specific residential building design on each parcel, a noise study shall be conducted by a qualified acoustician, who shall determine the need to incorporate noise attenuation measures into the building design in order to meet Title 24's interior noise limit for residential uses as well as the City's (Article 29, Section 2909(d)) 45-dBA (Ldn) interior noise limit for residential uses. This evaluation shall account for noise shielding by buildings existing at the time of the proposal, potential increases in ambient noise levels resulting from the removal of buildings that are planned to be demolished, all planned commercial or open space uses in adjacent areas, any known variations in project build-out that have or will occur (building heights, location, and phasing), any changes in activities adjacent to or near the Illinois Parcels or 28-Acre Site (given the Proposed Project's long build-out period), any new shielding benefits provided by surrounding buildings that exist at the time of development, future cumulative traffic noise increases on adjacent roadways; existing and planned stationary sources (i.e., emergency generators, HVAC, etc.), and future noise increases from all known cumulative projects located with direct line-of-sight to the project building. To minimize the potential for sleep disturbance effects from tonal noise or nighttime noise events associated with nearby industrial uses, predicted noise levels at each project building shall account for 24/7 operation of the BAE Systems Ship Repair facility, 24/7 transformer noise at Potrero Substation (if it remains an open air facility), and industrial activities at the AIC, to the	Project sponsors and qualified acoustician.	Prior to the issuance of the building permit for vertical construction of any residential building on each parcel, a noise study shall be prepared by a qualified acoustician.	Port Staff to review the noise study. A single noise study or multiple noise studies may be produced to address project phasing.	Considered complete after submittal and approval of the noise study by the Port.	Port or Planning Department/DBI

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extent such use(s) are in operation at the time the analysis is conducted. Noise reduction strategies such as the following could be incorporated into the project design as necessary to meet Title 24 interior limit and minimize the potential for sleep disturbance from adjacent industrial uses: • Orient bedrooms away from major noise sources (i.e., major streets, open space/recreation areas where special events would occur, and existing adjacent industrial uses, including but not limited to the AIC, PG&E Hoedown Yard (if it is still operating at that time), Potrero Substation, and the BAE site) and/or provide additional enhanced noise insulation features (higher STC ratings) or mechanical ventilation to minimize the effects of maximum instantaneous noise levels generated by these uses even though there is no code requirement to reduce Lmax noise levels. Such measures shall be implemented on Parcels D and E1 (both scenarios), Building 2 (Maximum Residential Scenario only), Parcels PKN (both scenarios), PKS (both scenarios), and HDY (Maximum Residential Scenario only); • Utilize enhanced exterior wall and roof-ceiling assemblies (with higher STC ratings), including increased insulation; • Utilize windows with higher STC / Outdoor/Indoor Transmission Class (OITC) ratings; • Employ architectural sound barriers as part of courtyards or building open space to maximize building shielding effects, and locate living spaces/bedrooms toward courtyards wherever possible; and Locate interior hallways (accessing residential units) adjacent to noisy streets or existing/planned industrial or commercial development.					
Mitigation Measure M-NO-7: Noise Control Plan for Special Event	Developer, Port, parks management	Prior to operation of a	Developer, Port, parks management	Considered complete upon	Port

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Outdoor Amplified Sound. The project sponsors shall develop and implement a Noise Control Plan for operations at the proposed entertainment venues to reduce the potential for noise impacts from public address and/or amplified music. This Noise Control Plan shall contain the following elements: • The project sponsors shall comply with noise controls and restrictions in applicable entertainment permit requirements for outdoor concerts. • Speaker systems shall be directed away from the nearest sensitive receptors to the degree feasible. • Outdoor speaker systems shall be operated consistent with the restrictions of Section 2909 of the San Francisco Police Code, and conform to a performance standard of 8 dBA and dBC over existing ambient L90 noise levels at the nearest residential use.	entity, and/or parks programming entity.	special outdoor amplified sound, the project sponsors, parks management entity, and/or parks programming entity to develop a Noise Control Plan prior to issuance of event permit.	entity, and/or parks programming entity shall submit the Noise Control Plan to the Port.	submission and approval of the NCP by the Port.	
Air Quality Mitigation Measures					
Mitigation Measure M-AQ-1a: Construction Emissions Minimization The following mitigation measure is required during construction of Phases 3, 4, and 5, or after build-out of 1.3 million gross square feet of development, whichever comes first: A. *Construction Emissions Minimization Plan.* Prior to issuance of a site permit, the project sponsors shall submit a Construction Emissions Minimization Plan (Plan) to the Port or Planning Department. The Plan shall detail project compliance with the following requirements: 1. Where access to alternative sources of power is available, portable diesel generators used during construction shall be prohibited. Where portable diesel engines are required because alternative sources of power are not available, the	Project sponsors and construction contractor(s).	Prior to issuance of a site permit, the project sponsors must submit Construction Emissions Minimization Plan Prior to the commencement of construction activities	Project sponsors or contractor to submit a Construction Emissions Minimization Plan. Quarterly reports shall be submitted to Port Staff or Planning Department indicating the construction phase and off-road equipment	Considered complete upon Port or Planning Staff review and approval of Construction Emissions Minimization Plan or alternative measures that achieve the same emissions reduction.	Port or Planning Department

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diesel engine shall meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available, as defined below. 2. All off-road equipment greater than 25 horsepower that operates for more than 20 total hours over the entire duration of construction activities shall have engines that meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available. If engines that comply with Tier 4 off-road emission standards are not commercially available, then the project sponsors shall provide the next cleanest piece of off-road equipment as provided by the step-down schedules in Table M-AQ-1-1.		during Phase 3, 4, and 5, or prior to construction following build-out of 1.3 million gross square feet of development, the project sponsors must certify (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications. The Plan shall be kept on site and available for review. A sign shall be posted at the perimeter of the construction site indicating the basic	information used during each phase. For off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used. Within six months of the completion of construction activities, the project sponsors shall submit to Port Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.		

Table M-AQ-1-1: Off-Road Equipment Compliance Step-Down Schedule

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 3	CARB PM VDECS (85%)[1]
2	Tier 2	CARB PM VDECS (85%)

How to use the table: If the requirements of (A)(2) cannot be met, then the project sponsors would need to meet Compliance Alternative 1. Should the project sponsors not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met.

[1] CARB, Currently Verified Diesel Emission Control Strategies (VDECS).

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Available online at http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm. Accessed January 14, 2016. i. With respect to Tier 4 equipment, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; and (ii) geographic proximity of equipment to the project site. ii. With respect to renewable diesel, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; (ii) geographic proximity of fuel source to the project site; and (iii) cost of renewable diesel is within 10 percent of Ultra Low Sulfur Diesel #2 market price. iii. The project sponsors shall maintain records concerning its efforts to comply with this requirement. Should the project sponsor determine either that an off-road vehicle that meets Tier 4 emissions standards or that renewable diesel are not commercially available, the project sponsor shall submit documentation to the satisfaction of Port or Planning Staff and, for the former condition, shall identify the next cleanest piece of equipment that would be use, in compliance with Table M-AQ-1-1. 3. The project sponsors shall ensure that future developers or their contractors require the idling time for off-road and on-road equipment be limited to no more than 2 minutes, except as provided in exceptions to the applicable State regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in		requirements of the Plan and where copies of the Plan are available to the public for review.			

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multiple languages (English, Spanish, and Chinese) in designated queuing areas and at the construction site to remind operators of the 2-minute idling limit. 4. The project sponsors shall require that each construction contractor mandate that construction operators properly maintain and tune equipment in accordance with manufacturer specifications. 5. The Plan shall include best available estimates of the construction timeline by phase with a description of each piece of off-road equipment required for every construction phase and shall be updated pursuant to the reporting requirements in Section B below. Reporting requirements for off-road equipment descriptions and information shall include as much detail as is available, but are not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For Verified Diesel Emission Control Strategies (VDECS) installed, descriptions and information shall include technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date and hour meter reading on installation date. The Plan shall also indicate whether renewable diesel will be used to power the equipment. The Plan shall also include anticipated fuel usage and hours of operation so that emissions can be estimated. 6. The project sponsors and their construction contractors shall keep the Plan available for public review on site during working hours. Each construction contractor shall post at the perimeter of the project site a legible and visible sign summarizing the requirements of the Plan. The sign shall also state that the public may ask to inspect the Plan at any time					

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during working hours, and shall explain how to request inspection of the Plan. Signs shall be posted on all sides of the construction site that face a public right-of-way. The project sponsors shall provide copies of the Plan to members of the public as requested. B. *Reporting.* Quarterly reports shall be submitted to Port or Planning Staff indicating the construction activities undertaken and information about the off-road equipment used, including the information required in Section A(5). In addition, reporting shall include the approximate amount of renewable diesel fuel used. Within 6 months of the completion of all project construction activities, the project sponsors shall submit to Port or Planning Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. The final report shall include detailed information required in Section A(5). In addition, reporting shall include the actual amount of renewable diesel fuel used. C. *Certification Statement and On-site Requirements.* Prior to the commencement of construction activities, the project sponsors shall certify through submission of city-standardized forms (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.					
Mitigation Measure M-AQ-1b: Diesel Backup Generator Specifications To reduce NOx associated with operation of the Maximum Commercial or Maximum Residential Scenarios, the project sponsors shall implement the following measures. A. All new diesel backup generators shall: 1. have engines that meet or exceed CARB Tier 4 off-road emission standards which have the lowest NOx emissions of commercially	Project sponsors	Prior to approval of a generator permit by Port Staff.	Anticipated location and engine specifications of a proposed diesel backup generator shall be submitted to the Port Staff for review and approval prior to	Considered complete upon review and approval by Port Staff.	Port

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available generators; and 2. be fueled with renewable diesel, if commercially available, which has been demonstrated to reduce NOx emissions by approximately 10 percent. B. All new diesel backup generators shall have an annual maintenance testing limit of 50 hours, subject to any further restrictions as may be imposed by the BAAQMD in its permitting process. C. For each new diesel backup generator permit submitted to BAAQMD for the project, anticipated location, and engine specifications shall be submitted to the Port Staff for review and approval prior to issuance of a permit for the generator from the San Francisco DBI or the Port. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment and any future replacement of the diesel backup generators shall be required to be consistent with these emissions specifications. The operator of the facility at which the generator is located shall maintain records of the testing schedule for each diesel backup generator for the life of that diesel backup generator and provide this information for review to the Port within 3 months of requesting such information.			issuance of a generator permit.		
Mitigation Measure M-AQ-1c: Use Low and Super-compliant VOC Architectural Coatings in Maintaining Buildings through Covenants Conditions and Restrictions (CC&Rs) and Ground Lease The Project sponsors shall require all developed parcels to include within their CC&R's and/or ground leases requirements for all future interior spaces to be repainted only with "Super-Compliant" Architectural Coatings (http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings). "Low-VOC" refers to paints that meet the more stringent regulatory limits in South Coast AQMD Rule 1113; however, many manufacturers have reformulated to levels well below these limits. These are referred to as "Super-Compliant" Architectural Coatings.	Project sponsors and construction contractor(s).	Project sponsors submit to the Port documentation of CC&R's and/or ground lease requirements prior to building occupancy	Project sponsors to include in CC&R's and/or ground lease requirements with buildings tenants prior to building occupancy.	Considered complete upon project sponsor submittal to the Port of documentation of CC&R's and/or ground lease requirements	Port or Planning Department

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		permit.			
Mitigation Measure M-AQ-1d: Promote use of Green Consumer Products The project sponsors shall provide education for residential and commercial tenants concerning green consumer products. Prior to receipt of any certificate of final occupancy and every five years thereafter, the project sponsors shall work with the San Francisco Department of Environment (SF Environment) to develop electronic correspondence to be distributed by email annually to residential and/or commercial tenants of each building on the project site that encourages the purchase of consumer products that generate lower than typical VOC emissions. The correspondence shall encourage environmentally preferable purchasing and shall include contact information and links to SF Approved. The website may also be used as an informational resource by businesses and residents.	Project sponsors.	Prior to occupancy of the building by tenants and every five years thereafter, project sponsors to distribute educational materials to tenants.	Project sponsors to work with SF Environment to develop educational materials.	Considered complete after distribution of educational materials to residential and commercial tenants.	Port or Planning Department
Mitigation Measure M-AQ-1e: Electrification of Loading Docks The project sponsors shall ensure that loading docks for retail, light industrial or warehouse uses that will receive deliveries from refrigerated transport trucks incorporate electrification hook-ups for transportation refrigeration units to avoid emissions generated by idling refrigerated transport trucks.	Project sponsors	Prior to issuance of a building permit for a building containing loading docks for retail, light industrial or warehouse uses.	Project sponsors to provide construction plans to DBI or the Port to ensure compliance.	Considered complete upon approval of construction plans by DBI or the Port.	Port or Planning Department
Mitigation Measure M-AQ-1f: Transportation Demand Management. 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	Developer to prepare and implement the TDM Plan, which will be implemented by the Transportation Management Association and will	Developer to prepare TDM Plan and submit to Planning Staff prior to approval of the project	Project sponsors to submit the TDM Plan to Planning Staff for review. Transportation Demand Management	The TDM Plan is considered complete upon approval by the Planning Staff. Annual monitoring	Planning Department

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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: • 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 memberships for project occupants; • 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	be binding on all development parcels.		Association to submit monitoring report annually to Planning Staff and implement TDM Plan Adjustments (if required).	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.	

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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. 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. 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. *TDM Plan Monitoring and Reporting*: 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. • 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					

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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: o 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					

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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. o 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. o 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. o 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.) o 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. *TDM Plan Adjustments.* The TDM Plan shall be adjusted based on the					

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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.					
Mitigation Measure M-AQ-1g: Additional Mobile Source Control Measures The following Mobile Source Control Measures from the BAAQMD's 2010 Clean Air Plan shall be implemented: • Promote use of clean fuel-efficient vehicles through preferential (designated and proximate to entry) parking and/or installation of charging stations beyond the level required by the City's Green Building code, from 8 to 20 percent. • Promote zero-emission vehicles by requesting that any car share program operator include electric vehicles within its car share	Project sponsors and TMA.	On-going.	Project sponsors and TMA to implement measures	On-going.	Port or Planning Department/DBI

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program to reduce the need to have a vehicle or second vehicle as a part of the TDM program that would be required of all new developments.					
Mitigation Measure M-AQ-1h: Offset of Operational Emissions Prior to issuance of the final certificate of occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, the project sponsors, with the oversight of Port Staff, shall either: **(1) Directly fund or implement a specific offset project within San Francisco** to achieve reductions of 25 tons per year of ozone precursors and 1 ton of PM10. This offset is intended to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3. To qualify under this mitigation measure, the specific emissions offset project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements. A preferred offset project would be one implemented locally within the City and County of San Francisco. Prior to implementation of the offset project, the project sponsors must obtain Port Staff's approval of the proposed offset project by providing documentation of the estimated amount of emissions of ROG, NOx, and PM10 to be reduced (tons per year) within the SFBAAB from the emissions reduction project(s). The project sponsors shall notify Port Staff within 6 months of completion of the offset project for verification; or **(2) Pay a one-time mitigation offset fee** to the BAAQMD's Strategic Incentives Division in an amount no less than $18,030 per weighted ton of ozone precursors and PM10 per year above the significance threshold, calculated as the difference between total annual emissions at build out under mitigated conditions and the	Project sponsors.	Offsets for Phase 3/build-out of 1.3 million square feet: Upon completion of construction, and prior to issuance of a Certificate of Occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, developer shall demonstrate to the satisfaction of Port Staff that offsets have been funded or implemented.	Port Staff to approve the proposed offset project.	If project sponsor directly funds or implements a specific offset project, considered complete when Port Staff approves the proposed offset project prior to individual Certificates of Occupancy. If project sponsor pays a one-time mitigation offset fee, considered complete when documentation of payment is provided to Port Staff.	Port

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significance threshold in the EIR air quality analysis, which is 25 tons per year of ozone precursors and 1 ton of PM10, plus a 5 percent administrative fee, to fund one or more emissions reduction projects within the SFBAAB. This one-time fee is intended to fund emissions reduction projects to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3 or after completion of 1.3 million sf of development, whichever comes first. Documentation of payment shall be provided to Port Staff. Acceptance of this fee by the BAAQMD shall serve as an acknowledgment and commitment by the BAAQMD to implement one or more emissions reduction project(s) within 1 year of receipt of the mitigation fee to achieve the emission reduction objectives specified above, and provide documentation to Port Staff and to the project sponsors describing the project(s) funded by the mitigation fee, including the amount of emissions of ROG, NOx, and PM10 reduced (tons per year) within the SFBAAB from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation offset fee following implementation of the emission reduction project(s), the project sponsors shall be entitled to a refund in that amount from the BAAQMD. To qualify under this mitigation measure, the specific emissions retrofit project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements.		or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date. Offsets for subsequent phases/build-out: Upon completion of construction of each subsequent phase, and prior to issuance of a Certificate of Occupancy for the final building associated with such phase, developer shall demonstrate to the satisfaction of Port Staff that offsets			

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		have been funded or implemented, or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date and taking into account offsets previously funded, implemented. and/or purchased.			
Wind and Shadow Mitigation Measures					
Mitigation Measure M-WS-1: Identification and Mitigation of Interim Hazardous Wind Impacts When the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted, the requirements described below apply: **Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies**	Project sponsors, qualified wind consultant.	As outlined in Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies, a wind impact analysis shall be	Qualified wind consultant to prepare a scope of work to be approved by Port Staff and following approval of a scope of work submit a wind impact analysis to Port Staff for approval	Considered complete upon approval or issuance of building permit.	Port

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Subject Parcel Proposed for Construction	**Circumstance or Condition**	**Related Upwind Parcels**					
Parcel A	Construction of any new buildings on Parcel A.	NA		prepared for the listed circumstances prior to issuance of a building permit for any proposed building when the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted.	of feasible design changes to minimize interim hazardous wind impacts.		
Parcel B	Construction of any new buildings on Parcel B.	NA					
Parcel E2	Construction of any new buildings on Parcel E2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1 and G					
Parcel E3	Construction of any new buildings on Parcel E3 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building	Parcels E2 and G					

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	Schematic Design submittal.						
Parcel F	Construction of any new buildings on Parcel F.	NA					
Parcel G	Construction of any new buildings on Parcel G.	NA					
Parcel H1	Construction of any new buildings on Parcel H1 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels E2 and G					
Parcel H2	Construction of any new buildings on Parcel H2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1, E2, and E3 that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1, E2, and E3					

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Source: SWCA. **Requirements** A wind impact analysis shall be required prior to building permit issuance for any proposed new building that is located within the project site and meets the conditions described above. All feasible means (e.g., changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, adding architectural canopies or screens, or street furniture) to eliminate hazardous winds, if predicted, shall be implemented. After such design changes and features have been considered, the additional effectiveness of landscaping may also be considered. 1. Screening-level analysis. A qualified wind consultant approved by Port Staff shall review the proposed building design and conduct a "desktop review" in order to provide a qualitative result determining whether there could be a wind hazard. The screening-level analysis shall have the following steps: For each new building proposed that meets the criteria above, a qualified wind consultant shall review and compare the exposure, massing, and orientation of the proposed building(s) on the subject parcel to the building(s) on the same parcel in the representative massing models of the Proposed Project tested in the wind tunnel as part of this EIR and in any subsequent wind analysis testing required by this mitigation measure. The wind consultant shall identify and compare the potential impacts of the proposed building(s) to those identified in this EIR, subsequent wind testing that may have occurred under this mitigation measure, and to the City's wind hazard criterion. The wind consultant's analysis and evaluation shall consider the proposed building(s) in the context of the "Current Project Baseline," which, at any given time during construction of the Proposed Project, shall be defined as any existing buildings at the site, the as-built designs of all previously-completed structures and the then-current designs of					

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approved but yet unbuilt structures that would be completed by the time of occupancy of the subject building. (a) If the qualified wind consultant concludes that the building design(s) could not create a new wind hazard and could not contribute to a wind hazard identified by prior wind tunnel testing for the EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If there could be a new wind hazard, then a quantitative assessment shall be conducted using wind tunnel testing or an equivalent quantitative analysis that produces comparable results to the analysis methodology used in this EIR. (b) If the qualified wind consultant concludes that the building design(s) could create a new wind hazard or could contribute to a wind hazard identified by prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, but in the consultant's professional judgment the building(s) can be modified to reduce such impact to a less-than-significant level, the consultant shall notify Port Staff and the building applicant. The consultant's professional judgment may be informed by the use of "desktop" analytical tools, such as computer tools relying on results of prior wind tunnel testing for the Proposed Project and other projects (i.e., "desktop" analysis does not include new wind tunnel testing). The analysis shall include consideration of wind location, duration, and speed of wind. The building applicant may then propose changes or supplements to the design of the proposed building(s) to achieve this result. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting to include podiums and roof terraces, and/or the addition of architectural canopies or screens, or					

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street furniture. The effectiveness of landscaping may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design and landscaping for the building(s) could not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. (e) If the consultant is unable to demonstrate to the satisfaction of Port Staff that no increase in wind hazards would occur, wind tunnel testing or an equivalent method of quantitative evaluation producing results that can be compared to those used in the EIR and in any subsequent wind analysis testing required by this mitigation measure is required. The building(s) shall be wind tunnel tested in the context of a model that represents the Current Project Baseline, as described in Item 1, above. The testing shall include all the test points in the vicinity of a proposed building or group of buildings that were tested in this EIR, as well as all additional points deemed appropriate by the consultant to determine the wind performance for the building(s). Testing shall occur in places identified as important, e.g., building entrances, sidewalks, etc., and there may need to be additional test point locations considered. At the direction and approval of the Port, the "vicinity" shall be determined by the wind consultant, as appropriate for the circumstances, e.g., a starting concept for "vicinity" could be approximately 350 feet around the perimeter of the subject parcel(s), subject to the wind consultant's reducing or increasing this radial distance. The wind tunnel testing shall test the proposed building design(s), as well as the Current Project Baseline, in					

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order to clearly identify those differences that would be due to the proposed new building(s). In the event the wind tunnel testing determines that design of the building(s) would increase the hours of wind hazard or extent of area subject to hazardous winds beyond those identified in prior wind testing conducted for this EIR and in subsequent wind tunnel analysis required by this mitigation measure, the wind consultant shall notify Port Staff and the building applicant. The building applicant may then propose changes or supplements to the design of the proposed building(s) to eliminate wind hazards. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting building(s) to include podiums and roof terraces, adding architectural canopies or screens, or street furniture. All feasible means (changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, the addition of architectural canopies or screens, or street furniture) to eliminate wind hazards, if predicted, shall be implemented to the extent necessary to mitigate the impact. After such design changes and features have been considered, the additional effectiveness of landscaping at the size it is proposed to be installed may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design would not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If the proposed building(s) would result in a wind hazard exceedance, and the only way to eliminate the hazard is to redesign a proposed building, then the building shall be redesigned.					

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Mitigation Measure M-WS-2: Wind Reduction for Rooftop Winds If the rooftop of building(s) is proposed as public open space and/or a passive or active public recreational area prior to issuance of a building permit for the subject building(s), a qualified wind consultant shall prepare a wind impact and mitigation analysis in the context of the Current Project Baseline regarding the proposed architectural design. All feasible means (such as changing the proposed building mass or design; raising the height of the parapets to at least 8 feet, using a porous material where such material would be effective in reducing wind speeds; using localized wind screens, canopies, trellises, and/or landscaping around seating areas) to eliminate wind hazards shall be implemented as necessary. A significant wind impact would be an increase in the number of hours that the wind hazard criterion is exceeded or an increase in the area subjected to winds exceeding the hazard criterion as compared to existing conditions at the height of the proposed rooftop. The wind consultant shall demonstrate to the satisfaction of Port Staff that the building design would not create a new wind hazard or contribute to a wind hazard identified in prior wind testing conducted for this EIR.	Project Sponsors and qualified wind consultant.	Prior to issuance of a building permit for a building with a rooftop proposed as public open space and/or passive/active recreational area, the qualified wind consultant shall demonstrate that no new wind hazards or a contribution to a wind hazard identified in the EIR would occur in a wind hazard and mitigation analysis.	Port Staff to review wind hazard and mitigation analysis.	Considered complete upon approval or issuance of building permit	Port
Biological Resources Mitigation Measures					
Mitigation Measure M-BI-1a: Worker Environmental Awareness Program Training Project-specific Worker Environmental Awareness Program (WEAP) training shall be developed and implemented by a qualified biologist* and attended by all project personnel performing demolition or ground-disturbing work prior to beginning demolition or ground-disturbing work on site for	Project sponsors and qualified project biologist.	Prior to demolition or ground-disturbing activities.	Port staff to review and approve WEAP training. Project sponsors and qualified biological consultant to document WEAP	Considered complete after Port staff reviews and approves WEAP training, and confirm	Port or Planning Department

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each construction phase. The WEAP training shall include, but not be limited to, education about the following: a. Applicable State and Federal laws, environmental regulations, project permit conditions, and penalties for non-compliance. b. Special-status plant and animal species with the potential to be encountered on or in the vicinity of the project site during construction. c. Avoidance measures and a protocol for encountering special-status species including a communication chain. d. Preconstruction surveys and biological monitoring requirements associated with each phase of work and at specific locations within the project site (e.g., shoreline work) as biological resources and protection measures will vary depending on where work is occurring within the site, time of year, and construction activity. e. Known sensitive resource areas in the project vicinity that are to be avoided and/or protected as well as approved project work areas, access roads, and staging areas. Best management practices (BMPs) (e.g., straw wattles or spill kits) and their location around the project site for erosion control and species exclusion, in addition to general housekeeping requirements. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.			training and provide documentation during annual mitigation report to the Port.	compliance in annual mitigation report.	
Mitigation Measure M-BI-1b: Nesting Bird Protection Measures The project site's proximity to San Francisco Bay and its current lack of	Project sponsors, qualified biological consultant.	Prior to issuance of demolition or building	If construction will occur during nesting season, qualified biological consultant to	Considered complete upon issuance of demolition or	Port or Planning Department

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activity result in a more attractive environment for birds to nest than other San Francisco locations (e.g., the Financial District) that have higher levels of site activity and human presence. Nesting birds and their nests shall be protected during construction by implementation of the following measures for each construction phase: a. To the extent feasible, conduct initial activities including, but not limited to, vegetation removal, tree trimming or removal, ground disturbance, building demolition, site grading, and other construction activities which may compromise breeding birds or the success of their nests (e.g., CRF, rock drilling, rock crushing, or pile driving), outside of the nesting season (January 15–August 15). b. If construction during the bird nesting season cannot be fully avoided, a qualified wildlife biologist* shall conduct pre-construction nesting surveys within 14 days prior to the start of construction or demolition at areas that have not been previously disturbed by project activities or after any construction breaks of 14 days or more. Surveys shall be performed for suitable habitat within 250 feet of the project site in order to locate any active passerine (perching bird) nests and within 500 feet of the project site to locate any active raptor (birds of prey) nests, waterbird nesting pairs, or colonies. c. If active nests are located during the preconstruction bird nesting surveys, a qualified biologist shall evaluate if the schedule of construction activities could affect the active nests and if so, the following measures would apply: i. If construction is not likely to affect the active nest, construction may proceed without restriction; however, a qualified biologist shall regularly monitor the nest at a frequency determined appropriate for the surrounding construction activity to confirm there is no adverse effect. Spot-check monitoring frequency		permits for construction during the nesting season (January 15 to August 15) ~~(August 16–January 14)~~	conduct bat surveys and present results to Port Staff	building permits for construction	

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would be determined on a nest-by-nest basis considering the particular construction activity, duration, proximity to the nest, and physical barriers which may screen activity from the nest. The qualified biologist may revise his/her determination at any time during the nesting season in coordination with the Port of San Francisco or Planning Department. ii. If it is determined that construction may affect the active nest, the qualified biologist shall establish a no-disturbance buffer around the nest(s) and all project work shall halt within the buffer until a qualified biologist determines the nest is no longer in use. Typically, these buffer distances are 250 feet for passerines and 500 feet for raptors; however, the buffers may be adjusted if an obstruction, such as a building, is within line-of-sight between the nest and construction. iii. Modifying nest buffer distances, allowing certain construction activities within the buffer, and/or modifying construction methods in proximity to active nests shall be done at the discretion of the qualified biologist and in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Necessary actions to remove or relocate an active nest(s) shall be coordinated with the Port of San Francisco or Planning Department and approved by CDFW. iv. Any work that must occur within established no-disturbance buffers around active nests shall be monitored by a qualified biologist. If adverse effects in response to project work within the buffer are					

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observed and could compromise the nest, work within the no-disturbance buffer(s) shall halt until the nest occupants have fledged. v. Any birds that begin nesting within the project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels, so exclusion zones around nests may be reduced or eliminated in these cases as determined by the qualified biologist in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Work may proceed around these active nests as long as the nests and their occupants are not directly impacted. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-2: Avoidance and Minimization Measures for Bats A qualified biologist (as defined by CDFW*) who is experienced with bat surveying techniques (including auditory sampling methods), behavior, roosting habitat, and identification of local bat species shall be consulted prior to demolition or building relocation activities to conduct a pre-construction habitat assessment of the project site (focusing on buildings to be demolished or relocated) to characterize potential bat habitat and identify potentially active roost sites. No further action is required should the pre-construction habitat assessment not identify bat habitat or signs of potentially active bat roosts within the project site (e.g., guano, urine staining, dead bats, etc.).	Project sponsors, qualified biological consultant, and CDFW.	Prior to issuance of demolition or building permits when trees or shrubs would be removed or buildings demolished as part of an individual project.	Qualified biological consultant to conduct bat surveys and present results to Port Staff.	Considered complete upon issuance of demolition or building permits.	Port or Planning Department

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The following measures shall be implemented should potential roosting habitat or potentially active bat roosts be identified during the habitat assessment in buildings to be demolished or relocated under the Proposed Project or in trees adjacent to construction activities that could be trimmed or removed under the Proposed Project: a) In areas identified as potential roosting habitat during the habitat assessment, initial building demolition, relocation, and any tree work (trimming or removal) shall occur when bats are active, approximately between the periods of March 1 to April 15 and August 15 to October 15, to the extent feasible. These dates avoid the bat maternity roosting season and period of winter torpor. [Torpor refers to a state of decreased physiological activity with reduced body temperature and metabolic rate.] b) Depending on temporal guidance as defined below, the qualified biologist shall conduct pre-construction surveys of potential bat roost sites identified during the initial habitat assessment no more than 14 days prior to building demolition or relocation, or any tree trimming or removal. c) If active bat roosts or evidence of roosting is identified during pre-construction surveys, the qualified biologist shall determine, if possible, the type of roost and species. A no-disturbance buffer shall be established around roost sites until the qualified biologist determines they are no longer active. The size of the no-disturbance buffer would be determined by the qualified biologist and would depend on the species present, roost type, existing screening around the roost site (such as dense vegetation or a building), as well as the type of construction activity that would occur around the roost site. d) If special-status bat species or maternity or hibernation roosts are detected during these surveys, appropriate species- and roost-specific avoidance and protection measures shall be					

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developed by the qualified biologist in coordination with CDFW. Such measures may include postponing the removal of buildings or structures, establishing exclusionary work buffers while the roost is active (e.g., 100-foot no-disturbance buffer), or other compensatory mitigation. e) The qualified biologist shall be present during building demolition, relocation, or tree work if potential bat roosting habitat or active bat roosts are present. Buildings and trees with active roosts shall be disturbed only under clear weather conditions when precipitation is not forecast for three days and when daytime temperatures are at least 50 degrees Fahrenheit. f) The demolition or relocation of buildings containing or suspected to contain bat roosting habitat or active bat roosts shall be done under the supervision of the qualified biologist. When appropriate, buildings shall be partially dismantled to significantly change the roost conditions, causing bats to abandon and not return to the roost, likely in the evening and after bats have emerged from the roost to forage. Under no circumstances shall active maternity roosts be disturbed until the roost disbands at the completion of the maternity roosting season or otherwise becomes inactive, as determined by the qualified biologist. g) Trimming or removal of existing trees with potential bat roosting habitat or active (non-maternity or hibernation) bat roost sites shall follow a two-step removal process (which shall occur during the time of year when bats are active, according to a) above, and depending on the type of roost and species present, according to c) above). i. On the first day and under supervision of the qualified biologist, tree branches and limbs not containing cavities or fissures in which bats could roost shall be cut using chainsaws.					

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ii. On the following day and under the supervision of the qualified biologist, the remainder of the tree may be trimmed or removed, either using chainsaws or other equipment (e.g., excavator or backhoe). All felled trees shall remain on the ground for at least 24 hours prior to chipping, off-site removal, or other processing to allow any bats to escape, or be inspected once felled by the qualified biologist to ensure no bats remain within the tree and/or branches. iv. * CDFW defines credentials of a "qualified biologist" within permits or authorizations issued for a project. Typical qualifications include a minimum of five years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-3: Pile Driving Noise Reduction for Protection of Fish and Marine Mammals Prior to the start of reconstruction of the bulkhead in Reach II, the project sponsors shall prepare a detailed Construction Plan that outlines the details of the piling installation approach. This Plan shall be reviewed and approved by Port Staff. The information provided in this plan shall include, but not be limited to, the following: • The type of piling to be used (whether sheet pile or H-pile); • The piling size to be used; • The method of pile installation to be used; • Noise levels for the type of piling to be used and the method of pile driving; • Recalculation of potential underwater noise levels that could be generated during pile driving using methodologies outlined in	Project sponsors.	Prior to construction of the bulkhead in Reach II, project sponsors to prepare a Construction Plan.	Project sponsors to prepare a Construction Plan and submit it to the Port for review and approval. If determined necessary, sound attenuation and monitoring plan would then be developed. Results of the vibration monitoring would be provided to NOAA if required. An alternative to the sound	Considered complete upon review and approval of the Construction Plan. If determined necessary, approval of the sound attenuation and monitoring plan would be required by Port Staff, and monitoring results would be provided to	Port

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CalTrans 2009 [Caltrans, Technical Guidance for Assessment and Mitigation]; and • When pile driving is to occur. If the results of the recalculations provided in the detailed Construction Plan for pile driving discussed above indicate that underwater noise levels are less than 183 dB (SEL) for fish at a distance of 33 feet (less than or equal to 10 meters) and 160 dB (RMS) sound pressure level or 120 dB (RMS) re 1 µPa impulse noise level for marine mammals for a distance 1,640 feet (500 meters), then no further measures are required to mitigate underwater noise. If recalculated noise levels are greater than those identified above, then the project sponsors shall develop a sound attenuation reduction and monitoring plan. This plan shall be reviewed and approved by Port Staff. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile-driving activities, and all BMPs to be taken to reduce impact hammer pile-driving sound in the marine environment to an intensity level of less than 183 and 160/120 dB (as identified above) at distances of 33 feet (less than or equal to 10 meters) for fish and 1,640 feet (500 meters) for marine mammals. The sound-monitoring results shall be made available to NOAA Fisheries. If, in the case of marine mammals, recalculated noise levels are greater than 160 dB (peak) at less than or equal to 1,640 feet (500 meters), then the project sponsors shall consult with NOAA to determine the need to obtain an Incidental Harassment Authorization (IHA) under the MMPA. If an IHA is required by NOAA, an application for an IHA shall be prepared by the project sponsors. The plan shall incorporate as appropriate, but not be limited to, the following BMPs: • Any impact-hammer-installed soldier wall H-pilings or sheet piling shall be conducted in strict accordance with the Long-Term Management Strategy (LTMS) work windows for Pacific herring,* during which the presence of Pacific herring in the project site is			attenuation and monitoring plan is to consult with NOAA and provide evidence to the satisfaction of Port Staff.	NOAA.	

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
expected to be minimal unless, where applicable, NOAA Fisheries in their Section 7 consultation with the Corps determines that the potential effect to special-status fish species is less than significant. • If pile installation using impact hammers must occur at times other than the approved LTMS work window for Pacific herring or result in underwater sound levels greater than those identified above, the project sponsors shall consult with both NOAA Fisheries and CDFW on the need to obtain incidental take authorizations to address potential impacts to longfin smelt and green sturgeon associated with reconstruction of the steel sheet pile bulkhead in Reach II, and to implement all requested actions to avoid impacts. • A 1,640-foot (500-meter) safety zone shall be established and maintained around the sound source to the extent such a safety zone is located within in-water areas, for the protection of marine mammals in the event that sound levels are unknown or cannot be adequately predicted. • In-water work activities associated with reconstruction of the steel sheet pile bulkhead in Reach II shall be halted when a marine mammal enters the 1,640-foot (500-meter) safety zone and shall cease until the mammal has been gone from the area for a minimum of 15 minutes. • A "soft start" technique shall be used in all pile driving, giving marine mammals an opportunity to vacate the area. • A NOAA Fisheries-approved biological monitor shall conduct daily surveys before and during impact hammer pile driving to inspect the safety zone and adjacent San Francisco Bay waters for marine mammals. The monitor shall be present as specified by NOAA Fisheries during the impact pile-driving phases of construction.					

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• Other BMPs shall be implemented as necessary, such as using bubble curtains or an air barrier, to reduce underwater noise levels to acceptable levels. Alternatively, the project sponsors may consult with NOAA directly and submit evidence to their satisfaction of Port Staff of NOAA consultation. In such case, the project sponsors shall comply with NOAA recommendations and/or requirements. * U.S. Army Corps of Engineers, Programmatic Essential Fish Habitat (EFH) Assessment for the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region. July 2009.					
Mitigation Measure M-BI-4: Compensation for Fill of Jurisdictional Waters To offset temporary and/or permanent impacts to jurisdictional waters of San Francisco Bay adjacent to the 28-Acre Site, construction associated with repair or replacement of the Reach II bulkhead shall be conducted as required by regulatory permits (i.e., those issued by the Corps, RWQCB, and BCDC) and in coordination with NMFS as appropriate. If required by regulatory permits, compensatory mitigation shall be provided as necessary, at a minimum ratio of 1:1 for fill beyond that required for normal repair and maintenance of existing structures. Compensation may include on-site or off-site shoreline improvements or intertidal/subtidal habitat enhancements along San Francisco's eastern waterfront through removal of chemically treated wood material (e.g., pilings, decking, etc.) by pulling, cutting, or breaking off piles at least 1 foot below mudline or removal of other unengineered debris (e.g., concrete-filled drums or large pieces of concrete). Improvements would be implemented in accordance with NMFS as appropriate. On-site or off-site restoration/enhancement plans, if required, must be prepared by a qualified biologist prior to construction and approved by the permitting agencies prior to beginning construction, repair, or	Project sponsors. In accordance with regulatory permits and coordination with NMFS, compensatory mitigation, if required, shall be provided at a minimum ratio of 1:1.	Prior to any construction at the Reach II bulkhead or in accordance with regulatory permits.	Project sponsors to comply with regulatory permits	Considered complete after issuance of regulatory permits for the fill of jurisdictional waters.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
replacement of the Reach II bulkhead. Implementation of restoration/enhancement activities by the permittee shall occur prior to project impacts, whenever possible.					
Geology and Soils Mitigation Measures					
Mitigation Measure M-GE-3a: Reduction of Rock Fall Hazards The project sponsors shall prepare a site-specific geotechnical report(s), subject to review and approval by the Port, that evaluates the design and construction methods proposed for Parcels PKS, C-1, and C-2, the Irish Hill playground, and 21st Street. The investigations shall determine the potential for rock fall hazards. If the potential for rock fall hazards is identified, the site-specific geotechnical investigations shall identify measures to minimize such hazards to be implemented by the project sponsors. Possible measures to reduce the impacts of potential rock fall hazards include, but are not limited to, the following: • Limited regrading to adjust slopes to stable gradient; • Rock fall containment measures such as installation of drape nets, rock fall catchment fences, or diversion dams; and • Site design measures such as implementing setbacks to ensure that buildings and public uses are outside areas that could be subject to damage as a result of rock fall.	Project sponsors.	Prior to the start of construction activities at Parcels PKS, C-1, C-2, the Irish Hill playground, and 21st Street.	Project sponsors to submit geotechnical report(s) to the Port for review and approval.	Considered complete upon approval of geotechnical report(s) and any associated measures to minimize rock fall hazards.	Port
Mitigation Measure M-GE-3b: Signage and Restricted Access to Pier 70 Prior to issuance of the first certificate of occupancy under the Proposed Project, the project sponsors shall install a gate or an equivalent measure to prevent access to the existing dilapidated pier at the project site. A sign shall be posted at the potential access point informing the public of potential risks associated with use of the structure and prohibiting public access.	Project sponsors to install signage and gate or equivalent measure to prevent access to the existing dilapidated pier.	Prior to issuance of the first Certificate of Occupancy.	Project sponsors to document installation of signage and gate or equivalent measure	Considered complete upon installation of the signage and gate or equivalent measure. The measure will be documented in the annual	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
				mitigation and monitoring report.	
Mitigation Measure M-GE-6: Paleontological Resources Monitoring and Mitigation Program Prior to issuance of a building permit for construction activities that would disturb sedimentary rocks of the Franciscan Complex (based on the site-specific geotechnical investigation or other available information), the project sponsors shall retain the services of a qualified paleontological consultant having expertise in California paleontology to design and implement a Paleontological Resources Monitoring and Mitigation Program (PRMMP). The PRMMP shall specify the timing and specific locations where construction monitoring would be required; emergency discovery procedures; sampling and data recovery procedures; procedures for the preparation, identification, analysis, and curation of fossil specimens and data recovered; preconstruction coordination procedures; and procedures for reporting the results of the monitoring program. The PRMMP shall be consistent with the Society for Vertebrate Paleontology (SVP) Standard Guidelines for the mitigation of construction-related adverse impacts to paleontological resources and the requirements of the designated repository for any fossils collected. During construction, earth-moving activities that have the potential to disturb previously undisturbed native sediment or sedimentary rocks shall be monitored by a qualified paleontological consultant having expertise in California paleontology. Monitoring need not be conducted for construction activities in areas where the ground has been previously disturbed or when construction activities would encounter artificial fill, Young Bay Mud, marsh deposits, or non-sedimentary rocks of the Franciscan Complex. If a paleontological resource is discovered, construction activities in an appropriate buffer around the discovery site shall be suspended for a maximum of 4 weeks. At the direction of the Environmental Review Officer	Project sponsors and qualified paleontological consultant.	Prior to issuance of a building permit where construction activities would disturb sedimentary rocks of the Franciscan complex. If earth-moving activities have the potential to disturb previously undisturbed native sediment, a qualified paleontological consultant would monitor the activities.	Qualified paleontological consultant to prepare a PRMMP for review and approval by the ERO A single PRMMP or multiple PRMMPs may be produced to address project phasing. In compliance with the requirements of the PRMMP, a qualified paleontological consultant would monitor construction and provide a monitoring report for inclusion in the annual mitigation and monitoring report.	Considered complete upon documentation to the satisfaction of that building permit construction activities would not disturb sedimentary rocks of the Franciscan Complex, or review and approval of the PRMMP, if required, by the Planning Department. Monitoring activities and compliance would be documented in the annual mitigation and monitoring report.	Port and Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
(ERO), the suspension of construction can be extended beyond 4 weeks if needed to implement appropriate measures in accordance with the PRMMP, but only if such a suspension is the only feasible means to prevent an adverse impact on the paleontological resource. The paleontological consultant's work shall be conducted at the direction of the City's ERO. Plans and reports prepared by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.					
Hydrology and Water Resources Mitigation Measures					
Mitigation Measure M-HY-2a: Design and Construction of Proposed Pump Station for Options 1 and 3 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline, the Proposed Project at full build-out, and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to	Project sponsors.	Prior to construction of the proposed pump station for Options 1 and 3.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
approval by the SFPUC.					
Mitigation Measure M-HY-2b: Design and Construction of Proposed Pump Station for Option 2 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; • During wet weather, wastewater flows from the project site shall bypass the wet-weather facilities and be conveyed to the combined sewer system in such a manner that they do not contribute to combined sewer discharges within the 20th Street sub-basin; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to approval by the SFPUC.	Project sponsors.	Prior to construction of the proposed pump station for Option 2.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC
Hazards and Hazardous Materials Mitigation Measures					
Mitigation Measure M-HZ-2a: Conduct Transformer Survey and Remove PCB Transformers	Project sponsors and qualified contractor.	Prior to the demolition, renovation, or	Qualified contractor to survey and determine the	Considered complete if no PCBs found or	Port

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The project sponsors shall retain a qualified contractor to survey any building and/or structure planned for demolition, renovation, or relocation to identify all electrical transformers in use and in storage. The contractor shall determine the PCB content using name plate information, or through sampling if name-plate data do not provide adequate information regarding the PCB content of the dielectric equipment. The project sponsors shall retain a qualified contractor to remove and dispose of all transformers in accordance with the requirements of Title 40 of the Code of Federal Regulations, Section 761.60 (described under the Regulatory Framework) and the Title 22 of the California Code of Regulations, Section 66261.24. The removal shall be completed in advance of any building or structural demolition, renovation, or relocation.		relocation of any building and/or structure.	PCB content of transformers in use and storage. If necessary, the contractor shall remove and dispose of transformers in accordance with applicable regulations.	upon appropriate disposal and removal of transformers. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	
Mitigation Measure M-HZ-2b: Conduct Sampling and Cleanup if Stained Building Materials Are Observed In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB (determined in accordance with Mitigation Measure H-HZ-2a), or the leakage has resulted in visible staining of the building materials or surrounding surface areas, the project sponsors shall retain a qualified professional to obtain samples of the building materials for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration of 1 part per million, then the project sponsors shall retain a contractor to clean the surface to a concentration of 1 part per million or less in accordance with Title 40 of the Code of Federal Regulations, Section 761.61(a). The sampling and cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB, or the leakage has resulted in visible staining of the building materials or surrounding surface areas. If determined necessary, sampling and	If leakage or spillage occurs, qualified contractor to obtain samples and clean the surface (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
		cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.			
Mitigation Measure M-HZ-2c: Conduct Soil Sampling if Stained Soil is Observed In the event that leakage is observed in the vicinity of a PCB-containing transformer that has resulted in visible staining of the surrounding soil (determined in accordance with Mitigation Measure M-HZ-2a), the project sponsors shall retain a qualified professional to obtain soil samples for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration less than the residential Environmental Screening Level of 0.22 milligrams per kilogram, then no further action shall be required. If PCBs are identified at a concentration greater than or equal to the residential Environmental Screening Level of 0.22 milligrams per kilogram, then the project sponsors shall require the contractor to implement the requirements of the Pier 70 RMP, as required by Mitigation Measure M-HZ-6. The sampling and implementation of the Pier 70 RMP requirements shall be completed in advance of any building or structural demolition, renovation, relocation, or subsequent development.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer, or the leakage has resulted in visible staining of soils. If determined necessary, sampling and removal shall be completed in advance of any building or structural demolition, renovation, or relocation.	If leakage or spillage occurs, qualified contractor to obtain samples and remove any PCBs (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented hazardous materials manifestos and in the annual mitigation and monitoring report.	Port
Mitigation Measure M-HZ-3a: Implement Construction and Maintenance-Related Measures of the Pier 70 Risk Management Plan The project sponsors shall provide notice to the RWQCB, DPH, and Port in accordance with the Pier 70 RMP, in advance of ground-disturbing activities	Project sponsors and construction contractor(s).	Notice shall be provided to the RWQCB, DPH, and Port in accordance	All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB,	Considered complete upon notice to the RWQCB, DPH, and Port.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover (Pier 70 RMP Sections 4.1, 4.2, and 6.3). The project sponsors shall also (through their contractor) implement the following measures of the Pier 70 RMP during construction to provide for the protection of worker and public health, including nearby schools and other sensitive receptors, and to ensure appropriate disposition of soil and groundwater removed from the site: • A project-specific health and safety plan (Pier 70 RMP Section 6.4); • Access controls (Pier 70 RMP Section 6.1); • Soil management protocols, including those for: o soil movement (Pier 70 RMP Section 6.5.1), o soil stockpile management (Pier 70 RMP Section 6.5.2), and o import of clean soil (including preparation of a project-specific Soil Import Plan) (Pier 70 RMP Section 6.5.3); • A dust control plan in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code and other applicable regulations as well as site-specific measures (Pier 70 RMP Section 6.6); • A project-specific stormwater pollution prevention control plan (Pier 70 RMP Section 6.7); • Off-site soil disposal (Pier 70 RMP Section 6.8);		with the Pier 70 RMP prior to any ground-disturbing activities that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover.	DPH, and Port for review and approval in accordance with the notification requirements of the RMP.		

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• A project-specific groundwater management plan for temporary dewatering (Pier 70 RMP Section 6.10.1); • Risk management measures to minimize the potential for new utilities to become conduits for the spread of groundwater contamination (Pier 70 RMP Section 6.10.2); • Appropriate design of underground pipelines to prevent the intrusion of groundwater or degradation of pipeline construction materials by chemicals in the soil or groundwater (Pier 70 RMP Section 6.10.3): and • Protocols for unforeseen conditions (Pier 70 RMP Section 6.9). Following completion of construction activities that disturb any durable cover, the integrity of the previously existing durable cover shall be re-established in accordance with Section 6.2 of the Pier 70 RMP and the protocols described in the Operations and Maintenance Plan of the Pier 70 RMP. All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB. DPH, and/or Port for review and approval in accordance with the notification requirements of the RMP (Pier 70 RMP Section 4.0).					
Mitigation Measure M-HZ-3b: Implement Well Protection Requirements of the Pier 70 Risk Management Plan In accordance with Section 6.11 of the Pier 70 RMP, the project sponsors shall review available information prior to any ground-disturbing activities to identify any monitoring wells within the construction area, including any wells installed by PG&E in support of investigation and remediation of the PG&E Responsibility Area within the 28-Acre Site. The wells shall be appropriately protected during construction. If construction necessitates destruction of an existing well, the destruction shall be conducted in accordance with California and DPH well abandonment regulations, and	Project sponsors	Prior to ground-disturbing activities.	Project sponsors to identify any monitoring wells in the area, and appropriately protect them. If destruction of a well is required, it would be conducted in accordance with	Monitoring complete if no wells or activities would be demonstrated in RWQCB and DPH regulatory applications and documented in the annual mitigation and	Port

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must be approved by the RWQCB. The Port shall also be notified of the destruction. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.			applicable regulations and the Port would be notified. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.	monitoring report.	
Mitigation Measure M-HZ-4: Implement Construction-Related Measures of the Hoedown Yard Site Management Plan In accordance with the notification requirements of the Hoedown Yard SMP (Section 4.2), the project sponsors (through their contractor) shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard. During construction, the contractor shall implement the following measures of the Hoedown Yard SMP to provide for the protection of worker and public health, and to ensure appropriate disposition of soil and groundwater. • A project-specific Health and Safety Plan (Hoedown Yard SMP Section 5): o Dust management measures in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code. The specific measures must address	Project sponsors	Prior to ground-disturbing activities at the Hoedown Yard.	The project sponsors shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard.	Considered complete after notification to the RWQCB, DPH, and/or Port.	DPH

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dust control (SMP Section 6.1) and dust monitoring (SMP Section 6.2). • Soil and water management measures, including: o soil handling (Hoedown Yard SMP Section 7.1.1), o stockpile management (Hoedown Yard SMP Section 7.1.2), o on-site reuse of soil (Hoedown Yard SMP Section 7.1.3), o off-site soil disposal (Hoedown Yard SMP Section 7.1.4), o excavation dewatering (Hoedown Yard SMP Section 7.1.5). o stormwater management (Hoedown Yard SMP Section 7.1.6), o site access and security (Hoedown Yard SMP Section 7.1.7), and o unanticipated subsurface conditions (Hoedown Yard SMP Section 7.2).					
Mitigation Measure M-HZ-5: Delay Development on Proposed Parcels H1, H2, and E3 Until Remediation of the PG&E Responsibility Area is Complete The project sponsors shall not start construction of the proposed development or associated infrastructure on proposed Parcel H1, H2, and E3 until PG&E's remedial activities in the PG&E Responsibility Area within and adjacent to these parcels have been completed to the satisfaction of the RWQCB, consistent with the terms of the remedial action plan prepared by PG&E and approved by RWQCB. During subsequent development, the project sponsors shall implement the requirements of the Pier 70 RMP within the PG&E Responsibility Area, as enforced through the recorded deed restriction on the Pier 70 Master Plan Area.	Project sponsors and PG&E.	Prior to the start of construction on proposed Parcels H1, H2, and E3. During subsequent development, for implementation of Pier 70 RMP Requirements.	PG&E to complete remedial activities in the PG&E Responsibility Area within and adjacent to Parcels H1, H2, and E3 to satisfaction of RWQCB. Project sponsor to implement Pier 70 RMP requirements, enforced by recorded deed	Considered complete upon RWQCB confirmation of satisfaction with PG&E remedial action.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
			restriction.		
Mitigation Measure M-HZ-6: Additional Risk Evaluations and Vapor Control Measures for Residential Land Uses The notification submittals required under Mitigation Measure M-HZ-3a shall describe site conditions at the time of development. If residential land uses are proposed at or near locations where soil vapor or groundwater concentrations exceed residential cleanup standards for vapor intrusion (based on information provided in the Pier 70 RMP), this information shall be included in the notification submittal and the RWQCB and DPH determine whether a risk evaluation is required. If required, the project sponsors or future developer(s) shall conduct a risk evaluation in accordance with the Pier 70 RMP. The risk evaluation shall be based on the soil vapor and groundwater quality presented in the Pier 70 RMP and the proposed building design. The project sponsors shall conduct additional soil vapor or groundwater sampling as needed to support the risk evaluation, subject to the approval of the RWQCB and DPH. If the risk evaluation demonstrates that there would be unacceptable health risks to residential users (i.e., greater than 1×10^{-6} incremental cancer risk or a non-cancer hazard index greater than 1), the project sponsors shall incorporate measures into the building design to minimize or eliminate exposure to soil vapor through the vapor intrusion pathway, subject to review and approval by the RWQCB and DPH. Appropriate vapor intrusion measures include, but are not limited to design of a safe building configuration that would preclude vapor intrusion; installation of a vapor barrier; and/or design and installation of an active vapor monitoring and extraction system. If the risk evaluation demonstrates that vapor intrusion risks would be within acceptable levels (less than 1×10^{-6} incremental cancer risk or a non-cancer hazard index less than 1) under a project-specific development scenario, no additional action shall be required. (For instance, the project sponsors could locate all residential uses above the first floor which, in some cases, could eliminate the potential for residential exposure to organic compounds in soil	Project sponsors	Prior to ground-disturbing activities of residential land uses if near locations where soil vapor or groundwater concentrations exceed residential cleanup standard for vapor intrusion.	Site conditions shall be recorded by the project sponsors and included in the notification submittal to the RWQCB and DPH. If required, the project sponsors shall conduct a risk evaluation in accordance with the Pier 70 RMP and incorporate measures to minimize or eliminate exposure to soil vapor.	Considered complete upon a notification submittal to the RWQCB and DPH. If a risk evaluation and further measures are required, they would be reviewed and approved by the RWQCB and DPH.	Port

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
vapors.)					
Mitigation Measure M-HZ-7: Modify Hoedown Yard Site Mitigation Plan The project sponsors shall conduct a risk evaluation to evaluate health risks to future site occupants, visitors, and maintenance workers under the proposed land use within the Hoedown Yard. The risk evaluation shall be based on the soil, soil vapor, and groundwater quality data provided in the existing SMP and supporting documents and the project sponsors shall conduct additional sampling as needed to support the risk evaluation. Based on the results of the risk evaluation, the project sponsors shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals (i.e., an excess cancer risk of 1×10^{-6} and a Hazard Index of 1) applicable to each land use proposed for development within the Hoedown Yard. At a minimum, the modified SMP shall include the following components: • Regulatory-approved cleanup levels for the proposed land uses; • A description of existing conditions, including a comparison of site data to regulatory-approved cleanup levels; • Regulatory oversight responsibilities and notification requirements; • Post-development risk-management measures, including management measures for the maintenance of engineering controls (e.g., durable covers, vapor mitigation systems) and site maintenance activities that could encounter contaminated soil; • Monitoring and reporting requirements; and • An operations and maintenance plan, including annual inspection requirements.	Project sponsors shall conduct a risk evaluation, and shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals applicable to each land use proposed for development within the Hoedown Yard.	Prior to ground-disturbing activities at the Hoedown Yard.	Project sponsors shall submit the risk evaluation and proposed risk management plan to the RWQCB, DPH, and Port for review and approval.	Considered complete upon review and approval of the risk evaluation and proposed risk management plan by the RWQCB, DPH, and Port.	Port, DPH

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]
The risk evaluation and proposed risk management plan shall be submitted to the RWQCB, DPH, and Port for review and approval prior to the start of ground disturbance.					
Mitigation Measure M-HZ-8a: Prevent Contact with Serpentinite Bedrock and Fill Materials in Irish Hill Playground The project sponsors shall ensure that a minimum 2-foot thick durable cover of asbestos-free clean imported fill with a vegetated cover is emplaced above serpentinite bedrock and fill materials in the level portions of Irish Hill Playground. The fill shall meet the soil criteria for clean fill specified in Table 4 of the Pier 70 RMP and included in Appendix F, Hazards and Hazardous Materials, of this EIR. Barriers shall be constructed to preclude direct climbing on the bedrock of the Irish Hill remnant. The design of the durable cover and barriers shall be submitted to the DPH and Port for review and approval prior to construction of the Irish Hill Playground.	Project sponsors to design and install a 2-foot-thick durable cover over serpentinite bedrock and fill in the level portions of the Irish Hill Playground and barriers to preclude direct climbing on the bedrock of the Irish Hill remnant.	Submittal of design of durable cover and barriers to DPH and Port prior to construction of the Irish Hill Playground.	Project sponsors shall submit design of durable covers and barriers to DPH, Port	Considered complete upon review and approval of the design and installation of the 2-foot-thick durable cover and barriers by the DPH and Port.	Port, DPH
Mitigation Measure M-HZ-8b: Restrictions on the Use of Irish Hill Playground To the extent feasible, the project sponsors shall ensure that the Irish Hill Playground is not operational until ground disturbing activities for construction of the new 21st Street and on the adjacent parcels (PKN, PKS, HDY-1, HDY2, C1, and C2) is completed. If this is not feasible, and Irish Hill Playground is operational prior to construction of the new 21st Street and construction on all adjacent parcels, the playground shall be closed for use when ground-disturbing activities are occurring for the construction of the new 21st Street and on any of the adjacent parcels.	Project sponsors.	Prior to and during construction of the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2.	Project sponsors shall ensure the playground is not operational until ground-disturbing activities at the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2 are complete; or playground shall be closed for use when ground-disturhing activities are occurring	Considered complete when the aforementioned parcels' ground-disturbing activities are finished. Documentation would occur in the annual mitigation and monitoring report.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
IMPROVEMENT MEASURES FOR THE PIER 70 MIXED-USE DISTRICT PROJECT					
Improvement Measure I-CR-4a: Documentation Before any demolition, rehabilitation, or relocation activities within the UIW Historic District, the project sponsors should retain a professional who meets the Secretary of the Interior's Professional Qualifications Standards for Architectural History to prepare written and photographic documentation of all contributing buildings proposed for demolition within the UIW Historic District. The documentation for the property should be prepared based on the National Park Service's Historic American Building Survey (HABS)/Historic American Engineering Record (HAER) Historical Report Guidelines. This type of documentation is based on a combination of both HABS/HAER standards and National Park Service's policy for photographic documentation, as outlined in the NRHP and National Historic Landmarks Survey Photo Policy Expansion. The written historical data for this documentation should follow HABS/HAER standards. The written data should be accompanied by a sketch plan of the property. Efforts should also be made to locate original construction drawings or plans of the property during the period of significance. If located, these drawings should be photographed, reproduced, and included in the dataset. If construction drawings or plans cannot be located, as-built drawings should be produced. Either HABS/HAER-standard large format or digital photography should be used. If digital photography is used, the ink and paper combinations for printing photographs must be in compliance with NR-NHL Photo Policy Expansion and have a permanency rating of approximately 115 years. Digital photographs should be taken as uncompressed, TIFF file format. The size of each image should be 1,600 by 1,200 pixels at 330 pixels per inch or larger, color format, and printed in black and white. The file name for each electronic image should correspond with the index of photographs and photograph label. Photograph views for the dataset should include (a)	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Project Sponsor Documentation: Before any demolition, rehabilitation, or relocation activities within the UIW Historic District.	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual to complete historic resources documentation, and transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Considered complete when documentation is reviewed and approved by Port Preservation Staff, and the documentation is provided to the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Port

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
contextual views; (b) views of each side of each building and interior views, where possible; (c) oblique views of buildings; and (d) detail views of character-defining features, including features on the interiors of some buildings. All views should be referenced on a photographic key. This photographic key should be on a map of the property and should show the photograph number with an arrow to indicate the direction of the view. Historic photographs should also be collected, reproduced, and included in the dataset. The project sponsors should transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System. The project sponsors should scope the documentation measures with Port Preservation staff..					
Improvement Measure I-CR-4b: Public Interpretation Following any demolition, rehabilitation, or relocation activities within the project site, the project sponsors should provide within publicly accessible areas of the project site a permanent display(s) of interpretive materials concerning the history and architectural features of the District's three historical eras (Nineteenth Century, Early Twentieth Century, and World War II), including World War II-era Slipways 5 through 8 and associated craneways. The display(s) should also document the history of the Irish Hill Remnant, including, for example, the original 70- to 100-foot tall Irish Hill landform and neighborhood of lodging, houses, restaurants, and saloons that occupied the once much larger hill until the earlier twentieth century. The content of the interpretive display(s) should be coordinated and consistent with the sitewide interpretive plan prepared for the 28-Acre Site in coordination with the Port. The specific location, media, and other characteristics of such interpretive display(s) should be presented to Port preservation staff for approval prior to any demolition or removal activities.	Project sponsors should provide a permanent display(s) of interpretive materials concerning the history and architectural features of the District within publicly accessible areas of the project site.	Project sponsors provide permanent display: Following any demolition, rehabilitation, or relocation activities within the project site.	Project sponsors submit documentation of permanent display(s) of interpretive materials	Considered complete when interpretive materials are presented to Port preservation staff for approval. The materials would then be presented in the publically accessible area of the project site.	Port
Improvement Measure I-TR-A: Construction Management Plan Traffic Control Plan for Construction – To reduce potential conflicts between	Project sponsors, TMA, and	Prior to issuance of a	Construction contractor(s) to	Considered complete upon	Port, 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
construction activities and pedestrians, bicyclists, transit, and autos during construction activities, the project sponsors should require construction contractor(s) to prepare a traffic control plan for major phases of construction (e.g., demolition and grading, construction, or renovation of individual buildings). The project sponsors and their construction contractor(s) will meet with relevant City agencies to coordinate feasible measures to reduce traffic congestion, including temporary transit stop relocations and other measures to reduce potential traffic and transit disruption and pedestrian circulation effects during major phases of construction. For any work within the public right-of-way, the contractor would be required to comply with San Francisco's Regulations for Working in San Francisco Streets (i.e., the "Blue Book"), which establish rules and permit requirements so that construction activities can be done safely and with the least possible interference with pedestrians, bicyclists, transit, and vehicular traffic. Additionally, non-construction-related truck movements and deliveries should be restricted as feasible during peak hours (generally 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., or other times, as determined by SFMTA and the Transportation Advisory Staff Committee [TASC]). In the event that the construction timeframes of the major phases and other development projects adjacent to the project site overlap, the project sponsors should coordinate with City Agencies through the TASC and the adjacent developers to minimize the severity of any disruption to adjacent land uses and transportation facilities from overlapping construction transportation impacts. The project sponsors, in conjunction with the adjacent developer(s), should propose a construction traffic control plan that includes measures to reduce potential construction traffic conflicts, such as coordinated material drop offs, collective worker parking, and transit to job site and other measures. <u>Reduce Single Occupant Vehicle Mode Share for Construction Workers</u> – To minimize parking demand and vehicle trips associated with construction workers, the project sponsors should require the construction contractor to include in the Traffic Control Plan for Construction methods to encourage	construction contractor(s).	building permit. Project construction updates for adjacent residents and businesses within 150 feet would occur throughout the construction phase.	prepare a Traffic Control Plan and meet with relevant City agencies (i.e., SFMTA, Port Staff, and Planning Department) to coordinate feasible measures to reduce traffic congestion. A single traffic control plan or multiple traffic control plans may be produced to address project phasing.	submittal of the Traffic Control Plan to the SFMTA and the Port. Project construction update materials would be provided in the annual mitigation and monitoring plan.	SFMTA as appropriate

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[1]
walking, bicycling, carpooling, and transit access to the project construction sites and to minimize parking in public rights-of-way by construction workers in the coordinated plan. Project Construction Updates for Adjacent Residents and Businesses – To minimize construction impacts on access for nearby residences, institutions, and businesses, the project sponsors should provide nearby residences and adjacent businesses with regularly-updated information regarding construction, including construction activities, peak construction vehicle activities (e.g., concrete pours), travel lane closures, and lane closures via a newsletter and/or website.					
Improvement Measure I-TR-B: Queue Abatement It should be the responsibility of the owner/operator of any off-street parking facility with more than 20 parking spaces (excluding loading and car-share spaces) to ensure that vehicle queues do not occur regularly on the public right-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of any public street, alley, or sidewalk for a consecutive period of 3 minutes or longer on a daily or weekly basis. If a recurring queue occurs, the owner/operator of the parking facility should employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the parking facility, the street(s) to which the facility connects, and the associated land uses (if applicable). Suggested abatement methods include but are not limited to the following: redesign of facility to improve vehicle circulation and/or on-site queue capacity; employment of parking attendants; installation of LOT FULL signs with active management by parking attendants; use of valet parking or other space-efficient parking techniques; use of off-site parking facilities or shared parking with nearby uses; use of parking occupancy sensors and signage	Project sponsors, owner/operator of any off-street parking facility, and transportation consultant.	On-going during operations of any off-street parking facilities.	The owner/operator of the parking facility should monitor vehicle queues in the public right-of-way, and would employ abatement measures as needed. If the Port Director, or his or her designee, suspects that a recurring queue is present, the Port should notify the property owner in writing. The owner/operator should hire a transportation consultant to	Monitoring of the public right-of-way would be on-going by the owner/operator of off-street parking operations.	Port. 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[1]
directing drivers to available spaces; TDM strategies such as additional bicycle parking, customer shuttles, delivery services; and/or parking demand management strategies such as parking time limits, paid parking, time-of-day parking surcharge, or validated parking. If the Port Director, or his or her designee, suspects that a recurring queue is present, Port Staff should notify the property owner in writing. Upon request, the owner/operator should hire a qualified transportation consultant to evaluate the conditions at the site for no less than 7 days. The consultant should prepare a monitoring report to be submitted to the Port for review. If the Port determines that a recurring queue does exist, the facility owner/operator should have 90 days from the date of the written determination to abate the queue.			prepare a monitoring report and if a recurring queue does exist, the owner/operator would abate the queue.		
Improvement Measure I-TR-C: Strategies to Enhance Transportation Conditions During Events. The project's Transportation Coordinator should participate as a member of the Mission Bay Ballpark Transportation Coordination Committee (MBBTCC) and provide at least 1-month notification to the MBBTCC where feasible prior to the start of any then known event that would overlap with an event at AT&T Park. The City and the project sponsors should meet to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Project sponsors, TMA, parks maintenance entity, parks programming entity, and/or Transportation Coordinator.	Prior to the start of any known event that would overlap with an event at AT&T Park.	Project sponsors and Transportation Coordinator to meet with MBBTCC and City to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Include in MMRP Annual Report; On-going during project lifespan.	Port, Planning Department, SFMTA
Improvement Measure I-WS-3a: Wind Reduction for Public Open Spaces and Pedestrian and Bicycle Areas For each development phase, a qualified wind consultant should prepare a wind impact and mitigation analysis regarding the proposed design of public open spaces and the surrounding proposed buildings. Feasible means should be considered to improve wind comfort conditions for each public open space, particularly for any public seating areas. These feasible means include horizontal and vertical, partially-porous wind screens (including canopies,	Project sponsors and qualified wind consultant.	During the design of public open spaces and pedestrian and bicycle areas for each development phase.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by the Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for public open spaces and pedestrian and	Port or 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
trellises, umbrellas, and walls), street furniture, landscaping, and trees. Specifics for particular public open spaces are set forth in Improvement Measures I-WS-3b to I-WS-3f. Any proposed wind-related improvement measure should be consistent with the design standards and guidelines outlined in the *Pier 70 SUD Design for Development*.				bicycle areas by the Port Staff.	
Improvement Measure I-WS-3b: Wind Reduction for Waterfront Promenade and Waterfront Terrace The Waterfront Promenade and Waterfront Terrace would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing vertical elements, such as wind screens and landscaping. Where necessary and appropriate, wind screens should be strategically placed directly around seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Waterfront Promenade and Waterfront Terrace.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Waterfront Promenade and Waterfront Terrace by Port Staff	Port
Improvement Measure I-WS-3c: Wind Reduction for Slipways Commons The central and western portions of Slipways Commons would be subject to winds exceeding the pedestrian wind comfort criteria. Street trees should be considered along Maryland Street, particularly on the east side of Maryland Street between Buildings E1 and E2. Vertical elements such as wind screens would help for areas where street trees are not feasible. Where necessary and appropriate, wind screens should be strategically placed to the west of any seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of	Project sponsors and qualified wind consultant.	During the design of the Slipway Commons.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Slipway Commons by Port Staff.	Port

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**
any wind screen or landscaping shall be compatible with the Historic District.					
Improvement Measure I-WS-3d: Wind Reduction for Building 12 Market Plaza and Market Square Building 12 Market Plaza and Market Square would be subject to winds exceeding the pedestrian wind comfort criteria. For reducing wind speeds in the public courtyard between Buildings 2 and 12, the inner south and west façades of Building D-1 could be stepped by at least 12 feet to direct downwashing winds above pedestrian level. Alternatively, overhead protection should be used, such as a 12-foot-deep canopy along the inside south and west façades of Building D-1, or localized trellises or umbrellas over seating areas. For reducing wind speeds on the eastern and southern sides of Building 12, street trees should be considered, along Maryland and 22nd streets. Smaller underplantings should be combined with street trees to reduce winds at pedestrian level. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Building 12 Market Plaza and Market Square.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Building 12 Market Plaza and Market Square by Port Staff.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
Improvement Measure I-WS-3e: Wind Reduction for Irish Hill Playground The Irish Hill Playground would be subject to winds exceeding the pedestrian wind comfort criteria. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Irish Hill Playground.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Irish Hill Playground by Port Staff.	Port
Improvement Measure I-WS-3f: Wind Reduction for 20th Street Plaza The 20th Street Plaza would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing hardscape elements, such as wind screens, canopies, and umbrellas. Where necessary and appropriate, wind screens should be strategically placed to the northwest of any seating area. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. If there would be seating areas directly adjacent to the north façade of the PKN Building, localized canopies or umbrellas should be used. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the 20th Street Plaza.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and analysis for the 20th Street by Port	Port

VDDA EXHIBIT L
ASSESSOR REQUESTED INFORMATION

Document Outline

Assessable/actionable events for Assessor ("ASR")

1. Initial land sale/ transfer of title
2. Mapping
3. Tax certificates
4. Lien date new construction
5. Completed new construction
6. Final ownership changes/sales to users

Assessable/Actionable Event information

1. Initial land sale / transfer of title [Include if event is applicable.]

a. Assessable: any recorded change in ownership or ground lease/changes to existing ground lease

b. Information needed:

i. Deeds (transfer maps do not convey title for ASR purposes)

ii. Subdivision maps and how they correspond to recorded deeds

iii. Appraisal for transfers from government entities or non-arm's length transactions

c. Timing: at the time of recording for a basis of calculating transfer tax **[or include applicable timeline from Assessor]**

2. Mapping [Include if event is applicable.]

a. Justification/Purpose: ASR needs this information to reserve new block and lot numbers for the project.

b. Information needed:

i. Tentative maps that overlay future parcel changes and project phases (with current APNs and future reserved APNs)

ii. Federal/state maps if applicable

iii. Timeline of subdivision activity and how the current parcels will be divided/combined/adjusted in each phase of the subdivision

iv. Initial subdivision maps and what deeds they correspond to

c. Timing:

i. Upon request to reserve APNs for new project **[or include applicable timeline from Assessor]**

3. Tax certificates (Treasurer & Tax Collector's Office provides to ASR) [Include if event is applicable.]

a. Justification: ASR needs this information to (1) ensure that any outstanding changes in ownership have been recorded and any completed or anticipated new construction has been valued and (2) to generate a new assessed value for TTX to use for tax pre-payment purposes.

b. Information needed:

i. Pre-final map

ii. TTX Form A and B (depending on how complicated the development is)

c. Timing: whenever requested by the taxpayer, ASR has four weeks to review and determine new value **[or include applicable timeline from Assessor]**

4. Lien date new construction

a. Justification/Purpose: ASR needs this information to accurately assess the value of new construction in progress as of January 1st as required by the Revenue & Taxation Code.

b. Information needed:

i. The date construction started and the estimated completion date. If construction was in progress on January 1st, the percentage of construction completed.

ii. A complete list of all the construction and/or demolition cost incurred as of this date, including direct and indirect costs and entrepreneurial profit. *(sample provided for reference See Attachment 1)*

iii. Copies of any leases signed.

iv. A detailed description of all work to be completed or any changes to the work description.

v. A copy of the pro forma, feasibility study or appraisal used to support the building of this project.

vi. Copies of all application for building permits.

vii. Certified copy of the lender's disbursement of funds.

viii. Cost not funded by construction loan.

ix. Details on any current or anticipated efforts to sell the property, if applicable.

x. Any additional information, if not referenced above, that would influence the market value of the property.

xi. Name, mailing address, phone number and e-mail of person(s) to contact regarding additional questions and inspection of property.

c. Timing:

i. By January 31st of each year the construction is in progress **[or include applicable timeline from Assessor.]**

5. Completed new construction

a. Justification: ASR needs this information to accurately assess the value of completed new construction as of the date of completion as required by the Revenue & Taxation Code.

b. Information needed:

i. All property types

A. The date construction started and completion date.

B. A detailed description of all work completed (attach referenced floor plans, etc.)

C. Copies of all applications for building permits.

D. A complete list of all construction costs *(see Attachment 1)* including direct, indirect costs and anticipated or actual entrepreneurial profit.

E. Detailed information on costs not funded by construction loans.

F. A copy of the pro forma, feasibility study or appraisal used to support the building of this project.

G. Details on any current or anticipated efforts to sell the property, if applicable.

H. Copies of any leases signed or currently in negotiation. Please include asking rents for spaces not leased.

I. A copy of the land lease or other document that indicates the value of the land, if applicable.

J. Projected or actual income and expense statement and a schedule of asking rent, if applicable. For actual statements, please provide the source document.

K. Certified copy of the lender's disbursement of funds.

L. Details on parking stall rents and any miscellaneous income.

M. Any appraisal completed.

N. Any additional information, if not referenced above, that would influence the market value of the property.

O. Name, address, phone number and email of person to contact for questions/arrange for a site inspection.

ii. Office

A. Rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

B. The gross and net rentable areas of the building.

C. Projected or actual sales volume of the property.

D. A copy of any existing operating agreements, if applicable.

E. A copy of the feasibility study.

F. A copy of the stacking plan, if applicable.

G. XFactor or BOMA recalculation of square footage, if applicable.

H. If the construction project includes a parking garage:

a. How will it be operated (i.e. leased to a second party for contract rent or net income to the owner)?

b. What is the anticipated number of spaces and vehicle capacity (with valet services if applicable)?

c. What will be the monthly fee for parking?

iii. Retail

A. Rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

B. The gross and net rentable areas of the building.

C. Details on parking stall rents and any miscellaneous income.

D. Projected or actual sales volume of the property.

E. A copy of the operating agreement signed with the mall owner, if applicable.

iv. Apartments

A. Tenant Rent Roll for residential and commercial units that includes the unit number, unit type (number of beds/baths), number of rooms, market rate or BMR unit, occupancy, square footage, contract rental rate, date lease signed, market rental rate, other fees collected – parking, storage, pet. Overall parking spaces, any upgrades, floor and view premiums (if applicable). Please provide a rent roll as of the certificate of occupancy and/or when stabilized occupancy is achieved.

B. A finish schedule.

C. Total square footage of improvements allocated by use (residential, retail, common area, parking, etc.). Area (sq. ft.) of each floor including basement, mezzanine, penthouse, etc.

v. Condos

A. The Parcel Split/Condo Conversion Questionnaire (See Attachment 2, Excel is strongly preferred.)

B. For any units retained by the developer (i.e. parking, storage, retail, etc.), please provide copies of any signed leases, details on any leases in negotiation or proposed, or a summary of asking rents. Include a tenant rent roll, projected or actual income and expense statements, and net rentable area of each retained unit.

C. Condo map/plan (if applicable) – required for us to split a new condo project or condo conversion

vi. Hotel

A. A list of the number of hotel rooms, the average daily rates, and projected occupancy levels.

B. Percentage of guest segmentation.

C. A copy of the Management Agreement.

D. A copy of the Franchise Fee Agreement, specifically identifying the franchise fees and how they are determined.

E. Breakdown of real property and personal property.

F. Current or projected rent roll showing any net rentable areas of the building by floor and area leased by each retail tenant (if any); the type of lease (FSG, NNN, or IG); the date and terms of each lease, the move in date; options to renew, escalation clauses, tax clauses, free rent or any lease concessions, or landlord/tenant improvement allowances. If there are no leasable office or retail areas on the property, so state.

c. Timing: within 60 days upon completion of construction for each project phase **[or include applicable timeline from Assessor.]**

6. Final ownership changes/sales to users

a. Event: any recorded change in ownership or new lease/changes to existing lease

b. Information needed:

i. All property types

A. Information about the sale:

a. The purchase agreement and closing statement

b. Identify the broker or agent on the sale

c. Original list price

d. Days on market

B. Details and terms of financing the property.

C. Details on any anticipated deferred maintenance costs or capital expenditures anticipated by buyer at the time of the sale (i.e. renovations, major repairs, seismic retrofitting, and asbestos abatement) and a detailed schedule of when the work is to be completed.

D. If the purchase price was not considered market value for the property, an explanation of why.

E. Detailed anticipated income and expense operating statements of the new owner at time of purchase and/or acquisition and the prior two (2) years.

F. Copies of any leases or lease abstracts, amendments or renewals, including free rent and tenant improvement allowances agreed to.

G. Marketing materials and/or asking rents to lease vacant space as of the transfer date

H. Any anticipated changes in use.

ii. Office

A. A copy of the Offering Memorandum distributed by selling agent.

B. Copies of any appraisal prepared for purchase financing.

C. The investor's pro-forma and market rent assumptions generated by Argus investment analysis or other format (Excel preferred).

D. A rent roll as of the change in ownership date showing; all tenants with corresponding suite numbers, suite sizes (sf), monthly or annual rent, date and terms of leases, scheduled rent escalations and any vacant rentable space (Excel format preferred).

E. Indicate if any lease expense agreements are other than full-service gross with a base year (FSG).

F. If vacancy is above 10%, provide historical vacancy or occupancy ratios (on an annual or bi-annual basis) over the previous three (3) years.

G. A detailed annual income and expense summary for the year of sale and the prior two (2) years. If historical income and operating statements were not provided by the seller, please substitute your operating budget as of the purchase date (Excel format preferred).

iii. Retail

A. Any cash flow analysis, pro forma worksheets or investment analysis in the acquisition of the property.

B. Any appraisal prepared for the acquisition or financing of the subject property.

C. Details on the financing involved for the purchase and/or acquisition of the subject property.

D. Current rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

E. The gross and net rentable areas of the building.

F. At the time of transfer, indicate the amount of net rentable vacant space, identify its location within the building and indicate the asking rental rates.

G. The anticipated sales volume of the property.

iv. Apartments

A. Rent roll as of the change in ownership date, showing the list of all tenants with monthly rent and move-in date. For retail tenants, please provide copies of the lease(s), including any amendments or renewals (Excel format preferred).

B. The anticipated rental rates for any vacant units.

C. The anticipated operating income and expenses at the time of purchase/change in ownership. If available, provide the operating income and expenses statements for the two (2) years preceding change in ownership (Excel format preferred).

D. Details on any miscellaneous income (parking, laundry, storage, etc.)

E. A copy of any appraisal prepared for any purpose (financing, insurance, investment) within two (2) years of the event date.

F. A description of each unit; number of rooms, bedrooms, bathrooms, furnished or unfurnished.

v. Hotel

A. Any appraisal, pro forma or feasibility study made to assist in the acquisition of the subject property, or for any other purpose (i.e. insurance, investment, financing) prepared within two (2) years of the event date.

B. List of the number of hotel rooms, the average daily rates and occupancy levels as of the change in ownership date and for the previous two (2) years.

C. The guest segmentation, by percentage.

D. Detailed, historic income and expense statement for the two (2) years prior to the event date, and the budgeted or anticipated income and expense statement for the first year following the change in ownership date.

E. Copy of the Management Agreement.

F. Copy of the Franchise Agreement, specifically identifying the franchise fees and how they are determined.

G. Copy of the Smith Travel Report for the property, as of the same year as the change in ownership.

H. The current rent roll showing net rentable areas by floor and area leased by each retail tenant (if any); the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances. If there are no leasable areas of the property, so state.

I. Copy of the sale agreement with detailed itemizations of all real property and business personal property components included in the sale.

vi. Single Family Homes/Condos

A. No additional information needed, recorded deed is sufficient

c. Timing: within 60 days of a change to the fee owner of the property **[or include applicable timeline from Assessor.]**

Attachments

1. **In Progress and Completed New Construction Cost Report template**

2. **Parcel Split/Condo Conversion Questionnaire**

VDDA EXHIBIT L
ATTACHMENT 1

City and County of San Francisco
San Francisco Assessor-Recorder

Carmen Chu
Assessor-Recorder

Please check one of the following:

A.P.N. _____
(Block) (Lot)

☐ **As of Lien Date** _____

Address _____

☐ **As of Date of Completion** _____

COST REPORT

DESCRIPTION	Contract Amount	% Complete	Total Cost Completed To Date	Reported Previously	This Report
DIRECT COST: (Includes)					
Building Permits/Fees					
Contractor's Profit and Overhead					
Equipment Used in Construction					
Labor Used in Construction					
Material, Products and Equipment					
Performance Bonds					
SUBTOTAL DIRECT COST					
TENANT IMPROVEMENT:					
Owners Cost					
Tenants Cost					
SUBTOTAL TENANT IMROVEMENT					
INDIRECT COST: (Includes)					
Architect Fees					
Construction Insurance					
Contingency					
Engineer Fees					
Financing Fees					
Interest Expense					
Lease-Up Costs					
Legal/Professional Fees					
Marketing/Sales Costs					
Other Misc.Fees					
Project Administration/Management					
Property Taxes					
SUBTOTAL INDIRECT COST					
LAND COST					
ENTREPRENEURIAL PROFIT					
TOTAL PROJECT COST					

Print Name and Title

Phone

Signature

Date

CONFIDENTIAL

UNIT NO.	USE	YEAR BUILT	TOTAL AREA	DECK AREA	STORIES	CONDO FLOOR	TOTAL ROOMS	BEDROOMS	BATHROOMS	HALF BATHROOMS	FIREPLACES	KITCH QLTY	PARKING SPACES	PARKING TYPE	VIEW TYPE	SALE DATE

VDDA EXHIBIT M

FORM OF ARCHITECT'S CERTIFICATE

TO: Port of San Francisco
Pier 1
San Francisco, California 94111

Completion of Vertical Project at Pier 70: _____ [insert address/Project name]

DATE: _____

FROM: Architect of Record, _____

The statements herein refer only to the Construction Documents prepared by the Architect. Any and all construction documents prepared by others, such as engineers, consultants or contractors, are not included in these representations. This Architect's Certificate is being provided pursuant to Section 13.1(a) of that certain Vertical Disposition and Development Agreement dated _____, 20XX (the "**Vertical DDA**") between the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission and _____, a _____. Capitalized terms used herein have the meanings given them in the Vertical DDA.

We hereby declare that we are architects licensed in the State of California and that we prepared the final Construction Documents for the Vertical Project ([**Add the following only if applicable**: other than Deferred Infrastructure).] As Architect of Record for the construction of the Improvements, to the best of our knowledge, we hereby declare as follows:

1. The Vertical Project has been completed in accordance with the final Construction Documents except as noted on ***Schedule A*** attached hereto (collectively, the "**Plans**"). The Plans describe the Vertical Project, completely and accurately, depict all material parts of the Vertical Project and have been completed with the standard of care exercised in this profession.

2. Based on our observations, the construction of the Vertical Project has been performed in a good and worker-like manner, except as may be noted on Schedule A attached hereto.

3. In our professional opinion, the completed Vertical Project complies with all applicable local, state, federal laws, regulations and ordinances.

4. We have been notified by our client, the Vertical Developer, that the required Regulatory Approvals, including necessary building permits, from all Regulatory Agencies related to the Vertical Project have been issued and are in force, and there is not an undischarged violation of applicable Laws of which we have notice as of the date hereof, except as may be noted on ***Schedule A*** attached hereto.

_____[insert Architect Firm]

By: _____
Name: _____
Title: _____

SCHEDULE A

EXCEPTIONS TO ARCHITECT'S CERTIFICATE

DATED _____

The statements made on the Architect's Certificate to which this Schedule A is attached are subject to the following exceptions:

FORM OF CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF AND WHEN RECORDED MAIL TO:

This document is exempt from payment of a recording fee pursuant to California Government Code Sec. 27383

San Francisco Port Commission
Port of San Francisco
Pier 1
San Francisco, CA 94111
Attention: Port General Counsel

APN: SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLETION OF VERTICAL PROJECT

WHEREAS, the **CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**") and _____, a _____ (the "**Vertical Developer**") entered into a Vertical Disposition and Development Agreement dated as of _____, 20XX (the "**Vertical DDA**"), a memorandum of which was recorded on _____, 20XX, in the Office of the Recorder of the City and County of San Francisco, in Reel _____, of the Official Records, at Image _____, setting forth the rights and obligations of the Vertical Developer with respect to the construction of the Vertical Project on that certain real property situated in the City and County of San Francisco, State of California, which property is particularly described in ***Exhibit A*** attached hereto and made a part hereof (the "**Property**"), and setting forth the terms and conditions under which Port and Vertical Developer would enter into a lease for the Property. Except as otherwise defined herein, capitalized terms shall have the meanings given them in the Vertical DDA;

[add if Property is subject to a Parcel Lease] WHEREAS, by Lease No. _____ dated as of _____, 201___ (the "**Lease**"), a memorandum of which was recorded on _____, 201____, in the Office of the Recorder of the City and County of San Francisco, in Reel _____, of the Official Records, at Image ___, Port did convey to the Vertical Developer (as Tenant thereunder) a leasehold interest in the Property;

[add if Property if a fee parcel] WHEREAS, pursuant to the Vertical DDA, Port conveyed fee title to the Property to Vertical Developer on _____, 20__;

WHEREAS, Port has conclusively determined that Vertical Developer has Completed the Vertical Project and fully performed all obligations under the Vertical DDA in accordance with its terms; and

WHEREAS, as stated in the Vertical DDA, Port's determination regarding the Completion of the Vertical Project is not directed to, and thus Port assumes no responsibility by virtue of this Certificate of Completion for, any of the Project Requirements or compliance with applicable Laws, including applicable building, fire, or other code requirements, conditions to occupancy of any improvement, or other applicable Laws.

NOW THEREFORE, as provided in the Vertical DDA, and subject to the foregoing provisions hereof, Port does hereby certify that the Vertical Project has been fully performed and completed as aforesaid as of _____, 20___ (the "**Effective Date**") and that the Vertical DDA is terminated (other than the provisions that survive the expiration or termination of the Vertical DDA) as of the Effective Date.

Nothing contained in this instrument shall modify in any way any provisions of the Lease.

IN WITNESS WHEREOF, Port has duly executed this instrument this ____ day of _____, 20___.

THE CITY AND COUNTY OF SAN FRANCISCO,
operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Deputy City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

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 _____

On _____ before me, _____ personally
(insert name and title of the officer),
appeared _____
_____
_____,
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.

_____ (Seal)
Signature

VERTICAL DDA EXHIBIT O

FORM OF SIGNIFICANT CHANGE CERTIFICATE

To:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Executive Director
Re: Pier 70 Vertical DDA, Parcel [XX]

Re: Significant Change Certificate for Parcel [XX]

This Significant Change Certificate (the "**Certificate**") is delivered to the Port, pursuant to Section 19.4(a) of that certain Vertical Disposition and Development Agreement, between the **CITY AND COUNTY OF SAN FRANCISCO** operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**") and _____ ("**Vertical Developer**"), and dated _____, ____ (as amended, the "**Vertical DDA**").

Vertical Developer has requested Port's consent to a Significant Change (as that term is defined in the Vertical DDA), which consent is governed by Section 19.4 of the Vertical DDA. In satisfaction of Section 19.4(a)(2) of the Vertical DDA, the chief financial officer of Vertical Developer hereby certifies to Port the following information regarding the proposed Significant Change

Purchaser(s):_____

Purchase price:_____

[[if applicable] Qualifying Early Sale Proceeds that will be treated as Land Proceeds in accordance with Section 3.6 of Parcel Lease Exhibit D]

Furthermore, Vertical Developer hereby reaffirms that it will continue to be obligated under all the terms and conditions of the Vertical DDA. As the chief financial officer of Vertical Developer, the undersigned certifies that this Certificate is true, accurate and complete.

This Certificate is for the benefit and protection of Port, with the understanding that the Port shall have the right to rely upon this Certificate.

[NAME OF VERTICAL DEVELOPER]

By:_____
Name:_____
Title:_____

VERTICAL DDA EXHIBIT P [FOR FEE PARCELS ONLY]

FORM OF VERTICAL DEVELOPER ESTOPPEL CERTIFICATE

The undersigned, [_____], a [_____] ("**Vertical Developer**"), is the Vertical Developer under that certain Vertical Disposition and Development Agreement dated as of _____, 20XX (the "**Vertical DDA**"), by and between the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission ("**Port**") and Vertical Developer, in connection with the development of the real property commonly known as _____, as more particularly described in the Vertical DDA (the "**Property**"). This Estoppel Certificate is provided to Port in connection with a proposed Transfer of the Vertical DDA as contemplated under Section 19.4 thereof.

Vertical Developer hereby certifies to Port the following as of the date set forth below:

1. The Effective Date of the Vertical DDA is _____, 20XX.

2. The Vertical DDA is presently in full force and effect (as may be modified, assigned, supplemented and/or amended as set forth in ***paragraph 3*** below.

3. The Vertical DDA has not been modified, assigned, supplemented or amended except as follows:

_____

_____

4. The Vertical DDA [**insert other agreements between Vertical Developer and Port such as the Parcel Lease, if any: (collectively, the "Property Agreements")**] represents the entire agreement between Port and Vertical Developer with respect to the Property.

5. To Vertical Developer's actual knowledge, Port is not in default or breach of the Vertical DDA/Property Agreements, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Vertical DDA/Property Agreements by Port.

6. To the best of Vertical Developer's knowledge, Vertical Developer is not in default or in breach of the Vertical DDA/Property Agreements, nor has Vertical Developer committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Vertical DDA/Property Agreements by Vertical Developer.

7. Vertical Developer is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

8. Vertical Developer has [not yet] commenced construction of the Vertical Project[and approximately [____%] of the Vertical Project has been completed].

This Certificate shall be binding upon Vertical Developer and inure to the benefit of Port, [_____] and [its/their respective] successors and assigns.

Dated: _____, 20___.

[ ], a [_____]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

VDDA EXHIBIT Q
City and Port Special Provisions

The Municipal Code (available at www.sfgov.org) and City and Port policies described in this Exhibit are incorporated by reference as though fully set forth in the VDDA (collectively, the "**City and Port Special Provisions**"). Vertical Developer is charged with full knowledge of and compliance with each applicable requirement, whether or not summarized below. All statutory references in this Exhibit are to the Municipal Code as in effect on the Reference Date of the Horizontal DDA unless specified otherwise. Initially capitalized or highlighted terms used in this Exhibit and not defined in the Horizontal DDA have the meanings ascribed to them in the cited ordinance.

The application to the 28-Acre Site Project of the specified provisions of the City and Port Special Provisions is subject to **DA § 5.3** (Changes to Existing City Laws and Standards) and waivers under Sections 6, 7, 8 and 9 of Ordinance No. 224-17, which is attached to and incorporated into the City and Port Special Provisions (collectively, the "**DA Waivers**").

The descriptions below are not comprehensive but are provided for notice purposes only. Vertical Developer understands that its failure to comply with any applicable provision of the City and Port Special Provisions will give rise to the specific remedies under the applicable City and Port Special Provisions and in certain cases give rise to a default under the VDDA, which could result in a default under the DA as well. References to "Developer" in the City and Port Special Provisions will apply to VDDA Parties and their successors under the VDDA and DA Successors under the DA.

Municipal Codes and Policies Summarized

1. Nondiscrimination in Contracts and Property Contracts
2. Health Care Accountability Ordinance
3. Prevailing Wages and Working Conditions in Construction Contracts
4. Other Prevailing Wage Rate Requirements
5. First Source Hiring Program
6. Criminal History In Hiring And Employment Decisions
7. Employee Signature Authorization Ordinance
8. Tobacco Products and Alcoholic Beverages
9. Integrated Pest Management Program
10. Resource-Efficient Facilities and Green Building Requirements
11. Tropical Hardwood and Virgin Redwood Ban
12. Diesel Fuel Measures
13. Arsenic-Treated Wood
14. Food Service and Packaging Waste Reduction Ordinance
15. Bottled Drinking Water
16. Graffiti Removal and Abatement
17. Drug-Free Workplace
18. Nutritional Standards and Guidelines
19. All-Gender Toilet Facilities
20. Indoor Air Quality
21. Conflicts of Interest
22. Sunshine
23. Contribution Limits-Contractors Doing Business with the City
24. Implementing the MacBride Principles – Northern Ireland

Contracting, Hiring, and Construction

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

(a) Covered Contracts. All provisions in this Section regarding the Nondiscrimination in Contracts and Property Contracts ordinance apply to "subcontracts to contracts" and "property contracts" as defined in Administrative Code sections 12B.2 and 12C.2.

(b) Covenant Not to Discriminate. In its development of the FC Project Area, 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 (Cal. Gov. 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.

(c) Requirement to Include. Developer must: (i) include a nondiscrimination clause in substantially the form of **Subsection (a** (Covenant Not to Discriminate); and (ii) incorporate by reference Administrative Code sections 12B.2(a), 12B.2(c)-(k), and 12C.3(a) in all applicable contracts, subcontracts, and subleases and require all contractors, subcontractors, and subtenants to comply with those provisions.

(d) Nondiscrimination in Benefits. Developer agrees not to discriminate between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of employees, where the domestic partnership has been registered with any governmental entity under state or local law authorizing registration, subject to the conditions set forth in Administrative Code section 12B.2. Developer's agreement relates to bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits (collectively "**Core Benefits**"), as well as other employee benefits described in section 12B.1(b), during the term of each applicable contract, subcontract, and sublease.

(e) Form. On or before the Reference Date, Developer must complete, execute, deliver to, and obtain approval of its completed *Nondiscrimination in Contracts and Benefits* form CMD-12B-101 from CMD. The form is available on CMD's website.

(f) Penalties. Developer understands that under Administrative Code section 12B.2(h), the City may assess against Developer or deduct from any payments due Developer a penalty of $50 for each person for each calendar day during which Developer or its subcontractor, property contractor, or other contractor discriminated against a protected person in violation of this Section. Violation of this Section, if not cured after notice and opportunity to

cure, also will be an Event of Default under the DDA and the DA and a material breach of any applicable contract, subcontract, or sublease..

2. Health Care Accountability Ordinance.
(Admin. Code ch. 12Q)

(a) Developer agrees to comply fully with and be bound by the Health Care Accountability Ordinance ("**HCAO**"), as set forth in Administrative Code chapter 12Q, unless exempt.

(b) Covered Employees. For each Covered Employee, Developer must provide the appropriate health benefit set forth in HCAO section 12Q.3, unless it is exempt as a small business under HCAO section 12Q.3(e).

(c) Notice and Opportunity to Cure. If Developer fails to cure a violation of the HCAO after receiving notice of a violation and an opportunity to cure the violation, the City will have the remedies set forth in HCAO section 12Q.5(f), subject to the DA Waivers, which the City may exercise individually or in combination with any of its other rights and remedies.

(d) Covered Contracts. Any Contract, Subcontract, or Sublease, as defined in Chapter 12Q, that Developer enters into for public works, public improvements, or for services must require the Contractor, Subtenant, or Subcontractor, as applicable, to comply with the applicable provisions of the HCAO and must contain contractual obligations substantially the same as those set forth in the HCAO. Developer agrees to notify the Contracting Department promptly of any Subcontractors performing services covered by Chapter 12Q and certify to the Contracting Department that Developer has notified the Subcontractors of their HCAO obligations under this Chapter.

(e) Noncompliance. Developer will be responsible for monitoring compliance with the HCAO by each Subcontractor, Subtenant, and Contractor performing services on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its Subcontractors, Subtenants, or Contractors. The City's remedies for Developer's noncompliance with the HCAO are subject to the DA Waivers.

(f) Retaliation Prohibited. Developer must not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City of any issue regarding noncompliance or anticipated noncompliance with the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Representation and Warranty. Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Reporting. Upon request, Developer must provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO.

(i) Records. After receiving a written request from the City to inspect pertinent payroll records and after at least 10 days to respond have elapsed, Developer agrees to provide the City with access to pertinent payroll records relating to the number of employees employed and terms of medical coverage. In addition, the City and its Agents, in consultation with the Department of Public Health, may conduct audits of Contracting Parties, although such audits

shall be conducted through an examination of records at a mutually agreed upon time and location within 10 days after written notice. Developer agrees to cooperate with the City in connection with these audits.

(j) Threshold. If a Subcontractor, Subtenant, or Contractor is exempt from the HCAO because the amount payable to the Subcontractor, Subtenant, or Contractor under all of its contracts with the City or relating to City-owned property is less than $25,000 (or $50,000 for nonprofits) in that City Fiscal Year, but the Subcontractor, Subtenant, or Contractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to the Subcontractor, Subtenant, or Contractor to equal or exceed $75,000 in that City Fiscal Year, then all of the Contractor's, Subtenant's, or Subcontractor's contracts with the City and relating to City-owned property will become subject to the HCAO from the date on which the later agreement is executed.

3. 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 FC Project Area 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 must comply with the prevailing wage requirements in *WDP § III.C.6 (Prevailing Wages)* that apply to construction work on all Prevailing Wage Covered Projects by Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) (as defined in the WDP).

(c) Penalties. The Port has designated OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in accordance with the WDP, subject to the DA Waivers.

4. Other Prevailing Wage Rate Requirements.
(Admin. Code ch. 21C)

(a) Under Administrative Code ch. 21C, individuals employed in certain activities at the FC Project Area are entitled to be paid not less than either the highest general prevailing rate of wages (including fringe benefits or their matching equivalents) paid in private employment for similar work in the area in which the contract is being performed, as determined by the Civil Service Commission or the "**Prevailing Rate of Wages**" (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the activities meet any of the specified exemptions. Covered activities are:

(i) motor bus services provided to the general public (§ 21C.1);

(ii) "**Janitorial Services**" (§ 21C.2);

(iii) operation of a "**Public Off-Street Parking Lot, Garage, or Automobile Storage Facility**" (§ 21C.3);

(iv) theatrical or technical services related to the presentation of a show, including workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services (§ 21C.4);

(v) operation of a "**Special Event**" (§ 21C.8);

(vi) "**Broadcast Services**" (§ 21C.9); and

(vii) driving a "**Commercial Vehicle**" or loading or unloading materials, goods, or products into or from a Commercial Vehicle in connection with the presentation of a "**Show**" or for a Special Event (§ 21C.10).

(b) Agreement. Developer agrees to comply with the obligations in Administrative Code chapter 21C and to require its tenants, contractors, and any subcontractors to comply with the obligations in chapter 21C. In addition, if Developer or its tenant, contractor, or any subcontractor fails to comply with these obligations, the City will have all available remedies against Developer to secure compliance and seek redress for workers who provided the services.

(c) OLSE. For current Prevailing Wage rates, see the OLSE website or call the OLSE at 415-554-6235.

5. First Source Hiring Program.
(Admin. Code ch. 83)

Developer's obligations to comply with the First Source Hiring Program are set forth in *WDP §§ II.C.3 (First Source Hiring Program for Construction Work)* and *II.D2 (First Source Hiring Program for Operations)*.

6. Criminal History In Hiring And Employment Decisions.
(Admin. Code ch. 12T)

(a) Agreement to Comply. Administrative Code Chapter 12T ("**Chapter 12T**") will only apply to a Contractor's, Subcontractor's, or subtenant's operations to the extent those operations are in furtherance of performing a Contract or Property Contract with the City subject to Chapter 12T. If applicable, Developer will comply with and be bound by Chapter 12T, including the remedies and implementing regulations, with respect to applicants to and employees of Developer who would be or are performing work at the FC Project Area under the DDA.

(b) Breach. Developer must incorporate Chapter 12T by reference in all contracts related to be performed in furtherance of a Contract or Property Contract with the City, as defined in Administrative Code section 12T.1. Developer will be responsible for monitoring compliance by its Subcontractors, Contractors, and subtenants, but the City agrees that Developer will not be liable for their noncompliance.

(c) Prohibited Activities. Developer and its Subcontractors, Contractors, and subtenants must not inquire about, require disclosure of, or if the information is received, base an Adverse Action on an applicant's or potential applicant's or employee's: (i) Arrest not leading to a Conviction, except under circumstances identified in Chapter 12T as an Unresolved Arrest; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise

rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system; (v) a Conviction that is more than seven years old, based on the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction, except that a Contractor, Subcontractor, or subtenant may inquire about, require disclosure of, base an Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or employee's driving record if driving is more than a de minimis element of the employment in question.

(d) Employment Applications. Developer and its Subcontractors, Contractors, and subtenants must not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any Conviction History or unresolved arrest until either after the first live interview with the person, or after a conditional offer of employment in accordance with section 12T.4(c).

(e) Disclosure. Developer and its Subcontractors, Contractors, and subtenants must state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Developer or its Subcontractors, Contractors, and subtenants at the FC Project Area that the DDA and all Contracts and Property Contracts will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Posting. Developer and its Subcontractors, Contractors, and subtenants must post the notice prepared by the OLSE, available on OLSE's website, in a conspicuous place at the FC Project Area and at other workplaces, job sites, or other locations under the Subcontractor's, Contractor's, or subtenant's control at which work is being done or will be done in furtherance of performing a Contract or Property Contract under the DDA with the City. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the FC Project Area or other workplace at which it is posted.

(g) Penalties. Developer and its Subcontractors, Contractors, and subtenants understand and agree that upon any failure to comply with Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T, subject to **Subsection (b)** (Breach) and the DA Waivers, including a penalty of $50 for each employee, applicant or other person as to whom the violation occurred or continued, and thereafter, for subsequent violations, the penalty may increase to no more than $100, for each employee or applicant whose rights were, or continue to be, violated.

(h) Inquiries. If Developer has any questions about the applicability of Chapter 12T, it may contact the Port for additional information. The Port will consult with the Director of the City's Office of Contract Administration, who has authority to grant a waiver under the circumstances set forth in section 12T.8 of Chapter 12T.

7. Employee Signature Authorization Ordinance.
(S.F. Admin Code §§ 23.50-23.56)

The City has adopted an Employee Signature Authorization Ordinance, which requires employers of employees in hotel or restaurant projects on public property with 50 or more full-time or part-time employees to enter into a "card check" agreement with a labor union regarding

the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Developer agrees to comply with the requirements of the ordinance, if applicable, including any requirements applicable to its successors, as specified in Administrative Code section 23.54.

Use Of City Property

8. Tobacco Products and Alcoholic Beverages.
(Admin. Code § 4.20; Health Code art. 19K)

(a) Definitions. For purposes of this Section: (i) "**alcoholic beverage**" is defined in California Business and Professions Code section 23004 and excludes cleaning solutions, medical supplies, and other products and substances not intended for drinking; and (ii) "**tobacco product**" is defined in Health Code section 1010(b).

(b) Advertising Ban. New general advertising signs that are visible to the public are prohibited on the exterior of any City-owned building under Administrative Code section 4.20-1.

(c) Tobacco Sales Ban. No person may sell tobacco products on property owned by or under the control of the City under Health Code article 19K.

(d) Alcoholic Beverage Advertising. Port property used for operation of a restaurant, concert or sports venue, or other facility or event where the sale, production, or consumption of alcoholic beverages is permitted, will be exempt from the alcoholic beverage advertising prohibition in Administrative Code section 4.20(a)-(c).

9. Integrated Pest Management Program.
(Env. Code ch. 3)

(a) IPM Plan. Chapter 3 of the Environment Code (the "**IPM Ordinance**") describes an integrated pest management policy ("**IPM Policy**") to be implemented by all City departments. Except for the permitted uses of pesticides provided in IPM Ordinance section 303, Developer must not use or apply during the DDA term, and must not contract with any party to provide pest abatement or control services to the FC Project Area, except in compliance with the Port's integrated pest management plan ("**IPM Plan**").

(b) Application. Although not a City Department, Developer agrees to comply, and must require all of Developer's contractors to comply, with the Port's approved IPM Plan and IPM Ordinance sections 300(d), 302, 304, 305(f), 305(g), and 306, as if Developer were a City department. Among other matters, the IPM Ordinance: (i) provides for the use of pesticides only as a last resort; (ii) prohibits the use or application of pesticides on City-owned property except for pesticides granted exemptions under IPM Ordinance section 303 (including pesticides included on the most current Reduced Risk Pesticide List compiled by the Department of the Environment); (iii) imposes certain notice requirements; and (iv) requires Developer to keep certain records and to report to the City all pesticide use by Developer's staff or contractors.

(c) Prior Review. Before Developer or Developer's contractor applies pesticides to outdoor areas, Developer must obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application must be made only by or under the supervision of

a person holding a valid Qualified Applicator certificate or Qualified Applicator license under California law. The City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the Department of the Environment website, http://sfenvironment.org/ipm.

10. Resource-Efficient Facilities and Green Building Requirements.
(Env. Code ch. 7)

Developer agrees to comply with all applicable provisions of the Environment Code relating to resource-efficiency and green building design requirements.

11. 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 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.

12. Diesel Fuel Measures.
(Env. Code ch. 9)

Consistent with the City's Greenhouse Gas Emissions Reduction Plan (Env. Code § 903) to reduce greenhouse gas emissions in the City, Developer must minimize exhaust emissions from operating equipment and trucks during construction. Developer's compliance with MMRP Mitigation Measure M-AQ-1a will satisfy this requirement.

13. Arsenic-Treated Wood.
(Env. Code ch. 13)

Developer must not purchase preservative-treated wood products containing arsenic on behalf of the City in the performance of the DDA without obtaining an exemption under Environment Code section 1304 from the Department of Environment. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. In this Section: (a) "**preservative-treated wood containing arsenic**" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative; and (b) "**saltwater immersion**" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

14. Food Service and Packaging Waste Reduction Ordinance.
(Env. Code ch. 16)

Developer agrees to comply fully with and be bound by section 1604(d) of the Food Service and Packaging Waste Reduction Ordinance (Env. Code ch. 16), including the remedies provided in section 1607 and implementing guidelines and rules. By entering into the DDA and the Development Agreement, Developer agrees that if it breaches this provision, and fails to cure within the cure periods provided herein, the City will suffer actual damages that will be impractical or extremely difficult to determine and that the following amounts of liquidated damage are reasonable estimates of the damage that the City will incur based on any violation, established in light of the circumstances existing on the Reference Date: (a) $100 for the first breach; (b) $200 for the second breach in the same year; and (c) $500 for subsequent breaches in the same year. These liquidated damages will not be considered penalties, but agreed monetary damages sustained by the City because of Developer's noncompliance.

15. Bottled Drinking Water.
(Env. Code ch. 24; Port Reso. No. 12-11)

Developer is subject to all applicable provisions of Environment Code chapter 24 prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of 21 fluid ounces or less at Events held on City Property with attendance of more than 100 people during the DDA Term. Also, Developer must comply with the Port's *Zero Waste Policy for Events and Activities* (Port Reso. No. 12-11) for applicable Events at the FC Project Area during the DDA Term.

16. Graffiti Removal and Abatement.
(Pub. Works Code Sec. 23)

(a) Requirement. Developer agrees to remove all graffiti from the FC Project Area, including from the exterior of any structures within the FC Project Area, consistent with the notice and cure provisions of Public Works Code section 23. If the Director of Public Works determines that any property contains graffiti in violation of section 2303, the Director may issue a notice of violation to Developer and any Offending Party. At the time the notice of violation is issued, the Director will take one or more photographs of the alleged graffiti and make copies of the photographs available to Developer and any Offending Party upon request. The photographs will be dated and retained as a part of the file for the violation. The notice will give Developer and any Offending Party 30 days after the date of the notice to either remove the graffiti or request a hearing on the notice of violation and set forth the procedure for requesting the hearing. This Section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property.

(b) Application. In this Section, "**graffiti**" means any inscription, word, figure, marking, or design that is affixed, marked, etched, scratched, drawn, or painted on any building, structure, fixture, or other improvement, whether permanent or temporary, including banners, billboards, and fencing surrounding construction sites, whether public or without the consent of the owner of the property or the owner's authorized agent, and that visible from the public right-of-way, but does not include: (i) any sign or banner that authorized by, and in compliance with, the applicable requirements of the DDA or the

Building Code; (ii) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*); (iii) any painting or marking that a City department makes in the course of its official duties or as part of a public education campaign; or (iv) any painting or marking required for compliance with any local, state, or federal law.

17. Drug-Free Workplace.
(41 U.S.C. ch. 81; Police Code art. 40)

To the extent applied by a federal grant or contract for the Project, the Drug-Free Workplace Act of 1988 (41 U.S.C. ch. 81) will apply to Developer. Developer agrees to adopt a Drug-Free Workplace Policy and comply with all other applicable requirements of the drug-free workplace laws under Police Code article 40.

18. Nutritional Standards and Guidelines.
(Admin. Code § 4.9-1)

(a) Definitions. For the purpose of this Section: (i) "**meal**" means "**prepared food**" as defined in Environment Code section 1602(l), which means food or beverages prepared within San Francisco for individual customers or consumers in a form commonly understood to be a breakfast, lunch, or dinner; (ii) "**Nutritional Standards Requirements**" means the food and beverage nutritional standards and calorie labeling requirements set forth in Administrative Code section 4.9-1(c); (iii) "**restaurant**" is defined in Health Code section 451(s) and includes any coffee shop, cocktail lounge, sandwich stand, public school cafeteria, in-plant or employee eating establishment, and any other eating establishment that gives or offers for sale food that requires no further preparation to the public, guests, patrons, or employees for consumption on or off the premises; (iv) "**vending machine**" is defined in Administrative Code section 4.2(a) and means an automated machine dispensing products or services, including food, beverages, tobacco products, newspapers, and periodicals.

(b) Vending Machines. Any permitted vending machine must comply with the Nutritional Standards Requirements in section 4.9-1(c). Developer must incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the FC Project Area or for the supply of food and beverages to that vending machine.

(c) Restaurants. Any restaurant on City property is encouraged to ensure that at least 25% of meals offered on the menu meet the Nutritional Standards Requirements set forth in Administrative Code section 4.9-1(e).

(d) Penalties. Developer's failure to comply with the Nutritional Standards Requirements in section 4.9-1(c) will be considered an Event of Default under the DDA and in addition to its other remedies, which will be subject to the DA Waivers, the City may require the removal of any vending machine on the FC Project Area that is not permitted or that violates the Nutritional Standards Requirements. Developer will be responsible for monitoring compliance with the Nutritional Standards Requirements by each subcontractor, subtenant, and contractor performing services or occupying premises on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its subcontractors, subtenants, or contractors.

19. All-Gender Toilet Facilities.
(Admin. Code § 4.1-3)

Developer must include at least one all-gender toilet facility on each floor of any new building on City-owned land or that is constructed by or for the City where toilet facilities are required or provided. Unless not allowed by an existing lease, whenever extensive renovations are made on one or more floors in any building on land that the City owns or in a building that is leased to or by the City, Developer will provide at least one all-gender toilet facility on each floor where the renovations take place and toilet facilities are required or provided. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures. "Extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the required toilet facilities.

20. Indoor Air Quality.
(Env. Code § 711(g))

Developer agrees to comply with section 711(g) of the Environment Code and regulations adopted under Environment Code section 703(b) relating to construction and maintenance protocols to address indoor air quality.

Use Of Port Property

21. Southern Waterfront Community Benefits and Beautification Policy.
(Port Reso. No. 07-77)

(a) Policy Goals. The Port's *Policy for Southern Waterfront Community Benefits and Beautification* identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Developer must provide community benefits and beautification measures in consideration for the use of the Project Site. Examples of desired benefits include: (i) beautification, greening, and maintenance of any outer edges of and entrances to the FC Project Area; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Developer's interaction with the Port, neighbors, visitors, and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the FC Project Area that are low-emission diesel equipment and use biodiesel or other reduced particulate emission fuels; (v) commitment to use low-impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the FC Project Area of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified as LBEs under Administrative Code chapter 14B; and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Developer's performance of the Project Requirements under the DDA will satisfy the requirements under this policy. Developer agrees to provide the Port with documents and records regarding these activities at the Port's request.

(b) Agreement to Use Local Truckers. Except to the extent inconsistent with any pertinent collective bargaining agreement, Developer agrees that, for all directly contracted or

service agreement trucking opportunities associated with Developer's operations at the FC Project Area, including hauling materials on, off, and within the Project Site, Developer will make good faith efforts to use Local Truckers first. For purposes of this Section, "**truckers**" means a business that provides trucking services for a profit, and "**Local Truckers**" means truckers that CMD has certified as LBEs.

To the extent that Developer in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Developer must use Local Truckers for a minimum of 60% of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the 60% requirement; equipment rental and disposal fees will not be counted. Developer will not be in default of this provision for not meeting the 60% minimum if Developer offered trucking opportunities to Local Truckers, but the Local Truckers were unavailable or unwilling to perform the work.

During all periods of construction activities at the Project Site, Developer must submit a monthly report to the Port and CMD stating the total cost to Developer of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers. The monthly report must document all truckers who conducted contract or service agreement work for Developer, and identify truckers that are Local Truckers. If Developer fails to meet the 60% minimum in any month, the report must document Developer's good faith outreach efforts to contact Local Truckers and the reasons that the work could not be conducted by Local Truckers. At the Port's or CMD's request, Developer must provide additional documentation required to ensure Developer's compliance with this provision. Developer's failure to comply with this Section will be a Material Breach under the DDA.

Other Public Policies

22. Conflicts of Interest.
(Calif. Gov. Code §§ 87100 *et seq.* & §§ 1090 *et seq.*; Charter § 15.103; Campaign and Govt'l Conduct Code art. III, ch. 2)

Through its execution of the DDA, 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 Port if Developer becomes aware of any such fact during the DDA Term.

23. Sunshine.
(Calif. Gov. Code §§ 6250 *et seq.*; Admin. Code ch. 67)

Developer understands and agrees that under the California Public Records Act (Calif. Gov. 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.

24. 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 the DDA, 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 board of directors; (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.

25. Implementing the MacBride Principles – Northern Ireland.
(Admin. Code ch. 12F)

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

AMENDED IN COMMITTEE
10/26/17

FILE NO. 170863 ORDINANCE NO. 224-17

[Development Agreement - FC Pier 70, LLC - Pier 70 Development Project]

Ordinance approving a Development Agreement between the City and County of San Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east; waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b).

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font.*
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background and Findings.

(a) California Government Code Sections 65864 et seq. ("Development Agreement Law") authorize any city, county, or city and county to enter into an agreement for the development of real property within its jurisdiction.

(b) Chapter 56 of the Administrative Code sets forth certain procedures for processing and approving development agreements in the City and County of San Francisco (the "City").

(c) In April 2011, the Port Commission (the "Port") selected Forest City Development California, Inc., a California corporation, through a competitive process to

negotiate exclusively for the mixed-use development (the "Project") of approximately 28 acres (the "28-Acre Site") of Seawall Lot 349, a land parcel under Port jurisdiction that is bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east commonly known as Pier 70. Forest City Development California, Inc. is now wholly owned by Forest City Realty Trust, Inc., a New York Stock Exchange-listed real estate company. FC Pier 70, LLC ("Developer"), a wholly-owned ~~an~~ affiliate of Forest City Realty Trust, Inc., ~~Development California, Inc.,~~ will act as the master developer for the Project. ~~("Developer").~~

(d) In conjunction with this ordinance, the Board of Supervisors has taken or intends to take a number of other actions in furtherance of the Project, including approval of: (1) a trust exchange agreement between the Port and the California State Lands Commission; (2) a disposition and development agreement ("DDA") between Developer and the Port; (3) amendments to the General Plan; (4) amendments to the Planning Code that create the Pier 70 Special Use District (the "SUD amendments") over the 28-Acre Site and two adjacent parcels known as the "Illinois Street Parcels" and incorporate more detailed land use controls of the Pier 70 SUD Design for Development; (5) amendments to the Zoning Maps; (6) approval of a development plan for the 28-Acre Site in accordance with Charter Section B7.310 (adopted as part of Proposition D, November 2008) and Section 4 of the Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative (Proposition F, November 2014); (7) a memorandum of understanding for interagency cooperation among the Port, the City, and other City agencies (the "ICA") with respect to the subdivision of the 28-Acre Site and construction of infrastructure and other public facilities; (8) formation proceedings for financing districts and a memorandum of understanding between the Port and the Assessor, the Treasurer-Tax Collector, and the Controller regarding the assessment, collection, and allocation of ad valorem and special taxes to the financing

districts; and (9) a number of related transaction documents and entitlements to govern the Project.

(e) At full build-out, the Project will include: (1) 1,100 to 2,150 new residential units, at least 30% of which, in the Affordable Housing Area that includes the 28-Acre Site and a portion of the 20th/Illinois Parcel, will be on-site housing affordable to a range of low- to moderate-income households as described in the Affordable Housing Plan in the DDA; (2) between 1 million and 2 million gross square feet of new commercial and office space; (3) rehabilitation of three significant contributing resources to the historic district; (4) space for small-scale manufacturing, retail, and neighborhood services; (5) transportation demand management on-site, a shuttle service, and payment of impact fees to the Municipal Transportation Agency that it will use to improve transportation connections through the neighborhood; (6) 9 acres of new open space, potentially including active recreation on rooftops, a playground, a market square, a central commons, and waterfront parks along the shoreline; (7) on-site strategies to protect against sea level rise; and (8) replacement studio space for artists leasing space in Building 11 in Pier 70 and a new arts space.

(f) While the DDA binds the Port and Developer, other City agencies retain a role in reviewing and issuing certain later approvals for the Project. Later approvals include approval of subdivision maps and plans for horizontal improvements and public facilities, design review and approval of new buildings under the SUD amendments, and acceptance of Developer's dedications of horizontal improvements and public facilities for maintenance and liability under the Subdivision Code. Accordingly, the City and Developer negotiated a development agreement for the Project (the "Development Agreement"), a copy of which is in Board File No. 170863 and incorporated in this ordinance by reference. The DDA, the Development Agreement, the ICA, the Tax MOU, and all leases and vertical disposition development

agreements that the Port enters into in accordance with the DDA are referred to collectively as the "Transaction Documents."

(g) Development of the 28-Acre Site in accordance with the DDA and the Development Agreement will help realize and further the City's goals to restore and revitalize the Union Iron Works Historic District, increase public access to the waterfront, increase public open space and community facilities within the neighborhood, increase affordable and market-rate housing, and create a significant number of construction and permanent jobs along the southeastern waterfront. In addition, the Project will provide additional benefits to the public that could not be obtained through application of existing City ordinances, regulations, and policies.

Section 2. Environmental Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (Cal. Public Resources Code §§ 21000 et seq.) ("CEQA"). A copy of this determination is in Board File No. 170863 and incorporated in this ordinance by reference.

(b) The Board of Supervisors previously adopted Resolution No. 402-17, a copy of which is in Board File No. 170987, making CEQA findings for the Project. The Board of Supervisors adopts and incorporates in this ordinance by reference the Planning Commission's findings under CEQA.

Section 3. Consistency Findings.

The Planning Commission recommended that the Board of Supervisors approve the Development Agreement and amendments to the General Plan, the Planning Code, and the Zoning Maps at a public hearing on August 24, 2017, by Resolution Nos. 19978 and 19979, a copy/copies of which is/are in Board File No. 170863. The Board of Supervisors adopts and incorporates by reference in this ordinance the Planning Commission's findings of consistency

with the General Plan, as amended, and the eight priority policies of Planning Code Section 101.1.

Section 4. Public Trust Findings.

At a public hearing on September ~~12~~26, 2017, the Port Commission consented to the Development Agreement and approved the trust exchange agreement and the DDA, subject to Board of Supervisors' approval, finding that the Project would be consistent with and further the purposes of the common law public trust and statutory trust under the Burton Act (Stats. 1968, ch. 1333) by Resolution Nos. 17-44 and 17-47, ~~a copy~~ copies of which ~~is~~are in Board File No. 170863. The Board of Supervisors adopts and incorporates in this ordinance by reference the Port Commission's public trust findings.

Section 5. Approval of Development Agreement.

The Board of Supervisors:

(a) approves all of the terms and conditions of the Development Agreement in substantially the form in Board File No. 170863;

(b) finds that the Development Agreement substantially complies with the requirements of Administrative Code Chapter 56;

(c) finds that the Project is a large multi-phase and mixed-use development that satisfies Administrative Code Section 56.3(g); and

(d) approves the Workforce Development Plan attached to the DDA in lieu of requirements under Administrative Code Chapter 14B, Article VII of Chapter 23, ~~and~~Section 56.7(c), and Chapter 83 to the extent that Chapter 83 applies to construction work that is subject to the Local Hiring Requirements of the Workforce Development Plan.

Section 6. Administrative Code Chapter 56 Waivers.

The Board of Supervisors waives the application to the Project of the following provisions of Administrative Code Chapter 56 to the extent inconsistent with the Development Agreement, the DDA, or the ICA, specifically:

(a) Section 56.4 (Application, Forms, Initial Notice, Hearing); Section 56.7(c) (Nondiscrimination/Affirmative Action Requirements); Section 56.8 (Notice); Section 56.10 (Negotiation Report and Documents); Section 56.15 (Amendment and Termination); Section 56.17(a) (Annual Review); Section 56.18 (Modification or Termination); and Section 56.20 (Fee); and

(b) any other procedural or other requirements if and to the extent that they are not strictly followed.

Section 7. Other Administrative Code Waivers.

The Board of Supervisors waives the application to the Project of these provisions of the Administrative Code: (a) Chapter 6 (Public Works Contracting Policies and Procedures) other than the payment of prevailing wages as required in Chapter 6; (b) Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting); (c) Competitive Bidding Procedures ~~appraisal effective date, and Additional~~ Appraisal Review as defined in Section 23.3 (Chapter Definitions) and required by Section 23.3 (Conveyance and Acquisition of Real Property); (d) Section ~~23.26~~23.31 (Year-to-Year and Shorter Leases); (e) Section 23.30~~-23.42~~ (Lease of Real Property~~s When City is Landlord~~); (f) Sections 23.33 (Competitive Bidding Procedures); (~~f~~g) Section 23A.7 (Transfer of Jurisdiction Over Surplus Properties to the Mayor's Office of Housing~~and Community Development~~); ~~and~~ (gh) Subsection (c)(2) of Section 61.5~~(c)(2)~~ (Listing of Unacceptable Non-Maritime Land Uses); and (i) remedies and penalties for noncompliance with Section 4.9-1(c) (Nutritional Standards and Guidelines), Section 12Q.5(f) (Health Care Accountability), or

Section 12T (Criminal History in Hiring and Employment) that would result in termination of any Transaction Document, impairment of Developer's or any vertical developer's development rights at the 28-Acre Site, or debarment of Developer or any vertical developer from future contract opportunities with the City.

Section 8. Planning Code Waivers.

The Board of Supervisors:

(a) finds that the impact fees and exactions payable under the Development Agreement will provide greater benefits to the City than the impact fees and exactions under Planning Code Article 4 and waives the application of, and to the extent applicable exempts the Project from, impact fees and exactions under Planning Code Article 4 on the condition that Developer and all building developers comply with impact fees and exactions established in the Development Agreement; and

(b) finds that the Transportation Plan attached to the Development Agreement includes a Transportation Demand Management Plan ("TDM Plan") and other provisions that meet the goals of the City's Transportation Demand Management Program in Planning Code Section 169 and waives the application of Section 169 to the Project on the condition that Developer implements and complies with the TDM Plan for the required compliance period.

Section 9. Subdivision Code Waivers.

(a) The Board of Supervisors waives the application to the Project of time limits under Subdivision Code ~~Section 1333.3(b) (Rights Conveyed),~~ Section 1346(e) (Improvement Plans) and Section 1355 (Time Limit for Submittal) to the extent that they conflict with the ICA or the Development Agreement.

(b) The Board of Supervisors also waives the application to the Project of Subdivision Code Section 1348 (Failure To Complete Improvements Within Agreed Time),

and the following terms shall apply in lieu thereof: The Public Improvement Agreement, as defined in the ICA, shall include provisions consistent with the Transaction Documents and the applicable requirements of the Municipal Code and the Subdivision Regulations regarding extensions of time and remedies that apply when improvements are not completed within the agreed time.

Section 10. Authorization.

(a) The Board of Supervisors affirms that the waivers in this ordinance do not waive requirements under the Development Agreement Law and authorizes the City to execute, deliver, and perform the Development Agreement as follows:

(1) the Director of Planning, the City Administrator, and the Director of Public Works are authorized to execute and deliver the Development Agreement with signed consents of the Port Commission, the Municipal Transportation Agency, and the San Francisco Public Utilities Commission; and

(2) the Director of Planning and other appropriate City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with its terms.

(b) The Director of Planning is authorized to exercise discretion, in consultation with the City Attorney, to enter into any additions, amendments, or other modifications to the Development Agreement that the Director of Planning determines are in the best interests of the City and that do not materially increase the obligations or liabilities of the City or materially decrease the benefits to the City as provided in the Development Agreement. Final versions of any additions, amendments, or other modifications to the Development Agreement shall be provided to the Clerk of the Board of Supervisors for inclusion in Board File No. 170863 within 30 days after execution by all parties.

Section 11. Ratification of Past Actions; Authorization of Future Actions.

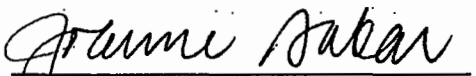
All actions taken by City officials in preparing and submitting the Development Agreement to the Board of Supervisors for review and consideration are hereby ratified and confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken by City officials consistent with this ordinance.

Section 12. Effective and Operative Dates.

(a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned, or the Mayor does not sign the ordinance within ten days after receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

(b) This ordinance shall become operative only on the effective date of the DDA. No rights or duties are created under the Development Agreement until the operative date of this ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
JOANNE SAKAI
Deputy City Attorney

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City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 170863 **Date Passed:** November 14, 2017

Ordinance approving a Development Agreement between the City and County of San Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east; waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b).

October 19, 2017 Budget and Finance Committee - CONTINUED

October 26, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 26, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

October 31, 2017 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

November 14, 2017 Board of Supervisors - FINALLY PASSED

Ayes: 9 - Breed, Cohen, Farrell, Fewer, Peskin, Ronen, Safai, Sheehy and Yee

Absent: 2 - Kim and Tang

File No. 170863

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 11/14/2017 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

11/15/17
Date Approved

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

[_____]
[_____]
[_____]
Attn: [_____]

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Vertical Disposition and Development Agreement)
(Development Agreement)

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**"), effective as of [_____], (the "**Effective Date**"), is entered into by and between [_____], a [_____] ("**Vertical Developer**" or "**Transferor**"), and [_____], a [_____] ("**Transferee**").

RECITALS:

A. The City and County of San Francisco, a municipal corporation (the "**City**"), operating by and through the San Francisco Port Commission ("**Port**") and Vertical Developer are parties to that certain Vertical Disposition and Development Agreement dated as of [_____], 20[__], for certain property located in the City and County of San Francisco, California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "**Property**"), [**Note: add if applicable any intervening amendment and/or assignments**] (as [amended] [and] [assigned], the "**Vertical DDA**"). Terms used herein but not defined herein shall have the meanings ascribed to such terms in the Vertical DDA.

B. FC Pier 70, LLC, a Delaware limited liability company ("**Horizontal Developer**") and the City entered into that certain Development Agreement (the "**Development Agreement**") dated as of [_____], 2018 for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**28-Acre Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on [_____], 2018 as Document No. [_____].

C. The Development Agreement was assigned by Horizontal Developer to Vertical Developer by that certain Development Agreement Assignment and Assumption Agreement dated as of [_____], 20[xx] and recorded in the Official Records of the City and County of San Francisco on [_____], 20[xx] as Document No. [_____]. [**Note: add if applicable any intervening amendment and/or assignments**]

D. The Property is located within the 28-Acre Site. The Vertical DDA and the Development Agreement [**Note: add other agreements if applicable**] are referred to herein collectively, as the "**Property Agreements**".

E. Vertical Developer and Transferee have entered into an agreement (the "**Purchase Agreement**") pursuant to which Vertical Developer has agreed to assign all of its right, title and interest in and to the Property Agreements to Transferee, and Transferee has agreed to assume all of Vertical Developer's right title and interest in and to the Property Agreements from Vertical Developer.

F. In order to consummate the transactions contemplated by the Purchase Agreement, Vertical Developer desires to assign and Transferee desires to assume the Property Agreements on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Vertical Developer and Transferee agree as follows:

1. Assignment By Vertical Developer. Vertical Developer hereby assigns to Transferee as of the Effective Date each and all of the right, title, interest and obligations of Vertical Developer under the Property Agreements and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to the Property Agreements.

2. Assumption By Transferee.

2.1 Assumption by Transferee. Transferee hereby assumes from Vertical Developer as of the Effective Date each and all of the right, title, interest and obligations of Vertical Developer under the Property Agreements and any other agreements or documents entered into by and between Port and Vertical Developer pursuant to the Vertical DDA or between City and Vertical Developer pursuant to the Development Agreement. Transferee hereby acknowledges that Transferee has reviewed the Property Agreements and agrees to be bound by the Property Agreements and all conditions and restrictions to which Vertical Developer is subject under the Vertical DDA and to which Developer is subject under the Development Agreement to the extent applicable to the Property.

2.2 **[Note: add if applicable to residential rental projects] [To be confirmed-subject to further modification]** Costa-Hawkins Waiver. Without limiting the foregoing assumption of rights and obligations by Transferee, Transferee specifically acknowledges that the Development Agreement and the DDA, which includes the Affordable Housing Plan attached thereto as Exhibit B3, 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 Unit or Inclusionary Units developed under the AHP for the 28-Acre Site.

3. Representations and Warranties of Vertical Developer. Vertical Developer hereby makes the following representations and warranties to Transferee, Port, and the City as of the Effective Date:

3.1 Status. Vertical Developer is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____] and is authorized to do business in the State of California and is in good standing therein.

3.2 Authority; No Conflicts. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Vertical Developer. The person signing this Agreement on behalf of Vertical Developer has full power and authority to sign this Agreement on Vertical Developer's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject.

4. Representations and Warranties of Transferee. Transferee hereby makes the following representations and warranties to Vertical Developer, Port, and the City as of the Effective Date:

4.1 Status. Transferee is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____] and is authorized to do business in the State of California and is in good standing therein.

4.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Transferee. The person signing this Agreement on behalf of Transferee has full power and authority to sign this Agreement on Transferee's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Transferee is a party or to which Transferee is subject

4.3 Investigation of Property; No Port or City Representations. Transferee has conducted a thorough investigation and due diligence of the Property. Transferee has reviewed and is familiar with the terms and conditions of the Property Agreements. Neither Port nor City has made any representations or warranties with respect to the condition of the Property.

5. Release of City Parties and the State Lands Indemnified Parties. Transferee, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges City Parties and the State Lands Indemnified Parties under the Vertical DDA of all Losses against the City Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the City Parties arising prior to the Effective Date.

Transferee understands and expressly accepts and assumes the risk that any facts concerning the Losses released, waived, and discharged in this Agreement includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the claims

released, waived, and discharged in this Agreement, Transferee expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, TRANSFEREE SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

TRANSFEREE INITIALS: _____

6. General Provisions.

6.1 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

6.2 Notices. The provisions of Section 21.1 of the Vertical DDA and Section 14.1 of the Development Agreement are incorporated by reference with the same effect as if set forth herein; provided, however, the address for Transferee is as follows:

[_____]
[_____]
[_____]
Attn: [_____]

With a copy to:

[_____]
[_____]
[_____]
Attn: [_____]

6.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

EXHIBIT R

6.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument.

6.5 Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

6.6 Amendment to Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

6.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

6.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

6.9 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

6.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

6.11 Partial Invalidity. If any portion of this Agreement as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

6.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Agreement; (b) it has executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared by Horizontal Developer's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Vertical Developer because Horizontal Developer's counsel prepared this Agreement in its final form.

6.13 Defined Terms. All capitalized terms not defined herein are set forth in the Vertical DDA.

[the remainder of this page has been intentionally left blank]

RELEASE

In accordance with Section 10.1 of the Development Agreement, the City hereby releases and discharges [insert Vertical Developer ("**Transferor**")] from all obligations that are transferred to, and assumed by, [insert transferee ("**Transferee**")] under the foregoing Assignment and Assumption Agreement between Transferor and Transferee, dated as of [_____], 20XX (the "**Assignment and Assumption Agreement**"), to which this Release is attached. All capitalized terms not defined in this Release are as defined in the Assignment and Assumption Agreement.

The City acknowledges that this release is made with the advice of counsel regarding its consequences and effects. The City agrees this release covers unknown claims and waives the benefit of California Civil Code § 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:

Director of Planning

Date:

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

By:_____

_____
Director of Planning

Date:_____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

EXHIBIT R

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 _____)

On _____ before me, _____, a Notary Public, personally appeared _____ 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 _____ (Seal)
Signature of Notary Public

EXHIBIT R

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

[_____]
[_____]
[_____]
Attn: [_____]

DEVELOPMENT AGREEMENT ASSIGNMENT AND ASSUMPTION AGREEMENT

This DEVELOPMENT AGREEMENT ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**"), effective as of [_____], (the "**Effective Date**"), is entered into by [_____], a [_____] ("**Horizontal Developer**" or "**Assignor**"), and [_____], a [_____] ("**Vertical Developer**" or "**Assignee**").

RECITALS:

A. Horizontal Developer and the City and County of San Francisco, a municipal corporation (the "**City**") entered into that certain Development Agreement (the "**Development Agreement**") dated as of [_____], 2018 for reference purposes, with respect to certain real property leased by Horizontal Developer pursuant to that certain Lease No. L-XXX dated as of [_____], 2018 (the "**Master Lease**"), between Horizontal Developer and the City, operating by and through the San Francisco Port Commission ("**Port**"), as such property is more particularly described in the Master Lease (the "**28-Acre Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco ("**Official Records**") on [_____], 2018 as Document No. [_____] and a Memorandum of the Master Lease was recorded in the Official Records on [_____], 2018 as Document No. [_____]. [**Note: add if applicable any intervening amendment and/or assignments**]

B. The City, operating by and through Port and Vertical Developer are parties to that certain Vertical Disposition and Development Agreement dated as of [_____], 20XX, for certain property located in the City and County of San Francisco, California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "**Transferred Property**") [**Note: add if applicable any intervening amendment and/or assignments**] (the "**Vertical DDA**"). The Transferred Property is located within the 28-Acre Site.

C. Under Section 10.1 of the Development Agreement, the initial Vertical Developer of each Development Parcel will be assigned specified rights and obligations under the Development Agreement by a recorded Assignment and Assumption Agreement, which Assignment and Assumption Agreement will provide, among other things, for the City to release Horizontal Developer from obligations under the Development Agreement to the extent they are assumed by the Vertical Developer, which release 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. Delivery of this Agreement is a condition to Close of Escrow under the Vertical DDA.

D. Pursuant to the Development Agreement, Horizontal Developer desires to assign all of its rights, title and interest under the Development Agreement with respect to the Transferred Property and Vertical Developer desires to assume all such rights, title and interest from Horizontal Developer on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Horizontal Developer and Vertical Developer agree as follows:

1. Assignment By Horizontal Developer. Horizontal Developer hereby assigns to Vertical Developer as of the Effective Date each and all of the right, title, interest and obligations of Horizontal Developer under the Development Agreement with respect to the Transferred Property. Horizontal Developer retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the 28-Acre Site for which the DDA remains in effect.

2. Assumption By Vertical Developer.

2.1 Assumption by Vertical Developer. Vertical Developer hereby assumes from Horizontal Developer as of the Effective Date each and all of the right, title, interest and obligations of Horizontal Developer under the Development Agreement with respect to the Transferred Property. Vertical Developer hereby acknowledges that Vertical Developer has reviewed the Development Agreement and agrees to be bound by the Development Agreement and all conditions and restrictions to which Horizontal Developer is subject under the Development Agreement to the extent applicable to the Transferred Property.

2.2 **[Note: add if applicable to residential rental projects] [To be confirmed-subject to further modification]** Costa-Hawkins Waiver. Without limiting the foregoing assumption of rights and obligations by Vertical Developer, Vertical Developer specifically acknowledges that the Development Agreement and the DDA, which includes the Affordable Housing Plan attached thereto as Exhibit B3, 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 Horizontal 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 Unit or Inclusionary Unit developed under the AHP for the 28-Acre Site.

3. Representations and Warranties of Horizontal Developer. Horizontal Developer hereby makes the following representations and warranties to Vertical Developer, Port and the City as of the Effective Date:

3.1 Status. Horizontal Developer is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____] and is authorized to do business in the State of California and is in good standing therein.

3.2 Authority; No Conflicts. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Horizontal Developer. The person signing this Agreement on behalf of Horizontal Developer has full power and authority to sign this Agreement on Horizontal Developer's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Horizontal Developer is a party or to which Horizontal Developer is subject.

4. Representations and Warranties of Vertical Developer. Vertical Developer hereby makes the following representations and warranties to Horizontal Developer, Port and the City as of the Effective Date:

4.1 Status. Vertical Developer is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____] and is authorized to do business in the State of California and is in good standing therein.

4.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Vertical Developer. The person signing this Agreement on behalf of Vertical Developer has full power and authority to sign this Agreement on Vertical Developer's behalf. This Agreement will not violate any provision of any agreement or judicial order to which Vertical Developer is a party or to which Vertical Developer is subject.

5. Release of City Parties and the State Lands Indemnified Parties. Vertical Developer, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges City Parties and the State Lands Indemnified Parties under the Development Agreement of all Losses against the City Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims Horizontal Developer may have against the City Parties arising prior to the Effective Date.

Vertical Developer understands and expressly accepts and assumes the risk that any facts concerning the Losses released, waived, and discharged in this Agreement includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the claims released, waived, and discharged in this Agreement, Vertical Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, VERTICAL DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

VERTICAL DEVELOPER INITIALS: _____

6. General Provisions.

6.1 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

6.2 Notices. The provisions of Section 14.1 of the Development Agreement are incorporated by reference with the same effect as if set forth herein; provided, however, the address for Vertical Developer is as follows:

[_____]
[_____]
[_____]
Attn: [_____]

With a copy to:

[_____]
[_____]
[_____]
Attn: [_____]

6.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

6.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument.

6.5 Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a

part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

6.6 Amendment To Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

6.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

6.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

6.9 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

6.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

6.11 Partial Invalidity. If any portion of this Agreement as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

6.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Agreement; (b) it has executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared by Horizontal Developer's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Horizontal Developer because Horizontal Developer's counsel prepared this Agreement in its final form.

6.13 Defined Terms. All capitalized terms not defined herein are set forth in the Development Agreement.

[the remainder of this page has been intentionally left blank]

EXHIBIT S

RELEASE

In accordance with Section 10.1 of the Development Agreement, the City hereby releases and discharges [insert Horizontal Developer ("**Horizontal Developer**")] from all obligations that are transferred to, and assumed by, [insert transferee ("**Vertical Developer**")] under the foregoing Assignment and Assumption Agreement between Horizontal Developer and Vertical Developer, dated as of [_____], 20XX (the "**Assignment and Assumption Agreement**"), to which this Release is attached. All capitalized terms not defined in this Release are as defined in the Assignment and Assumption Agreement.

The City acknowledges that this release is made with the advice of counsel regarding its consequences and effects. The City agrees that this release covers unknown claims and waives the benefit of California Civil Code § 1542, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

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

By:_____

_____
Director of Planning

Date:_____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By:_____
Name: [Name of Deputy]
Deputy City Attorney

EXHIBIT S

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 _____)

On _____ before me, _____, a Notary Public, personally appeared _____ 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 _____ (Seal)
Signature of Notary Public

EXHIBIT S

EXHIBIT A

LEGAL DESCRIPTION OF TRANSFERRED PROPERTY

[INSERT LEGAL DESCRIPTION FROM VERTICAL DDA]

VDDA Schedule 3.1: CFD and Assessment Matters

All matters addressed in this Exhibit relate to the following actions, all of which the City has undertaken in accordance with the San Francisco Special Tax Financing Law (San Francisco Administration Code ch. 43, art. X), which incorporates the Mello-Roos Community Facilities Act of 1982 (Cal. Gov't Code §§ 53311-53368) (collectively, the "**CFD Law**"), by Board of Supervisors Resolution No. XX-XX (the "**Formation Resolution**") to implement the Financing Plan in the DDA between the Master Developer and the Port (collectively, the "**CFD Provisions**"). Unless specified otherwise, all statutory references in this Exhibit are to the California Government Code.

1. Formation of a Special Tax District. The City's actions in relation to the CFD Provisions include:

(a) formation of a community facilities district designated as "*City and County of San Francisco Special Tax District No. 2018-3 (Pier 70 Leased Properties)*" (the "**Special Tax District**") that includes the Property within its boundaries;

(b) designation of property for potential future annexation to the Special Tax District (the "**Future Annexation Area**");

(c) approval of a rate and method of apportionment (the "**Rate and Method**"), a copy of which is attached to the Formation Resolution, for the calculation and levy of the Facilities Special Tax, the Shoreline Special Tax, the Arts Building Special Tax, and the Services Special Tax (as each term is defined in the Rate and Method) against all taxable property in the Special Tax District (collectively, the "**Special Taxes**");

(d) recordation of the "**Notice of Special Tax Lien**" against the real property in the Special Tax District in the Official Records of the City and County of San Francisco, as document number _____ pursuant to California Government Code Section 53328.3;

(e) authorization to issue bonds secured by one or more of the Special Taxes ("**Bonds**");

(f) authorization to use Bond proceeds and Special Taxes to finance the construction, completion, and acquisition of improvements described in the Formation Resolution (the "**CFD Improvements**"); and

(g) authorization to levy and use Special Taxes in perpetuity to finance services described in the Formation Resolution such as capital maintenance and repair of the CFD Improvements (the "**Services**").

2. **[Fee] [Leasehold]** Interest Subject to CFD Provisions. The Vertical Developer acknowledges and agrees as follows.

(a) Its **[fee] [leasehold]** interest in the Property is subject to the levy of Special Taxes and the Vertical Developer will not have any right to amend the CFD Provisions.

(b) It is critical to each of the City, the Port, the Master Developer, and Vertical Developer that the construction and completion of the CFD Improvements required to develop the Property be coordinated in all respects (including cost, timing,

capacity, function, and type) with the construction and completion of the CFD Improvements for other property in the Special Tax District.

(c) If the Property were excluded from the Special Tax District, or the Special Taxes to be levied on the Property were reduced or eliminated, coordination of CFD Improvements required to develop the Property with CFD Improvements for other property in the Special Tax District would be materially adversely affected.

3. Cooperation with CFD Matters. The Vertical Developer agrees to the following with respect to the Special Tax District, the levy of the Special Taxes, and the issuance of any Bonds, at the Vertical Developer's sole expense.

(a) The Vertical Developer will:

i. if determined necessary by the City, and at the request of the City, cooperate with the City if the City decides to enter into a joint community facilities agreement or any other agreement necessary to finance CFD Improvements and Services (collectively, the "**JCFA**") that will be owned or operated by government agencies other than the City or its agencies.

(b) The Vertical Developer will not, at any time or in any manner, contest, protest, or otherwise challenge any of the following:

i. the formation of the Special Tax District;

ii. the designation of the Future Annexation Area;

iii. the authorization, levy, or amount of the Special Taxes on the Property;

iv. the authorization to issue the Bonds;

v. the CFD Improvements and Services to be financed by the Special Tax District; and

vi. the establishment of an appropriations limit for the Special Tax District.

(c) If required for the Special Tax District to levy Special Taxes or issue Bonds, the Vertical Developer will acknowledge that the Property is subject to the lien of the Special Tax District and the levy of Special Taxes and that the Special Tax District is authorized to issue Bonds.

(d) The Vertical Developer will not bring any action, suit, or proceeding against the Special Tax District or the City; provided, however, that after exhausting its appeal rights under the Rate and Method, the Vertical Developer may bring an action, suit, or proceeding against the Special Tax District or the City if it relates solely to an allegation that the Special Taxes have not been levied in accordance with the Rate and Method.

(e) The Vertical Developer will not take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken with respect to the Special Tax District's formation or the issuance of Bonds, including

when Special Taxes are first levied, the amount of Special Taxes, the apportionment of Special Taxes, and the use of the Special Taxes collected by the Special Tax District.

4. The following definitions apply to this Exhibit.

(a) "**Actual Knowledge**" means the knowledge that the person signing this VDDA has on the date of execution of this VDDA or has obtained from:

i. interviews with current officers and responsible employees of the Vertical Developer and its Affiliates that the person has determined are likely, in the ordinary course of their respective duties, to have knowledge of the matters set forth in this VDDA;

ii. a review of documents that the person determined were reasonably necessary to obtain knowledge of the matters set forth in this VDDA; or

iii. both, in any case without conducting any extraordinary inspection or inquiry except as prudent and customary in connection with the ordinary course of the Vertical Developer's current business and operations or contacting individuals who are no longer employees of the Vertical Developer or its Affiliates.

(b) "**Affiliate**" means any person that directly or indirectly, through one or more intermediaries:

i. exercises managerial control over the Vertical Developer; or

ii. is under managerial control of the Vertical Developer; and

iii. in each case, about whom information could be material to potential investors deciding whether to invest in future Bonds.

(c) "**Related Property**" means any real property interest owned or held by the Vertical Developer or any of its Affiliates.

5. Compliance. The Vertical Developer represents and warrants as follows and agrees that if its representations and warranties are discovered to be untrue after the Effective Date of this VDDA, the Port may, in its discretion, elect to terminate this VDDA.

(a) With respect to Related Property located within the boundaries of a development project in California, except as set forth in **Attachment 1**, to Vertical Developer's Actual Knowledge, neither Vertical Developer nor Vertical Developer's Affiliates within the last five years have:

i. intentionally failed to pay when due any property taxes, special taxes, or assessments levied or assessed against the Related Property; or

ii. owned any interest in Related Property that became either tax-deeded to California or the subject of foreclosure proceedings for failure to pay property taxes, special taxes, or assessments levied or assessed against the Related Property.

(b) With respect to Related Property located within the boundaries of a development project outside of California, except as set forth in **Attachment 1**, to Vertical Developer's Actual Knowledge, neither Vertical Developer nor Vertical

Developer's Affiliates within the last five years have owned any interest in Related Property that became either tax-deeded to a governmental agency or the subject of foreclosure proceedings for failure to pay special taxes or assessments that secure the payment of bonds and that were levied or assessed against the Related Property.

(c) Except as set forth in **Attachment 1**, neither the Vertical Developer nor its Affiliates have failed to comply in the last five years under any continuing disclosure agreement relating to Related Property in projects in California.

6. Acknowledgment of the Rate and Method. The Rate and Method has been provided to the Vertical Developer prior to the Effective Date of this VDDA. The Vertical Developer has read and, if deemed necessary, consulted with counsel, regarding the provisions of the Rate and Method.

7. Issuance of Bonds. This Section will apply to the Special Tax District's issuance of Bonds at any time.

(a) The Vertical Developer will provide, at the request of the City or any Financing Participant (as defined in subsection (c) below), certificates or other documents executed by each secured lender that provided funds for the Vertical Developer's development of the Property signifying the lender's acknowledgment of:

i. the imposition of the Special Taxes on the Property;

ii. the issuance of Bonds; and

iii. the Special Tax District's foreclosure rights if the Vertical Developer is delinquent in the payment of Special Taxes.

(b) The Vertical Developer acknowledges that Bonds may be issued in one or more series over time, that the issuance of each series of Bonds may require information and documents to be provided by the Vertical Developer, and that the timely provision of that information and documents for each series of Bonds is critical for the Master Developer and the Port to achieve their respective financial goals. The Vertical Developer's obligations will arise with the issuance of each series of Bonds and continue as provided in any related continuing disclosure agreement.

(c) The Vertical Developer will not interfere with or impede the issuance of any series of Bonds issued by or in connection with the Special Tax District and will, at the Vertical Developer's expense, provide information in connection with each series of Bonds as requested by any of the following (collectively, the "**Financing Participants**"):

i. the City, the Port, and any other JCFA Party, or any of their agents, including bond counsel and disclosure counsel;

ii. appraisers engaged to appraise the Property;

iii. market absorption consultants;

iv. underwriters and underwriters' counsel;

v. financial advisors associated with the Bonds or the Special Tax District; and

vi. persons providing credit enhancement for the Bonds or the Special Tax District.

(d) The Vertical Developer will provide, at Vertical Developer's expense, required information, which may include:

i. a description of the Vertical Developer's financing sources to develop the Property;

ii. a description of the proposed development project and the ownership structure of the Vertical Developer;

iii. the status of the Property, including the rent roll and vacancy history;

iv. any history of delinquencies and defaults by the Vertical Developer and its Affiliates, including the information disclosed in **Attachment 1**;

v. the Vertical Developer's financial statements, which may be consolidated with its parent company and, for publicly traded companies where the Vertical Developer's financial statements are consolidated with the publicly traded company, may be limited to those financial statements required by SEC Regulations;

vi. other financial and operating information, including a development pro forma, with respect to the Vertical Developer and the Property;

vii. certificates requested by the Financing Participants, which may include representations on:

1. the due formation of the Vertical Developer;

2. the due execution of documents executed by the Vertical Developer in connection with the Special Tax District or any Bonds;

3. no material litigation or investigation by or against the Vertical Developer or its Affiliates that seeks to prohibit, restrain, or enjoin the development of the Property, or in which the Vertical Developer or its Affiliates may be adjudicated as bankrupt or discharged from any or all debts or obligations or granted an extension of time to pay or a reorganization or readjustment of its debts, or which, if determined adversely to the Vertical Developer or its Affiliates, could adversely affect the development of the Property and the payment of the Special Taxes; and

4. the accuracy of the information provided in connection with the issuance of any series of Bonds, including the information in all disclosure documents; and

viii. opinions of counsel to the Vertical Developer requested by any of the Financing Participants, which may include any matter listed in **clause (vii)** of

this Subsection and a 10b-5 opinion regarding any disclosure about the Vertical Developer and its Affiliates in the offering statement used to market the Bonds.

(e) The City will decide on the amount and application of any capitalized interest in consultation with the Master Developer, and the Vertical Developer will not contest the amount and application of capitalized interest.

(f) This Subsection will apply if any of the Financing Participants requires a renewable letter of credit, cash, or other form of credit enhancement ("**Special Tax Security**") in connection with the issuance of the Bonds.

i. The Vertical Developer will provide Special Tax Security that is acceptable to the Financing Participants in an amount no greater than two years' levy of Special Taxes against the Property by the Special Tax District, as reasonably determined by any of the Financing Participants,

ii. In addition, if the Master Developer (or any current owner of the Property) posted Special Tax Security with respect to the Property before the Close of Escrow, the Vertical Developer will provide replacement Special Tax Security with respect to the Property acceptable to the Financing Participants. The Vertical Developer's posting of replacement Special Tax Security will be a condition precedent to the Effective Date of this VDDA.

iii. The Vertical Developer acknowledges that the Special Tax Security is intended to secure the Special Tax payments by the Vertical Developer and its successors and assigns, but not any sub-tenants of less than the whole of the Property or apartment dwellers.

iv. Any letter of credit must be provided by an issuer acceptable to the Financing Participants and have a minimum "A" long-term debt rating (or the equivalent "A" designation) from both Standard & Poor's and Moody's Investors Service, unless the Financing Participants agree to a lower rating.

(g) Any reimbursements from the proceeds of any Bonds or directly from any Special Taxes (or prepayments of Special Taxes) for the costs of authorized CFD Improvements, returns of deposits, or payments of the costs of issuance will be the property of the Master Developer (as between the Master Developer and the Vertical Developer), regardless of the time of the original payment or the identity of the party that made the payment. Should the Vertical Developer receive any such reimbursements, or should the Vertical Developer receive the return or reimbursement of any deposits with any governmental entity or utility related to authorized CFD Improvements, the Vertical Developer will endorse and tender the payment to the Master Developer immediately.

(h) The Vertical Developer will execute and perform under any continuing disclosure agreement as requested by any of the Financing Participants. In addition, if, prior to the Effective Date, the Master Developer has entered into a continuing disclosure agreement, the Vertical Developer will assume the obligations under the continuing disclosure agreement with respect to the Property, in the form and manner required by the Financing Participants and the continuing disclosure agreement. The assumption of any continuing disclosure agreement will be a condition precedent to the Effective Date of this VDDA.

8. Cooperation to Amend the Special Tax District.

(a) The Vertical Developer acknowledges that the Port, the Master Developer, or the City may request proceedings to amend any CFD Provisions ("**Change Proceedings**"). **Subsection 8(b)** will apply so long as the changes contemplated by the Change Proceedings:

i. do not increase the Special Tax rates to be levied on the Property above Special Tax rates for the Property, escalated to the date of calculation, under the Rate and Method;

ii. do not change the Rate and Method so that the Vertical Developer is taxed sooner than under the current version of the Rate and Method; and

iii. do not result in more favorable treatment of one or more other tenants or property owners in the Special Tax District compared to the treatment of the Vertical Developer and the Property.

(b) Subject to **Subsection 8(a)**, the Vertical Developer shall not contest, protest, or otherwise challenge Change Proceedings to the Special Tax District.

9. Annexation of Property to the Special Tax District.

(a) The Vertical Developer acknowledges that in accordance with the CFD Law:

i. the City has designated certain property as a Future Annexation Area to the Special Tax District;

ii. from time to time, parcels of the Future Annexation Area may be annexed to the Special Tax District by execution of a unanimous written consent of the owners of the parcels of Future Annexation Area to be annexed without a public hearing or election; and

iii. the Master Developer, City, and Port may also request annexation of additional property to the Special Tax District.

(b) The Vertical Developer will not:

i. contest, protest, or otherwise challenge the annexation of any additional property to the Special Tax District as described in **Section 9(a)** above, or the imposition of the levy of Special Taxes on the annexed property; or

ii. take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken by the Master Developer or the owners of property (including the owners of the Future Annexation Area) with respect to the annexation of additional property to the Special Tax District.

10. Activity in Other Special Tax Districts. The Vertical Developer acknowledges that other parcels in the SUD are included in a separate special tax district formed by the City (the "**Other STD**") and agrees not to:

(a) contest, protest, or otherwise challenge the formation, implementation, levy of special taxes in, or issuance of bonds by the Other STD, or the annexation of

additional property to, or any Change Proceedings conducted with respect to, the Other STD; or

(b) take any other action that would in any way interfere with the operation of the Other STD or decisions made or actions taken by the City, the Port, and the Master Developer with respect to the Other STD.

11. Shortfall Provisions.

(a) All capitalized terms used in this **Section 11** that are not otherwise defined herein shall have the meaning given such terms in the Appendix to the Horizontal DDA (the "**Appendix**").

(b) The Vertical Developer agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Premises until the IFD Termination Date.

(c) If the Vertical Developer initiates a Reassessment on the Premises in violation of **Section 11(b)** above, then the following shall occur:

a. Vertical Developer will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

b. The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

12. Acquisition Agreement.

The Vertical Developer acknowledges that the Vertical Developer is not and will not become either a party, a third-party beneficiary, or an assignee to the Acquisition and Reimbursement Agreement between the Master Developer and the Port (the "**Acquisition Agreement**"), and that any reimbursements from the proceeds of Bonds or Special Taxes for the costs of authorized CFD Improvements under the Acquisition Agreement will be the property of the Master Developer, regardless of the time of the original payment or the identity of the party that made the payment. Should the Vertical Developer receive any reimbursements, or should the Vertical Developer receive the return or reimbursement of any deposits that were intended to be financed with Special Taxes or Bonds, the Vertical Developer shall endorse and tender the payment to the Master Developer promptly. The Vertical Developer further agrees not to contest, protest or otherwise challenge the rights or obligations of the Master Developer or the Port under the Acquisition Agreement.

13. General Provisions.

(a) The Vertical Developer will pay prior to delinquency all Special Taxes levied on the Property while the Vertical Developer or any Affiliate has a **[fee] [leasehold]** interest in the Property.

(b) The Vertical Developer will not petition, support, encourage, consent to, or implement any action seeking to reduce or repeal the levying of all or any part of the

Special Taxes in the Special Tax District, except at the written request of the Port, the Master Developer, and the City.

(c) The Vertical Developer will disclose the requirements of this Exhibit to any tenant of the entirety of the Property and require each such tenant to enter into an agreement with the Vertical Developer, the Port, and the Master Developer assuming the Vertical Developer's obligations under this Exhibit. This paragraph will not apply to any rentals to apartment dwellers or tenants of less than all of the Property. If required, the Vertical Developer will comply with disclosures required by Section 53341.5.

(d) The Master Developer is an express third-party beneficiary of the covenants and agreements of this Exhibit and may enforce each provision against the Vertical Developer as if the Master Developer were a party to this VDDA.

(e) The Port is required to provide to the Vertical Developer a notice of special tax pursuant to Section 53341.5 regarding the Special Taxes in the Rate and Method (the "**Notice of Special Tax**"). The Notice of Special Tax is attached as **Exhibit XXXX** and the Vertical Developer shall execute and return to the Port a copy of the Notice of Special Tax within three business days after executing this VDDA.

(f) The covenants and provisions contained in this Exhibit remain in effect for the term of this VDDA.

Attachment 1: Certain Representations of Vertical Developer
Exhibit XXXX: Notice of Special Tax

VDDA SCHEDULE 4.2
PORT DISCLOSURE MATTERS
[if applicable]

[To be prepared and inserted prior to execution]

VDDA SCHEDULE 12.4-1
DESCRIPTION OF DEFERRED INFRASTRUCTURE
[if applicable]

[To be prepared and inserted prior to execution]

Schedule 15.3

Remedies for Failure to Commence Construction

[For Residential Fee Parcels Only]

1. Liquidated Damages.

a. If the Commencement of Residential Construction has not occurred on or prior to the Required Construction Commencement Date, then Vertical Developer will pay to Port, as liquidated damages, an amount equal to [insert amount that is 2x the daily special tax obligation for the Property] for each day that the Commencement of Residential Construction is delayed beyond the Required Construction Commencement Date (the "**Liquidated Amount**"). Vertical Developer will pay to Port the Liquidated Amount within ten (10) business days of demand therefor; provided, however, Port's delay in making any such demand will not be deemed to be a waiver of its rights to demand such amounts.

b. The Liquidated Amount will be applied by Port as follows:

i. First, to pay any taxes and assessments on the Property (including CFD and IFD assessments) to the extent then due and payable;

ii. Second, all remaining proceeds to Port to be treated as Land Proceeds in accordance with Section ___ of the Financing Plan (Exhibit C1 to the DDA).

c. THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES, IN THE EVENT OF THE FAILURE TO CAUSE THE COMMENCEMENT OF RESIDENTIAL CONSTRUCTION PRIOR TO THE REQUIRED CONSTRUCTION COMMENCEMENT DATE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE LIQUIDATED AMOUNT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: PORT:_____ VERTICAL DEVELOPER:_____.

2. Repurchase of Property.

a. Notice. If Commencement of Residential Construction does not occur by the date that is twelve (12) months after the Required Construction Commencement Date (a "**Commencement Default**"), Port will promptly deliver notice of the Commencement Default to Horizontal Developer and Vertical Developer (the "**Commencement Default Notice**").

b. Horizontal Developer Purchase Option. Following receipt of a Commencement Default Notice, Horizontal Developer will have an exclusive, one-time right to purchase the Property from Vertical Developer for a purchase price equal to eighty-five percent (85%) of the Acquisition Price (the "**Repurchase Price**") and otherwise on the following terms and conditions (the "**Horizontal Developer Purchase Option**"):

i. Horizontal Developer will have a period of thirty (30) days from receipt of such notice (the "**Horizontal Developer Exercise Period**") in which to notify Port and Vertical Developer in writing that it desires to exercise the Horizontal Developer Purchase Option (the "**Horizontal Developer Exercise Notice**").

ii. If Horizontal Developer timely delivers the Horizontal Developer Exercise Notice, then Vertical Developer will cooperate with Horizontal Developer to consummate such

acquisition within ninety (90) days of Vertical Developer's receipt of the Horizontal Developer Exercise Notice ("**Horizontal Developer Closing Period**").

iii. Any rights of Horizontal Developer under this Schedule 15.3 may be exercised by or through its nominee or designee which is an Affiliate of Horizontal Developer.

c. Port Purchase Option. If Horizontal Developer fails or declines to exercise the Horizontal Developer Purchase Option within the Horizontal Developer Exercise Period, or if Horizontal Developer exercises the Horizontal Developer Purchase Option and thereafter fails to consummate the same within the Horizontal Developer Closing Period whether through revocation in accordance with [Section 2(e) below] or some other event (collectively, "**MD Period**"), then Port will have an exclusive, one-time right to (1) purchase the Property for the Repurchase Price from Vertical Developer or (2) cause Vertical Developer to sell the Property to a Successful Respondent for not less than the Repurchase Price, and otherwise on the following terms and conditions (the "**Port Repurchase Option**"):

i. Port will have a period of six (6) months from the expiration of the applicable MD Period in which to notify Vertical Developer in writing that it desires to exercise the Port Repurchase Option (the "**Port Exercise Notice**").

ii. If Port timely delivers the Port Exercise Notice, then Port may elect, in its sole discretion, to either:

(1) acquire the Property directly from Vertical Developer, in which case, Vertical Developer will cooperate with Port to consummate such acquisition within ninety (90) days of Vertical Developer's receipt of the Port Exercise Notice; or

(2) issue a request for proposal for the Property or such other solicitation as determined by Port (collectively, "**RFP**"), which RFP will require a minimum bid of no less than the Repurchase Price to qualify as a potential purchaser of the Property. Vertical Developer will cooperate with Port and the successful respondent to the RFP ("**Successful Respondent**") to consummate the acquisition of the Property by the Successful Respondent within ninety (90) days of Port's selection of the Successful Respondent. Vertical Developer will have no rights to any amount or other consideration paid by the Successful Respondent to Port for the Property that exceeds the Repurchase Price.

d. Vertical Developer Obligations. In connection with the closing of the Horizontal Developer Purchase Option or the Port Purchase Option (collectively, the "**Repurchase Closing**"), Vertical Developer will deliver into escrow, at least five (5) days prior to the contemplated Repurchase Closing, (i) a quitclaim deed with respect to the Property, subject only to Permitted Exceptions and (ii) a reconveyance of any Mortgage encumbering the Property, together with irrevocable instruction from the applicable Lender(s) to record the same upon payment to such Lender in accordance with Section 3 below.

e. Revocation. Notwithstanding anything herein to the contrary, each of Horizontal Developer and Port will have the right, for any reason or no reason, to rescind the Horizontal Developer Exercise Notice or Port Exercise Notice, as applicable, at any time before the consummation of the Closing by delivering written notice to Vertical Developer and the other Party, in which event the party revoking such exercise of its right will have no further right to purchase or repurchase the Property pursuant to this Agreement.

f. Application of Repurchase Price. Upon the Repurchase Closing in accordance with this Schedule 15.3 (in any case, a "**Repurchase**"), the Repurchase Price will be applied as follows: (i) first, to pay any taxes and assessments on the Property (including CFD and IFD assessments) to the extent then due and payable; (ii) second, to Port to pay any unpaid amounts required to be paid under this Agreement, including, but not limited to, any unpaid Liquidated Amount; (iii) third, to pay the Closing Costs [of Vertical Developer, Horizontal

Developer, and Port, as applicable,] associated with the Repurchase; (iv) fourth, to any Lender to satisfy the indebtedness evidenced by the Mortgage; and (v) fifth, to Vertical Developer.

3. Rights of Lenders.

Without limiting the rights afforded to Lenders pursuant to Article 16 (Financing; Rights of Lenders) of this Agreement, following a Commencement Default and notice by Port thereof, any Lender will have the right, but not the obligation, to notify Port and Horizontal Developer that it intends to pursue a [Lender Acquisition. Upon receipt of such notice, neither Horizontal Developer nor Port will pursue a its purchase or repurchase right hereunder, as applicable for so long (and only for so long) as Lender is diligently pursuing such Lender Acquisition, and all time periods set forth herein in connection with Horizontal Developer Purchase Option and Port Repurchase Option will be tolled for such period of time.

4. Termination.

The Unless terminated sooner as provided for in this Schedule 15.3, the Horizontal Developer Purchase Option and the Port Repurchase Option will automatically terminate, and will be of no force or effect, upon the earliest of (a) the date upon which a Repurchase is consummated, (b) so long as no Horizontal Developer Exercise Notice or Port Developer Notice has been delivered, the date upon which Commencement of Residential Construction occurs, and (c) the date upon which a Lender Acquisition is consummated.

5. Anti-Flip Protections.

If the Property is acquired by Horizontal Developer, and Horizontal Developer thereafter Transfers the Property to any non-Affiliate prior to the Commencement of Residential Construction, then upon the consummation of such Transfer, Horizontal Developer will pay to Port an amount equal to the net sales proceeds of such Transfer less the Repurchase Price, and Port will treat such amounts as Land Proceeds in accordance with [Section ____] of the Financing Plan (Exhibit C1 to the DDA)]. [Note: Parties discussing whether payment will be through accounting].For purposes of this Schedule 15.3, "**Transfer**" includes the sale, transfer, or conveyance of the Property by deed to another party.

6. Third Party Beneficiary.

Horizontal Developer is an intended third-party beneficiary of the terms and provisions of the Agreement set forth in this Schedule 15.3, and Horizontal Developer will have the same rights to enforce this Schedule 15.3 as if Horizontal Developer were a direct party hereto.

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[Applicable to Fee Parcels Only]

VDDA SCHEDULE 16

FINANCING PROVISIONS

1.1. ***Mortgages***.

(a) **Right to Grant Mortgages.** Port acknowledges that Vertical Developer may from time to time grant a mortgage, deed of trust or other security instrument (each a "**Mortgage**") encumbering the Property. The beneficiary of any such Mortgage is referred to herein as a "**Lender**". Any Lender that constitutes a Bona Fide Institutional Lender shall have the rights set forth in this ***Schedule 16***.

"**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 pension fund, an investment banking or merchant banking 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 Mortgage is recorded in favor of such entity, owns or manages assets of at least Five Hundred Million Dollars ($500,000,000) in the aggregate (or the equivalent in foreign currency); (ii) any Affiliate of any of the foregoing; or (iii) an Historic Preservation Tax Credit or Low Income Housing Credit investor or Affiliate thereof that has given a loan to Vertical Developer to optimize or utilize effectively the Historic Preservation Tax Credits or Low Income Housing Tax Credits, as applicable.

(b) **Mortgages Subject to this Agreement.** With the exception of the rights expressly granted to Lenders in this ***Schedule 16***, the execution and delivery of a Mortgage will not give or be deemed to give a Lender any greater rights than those granted to Vertical Developer hereunder.

(c) **Transfer by Lenders.** A Lender may transfer or assign all or any part of or interest in any Mortgage without the consent of or notice to any Party; provided, however, that Port will have no obligations under this Agreement to a Lender unless (i) such Lender is a Bona Fide Institutional Lender and (ii) Port is notified of such Lender. Furthermore, Port's receipt of notice of a Lender following Port's delivery of a notice or demand to Vertical Developer or to one or more Lenders under ***Section 1.4 of this Schedule 16*** (Lender's Obligations with Respect to the Property) will not result in an extension of any of the time periods in this ***Schedule 16*** including the cure periods specified in ***Section 1.5 of this Schedule 16*** (Provisions of Any Mortgage).

1.2. ***Copy of Notice of Default to Lender***.

(a) **Copy to Lender.** Whenever Port delivers any notice or demand to Vertical Developer for any breach or default by Vertical Developer in its obligations or covenants under this Agreement, Port will at the same time forward a copy of such notice or

demand to each Lender that has previously made a written request to Port for a copy of any such notices in accordance with ***Section 1.2(b) of this Schedule 16*** (Notice from Lender to Port). A delay or failure by Port to provide such notice or demand to any Lender that has previously made a written request therefor will extend, by the number of days until notice is given, the time allowed to such Lender to cure.

(b) **Notice From Lender to Port**. Each Lender is entitled to receive notices in accordance with ***Section 1.2(a) of this Schedule 16*** (Copy to Lender) provided such Lender has delivered a notice to Port in substantially the following form:

> "The undersigned does hereby certify that it is a Lender, as such term is defined in that certain Vertical Disposition and Development Agreement entered into by and between the City and County of San Francisco, operating by and through the San Francisco Port Commission ("Port") and [insert name of Vertical Developer], as Vertical Developer (the "VDDA"), of Vertical Developer's interest in the property subject to the VDDA, a legal description of which is attached hereto as Exhibit A and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the VDDA to Vertical Developer by Port be sent to the undersigned at the following address: _____."

If Lender desires to have Port acknowledge receipt of Lender's name and address delivered to Port pursuant to this ***Section 1.2(b)***, then such request must be made in bold, underlined and in capitalized letters.

1.3. ***Lender's Option to Cure Defaults***.

(a) Before or after receiving any notice of failure to cure referred to in ***Section 1.2 of this Schedule 16*** (Copy of Notice of Default to Lender), each Lender will have the right (but not the obligation), at its option, to commence to cure or cause to be cured any Event of Default, within the same period afforded to Vertical Developer hereunder plus an additional period of (i) fifteen (15) days with respect to a monetary Event of Default and (ii) forty-five (45) days with respect to a non-monetary Event of Default that is susceptible of cure by such Lender without obtaining title to the applicable property subject to the applicable Mortgage or acquiring the ownership interests in Vertical Developer, as applicable.

(b) If a non-monetary Event of Default cannot be cured by Lender without obtaining title to the Property, or applicable portion thereof, Port will refrain from exercising its right to terminate this Agreement and will permit the cure by a Lender of such Event of Default if, within the cure period set forth in ***Section 1.3(a) of this Schedule 16***: (i) such Lender notifies Port in writing that such Lender intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property or ownership interests, as applicable; (ii) such Lender commences foreclosure proceedings whether by non-judicial foreclosure, judicial foreclosure, by appointment of a receiver, or deed (or assignment) in lieu of foreclosure, within sixty (60) days after giving such notice, and diligently pursues such proceedings to completion; and (iii) after obtaining title, such Lender, subject to ***Section 1.4 of this Schedule 16*** (Lender's Obligations with Respect to the Property), diligently proceeds to cure those Events of Default that are susceptible of cure by such Lender. The period from the date Lender so notifies Port

until a Lender acquires title to applicable property subject to the applicable Mortgage or some other party acquires such interest through foreclosure is herein called the "**Foreclosure Period.**"

(c) Nothing in this ***Schedule 16*** will preclude Port from exercising any rights or remedies under this Agreement against Vertical Developer (other than a termination of this Agreement) with respect to any other Events of Default during the Foreclosure Period.

(d) Notwithstanding the foregoing, no Lender will be required to cure any non-monetary Event of Default that is specific or personal to Vertical Developer which cannot be cured by Lender (by way of example and not limitation, Vertical Developer bankruptcy, or the failure to submit required information in the possession of Vertical Developer). Lender's acquisition of title to applicable property subject to the applicable Mortgage, or the completion of a foreclosure (or assignment in lieu thereof), as applicable, will be deemed to be a cure of such Events of Default specific or personal to Vertical Developer. The foregoing will not excuse a Lender's failure to cure any continuing default that is curable by Lender.

(e) If a Lender is prohibited by any law, injunction, or any bankruptcy, insolvency or other judicial proceeding from commencing or prosecuting a foreclosure action, then the times specified for commencing or prosecuting such foreclosure action, as applicable, will be extended by each day of such prohibition.

1.4. ***Lender's Obligations with Respect to the Property.***

(a) **Rights and Obligations upon Lender Acquisition.** Except as set forth in this ***Schedule 16***, no Lender will have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to applicable property subject to the applicable Mortgage (referred to as "**Foreclosed Property**"). Except as otherwise provided herein (including, without limitation, ***Sections 1.4(b)—(d) of this Schedule 16***, a Lender (or its designee, successor or assign) or other winning bidder at a foreclosure sale (collectively, a "**Successor Owner**") that acquires title to any Foreclosed Property (a "**Lender Acquisition**") will take title subject to all of the terms and conditions of this Agreement to the extent applicable to the Foreclosed Property. Upon completion of a Lender Acquisition, Port will recognize the Successor Owner as Vertical Developer under this Agreement. Such recognition will be effective and self-operative without the execution of any further instruments; provided, upon request, at no cost to Port, Port will execute a written agreement recognizing Successor Owner. A Successor Owner, upon a Lender Acquisition, will be required promptly to cure all monetary defaults and all other ongoing defaults then reasonably susceptible of being cured by such Successor Owner to the extent not cured prior to completion of the Lender Acquisition. The foregoing obligation includes any obligation to cause the Commencement of Residential Construction, except as set forth in ***Section 1.4(c) of this Schedule 16*** (No Obligation to Commence Residential Construction).

(b) **Obligations of Lender Prior to Lender Acquisition.** Prior to a Lender Acquisition, Port will have no right to enforce any obligation under this Agreement against any Lender unless such Lender expressly assumes and agrees to be bound by this Agreement in a form reasonably approved in writing by Lender and Port, which form will be consistent with the terms of this Agreement (for the avoidance of doubt, the foregoing will not limit Port's rights and remedies against Vertical Developer notwithstanding any interest Lender may have in Vertical Developer or any right against any successor owner of the Property for a continuing default, as set forth in and subject to the limitations of this ***Schedule 16***). However, Lender agrees to comply during a Foreclosure Period with the terms, conditions and covenants of this

Agreement that are reasonably susceptible of being complied with by Lender prior to acquiring possession of a fee interest in the applicable property subject to the applicable Mortgage, including the payment of all sums due and owing hereunder.

(c) Obligation to Commence Residential Construction. Subject to ***Sections 1.4(d)*** (Obligation to Sell If Not Commence Residential Construction) and ***1.4(e)*** (Lender Agreement to Commence Residential Construction) ***of this Schedule 16***, any Lender who obtains title to Foreclosed Property through a Lender Acquisition or any other Successor Owner (other than such Lender) will be obligated to cause the Commencement of Residential Construction in accordance with this Agreement, except that the Required Construction Commencement Date shall be reset as if the Closing Date occurred as of the date of the Lender Acquisition.

(d) Obligation to Sell If Not Commence Residential Construction. In the event that Lender acquires the Foreclosed Property through a Lender Acquisition and Lender chooses not to cause the Commencement of Residential Construction to occur prior to the Required Commencement Construction Date, it will notify Port in writing of its election within one hundred twenty (120) days following the Lender Acquisition or promptly after Lender makes such election, and will thereafter use good faith efforts to sell its interest with reasonable diligence to a purchaser that will be obligated to cause the Commencement of Residential Construction to occur in accordance with this Agreement (subject to adjustment of the Required Construction Commencement Date as set forth in ***Section 1.4(c)*** above), but in any event Lender will use good faith efforts to cause such sale to occur within nine (9) months following Lender's written notice to Port of its election (the "**Sale Period**").

(e) Lender Agreement to Commence Residential Construction. If Lender fails to sell its interest in the Property within the Sale Period, such failure will not constitute a default hereunder but Lender will be obligated to cause the Commencement of Residential Construction to the extent this Agreement obligates Vertical Developer to do so (subject to adjustment of the Required Construction Commencement Date as set forth in ***Section 1.4(c)*** above). In the event Lender agrees, or is deemed to have agreed, to cause the Commencement of Residential Construction, (i) all such work will be performed in accordance with all the requirements set forth in this Agreement, (ii) Lender shall engage a qualified construction manager with at least ten (10) years' experience managing construction projects of a similar nature, and (iii) Lender shall confirm to Port in writing that its construction manager satisfies the foregoing requirement.

1.5. ***Provisions of Any Mortgage***. Each Mortgage must provide that Lender will during the term of this Agreement, (i) promptly provide Port by registered or certified mail a copy of any notice delivered by Lender to Vertical Developer of a borrower event of default (*i.e.*, following the expiration of all notice and cure periods) under the Mortgage, and (ii) give Port prior notice before Lender initiates any Mortgage foreclosure action with respect to the Property or the Project.

1.6. ***No Impairment of Mortgage***. No default by Vertical Developer under this Agreement will invalidate or defeat the lien of any Lender. Neither a breach of any obligation in a Mortgage, nor a foreclosure under any Mortgage will defeat, diminish, render invalid or unenforceable or otherwise impair Vertical Developer's rights or obligations under this Agreement or constitute, by itself, a default under this Agreement.

1.7. ***Multiple Mortgages.***

(a) If at any time there is more than one Mortgage constituting a lien on a single portion of the Property or any interest therein, the lien of Lender prior in time to all others (the "**Senior Lender**") will be vested with the rights under ***Sections 1.3*** (Lender's Option to Cure Defaults), ***1.13*** (Consent of Lender), and ***1.4*** (Cooperation) ***of this Schedule 16*** to the exclusion of the holder of any other Mortgage except if the Senior Lender fails to exercise the rights set forth in ***Section 1.3*** (Lender's Option to Cure Defaults), then the holder of a junior Mortgage that has provided notice to Port in accordance with ***Section 1.2*** (Copy of Notice of Default to Lender) will succeed to the rights set forth in ***Section 1.3*** (Lender's Option to Cure Defaults), only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in ***Section 1.3*** (Lender's Option to Cure Defaults).

(b) A Senior Lender's failure to exercise its rights under ***Section 1.3*** (Lender's Option to Cure Defaults), ***Section 1.13*** (Consent of Lender) or ***Section 1.14*** (Cooperation) ***of this Schedule 16*** as applicable, or any delay in the response of any Lender to any notice by Port will not extend (i) any cure period or (ii) Vertical Developer's or any Lender's rights under this ***Schedule 16***. For purposes of this ***Section 1.7***, in the absence of an order of a court of competent jurisdiction that is served on Port, a title report prepared by a reputable title company licensed to do business in the State of California and having an office in the City, setting forth the order of priorities of the liens of Mortgages on real property, may be relied upon by Port as conclusive evidence of priority.

1.8. ***Cured Defaults***. Port will accept performance by a Lender with the same force and effect as it performed by Vertical Developer. No such performance on behalf of Vertical Developer in and of itself will cause Lender to become a "mortgagee in possession" or otherwise cause it to be bound by or liable under this Agreement.

1.9. ***Limitation on Liability of Lender***. Notwithstanding anything herein to the contrary, no Lender will become liable under the provisions of this Agreement unless and until such time as it becomes the owner of some or any portion of the Property and then only for so long as it remains the owner of such fee interest and only with respect to the obligations arising during such period of ownership.

If a Lender becomes the owner of the Property, (i) except as set forth in ***Sections 1.4(c)*** (Obligation to Commence Residential Construction) and ***1.4(d)*** (Obligation to Sell if Not Commence Residential Construction) ***of this Schedule 16***, such Lender will be liable to Port for the obligations of Vertical Developer hereunder only to the extent such obligations arise during the period that such Lender remains the owner of the Property, and (ii) in no event will Lender have personal liability under this Agreement, as applicable, greater than Lender's interest in the Property, and Port will have no recourse against Lender's assets other than its interest herein or therein.

1.10. ***Intentionally Omitted.***

1.11. ***Nominee***. Any rights of a Lender under this ***Schedule 16*** (Financing Provisions), may be exercised by or through its nominee or designee (other than Vertical Developer) which is an Affiliate of Lender; provided, however, no Lender will acquire title to the Property through a nominee or designee which is not a Person otherwise permitted to become Vertical Developer

hereunder; provided, further that a Lender may acquire title to the Property through a wholly owned (directly or indirectly) subsidiary of Lender.

1.12. ***Intentionally Omitted.***

1.13. ***Consent of Lender***. Port will not (i) modify this Agreement in a manner that amends any provision of this ***Schedule 16*** or otherwise amends the terms of this Agreement in a manner that creates a material adverse effect upon Senior Lender, or (ii) terminate or cancel this Agreement without Senior Lender's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any such modification, termination or cancellation of this Agreement without Senior Lender's consent will be effective against Senior Lender.

1.14. ***Cooperation***. Port, through its Executive Director, and Vertical Developer will cooperate in including in this Agreement by suitable written amendment or agreement from time to time any provision which may be reasonably requested by the Senior Lender and customarily included in such amendment or agreement to implement the provisions and intent of this ***Schedule 16*** provided, however, that any such amendment or agreement will not adversely affect in any material respect any of Port's rights and remedies under this Agreement.

1.15. ***Reliance***.

The provisions of this ***Schedule 16*** are for the benefit of the Lender and may be relied upon and shall be enforceable by the Lender.

1.16. ***Priority of Lender Protections***.

In the event of a conflict between a provision in this ***Schedule 16***, on the one hand, and any other provision of this Agreement, on the other hand, the provision set forth in this ***Schedule 16*** will control.

SCHEDULE 18.1 HAZARDOUS MATERIALS INDEMNIFICATION

[FOR FEE PARCELS ONLY]

18.1(b) Hazardous Materials Indemnification.

(i) In addition to its obligations under Section 18.1(a) and subject to Section 18.1(c), Vertical Developer, for itself and on behalf of its tenants, Agents, or any of their respective Agents (individually "**Related Third Party**" and collectively "**Related Third Parties**") or their respective Invitees, agrees to Indemnify the City Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(1) any Hazardous Material Condition existing or occurring during the Term;

(2) any Handling or Release of Hazardous Materials in, on, under, around or about the Premises during the Term;

(3) [Add if Vertical Developer responsible for Deferred Infrastructure: without limiting Vertical Developer's Indemnification obligations in this Section 18.1(b), any Handling or Release of Hazardous Materials in, on, under, around or about any area outside the Premises boundary used by Vertical Developer or its Agents to perform the Deferred Infrastructure, ("**Deferred Infrastructure Area**") at any time prior to Acceptance of such Deferred Infrastructure; or

(4) without limiting Vertical Developer's Indemnification obligations in Section 18.1(b)(2) [**if applicable:** or 18.1(b)(3)], any Handling or Release of Hazardous Materials outside of the Premises, but in, on, under, around or about the 28-Acre Site, by Tenant or any Related Third Parties during the Term; or

(5) any Exacerbation of any Hazardous Material Condition during the Term; or

(6) failure by Vertical Developer or any of its Related Third Parties to comply with the Pier 70 Risk Management Plan or failure by Vertical Developer's Invitees or the Invitees of the Related Third Parties to comply with the Pier 70 Risk Management Plan within the Premises during the Term; or

(7) claims by Vertical Developer or any Related Third Party for exposure during the Term from and after [**for non-Horizontal Developer-affiliate deals**: the Closing Date] [**for Horizontal Developer affiliates deals**: the effective date of the Master Lease] to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(ii) "**Losses**" under Section 18.1(b) includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this section, Vertical Developer must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(iii) Vertical Developer understands and agrees that its liability to the City Parties and the State Lands Indemnified Parties under this Section 18.1(b) subject to Section 18.1(c), arises upon the earlier to occur of:

(1) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises, **[Add if Vertical Developer responsible for Deferred Infrastructure:** and the Deferred Infrastructure Area;]

(2) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises **[Add if Vertical Developer responsible for Deferred Infrastructure:** the Deferred Infrastructure Area;]

(3) the Exacerbation of any Hazardous Material Condition, or

(4) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

18.1(c) Exclusions from Indemnifications, Waivers and Releases.

(i) Nothing in this Article 18.1(b) relieves the City Parties or the State Lands Indemnified Parties from liability, nor will the defense obligations set forth in Sections 18.3 extend to Losses:

(1) to the extent caused by the gross negligence or willful misconduct of the City Parties; or

(2) from third parties' claims for exposure to Hazardous Materials prior to **[for non-Horizontal Developer affiliate deals:** the Closing Date.] **[for Horizontal Developer affiliate deals:** the effective date of the Master Lease.] or

(3) without limiting Vertical Developer's Indemnification obligations under [if applicable: Sections 18.1(b)(i)(3)], 18.1(b)(i)(4), 18.1(b)(i)(6), or 18.1(b)(i)(7), and to the extent the applicable Loss was not caused by the failure of Vertical Developer or any of its Related Third Parties to comply with the Pier 70 Risk Management Plan or the failure of Vertical Developer's Invitees or the Invitees of the Related Third Parties to comply with the Pier 70 Risk Management Plan within the Property, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Deferred Infrastructure Area after the Acceptance Date for the Deferred Infrastructure Area (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Deferred Infrastructure Area and is not also present in, on or around the Premises); provided, however, the foregoing limitation on Vertical Developer's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Vertical Developer, its tenants, subtenants, Agents, or any of their respective Agents.

(ii) If it is reasonable for a City Party or a State Lands Indemnified Party to assert that a claim for Indemnification under this Section 18.1(c) is covered by a pollution liability insurance policy, pursuant to which such City Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Vertical Developer in asserting a claim or claims under such insurance policy but without waiving any of its rights under this Section 18.1(c). Notwithstanding the foregoing, if a City Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Vertical Developer, the Indemnification from Vertical Developer under this Section 18.1(c) will not be effective unless such City Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (1) Vertical Developer pays any self-insured retention amount required under the policy, and (2) nothing in this sentence requires any City Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Vertical Developer.

18.1(d) Additional Definitions.

"**Environmental Laws**" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this Lease. "**Environmental Laws**" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials 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, including both administrative and judicial proceedings.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"**Exacerbate**" **or** "**Exacerbating**" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure 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, it being understood that the mere discovery of Hazardous Materials does not cause "**Exacerbation**". "**Exacerbate**" also includes the disturbance, removal or generation of Hazardous Materials in the course of Vertical Developer's operations, Investigations, maintenance, repair, construction of Improvements and Alterations under this Lease. "**Exacerbate**" also means failure to comply with the Pier 70 Risk Management Plan. "**Exacerbation**" has a correlative meaning.

"**Handle**" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "**Handling**" has a correlative meaning.

"**Hazardous Material Claim**" means any Environmental Regulatory Action or any claim made or threatened by any third party against the City Parties or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of

the use or any amenity of the Premises or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"**Hazardous Material Condition**" means the Release or Exacerbation, or threatened Release or Exacerbation of Hazardous Materials in, on, under, or about the Premises or the environment, or from any vehicles Vertical Developer, its tenants, subtenants, or its Agents and Invitees use in, on, under, or about the Premises.

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"**New Hazardous Material**" means a Hazardous Material that is not a Pre-Existing Hazardous Material.

"**Pier 70 Risk Management Plan**" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"**Release**" means when used with respect to Hazardous Materials, any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"**Remediate**" or "**Remediation**" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "**remedy**" or "**remedial action**" in California Health and Safety Code Section 25322 and "**remove**" or "**removal**" in California Health and Safety Code Section 25323.

"**State Lands Indemnified Parties**" means the State of California, the California State Lands Commission, all of its heirs, legal representatives, successors and assigns, and all other Persons acting on its behalf.

SCHEDULE 19.4

PORT'S SHARE OF NET TRANSFER PROCEEDS

(a) Distribution of, and Port's Participation in, Sale Proceeds of Qualifying Early Sale. One Hundred Percent (100%) of the Qualifying Early Sale Proceeds from a Qualifying Early Sale by Initial Vertical Developer occurring at any time prior to the Early Transfer Date, less the following deductions will be treated as Land Proceeds in accordance with Section 3.2 of the Financing Plan (Exhibit C-1 to the DDA):

(i) The "**Acquisition Price**" as defined in the Vertical DDA;

(ii) Port's Attorneys' Fees and Costs associated with Port's review of the Qualifying Early Sale;

(iii) Costs of Sale;

(iv) Tenant's Certified Entitlement Costs; and

(v) A 12% annual return on the Certified Entitlement Costs.

(b) Additional Definitions. Pertinent definitions used in this Schedule 19.4 are included below (undefined capitalized terms used herein are defined in the Vertical DDA):

"**Attorneys' Fees and Costs**" means reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

"**Cash Consideration**" means (i) cash, or (ii) cash

"**Certified Entitlement Costs**" means costs set forth in an itemized statement detailing Entitlement Cost incurred by Initial Vertical Developer to the date of the Qualifying Early certified as true, accurate and complete by an independent certified public accountant.

"**Costs of Sale**" means only the following costs incurred by Initial Vertical Developer connection with the Qualifying Early Sale: (i) brokerage commissions paid to licensed real brokers (provided, however, that in the case of brokerage commissions paid to Affiliate brokers, such commissions must be commercially reasonable), (ii) finder's fees (provided that in the of finder's fees to Affiliates, such finder's fees must be commercially reasonable), reasonable and customary closing fees and costs including recording fees and transfer taxes, insurance premiums and survey fees, (iv) reasonable advertising and marketing costs, and (v) reasonable Attorneys' Fees and Costs. "Costs of Sale" excludes adjustments to reflect of rents, taxes or other items of income or expense customarily prorated in connection with of real

"**Early Transfer Date**" means the earlier of: (1) three years after Close of Escrow; or (2) the date that Port issues a site permit and first building permit addendum to allow commencement of construction of the Vertical Project.

"**Entitlement Costs**" means Initial Vertical Developer's reasonable out-of-pocket costs actually incurred from and after the effective date of the Vertical DDA until the Qualifying Early Sale and attributable to the following only: designing the Vertical Project; costs related to all land use approvals and entitlements, including preparation and processing of design review applications under the Pier 70 SUD and the Design for Development, subdivision maps, and costs of compliance with all conditions of approval and CEQA mitigation measures legally required by the City, Port or any other Regulatory Agency as a condition to obtaining the entitlements; and architectural, engineering, consultants, community outreach, attorney and other professional fees reasonably necessary to obtain the entitlements.
"**Initial Vertical Developer**" means [**insert name of initial Vertical Developer entity]**

"**Managing Party**" means, with respect to any Person, both (i) the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management, policies or activities of such Person (excluding customary limited partner or non-managing member approval rights) and (ii) the ownership (direct or indirect) of more than ten percent (10%) of the profits or capital of such Person.

"**Non-Cash Consideration**" means consideration received by the Initial Vertical Developer in connection with a Qualifying Early Sale that is not Cash Consideration.

"**Qualifying Early Sale**" means (i) a sale of the Initial Vertical Developer's fee interest in the Property to a Person other than a Vertical Developer Affiliate, or (ii) a Recapitalization that results in a change in the Managing Party of Vertical Developer or of the Managing Party owning ten percent (10%) or less of the profits or capital of Vertical Developer.

"**Qualifying Early Sale Proceeds**" means all Sale Proceeds received by or for the account of the Initial Vertical Developer in connection with a Qualifying Early Sale .

"**Recapitalization**" means a transfer, in a single transaction or a related series of transactions that results in a change in the Person that had more than fifty percent (50%) of the ownership interest in Initial Vertical Developer (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof, and whether direct or indirect).

"**Sale Proceeds**" means all consideration received by or for the account of Initial Vertical Developer in connection with a Qualifying Early Sale, including Cash Consideration, the principal amount of any loan made by Initial Vertical Developer to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price. "**Sale Proceeds**" do not include a commitment by an owner (whether direct or indirect) of Initial Vertical Developer to fund its share of future capital calls to construct the Vertical Project, which, in and of itself, will not be considered or deemed to be Sale Proceeds.

Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21

This Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21 (this "**Appendix**") sets forth special terms and obligations that apply specifically and exclusively to the lease of Historic Building 2, 12 or 21, as applicable, each located within the 28-Acre Site (Historic Buildings 2, 12 and 21 each a "**Historic Building**" and collectively "**Historic Buildings**"). At the time of execution of the VDDA, the approved form of VDDA for Historic Buildings 2, 12 and 21 will be revised to reflect the specific terms set forth in this Appendix, but except as expressly modified herein, the terms set forth in the approved form of VDDA will apply. For the purposes of this Appendix, any capitalized term not defined herein will have the meaning ascribed to them in the VDDA.

[NTD: The replacement in Section A below will only apply to Buildings 12 and 21: NOT Building 2, which is an Option Parcel]

A. ***Restrictive Covenants (Section 3.2).*** Section 3.2(f) of the Agreement will be replaced with the following:

> "(f) the obligation to develop the Vertical Project that complies with the Scope of Development attached hereto as Exhibit B (the "**Scope of Development**") and the Schedule of Performance attached hereto as ***Exhibit C-3***."

B. ***Port's Conditions Precedent (Section [6.4(a)])*** of the Agreement will be supplemented to add the following additional conditions precedent to Port's obligation to close Escrow and thereby Deliver the Historic Buildings to Vertical Developer:

[NTD: ITEMS (xv) through (xx) Apply to Buildings 12 and 21 Only; NOT Building 2, which is an Option Parcel]

(xv) Port has approved those aspects of the Construction Documents that are required under ***Section 12.15 (Port Review of Schematic Drawings and Construction Documents)*** to be approved prior to Close of Escrow.

(xvi) Port has received and approved evidence of adequate financing for the Vertical Project , including evidence of Vertical Developer's ability to meet any debt service obligation(s) attendant thereto, as provided for below:

(1) Vertical Developer has submitted the then-current development budget for the Vertical Project (the "**Development Budget**"), showing Vertical Developer's anticipated costs of construction.

(2) Vertical Developer has submitted, and Port has reasonably approved, (i) evidence of a bona fide commitment or commitments for the financing of that portion of the Development Budget Vertical Developer intends to borrow to finance the Vertical Project , certified by Vertical Developer to be a true and correct copy or copies thereof, with (x) no conditions to funding other than standard and customary conditions and (y) no provisions requiring acts of Vertical Developer prohibited in this Agreement, or prohibiting acts of Vertical Developer required in this Agreement, and (ii) such documentation showing sources and uses of funds as may be required by such leasehold lender.

(3) Vertical Developer has submitted a statement and appropriate supporting documents certified by Vertical Developer to be true and correct and in form reasonably satisfactory to Port showing sources and expected uses of funds sufficient to demonstrate that Vertical Developer has or will have funds equal to or exceeding the total development cost of the Vertical Project (as shown on the Development Budget) as of the Closing Date, and such funds have been spent for uses described in the Development Budget or are committed and available for that purpose.

(4) Within thirty (30) days after Vertical Developer's submission of all of the applicable documents described in this ***Section 6.4(a)(xvi)***, Port will notify Vertical Developer in writing of Port's approval or disapproval (including the reasons for disapproval) of the evidence of financing.

(xvii) If Vertical Developer elects to finance any part of the Vertical Project through funding from a leasehold lender, then such financing has closed or will close simultaneously with the Closing Date.

(xviii) Port has reasonably approved evidence of a guaranteed maximum price contract for construction of the Vertical Project ("**Construction Contract**"). Port's approval of the Construction Contract shall solely be for purposes of determining consistency with the Development Budget and the Scope of Development attached hereto as ***Exhibit B*** and consistency with the terms of this Agreement and the Parcel Lease. Port's approval of the Construction Contract is in addition to, and not as a limitation of, Port's approval rights of the Construction Documents pursuant to ***Article 12***.

(xix) The first construction permit for the Vertical Project (or in the case of a site permit or equivalent process, the first addendum authorizing construction of the Vertical Project) is ready to be issued but for the execution of the Parcel Lease by Port and payment by Vertical Developer of all building permit fees that are required to be paid prior to commencement of the work described in the building permit.

(xx) Vertical Developer has caused [_____] to deposit into Escrow, at Vertical Developer's election, one of the following (A) a completion guaranty from a Person other than Vertical Developer meeting the Obligor Net Worth Amount guaranteeing completion of the Vertical Project in the form attached here to as ***Exhibit [__]*** ("**Completion Guaranty**"), (B) a payment and a performance bond issued by a surety reasonably acceptable to Port in an amount equal to 100% of the guaranteed maximum price in the Construction Contract in the form attached hereto as ***Exhibit [__]*** ("**Performance Bond**"), or (C) a letter of credit in an amount equal to 100% of the guaranteed maximum price in the Construction Contract and in a form reasonably acceptable to Port ("**Letter of Credit**").

(xxi) Vertical Developer will have submitted to Port evidence that the Historic Preservation Certification Application, Part 1 and Part 2 for the Vertical Project has been submitted to the National Park Service ("**NPS**"), provided, however, that this requirement will not apply if a change in Law would eliminate the availability of Historic Preservation Tax Credits for the Historic Building, or if, upon request by Vertical Developer, the Port Director, in her sole discretion, waives this requirement.

C. ***Vertical Developer's Conditions Precedent (Section 6.5(a))*** of the Agreement will be supplemented to add the following additional conditions precedent to Vertical Developer's obligation to close Escrow and accept the Property from Port under this Agreement:

[NTD: ITEMS (v)-(ix) apply to Buildings 12 and 21 Only; NOT Building 2, which is an Option Parcel]

(v) Port has approved those aspects of the Construction Documents that are required under ***Article 12*** to be approved by Port by the Close of Escrow, provided that Vertical Developer has timely submitted all required information and documents.

(vi) Port has approved evidence of adequate financing for the Construction of the Vertical Project in accordance with ***Section 6.4(a)(xvi)***.

(vii) If Vertical Developer elects to finance any part of the Vertical Project through funding from a leasehold lender and has provided all documents requested by the leasehold lender in a timely manner, then such financing has closed or will close simultaneously with the Close of Escrow.

(viii) The first building permit for the Vertical Project (or in the case of a site permit or equivalent process, the first addendum authorizing construction of the Vertical Project) is ready be to issued but for the execution of the Parcel Lease by Port and payment by Vertical Developer of all building permit fees that are required to be paid prior to commencement of the work described in the building permit.

(ix) Vertical Developer has obtained all Regulatory Approvals required to commence Construction of the Vertical Project and the same has been Finally Granted.

D. ***Closing. Section 7.2 (Closing)*** of the Agreement is hereby replaced in its entirety to read as follows:

[NTD: Revised Section 7.2. below only applies to Buildings 12 and 21; NOT Building 2, which is an Option Parcel]

7.2. *Closing.* The Closing hereunder will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of the Title Company on the date that is no later than thirty-six (36) months after the Effective Date hereof before 3:00 p.m. San Francisco time or such earlier date and time as Vertical Developer and Port may mutually agree upon in writing (the "**Target Closing Date**"). The "**Closing Date**" is the date that the Closing or Close of Escrow occurs.

[NTD: Revised Section 7.4 (b) below only applies to Buildings 12 and 21; not Building 2, which is an Option Parcel]

E. ***Deposit of Documents by Vertical Developer (Section [7.4(b)])*** of the Agreement will be supplemented to add the following items to be deposited by Vertical Developer into escrow at or before the Closing: **[NTD: cross check against Agreement to confirm romanette numbering is correct]**

(viii) At the election of [_____] in accordance with **[*Section 6.4(a)(xx)*]**, a Completion Guaranty, Performance Bond or Letter of Credit.

F. ***Loss (Section [8.1])*** of the Agreement shall be deleted in its entirety and replaced with the following provision:

Loss.

(i) Prior to the Closing Date, Port will give Vertical Developer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event of any damage or destruction of the Historic Building occurring prior to the Close of Escrow which Developer reasonably determines would add less than Five Hundred Thousand and No/100 Dollars ($500,000.00) to the Budget, Developer and Port will Close the Escrow if the other closing conditions are satisfied. In such event, all proceeds, if any, of property, earthquake and flood insurance payable to Port by reason of such damage or destruction related solely to the Historic Building, whether under insurance policies held by Port or by Developer, shall be paid or Port's rights to such proceeds assigned, as applicable, to Developer.

(ii) If any damage or destruction of the Historic Building occurring prior to the Close of Escrow which Vertical Developer reasonably determines would add more than Five Hundred Thousand and No/100 Dollars ($500,000.00) to the Budget [and Port elects not to, within a reasonable time, but in no event later than 120 days after Port's notice to Vertical Developer of the occurrence, provide Vertical Developer with additional funds exceeding $500,000 through cash payment of Port funds [**for Building 2 only, if Hybrid Lease:** (or, if agreed to by Developer in its sole discretion, through Port payment of insurance payments or rent credits to be applied 50% against Minimum Rent otherwise owed under the Lease)]. Developer may elect upon 10 days' notice to Port (i) to terminate this Agreement by written notice to Port, or (ii) to Close Escrow. If Developer elects to Close Escrow, then to the extent that Port elects, in its sole discretion, to make a claim against any insurance carried by Port covering the loss, all proceeds of property, earthquake and flood insurance payable to Port by reason of such damage or destruction related solely to the Historic Building, whether under insurance policies held by Port or by Developer, shall be paid or Port's rights to such proceeds assigned, as applicable, to Developer, and, if such event of damage or destruction occurs by any reason other than the negligent or willful acts or omissions of Developer, its Agents or Invitees, Port shall pay or credit to Developer against Rent otherwise due and payable under the Lease, the amount of the insurance deductible. Vertical Developer may terminate this Agreement in the event that all or any portion of the Property is condemned.

G. **Development of Vertical Project and Related Infrastructure (Section [12])** of the Agreement shall be deleted in its entirety and replaced with the following provision:

12. DEVELOPMENT OF VERTICAL PROJECT AND RELATED INFRASTRUCTURE.

12.1. ***Developer's Construction Obligations; Project Requirements.***

(a) Project Requirements. Developer must Construct all of the Improvements in compliance with: (i) the Scope of Development, the Construction Documents, and the Schedule of Performance attached hereto as ***Exhibit C-3***; (ii) all applicable Laws, including Port Building Code, required Regulatory Approvals, the Waterfront Plan, the Pier 70 SUD and Design for Development, Environmental Laws, State Historical Building code, disabled access Laws and Laws regulating construction on the Property; (iii) the Secretary's Standards attached hereto as ***Schedule 12.1-1*** for all proposed work affecting any of the structures and buildings within the Property (regardless of whether Developer seeks Historic Preservation Tax Credits), (iv) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen

sinks in any café, restaurant or other food establishment on the Property, (v) the Mitigation Monitoring and Reporting Program; (vi) Workforce Development Plan, (vii) the HREs, and (ix) this Agreement (sometimes referred to collectively as the "**Project Requirements**"). Notwithstanding any other provision of this Agreement or the Lease to the contrary, Port's approval of the Schematic Drawings attached hereto as ***Schedule 12.1-2*** and the site plan in the form attached hereto as ***Exhibit A-2*** is in no manner intended to, and shall not, evidence or be deemed to evidence Port's approval of the Construction Documents. Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

(b) Scope of Development. Developer will Construct or cause to be Constructed the Improvements in accordance with the Project Requirements in the manner set forth in this ***Section 12***, the Scope of Development, and the Schematic Drawings.

12.2. ***Mitigation Monitoring and Reporting Program***. In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the Vertical Project will be in accordance with all applicable Environmental Laws and the Mitigation Monitoring and Reporting Program attached hereto as Exhibit K. Vertical Developer will incorporate the Mitigation Monitoring and Reporting Program into any contract or subcontract.

12.3. ***Amendment of Development Requirements***. Vertical Developer will not seek any amendment to the Design for Development under Section [249.79(c)] of the SUD or to the SUD under Section 302 of the Planning Code without obtaining the prior written consent of Port (and, for any proposed amendment that may impact Horizontal Developer, the Horizontal Developer), which consent may be given or withheld in each of their sole discretion. In its application to Port or the City for a Regulatory Approval under the SUD or applicable building codes, Vertical Developer will expressly identify in writing any elements of its proposed construction that requires an amendment to the Vertical Development Requirements, and state the reason for the proposed amendment. No amendment to the Vertical Development Requirements will be effective with respect to such items if an amendment was not clearly sought by Vertical Developer in writing and such amendment was not approved by the Port in its proprietary capacity.

[Note: Include the following *Section 12.4* (and all subsequent references to "Deferred Infrastructure") only if obligation to construct Infrastructure or other Horizontal DDA obligation tied to the Schedule of Performance has been transferred to Vertical Developer in Schedule 12.4-1]

12.4. ***Construction of Infrastructure***. Vertical Developer will be solely responsible for developing all improvements within the Property, including, without limitation, private right of ways, pedestrian walkways, infrastructure, and landscaping and hardscaping in any open space and common areas located within the Property. **[add if applicable]:** Vertical Developer will also be required to construct the Deferred Infrastructure identified on ***Exhibit Schedule 12.4-1*** attached to this Agreement. Horizontal Developer (or its successor with respect to the obligation to construct Horizontal Improvements in accordance with the Pier 70 Infrastructure Plan (attached to the Horizontal DDA as ***Exhibit B8***) will cause to be constructed Horizontal Improvements serving the Property, including streets and utilities necessary to serve the Property adjacent to (but not within) the Property, in accordance with the terms of the Horizontal DDA and as between Vertical Developer and Horizontal Developer, in accordance with the VCA. If Vertical Developer requires access to any real property outside of the Property that is under the control of Port in connection with the construction of the Deferred Infrastructure, Vertical Developer and Horizontal Developer

will use good faith efforts to negotiate and execute a license substantially in the form of Port's standard form of license, as may be adjusted between the Parties to account for the additional risks associated with such activities, including increased insurance coverage amounts or additional insurance coverage and broader indemnity and release provisions, and any additional provisions required by Law (or mandated by the Port Commission pursuant to a policy adopted by the Port Commission in a public meeting) to be included in real property licenses.

12.5. ***Construction Standards.*** All construction must performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

12.6. ***Reports and Information.*** During periods of construction, Vertical Developer will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

12.7. ***Costs of Vertical Project***

[For Building 2 Only]: Costs of Vertical Project. Port has no responsibility for any costs of the Vertical Project and Vertical Developer will pay (or cause to be paid) all costs for the Vertical Project, subject to Port's obligations under the DDA.

[For Buildings 12 and 21 Only]: Costs of Vertical Project for Historic Buildings 12 and 21.

(a) Definitions.

"**Hard Costs**" means reasonable out-of-pocket costs of Rehabilitation (including costs of signage and tenant improvements constructed by Vertical Developer and not otherwise included in Soft Costs or reimbursed by any subtenant or user of the premises under the Parcel Lease) actually incurred by Vertical Developer through the Historic Building Cost Trigger Date attributable solely to the cost of labor, materials and construction "**Hard Costs**" do not include any cost reimbursed by any subtenant or user of the premises under the Parcel Lease, (ii) any Hard Costs that are included as Soft Costs or are included in other costs reimbursable to Vertical Developer or Master Developer under the DDA or Financing Plan, as applicable, or (iii) any costs incurred from and after the Historic Building Cost Trigger Date..

"**Historic Building Cost**" means the (a) sum of the following amounts, calculated separately for Historic Building 12 and Historic Building 21, determined at the earlier of the Historic Building Cost Trigger Date, or if a Sale or Qualifying Refinancing will occur (as those terms are defined in the Parcel Lease) prior to such date, forty-five (45) days prior to the applicable Sale or Qualifying Refinancing: (i) all reasonable and customary Hard Costs and Soft Costs of Rehabilitation, plus (ii) Vertical Developer Return, less (b)(i) Gross Income (as defined in the Parcel Lease) from the premises under the Parcel Lease until and including the Historic Building Cost Trigger Date, minus (ii) operating expenses for the applicable Historic Building to the extent not otherwise included in Hard Costs or Soft Costs.

"**Historic Building Cost Trigger Date**" means the earlier to occur of the date that is one year after receipt of a TCO or 90% occupancy of space in the applicable Historic Building.

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

"**Permissible Financing Costs**" means debt service and other customary financing costs incurred in connection with obtaining, negotiating and closing any financing for the development and construction of the Vertical Project, including financing from an Affiliate of Vertical Developer or another lender that is not a Bona Fide Institutional Lender (as defined in the Parcel Lease) (provided the terms of any such financing are market when compared with other debt financing provided by Bona Fide Institutional Lenders), a Bona Fide Institutional Lender (including, but not limited to any mezzanine financing), or from the sale of Historic Preservation Tax Credits, and all interest costs and other customary payments made by Vertical Developer pursuant to the terms thereof, including all application fees, transaction costs, due diligence expenses, professional fees if the services of such professionals are customary in the type of financing obtained by Vertical Developer, reasonable legal fees, and title, appraisal and survey costs actually incurred in connection with such financing and paid or reimbursed by Vertical Developer.

"**Rehabilitation**" means the repair or alteration of an historic building that does not damage or destroy materials, features, or finishes considered important in defining the building's historic character.

"**Soft Costs**" means reasonable out-of-pocket costs actually incurred by the Vertical Developer that actually constructs the Initial Improvements except to the extent excluded under this Agreement or the Parcel Lease, that are directly attributable to the following only: designing the Initial Improvements (including mock-ups and signage design); negotiation of the Transaction Documents; pursuing Historic Preservation Tax Credits; architectural, engineering, consultant, attorney, and other professional fees and printing costs; regulatory fees; CEQA mitigation measures; community benefits; Impact Fees (as defined in the DDA); Permissible Financing Costs; Port Costs and Other City Costs (as defined in the Vertical DDA); builder's risk insurance and other insurance expenses directly related to construction of the Initial Improvements, including environmental insurance; performance and payment bonds; a development fee, not to exceed 4% of Historic Building Costs (excluding the Tenant Return); costs for a construction office and construction-related signage, to the extent a construction office and construction related signage separate from Master Developer is required; Impositions to the extent attributable to the Leasehold Estate; premiums for the title insurance; safety and security measures; costs of purchasing and installing telecommunications and data infrastructure for the premises under the Parcel Lease; utilities during construction; leasing and marketing expenses (including standard brokerage commissions; provided, however, that in the case of brokerage commissions paid to Affiliate brokers, such commissions must be commercially reasonable); third party costs to prepare the Certified Historic Building Costs; tenant improvement allowances; and any other reasonable and customary costs necessary to the Rehabilitation and tenanting of the Initial Improvements through the Historic Building Cost Trigger Date, as reasonably approved by Port. "**Soft Costs**" do not include (i) distributions, dividends, preferred return or other capital return to the members or shareholders of Tenant, Tenant, or any of their respective Affiliates, (ii) any cost reimbursed by any subtenant or user of the premises under the Parcel Lease, (iii) any Soft Costs that are included as Hard Costs or are included in other costs reimbursable to Vertical Developer or Master Developer under the DDA or Financing Plan, as applicable, or (iv) any Soft Costs incurred from and after the Historic Building Cost Trigger Date.

"**TCO**" is an acronym for a Temporary Certificate of Occupancy.

"**Tenant Return**" means an amount equal to 10% of the Hard Costs and Soft Costs actually incurred by Vertical Developer for the Rehabilitation.

(b) Port Reimbursement Obligation. When determined in accordance with Section (c) below, Port will pay Vertical Developer an amount equal to the Historic Building Feasibility Gap from the next available Public Financing Sources, including any available Port Tax Increment (as those terms are defined under the Financing Plan). To allow the calculation of the Historic

Building Feasibility Gap, Vertical Developer will comply with the recordkeeping and reporting requirements of this **Section 12.7**.

(c) Reporting Requirements. Within the earlier of one hundred twenty (120) days following the date that is one year after the Historic Building Cost Trigger Date, and (ii) forty-five (45) days prior to a Sale or Qualifying Refinancing under the Parcel Lease, the Vertical Developer that constructed the Initial Improvements will furnish Port with:

the Certified Historic Building Cost Statement provided in accordance with the procedures attached to the Parcel Lease as ***Attachment 1 to Exhibit D.***

12.8. ***Port Rights of Access***. Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Property to the extent necessary to carry out the purposes of this Agreement, including to observe the progress of Construction of the Vertical Project, to inspect the work being performed in such Construction, and to monitor Vertical Developer's compliance with the Project Requirements; provided however, Port will use commercially reasonable efforts not to adversely impact Vertical Developer's work on the Property in connection with Port's access to the Property. Port will not be estopped from taking any action (including later claiming that the construction of the Vertical Project improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

12.9. ***Regulatory Approvals***.

(a) Port Acting as Owner of Property. Vertical Developer understands and agrees that Port is entering into this Agreement in its proprietary capacity as the holder of fee title to the Property and not as a Regulatory Agency with certain police powers. Vertical Developer agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Vertical Project can be obtained. Vertical Developer agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Vertical Project will be issued by the appropriate Regulatory Agency, and Vertical Developer understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Vertical Developer will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Vertical Project and/or the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Vertical Developer, at Vertical Developer's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Vertical Project. By entering into this Agreement, Port is in no way modifying or limiting Vertical Developer's obligations to cause the Property to be developed, restored, used and occupied in accordance with all Laws. Vertical Developer further agrees and acknowledges that any time limitations on Port review or approval within this Agreement applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Vertical Developer understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Vertical Project or other matters related to this Agreement, and any such advocacy, promotion or lobbying will be done by Vertical Developer at Vertical Developer's sole cost and expense. Vertical Developer hereby waives any Claims against the City Parties, and fully releases and discharges the City Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Vertical Project; provided, however, that nothing herein is intended to affect or otherwise alter the rights, remedies and obligations of the Parties or any City Parties arising under the Development Agreement.

(b) Regulatory Approval; Conditions.

(i) Vertical Developer understands that construction of the Vertical Project [and Deferred Infrastructure,] and Vertical Developer's contemplated uses and activities on the Property, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, SFPW, SFDPH, BAAQMD, Cal OSHA and other Regulatory Agencies. Vertical Developer is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

(ii) Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Agreement, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if (1) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could encumber, restrict or adversely change the use of any Port property other than the Property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions; or (2) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions or restrictions under such permit that could restrict or change the use of the Property in a manner not otherwise permitted under this Agreement or the Parcel Lease or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions including the assumption of any unreimbursed costs or fees Port may be subject to as a result of such Regulatory Approval.

(iii) Vertical Developer will not seek any Regulatory Approval without first obtaining the approval of Port, which (except as set forth herein) will not be unreasonably withheld, conditioned or delayed. Throughout the Term, Vertical Developer will submit all applications and other forms of request for required Regulatory Approvals on a timely basis and will consult and coordinate with Port in Vertical Developer's efforts to obtain Regulatory Approvals. Port will provide Vertical Developer with its approval or disapproval thereof in writing to Vertical Developer within ten (10) business days after receipt of Vertical Developer's written request, or if Port's Executive Director reasonably determines that Port Commission or Board action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Vertical Developer's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Vertical Developer for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

(iv) Vertical Developer will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-site or require off-site improvements, removal, or other measures. Vertical Developer in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval; provided however, post-closing, Vertical Developer's right will be limited by Section 5.2 (CFD Matters) of the Parcel Lease. Vertical Developer will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Vertical Developer will pay or discharge

any fines, penalties or corrective actions imposed as a result of the failure of Vertical Developer to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Vertical Developer's obligation to pay all the costs of complying with any conditions or restrictions. Vertical Developer will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Property.

(v) Without limiting any other Indemnification provisions of the Parcel Lease, Vertical Developer will Indemnify the City Parties from and against any and all Losses which may arise in connection with Vertical Developer's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to develop and construct the Property in accordance with the Scope of Development, except to the extent that such Losses arise from the gross negligence or willful misconduct of any City Party.

(c) **Certain City Regulatory Approvals.** Horizontal Developer and the City have entered into the Development Agreement, which will govern certain land use matters under the Planning Code, including Impact Fees and Exactions. The Port and other City Agencies, with Horizontal Developer's consent, have entered into the ICA specifying certain procedures and standards that will apply when Horizontal Developer seeks Regulatory Approvals for the Horizontal Improvements from other City Agencies. A copy of the Development Agreement has either been made available to Vertical Developer for its review at Port's offices or has been provided to Vertical Developer.

(d) **Compliance.** Vertical Developer is solely responsible for ensuring that the design and construction of the Vertical Project and the Deferred Infrastructure (if assigned to and assumed by Vertical Developer in the VCA) comply with all Vertical Development Requirements and applicable Laws at no cost to the Port.

(e) **Noncompliance.** Vertical Developer must pay any fines and penalties and perform any corrective actions imposed for noncompliance with any applicable Laws and Indemnify the Port against any liability arising from such noncompliance, even if the Port is a co-permittee. Vertical Developer will not be entitled to reimbursement from public financing sources for any fines, penalties, and costs of corrective actions related to its construction of Deferred Infrastructure.

12.10. ***Conditions to Commencement of Construction of the Vertical Project.***

(a) **Conditions Precedent.** Unless expressly waived by Port, Vertical Developer must satisfy all of the following conditions before Commencement of Construction of the Vertical Project:

(i) *Certification.* Vertical Developer will have delivered to Port a statement certified by its officer as true, correct and complete that (1) it has obtained all Regulatory Approvals required to commence construction of the Vertical Project, (2) it has obtained sufficient financing to commence and complete the Vertical Project, (3) it has paid the City all Impact Fees and Exactions that are required to be paid prior to commencement of construction of the Vertical Project, **[add for Building 2 only:** and (4) it has paid the Master Marketing Fee in accordance with Section 12.16.

(ii) *Insurance.* Vertical Developer has in place all insurance required during construction of the Vertical Project under the terms of the Parcel Lease and has provided Port evidence thereof.

(iii) *Good Standing.* There will be no uncured Vertical Developer Default by Vertical Developer under this Agreement or uncured Event of Default under the Parcel Lease

(iv) *Security.* Vertical Developer will have provided security to Port with respect to the Vertical Improvements as provided in ***Section 6.4(a)(xx)***.

(b) **Conditions for Benefit of the Port.** The conditions in ***Section [12.10(a)]*** (Conditions Precedent) are solely for the benefit of Port. Only Port may waive any of those conditions, and only to the extent waivable under law.

(c) **Effect of Failure of Condition.** Developer's failure to satisfy any condition described in ***Section [12.9(a)]*** (Conditions Precedent) will not alone relieve either Party of any obligations that previously arose under this Agreement.

12.11. ***Commencement Estoppel.*** Vertical Developer has the right, but not the obligation, to request an estoppel certificate from Port, at no cost to Port, for the benefit of Vertical Developer and any Mortgagee or any other lender of the Vertical Project, stating that Vertical Developer has satisfied the conditions set forth in Section 12.10. Any such request will include a certification by Vertical Developer that (i) it has satisfied the requirements of Section 12.10(a)(i) and (ii) that to its actual knowledge, Port is not in default under this Agreement or the Parcel Lease. Port will have at least ten (10) business days to respond to such request.

12.12. ***Safety Matters.*** Vertical Developer will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining or nearby property, or the risk of injury to members of the public, caused by or resulting from the performance of its development of the Vertical Project. Vertical Developer will erect appropriate construction barricades to enclose the areas of such construction and maintain them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

12.13. ***Post-Closing Boundary Adjustments.*** The Parties acknowledge that, as development of the 28-Acre Site advances, the description of each parcel of real property may require further refinements, which may require minor boundary adjustments. The Parties agree to cooperate in effecting any required boundary adjustments consistent with ***Section 21.2*** (Technical Changes). Vertical Developer agrees that all conveyance agreements from Vertical Developers to any transferees of the Property will include the obligation to cooperate with Port.

12.14. ***The Construction Documents.***

(a) **Construction Documents Generally.** "**Construction Documents**" will consist of Schematic Drawings, Design Development Documents and Final Construction Documents, as described below and must also comply with ***Sections 12.13(a)(iv)*** and ***12.13(a)(v)*** and the terms and conditions of this Agreement. As used in this Agreement "Construction Documents" excludes any contracts between Vertical Developer and any contractor, subcontractor, architect, engineer or consultant.

(b) **"Design Development Documents"** means drawings and plans in sufficient detail and completeness to show that the Vertical Project and the construction thereof will comply with the Project Requirements and will generally include the following:

(1) Site plan(s) at appropriate scale showing the building, streets, walks, and other open spaces. All land uses shall be designated. All site development details and bounding streets, points of vehicular and pedestrian access shall be shown.

(2) All building plans and elevations at appropriate scale.

(3) Building sections showing all typical cross sections at appropriate scale.

(4) Floor plans.

(5) Plans for public access areas showing details of features intended to be Constructed as part of the Improvements.

(6) Outline specifications for materials and finishes.

(7) Plans for interior and exterior signs required by the Port Building Code.

(8) Site and exterior and interior (for common areas only) lighting plans.

(9) Material and color samples for exterior facades, public plazas and open space, and other public areas, generally representative of the intended finished look.

(10) Roof plans showing all proposed mechanical and other equipment, vents, photo-voltaic panels, satellite dish(es), antennae(s), and mechanical or elevator penthouses.

(11) Geotechnical, structural, and other engineering assessments and investigation reports.

(12) Stormwater management plan.

(c) **"Final Construction Documents"** means plans and specifications required under applicable building codes to be submitted with an application for a building permit or addendum upon which Vertical Developer and its general contractor will rely to construct the Vertical Project.

(d) **"Schematic Drawings"** generally means: (a) a site plan at appropriate scale showing relationships of the Improvements and their respective uses, designating public access areas, open spaces, walkways, loading areas, streets, parking, and adjacent uses--adjacent existing and proposed streets, arcades and structures also should be shown; (b) conceptual plans for public access areas showing details of features intended to be constructed as part of the Vertical Project; (c) building plans, floor plans and elevations at appropriate scale and in detail sufficient to describe the Vertical Project, the general architectural character, and the location and size of uses; (d) perspective drawings sufficient to illustrate the Vertical Project; and (e) building sections showing all typical cross sections at appropriate scale and height relationships of those areas noted above.

(e) **Preparation of Construction Documents by Licensed Architect.** The Construction Documents must be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California, in consultation with a licensed historic preservation architect for purposes of complying with the Secretary's Standards as determined by the California State Historic Preservation Officer ("**SHPO**") and NPS. A California licensed architect will coordinate the work of any associated design professionals, including engineers and landscape architects.

(f) **Certification by Structural Engineer.** A California licensed structural engineer must review and certify (by wet-stamp on the Construction Documents) all final structural plans and the sufficiency of structural support elements to support the Vertical Project.

12.15. ***Submission of Schematic Drawings and Construction Documents.***

Vertical Developer will prepare and submit the Construction Documents meeting the requirements of ***Section 12.13*** above to Port for review and approval or disapproval, as provided in ***Sections 12.15 and 12.16***. Each stage of document submittal is intended to constitute a further development and refinement from the previous stage. The elements of the Design Development Documents requiring Port approval will be in substantial conformance with the Schematic Drawings and the Scope of Development, and will incorporate conditions, modifications, and changes specified by the Port or required as a conditions of Regulatory Approvals. Design Development Documents will be in sufficient detail and completeness to show that the Vertical Project and the construction thereof will comply with the Project

Requirements and matters previously approved. Final Construction Documents will be a final expression of, and be based upon and substantially conform to, the approved Design Development Documents.

12.16. ***Port Review of Schematic Drawings and Construction Documents.***

(a) **Scope of Review.**

(i) *Generally.* Port's review and approval or disapproval of the Construction Documents under this Agreement will be reasonable and address the following: (i) conformity and compliance with the Project Requirements, (ii) exterior architectural appearance and aesthetics of the Historic Buildings, (iii) alterations to any of the Historic Buildings (iv) design and appearance of interior and exterior historic fabric and spaces that are subject to regulation under the State's Historical Building Code and the Secretary's Standards, and (v) landscape and design of all outdoor areas, including those required under Regulatory Approvals or pursuant to this Agreement to be accessible to the public. Port will review exterior signs (which may be submitted for approval with Schematic Drawings or during or post-construction) for consistency with the Design for Development, the Building Signage Plan approved by the Port pursuant to the DDA and the Secretary's Standards. Should Port identify a conflict among the Project Requirements, it will resolve such conflicts in favor of compliance with Secretary Standards, subject to compliance with all applicable laws.

(ii) *Review of Elements Subject to Secretary Standards by SHPO.* At least thirty (30) business days before submitting to SHPO, the final Historic Preservation Certification Applications, Part 2 – Description of Rehabilitation, for the Vertical Project, if any ("**SHPO Submittals**"), Vertical Developer shall provide copies of same to Port for review and comment. Port's review of the SHPO Submittals will be subject to the standards outlined in ***Section 12.15(a)(i)***. So long as the SHPO Submittals comply with the Project Requirements, Port will co-sign the SHPO Submittals if required, and if SHPO has recommended and NPS has approved or subsequently approves elements of the SHPO Submittals as being consistent with the Secretary's Standards, Port will also agree that such SHPO approved elements are consistent with the Secretary's Standards. If Vertical Developer is seeking Historic Preservation Tax Credits for the Vertical Project, then in no event will Port condition or disapprove the Schematic Drawings or any other Construction Document on the basis of elements that have been approved by the SHPO and National Park Service for purposes of certifying the Vertical Project for Historic Preservation Tax Credits.

(b) **Effect of Review.** Subject to ***Section 12.15(a)(ii)***, Port's review and approval or disapproval of the Construction Documents will be final and conclusive. Except by mutual reasonable agreement with Vertical Developer, Port will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously.

(c) **Method of Port Action/Prior Approvals.** Port will (i) approve or (ii) provide comments, propose changes, or both on each set of Construction Documents, in writing, within 30 days of receipt, so long as each set of the applicable Construction Documents meet the requirements described in ***Section 12.13*** above. Port may propose changes to the Constructions Documents that do not conflict with Project Requirements or previously approved Construction Documents. If Port proposes changes to the applicable Construction Documents, Vertical Developer and Port will promptly meet and confer in good faith to reach an agreement on any such changes proposed for a period of not more than 21 days, as may be extended by mutual agreement. Coming out of this meet and confer process, Vertical Developer will incorporate any revisions to the Construction Documents into its subsequent submittal of Construction Documents to Port. Upon receipt of the resubmittal of the Construction Documents, Port will approve, disapprove or approve conditionally the Construction Documents, in writing. Notwithstanding any other provision of this Agreement or the Parcel Lease to the contrary, Port's approval of the Construction Documents in its proprietary capacity under this Agreement

will not, evidence or be deemed to evidence Port's approval of the Final Construction Documents in its regulatory capacity. Approval of Construction Documents by Port will not be construed as approval of such documents by SHPO or NPS.

(d) **Timing of Port Disapproval/Conditional Approval and Vertical Developer Resubmission.** If Port disapproves aspects of the Construction Documents in whole or in part, Port in the written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions will be stated in writing and a time will be stated for satisfying the conditions. Vertical Developer will resubmit as expeditiously as possible and may continue making resubmissions until the approval of the submissions. Approval of Construction Documents by Port will not be construed as approval of such documents by SHPO or NPS

12.17. ***Changes in Final Construction Documents***

(a) **Approval of Changes in Required Elements.** Vertical Developer will not make or cause to be made any material or substantial changes in any Port-approved Construction Documents as to the specific elements approved by Port as provided in ***Section 12.15(a)(i)*** (each a "**Required Element**") without Port's express written approval in its reasonable discretion; provided, however, if certain materials approved by the Port are not available for construction, the Vertical Developer may substitute materials which are the architectural and environmental equivalent or superior as to aesthetic appearance, qualify, color, design and texture, as approved by the Port in its reasonable discretion. Prior to making any changes that Vertical Developer considers to be non-material to any Port approved Construction Documents as to Required Elements, including substituting materials that are the architectural equivalent as to aesthetic appearance, quality, color, transparency, design and texture, Vertical Developer must first notify Port in writing of such changes in Required Elements. If Port determines that such noticed changes are material or substantial, Port will respond to Vertical Developer within 15 days of receipt of such request.

(b) **Response.** Vertical Developer will request Port's approval for all material or substantial changes in Required Elements in writing. Any such changes proposed for any Construction Document after the approved Schematic Drawings will expressly include the request for approval, which the Port will consider with the applicable submittal under ***Section 12.15(c)***. In addition to the notice parties set forth ***Article 30*** (Notices), Vertical Developer will deliver by electronic mail (or other format reasonably requested by Port) copies of all requests for Port's approval of material or substantial changes to Required Elements to the following parties: Port's Deputy Director of Real Estate and Development, Port's in-house historic expert, and Port's project manager for the Property. If Vertical Developer requests a material or substantial change in a Required Element outside of a Construction Document submittal, then Port will respond to Vertical Developer as promptly as reasonably possible, but in no event later than twenty (20) days after receipt of Vertical Developer's request. If Port fails to respond to such request on or after fifteen (15) days after Vertical Developer's written request, Vertical Developer will submit a second written notice to Port (including the Port parties set forth in this ***Section 12.16(b)***) requesting Port's approval or disapproval within five (5) business days after receipt by Port of Vertical Developer's second notice. The second notice shall display prominently on the envelope enclosing such request and the first page of such request (or the subject line in any notice delivered by electronic mail), substantially the following: **"APPROVAL REQUEST FOR PIER 70 VERTICAL PROJECT CONSTRUCTION REVIEW MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to respond within such five (5) business day period, such changes will be deemed approved; provided, however, Port's response by electronic mail only will be deemed a sufficient response for purposes of this ***Section 12.16(b)***. All changes to the Construction Documents must be consistent with the Secretary's Standards, and

with all other Laws as determined by Port in the exercise of its reasonable discretion. Notwithstanding the foregoing, if Vertical Developer requests a material or substantial change to approved Final Construction Documents once construction of the Vertical Project has commenced, Port will respond as promptly as reasonably possible to avoid construction delays, but in no event later than five (5) business days after Vertical Developer's request. If Port fails to respond within such three business day period, Vertical Developer may submit a second notice, consistent with the requirements set forth above in this subsection (b). If Port fails to respond within a two business day period after the second notice, Port's approval, in its proprietary capacity hereunder, the changes will be deemed approved.

(c) If Port disapproves of Vertical Developer's request and Vertical Developer disagrees with Port's disapproval, both Parties agree to use their commercially reasonable effort to reach a solution expeditiously that is mutually satisfactory to Vertical Developer and Port.

12.18. ***Conflict With Other Governmental Requirements.***

(a) **Approval by Port.** Port will not withhold its approval, where otherwise required under this Agreement, of elements of the Construction Documents or changes in Construction Documents required by any other governmental body with jurisdiction if all of the following have occurred:

(i) Port receives written notice of the required change;

(ii) Port is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction of and requiring such element or change and with Vertical Developer and its design team;

(iii) Vertical Developer cooperates fully with the governmental body having jurisdiction in seeking reasonable modifications of such requirement, or reasonable design modifications of the Vertical Project, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to Port may be achieved despite the imposition of such requirement; and

(iv) any conditions imposed in connection with such requirements are subject to ***Article [11]***.

(b) **Efforts to Attempt to Resolve Disputes.** Vertical Developer and Port recognize that the foregoing kind of conflict may arise at any stage in the preparation of the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of building permits. Accordingly, time is of the essence when such a conflict arises. Both Parties agree to use their commercially reasonable efforts to reach a solution expeditiously that is mutually satisfactory to Vertical Developer and Port.

12.19. ***Progress Meetings/Consultation.*** During the preparation of Construction Documents and the Construction of the Vertical Project, Port staff and Vertical Developer agree to hold periodic progress meetings, as appropriate considering Vertical Developer's progress, to coordinate the preparation of, submission to, and review by Port of Construction Documents and the construction process. Port staff and Vertical Developer (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration. Upon reasonable prior notice to Vertical Developer, Port may, but is not obligated to, have one or more individuals present on the Property at any time and from time to time during construction, to observe the progress of Construction of the Vertical Project and to monitor Developer's compliance with this Agreement, subject to compliance with reasonable safety measures imposed by Vertical Developer.

12.20. ***Submittals after Completion.***

(a) **Record Drawings.** Vertical Developer shall furnish Port Record Drawings of the Vertical Project improvements constructed on, in, under and around the Property. Record Drawings must be in the form of full-size, hard paper copies and converted into electronic format as full-size scanned TIF files, and (2) in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "Record Drawings" means drawings, plans and surveys showing the Subsequent Construction as built on the Property and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Vertical Developer fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Subsequent Construction, and the cost of preparing such Record Drawings must reimbursed by Vertical Developer to Port as Additional Rent. Nothing in this Section shall limit Vertical Developer's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity. Vertical Developer will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Vertical Developer's request, Port will provide Vertical Developer with a release from liability for future use of the applicable materials, in a form acceptable to Vertical Developer and Port.

(b) **Record Drawing Requirements.** Record Drawings must be based on no less than 24" x 36", with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing must have a Port-assigned number placed onto the title block prior to scanning. An index of drawings shall be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings must be scanned as a test, prior to execution of this requirement in full.

12.21. ***Insurance Requirements***

(a) **Before Initial Close of Escrow.** Before the Initial Close of Escrow, Vertical Developer will procure and maintain insurance coverage set forth in the Parcel Lease for the Historic Buildings.

(b) **After Initial Close of Escrow.** From and after the Initial Close of Escrow, Vertical Developer's requirement to maintain insurance under this Agreement will be as set forth in the Parcel Lease.

(c) **Port Self-Help Right to Obtain Insurance.** After five (5) days' written notice to Vertical Developer, Port has the right, but not the obligation, to obtain, and thereafter continuously to maintain, any insurance required by this Agreement that Vertical Developer fails to obtain or maintain, and to charge the cost of obtaining and maintaining that insurance to Vertical Developer; provided, however, if Vertical Developer reimburses Port for any premiums and subsequently provides such insurance satisfactory to Port, then Port agrees to cancel the insurance it obtained and to credit Vertical Developer with any premium refund less any other costs incurred by Port resulting from Vertical Developer's failure to obtain or maintain the required insurance.

(d) **Indemnity.** The Indemnification requirements under this Agreement, the Parcel Lease, or any other agreement between Port and Vertical Developer, will in no way be limited by any insurance requirements under any such agreements.

12.22. ***Building Permit.*** Vertical Developer will submit to Port a complete application for a building permit (or site permit or equivalent) and will make deferred submittals in accordance with the Port Building Code for the remainder of the Vertical Project in a diligent and expeditious

manner. Upon any such submission, Vertical Developer will prosecute the application diligently to issuance.

12.23. ***Information Required by the County Assessor***. The County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable transfers of property. Exhibit L lists the information that the County Assessor expects to need in order to perform the foregoing tasks (the "**Assessor Information**"). Each Party will provide to the County Assessor any Assessor Information requested in writing by the County Assessor in the format required by the County Assessor (the "**Requested Information**") within 90 days of the applicable Party's receipt of a written request for such Requested Information. Port's sole remedy with regards to a breach of this Section 12.14 is specific performance, Port hereby waiving all other rights and remedies available at law or equity. Vertical Developer waives any right to confidentiality under applicable law to the extent necessary for the County Assessor to notify Port of Vertical Developer's failure to provide the Requested Information on a timely basis and Port to exercise its right to specific performance of Vertical Developer's obligation. Promptly following the County Assessor's request, Port may, from time to time update the information requirements set forth in Exhibit L by providing Vertical Developer no less than ten (10) business days' prior notice and a replacement copy of Exhibit L.

H. **Default by Vertical Developer (Section 15.1)** of the Agreement will be supplemented to add the following event or circumstance that will constitute a Vertical Developer Default:

(k) After the Initial Close of Escrow, Vertical Developer fails to diligently proceed to commence within the times required under the Schedule of Performance, or after commencement fails to prosecute diligently to Completion (except for Deferred Items, if any), the Construction of the Vertical Project improvements in accordance with the Scope of Development, approved Construction Documents, and this Agreement, or commences construction of the Vertical Project but then abandons or ceases its work without the Approval of Port for more than one hundred and twenty (120) consecutive days or a total of one hundred and eighty (180) days (not counting any period of Force Majeure), and such failure, abandonment, or cessation continues for a period of forty-five (45) days following such Vertical Developer's receipt of notice thereof from Port;

I. **Article 22 (Definitions)** is revised to include the following new definitions:

"**Assessor Information**" is defined in ***Section 12.23***.

"**Completion Guaranty**" is defined in ***Section 6.4(a)(xix)***.

"**Construction Contract**" is defined in ***Section 6.4(a)(xvii)***.

"**Construction Documents**" is defined in ***Section 12.13(a)***.

"**Design Development Documents**" is defined in ***Section 12.13(b)***.

"**Development Budget**" is defined in ***Section 6.4(a)(xv)(1)***.

"**Final Construction Documents**" is defined in ***Section 12.13(c)***.

"**Finally Granted**" means that the action is final, binding and non-appealable and all applicable statutes of limitation relating to such action, including with respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to such action.

"**Hard Costs**" are defined in ***Section 12.7(a)***.

"**Historic Building Cost**" is defined in ***Section 12.7(a).***

"**Historic Building Cost Trigger Date**" is defined in ***Section 12.7(a).***

"**Historic Building Feasibility Gap**" is defined in ***Section 12.7(a)***.

"**History Building Schedule**" is defined in ***Section 12.7(a)***.

"**Historic Preservation 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.

"**Letter of Credit**" is defined in ***Section 6.4(a)(xix)***.

"**Net Worth**" 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 generally accepted accounting principles consistently applies or the income tax basis of accounting consistently applied.

"**NPS**" is defined in ***Section 6.4(a)(xx)***.

"**Obligor Net Worth Amount**" means Ten Million Dollars ($10,000,000.00) which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Effective Date and every ten (10) years thereafter.

"**Performance Bond**" is defined in ***Section 6.4(a)(xix).***

"**Permissible Financing Costs**" is defined in ***Section 12.7(a)***.

"**Requested Information**" is defined in ***Section 12.23***.

"**Required Element**" is defined in ***Section 12.16(a)***.

"**Schematic Drawings**" is defined in ***Section 12.13(d)***.

"**SHPO Submittals**" is defined in ***Section 12.15(a)(ii)***.

"**Soft Costs**" is defined in ***Section 12.7(a)***.

"**Tenant Return**" is defined in ***Section 12.7(a).***

J. **Historic Preservation Tax Credits (Article 23)** is hereby added to the Agreement to read as follows:

23. HISTORIC PRESERVATION TAX CREDITS

23.1. Qualifying for Tax Credits. Vertical Developer will use its best efforts during the Term of this Agreement to obtain Historic Preservation Tax Credits available for the Vertical Project in a timely manner. After NPS has reviewed the Part 1 Applications and made a determination that the Vertical Project is eligible for Historic Preservation Tax Credits, Vertical Developer will timely submit to NPS, a final Historic Preservation Certification Applications, Part 2 – Description of Rehabilitation for Historic Preservation Project.

23.2. Use of Tax Credits. Vertical Developer is expected to sell Historic Preservation Tax Credits to one or more tax credit investors and, in connection therewith, shall submit to Port an executed master sublease for the Historic Buildings to a new partnership or limited liability company to be formed with one or more third parties (collectively, "Tax Credit Investors") and controlled by Vertical Developer or its Affiliate, together with an executed operating agreement or limited partnership agreement and all related authority and governing documents or such other

evidence that is reasonably satisfactory to Port, indicating that Vertical Developer has entered into, or has a binding commitment to enter into, an agreement with the Tax Credit Investors to utilize the Historic Preservation Tax Credits in such partnership or limited liability company (each, a "master subtenant"). So long as the terms and conditions of the Parcel Lease are not changed in any way, Port hereby consents to any master sublease with such master subtenant.

Exhibit [ ]

Form of Performance Bond

Exhibit [__]

Scope of Development

Exhibit [ ]

Schedule of Performance for Buildings 12 and 21

Outside Date for Close of Escrow:	No later than three (3) years after the Effective Date hereof.*
Outside Date for Commencement of Construction:	No later than three (3) years after the Effective Date hereof.**
Completion of Construction:	From and after Commencement of Construction Vertical Developer must diligently prosecute construction of the Improvements to completion.***

*Subject to the provisions regarding time for performance and the procedures for Excusable Delay as set forth in Article 4 of the DDA (Performance Dates) including Down Market Delay (as defined in the DDA).

**Subject to the provisions regarding time for performance and the procedures for Excusable Delay as set forth in Article 4 of the DDA (Performance Dates) but expressly excluding Down Market Delay.

***Subject to allowable periods where construction may cease due to events of Excusable Delay, subject to the provisions regarding time for performance and the procedures set forth in Article 4 of the DDA (Performance Dates) but expressly excluding Down Market Delay.

Exhibit [__]

Schematic Drawings

Exhibit [.]

Secretary of the Interior's Standards
for the Treatment of Historic Properties

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21

This Pier 70 VDDA Appendix for Historic Buildings 2, 12 and 21 (this "**Appendix**") sets forth special terms and obligations that apply specifically and exclusively to the lease of Historic Building 2, 12 or 21, as applicable, each located within the 28-Acre Site (Historic Buildings 2, 12 and 21 each a "**Historic Building**" and collectively "**Historic Buildings**"). At the time of execution of the VDDA, the approved form of VDDA for Historic Buildings 2, 12 and 21 will be revised to reflect the specific terms set forth in this Appendix, but except as expressly modified herein, the terms set forth in the approved form of VDDA will apply. For the purposes of this Appendix, any capitalized term not defined herein will have the meaning ascribed to them in the VDDA.

[NTD: The replacement in Section A below will only apply to Buildings 12 and 21; NOT Building 2, which is an Option Parcel]

A. ***Restrictive Covenants (Section 3.2).*** Section 3.2(f) of the Agreement will be replaced with the following:

> "(f) the obligation to develop the Vertical Project that complies with the Scope of Development attached hereto as Exhibit B (the "**Scope of Development**") and the Schedule of Performance attached hereto as ***Exhibit C-3***."

B. ***Port's Conditions Precedent (Section [6.4(a)])*** of the Agreement will be supplemented to add the following additional conditions precedent to Port's obligation to close Escrow and thereby Deliver the Historic Buildings to Vertical Developer:

[NTD: ITEMS (xv) through (xx) Apply to Buildings 12 and 21 Only; NOT Building 2, which is an Option Parcel]

(xv) Port has approved those aspects of the Construction Documents that are required under ***Section 12.15 (Port Review of Schematic Drawings and Construction Documents)*** to be approved prior to Close of Escrow.

(xvi) Port has received and approved evidence of adequate financing for the Vertical Project , including evidence of Vertical Developer's ability to meet any debt service obligation(s) attendant thereto, as provided for below:

(1) Vertical Developer has submitted the then-current development budget for the Vertical Project (the "**Development Budget**"), showing Vertical Developer's anticipated costs of construction.

(2) Vertical Developer has submitted, and Port has reasonably approved, (i) evidence of a bona fide commitment or commitments for the financing of that portion of the Development Budget Vertical Developer intends to borrow to finance the Vertical Project , certified by Vertical Developer to be a true and correct copy or copies thereof, with (x) no conditions to funding other than standard and customary conditions and (y) no provisions requiring acts of Vertical Developer prohibited in this Agreement, or prohibiting acts of Vertical Developer required in this Agreement, and (ii) such documentation showing sources and uses of funds as may be required by such leasehold lender.

(3) Vertical Developer has submitted a statement and appropriate supporting documents certified by Vertical Developer to be true and correct and in form reasonably satisfactory to Port showing sources and expected uses of funds sufficient to demonstrate that Vertical Developer has or will have funds equal to or exceeding the total development cost of the Vertical Project (as shown on the Development Budget) as of the Closing Date, and such funds have been spent for uses described in the Development Budget or are committed and available for that purpose.

(4) Within thirty (30) days after Vertical Developer's submission of all of the applicable documents described in this ***Section 6.4(a)(xvi)***, Port will notify Vertical Developer in writing of Port's approval or disapproval (including the reasons for disapproval) of the evidence of financing.

(xvii) If Vertical Developer elects to finance any part of the Vertical Project through funding from a leasehold lender, then such financing has closed or will close simultaneously with the Closing Date.

(xviii) Port has reasonably approved evidence of a guaranteed maximum price contract for construction of the Vertical Project (**"Construction Contract"**). Port's approval of the Construction Contract shall solely be for purposes of determining consistency with the Development Budget and the Scope of Development attached hereto as ***Exhibit B*** and consistency with the terms of this Agreement and the Parcel Lease. Port's approval of the Construction Contract is in addition to, and not as a limitation of, Port's approval rights of the Construction Documents pursuant to ***Article 12***.

(xix) The first construction permit for the Vertical Project (or in the case of a site permit or equivalent process, the first addendum authorizing construction of the Vertical Project) is ready to be issued but for the execution of the Parcel Lease by Port and payment by Vertical Developer of all building permit fees that are required to be paid prior to commencement of the work described in the building permit.

(xx) Vertical Developer has caused [_____] to deposit into Escrow, at Vertical Developer's election, one of the following (A) a completion guaranty from a Person other than Vertical Developer meeting the Obligor Net Worth Amount guaranteeing completion of the Vertical Project in the form attached here to as ***Exhibit [__]*** (**"Completion Guaranty"**), (B) a payment and a performance bond issued by a surety reasonably acceptable to Port in an amount equal to 100% of the guaranteed maximum price in the Construction Contract in the form attached hereto as ***Exhibit [__]*** (**"Performance Bond"**), or (C) a letter of credit in an amount equal to 100% of the guaranteed maximum price in the Construction Contract and in a form reasonably acceptable to Port (**"Letter of Credit"**).

(xxi) Vertical Developer will have submitted to Port evidence that the Historic Preservation Certification Application, Part 1 and Part 2 for the Vertical Project has been submitted to the National Park Service (**"NPS"**), provided, however, that this requirement will not apply if a change in Law would eliminate the availability of Historic Preservation Tax Credits for the Historic Building, or if, upon request by Vertical Developer, the Port Director, in her sole discretion, waives this requirement.

C. ***Vertical Developer's Conditions Precedent (Section 6.5(a))*** of the Agreement will be supplemented to add the following additional conditions precedent to Vertical Developer's obligation to close Escrow and accept the Property from Port under this Agreement:

[NTD: ITEMS (v)-(ix) apply to Buildings 12 and 21 Only; NOT Building 2, which is an Option Parcel]

(v) Port has approved those aspects of the Construction Documents that are required under ***Article 12*** to be approved by Port by the Close of Escrow, provided that Vertical Developer has timely submitted all required information and documents.

(vi) Port has approved evidence of adequate financing for the Construction of the Vertical Project in accordance with ***Section 6.4(a)(xvi)***.

(vii) If Vertical Developer elects to finance any part of the Vertical Project through funding from a leasehold lender and has provided all documents requested by the leasehold lender in a timely manner, then such financing has closed or will close simultaneously with the Close of Escrow.

(viii) The first building permit for the Vertical Project (or in the case of a site permit or equivalent process, the first addendum authorizing construction of the Vertical Project) is ready be to issued but for the execution of the Parcel Lease by Port and payment by Vertical Developer of all building permit fees that are required to be paid prior to commencement of the work described in the building permit.

(ix) Vertical Developer has obtained all Regulatory Approvals required to commence Construction of the Vertical Project and the same has been Finally Granted.

D. ***Closing. Section 7.2 (Closing)*** of the Agreement is hereby replaced in its entirety to read as follows:

[NTD: Revised Section 7.2 below only applies to Buildings 12 and 21; NOT Building 2, which is an Option Parcel]

7.2. *Closing.* The Closing hereunder will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of the Title Company on the date that is no later than thirty-six (36) months after the Effective Date hereof before 3:00 p.m. San Francisco time or such earlier date and time as Vertical Developer and Port may mutually agree upon in writing (the **"Target Closing Date"**). The **"Closing Date"** is the date that the Closing or Close of Escrow occurs.

[NTD: Revised Section 7.4 (b) below only applies to Buildings 12 and 21; not Building 2, which is an Option Parcel]

E. ***Deposit of Documents by Vertical Developer (Section [7.4(b)])*** of the Agreement will be supplemented to add the following items to be deposited by Vertical Developer into escrow at or before the Closing: **[NTD: cross check against Agreement to confirm romanette numbering is correct]**

(viii) At the election of [_____] in accordance with **[*Section 6.4(a)(xx)*]**, a Completion Guaranty, Performance Bond or Letter of Credit.

F. ***Loss (Section [8.1])*** of the Agreement shall be deleted in its entirety and replaced with the following provision:

Loss.

(i) Prior to the Closing Date, Port will give Vertical Developer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event of any damage or destruction of the Historic Building occurring prior to the Close of Escrow which Developer reasonably determines would add less than Five Hundred Thousand and No/100 Dollars ($500,000.00) to the Budget, Developer and Port will Close the Escrow if the other closing conditions are satisfied. In such event, all proceeds, if any, of property, earthquake and flood insurance payable to Port by reason of such damage or destruction related solely to the Historic Building, whether under insurance policies held by Port or by Developer, shall be paid or Port's rights to such proceeds assigned, as applicable, to Developer.

(ii) If any damage or destruction of the Historic Building occurring prior to the Close of Escrow which Vertical Developer reasonably determines would add more than Five Hundred Thousand and No/100 Dollars ($500,000.00) to the Budget [and Port elects not to, within a reasonable time, but in no event later than 120 days after Port's notice to Vertical Developer of the occurrence, provide Vertical Developer with additional funds exceeding $500,000 through cash payment of Port funds [**for Building 2 only, if Hybrid Lease:** (or, if agreed to by Developer in its sole discretion, through Port payment of insurance payments or rent credits to be applied 50% against Minimum Rent otherwise owed under the Lease)]. Developer may elect upon 10 days' notice to Port (i) to terminate this Agreement by written notice to Port, or (ii) to Close Escrow. If Developer elects to Close Escrow, then to the extent that Port elects, in its sole discretion, to make a claim against any insurance carried by Port covering the loss, all proceeds of property, earthquake and flood insurance payable to Port by reason of such damage or destruction related solely to the Historic Building, whether under insurance policies held by Port or by Developer, shall be paid or Port's rights to such proceeds assigned, as applicable, to Developer, and, if such event of damage or destruction occurs by any reason other than the negligent or willful acts or omissions of Developer, its Agents or Invitees, Port shall pay or credit to Developer against Rent otherwise due and payable under the Lease, the amount of the insurance deductible. Vertical Developer may terminate this Agreement in the event that all or any portion of the Property is condemned.

G. **Development of Vertical Project and Related Infrastructure (Section [12])** of the Agreement shall be deleted in its entirety and replaced with the following provision:

12. DEVELOPMENT OF VERTICAL PROJECT AND RELATED INFRASTRUCTURE.

12.1. ***Developer's Construction Obligations; Project Requirements.***

(a) Project Requirements. Developer must Construct all of the Improvements in compliance with: (i) the Scope of Development, the Construction Documents, and the Schedule of Performance attached hereto as ***Exhibit C-3***; (ii) all applicable Laws, including Port Building Code, required Regulatory Approvals, the Waterfront Plan, the Pier 70 SUD and Design for Development, Environmental Laws, State Historical Building code, disabled access Laws and Laws regulating construction on the Property; (iii) the Secretary's Standards attached hereto as ***Schedule 12.1-1*** for all proposed work affecting any of the structures and buildings within the Property (regardless of whether Developer seeks Historic Preservation Tax Credits), (iv) the FOG Ordinance and the inclusion of automatic grease removal devices on all kitchen

sinks in any café, restaurant or other food establishment on the Property, (v) the Mitigation Monitoring and Reporting Program; (vi) Workforce Development Plan, (vii) the HREs, and (ix) this Agreement (sometimes referred to collectively as the "**Project Requirements**"). Notwithstanding any other provision of this Agreement or the Lease to the contrary, Port's approval of the Schematic Drawings attached hereto as ***Schedule 12.1-2*** and the site plan in the form attached hereto as ***Exhibit A-2*** is in no manner intended to, and shall not, evidence or be deemed to evidence Port's approval of the Construction Documents. Vertical Developer hereby consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies, or programs required by the Horizontal DDA, this Agreement and the Project Requirements, including, without limitation, any Claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

(b) Scope of Development. Developer will Construct or cause to be Constructed the Improvements in accordance with the Project Requirements in the manner set forth in this ***Section 12***, the Scope of Development, and the Schematic Drawings.

12.2. ***Mitigation Monitoring and Reporting Program***. In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the Vertical Project will be in accordance with all applicable Environmental Laws and the Mitigation Monitoring and Reporting Program attached hereto as Exhibit K. Vertical Developer will incorporate the Mitigation Monitoring and Reporting Program into any contract or subcontract.

12.3. ***Amendment of Development Requirements***. Vertical Developer will not seek any amendment to the Design for Development under Section [249.79(c)] of the SUD or to the SUD under Section 302 of the Planning Code without obtaining the prior written consent of Port (and, for any proposed amendment that may impact Horizontal Developer, the Horizontal Developer), which consent may be given or withheld in each of their sole discretion. In its application to Port or the City for a Regulatory Approval under the SUD or applicable building codes, Vertical Developer will expressly identify in writing any elements of its proposed construction that requires an amendment to the Vertical Development Requirements, and state the reason for the proposed amendment. No amendment to the Vertical Development Requirements will be effective with respect to such items if an amendment was not clearly sought by Vertical Developer in writing and such amendment was not approved by the Port in its proprietary capacity.

[Note: Include the following *Section* 12.4 (and all subsequent references to "Deferred Infrastructure") only if obligation to construct Infrastructure or other Horizontal DDA obligation tied to the Schedule of Performance has been transferred to Vertical Developer in Schedule 12.4-1]

12.4. ***Construction of Infrastructure***. Vertical Developer will be solely responsible for developing all improvements within the Property, including, without limitation, private right of ways, pedestrian walkways, infrastructure, and landscaping and hardscaping in any open space and common areas located within the Property. **[add if applicable]:** Vertical Developer will also be required to construct the Deferred Infrastructure identified on ***Exhibit Schedule 12.4-1*** attached to this Agreement. Horizontal Developer (or its successor with respect to the obligation to construct Horizontal Improvements in accordance with the Pier 70 Infrastructure Plan (attached to the Horizontal DDA as ***Exhibit B8***) will cause to be constructed Horizontal Improvements serving the Property, including streets and utilities necessary to serve the Property adjacent to (but not within) the Property, in accordance with the terms of the Horizontal DDA and as between Vertical Developer and Horizontal Developer, in accordance with the VCA. If Vertical Developer requires access to any real property outside of the Property that is under the control of Port in connection with the construction of the Deferred Infrastructure, Vertical Developer and Horizontal Developer

will use good faith efforts to negotiate and execute a license substantially in the form of Port's standard form of license, as may be adjusted between the Parties to account for the additional risks associated with such activities, including increased insurance coverage amounts or additional insurance coverage and broader indemnity and release provisions, and any additional provisions required by Law (or mandated by the Port Commission pursuant to a policy adopted by the Port Commission in a public meeting) to be included in real property licenses.

12.5. ***Construction Standards***. All construction must performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

12.6. ***Reports and Information***. During periods of construction, Vertical Developer will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

12.7. ***Costs of Vertical Project***

[For Building 2 Only]: Costs of Vertical Project. Port has no responsibility for any costs of the Vertical Project and Vertical Developer will pay (or cause to be paid) all costs for the Vertical Project, subject to Port's obligations under the DDA.

[For Buildings 12 and 21 Only]: Costs of Vertical Project for Historic Buildings 12 and 21.

(a) Definitions.

"**Hard Costs**" means reasonable out-of-pocket costs of Rehabilitation (including costs of signage and tenant improvements constructed by Vertical Developer and not otherwise included in Soft Costs or reimbursed by any subtenant or user of the premises under the Parcel Lease) actually incurred by Vertical Developer through the Historic Building Cost Trigger Date attributable solely to the cost of labor, materials and construction "**Hard Costs**" do not include any cost reimbursed by any subtenant or user of the premises under the Parcel Lease, (ii) any Hard Costs that are included as Soft Costs or are included in other costs reimbursable to Vertical Developer or Master Developer under the DDA or Financing Plan, as applicable, or (iii) any costs incurred from and after the Historic Building Cost Trigger Date..

"**Historic Building Cost**" means the (a) sum of the following amounts, calculated separately for Historic Building 12 and Historic Building 21, determined at the earlier of the Historic Building Cost Trigger Date, or if a Sale or Qualifying Refinancing will occur (as those terms are defined in the Parcel Lease) prior to such date, forty-five (45) days prior to the applicable Sale or Qualifying Refinancing: (i) all reasonable and customary Hard Costs and Soft Costs of Rehabilitation, plus (ii) Vertical Developer Return, less (b)(i) Gross Income (as defined in the Parcel Lease) from the premises under the Parcel Lease until and including the Historic Building Cost Trigger Date, minus (ii) operating expenses for the applicable Historic Building to the extent not otherwise included in Hard Costs or Soft Costs.

"**Historic Building Cost Trigger Date**" means the earlier to occur of the date that is one year after receipt of a TCO or 90% occupancy of space in the applicable Historic Building.

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

"**Permissible Financing Costs**" means debt service and other customary financing costs incurred in connection with obtaining, negotiating and closing any financing for the development and construction of the Vertical Project, including financing from an Affiliate of Vertical Developer or another lender that is not a Bona Fide Institutional Lender (as defined in the Parcel Lease) (provided the terms of any such financing are market when compared with other debt financing provided by Bona Fide Institutional Lenders), a Bona Fide Institutional Lender (including, but not limited to any mezzanine financing), or from the sale of Historic Preservation Tax Credits, and all interest costs and other customary payments made by Vertical Developer pursuant to the terms thereof, including all application fees, transaction costs, due diligence expenses, professional fees if the services of such professionals are customary in the type of financing obtained by Vertical Developer, reasonable legal fees, and title, appraisal and survey costs actually incurred in connection with such financing and paid or reimbursed by Vertical Developer.

"**Rehabilitation**" means the repair or alteration of an historic building that does not damage or destroy materials, features, or finishes considered important in defining the building's historic character.

"**Soft Costs**" means reasonable out-of-pocket costs actually incurred by the Vertical Developer that actually constructs the Initial Improvements except to the extent excluded under this Agreement or the Parcel Lease, that are directly attributable to the following only: designing the Initial Improvements (including mock-ups and signage design); negotiation of the Transaction Documents; pursuing Historic Preservation Tax Credits; architectural, engineering, consultant, attorney, and other professional fees and printing costs; regulatory fees; CEQA mitigation measures; community benefits; Impact Fees (as defined in the DDA); Permissible Financing Costs; Port Costs and Other City Costs (as defined in the Vertical DDA); builder's risk insurance and other insurance expenses directly related to construction of the Initial Improvements, including environmental insurance; performance and payment bonds; a development fee, not to exceed 4% of Historic Building Costs (excluding the Tenant Return); costs for a construction office and construction-related signage, to the extent a construction office and construction related signage separate from Master Developer is required; Impositions to the extent attributable to the Leasehold Estate; premiums for the title insurance; safety and security measures; costs of purchasing and installing telecommunications and data infrastructure for the premises under the Parcel Lease; utilities during construction; leasing and marketing expenses (including standard brokerage commissions; provided, however, that in the case of brokerage commissions paid to Affiliate brokers, such commissions must be commercially reasonable); third party costs to prepare the Certified Historic Building Costs; tenant improvement allowances; and any other reasonable and customary costs necessary to the Rehabilitation and tenanting of the Initial Improvements through the Historic Building Cost Trigger Date, as reasonably approved by Port. "**Soft Costs**" do not include (i) distributions, dividends, preferred return or other capital return to the members or shareholders of Tenant, Tenant, or any of their respective Affiliates, (ii) any cost reimbursed by any subtenant or user of the premises under the Parcel Lease, (iii) any Soft Costs that are included as Hard Costs or are included in other costs reimbursable to Vertical Developer or Master Developer under the DDA or Financing Plan, as applicable, or (iv) any Soft Costs incurred from and after the Historic Building Cost Trigger Date.

"**TCO**" is an acronym for a Temporary Certificate of Occupancy.

"**Tenant Return**" means an amount equal to 10% of the Hard Costs and Soft Costs actually incurred by Vertical Developer for the Rehabilitation.

(b) Port Reimbursement Obligation. When determined in accordance with Section (c) below, Port will pay Vertical Developer an amount equal to the Historic Building Feasibility Gap from the next available Public Financing Sources, including any available Port Tax Increment (as those terms are defined under the Financing Plan). To allow the calculation of the Historic

Building Feasibility Gap, Vertical Developer will comply with the recordkeeping and reporting requirements of this **Section 12.7**.

(c) Reporting Requirements. Within the earlier of one hundred twenty (120) days following the date that is one year after the Historic Building Cost Trigger Date, and (ii) forty-five (45) days prior to a Sale or Qualifying Refinancing under the Parcel Lease, the Vertical Developer that constructed the Initial Improvements will furnish Port with:

the Certified Historic Building Cost Statement provided in accordance with the procedures attached to the Parcel Lease as ***Attachment 1 to Exhibit D.***

12.8. ***Port Rights of Access.*** Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Property to the extent necessary to carry out the purposes of this Agreement, including to observe the progress of Construction of the Vertical Project, to inspect the work being performed in such Construction, and to monitor Vertical Developer's compliance with the Project Requirements; provided however, Port will use commercially reasonable efforts not to adversely impact Vertical Developer's work on the Property in connection with Port's access to the Property. Port will not be estopped from taking any action (including later claiming that the construction of the Vertical Project improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

12.9. ***Regulatory Approvals.***

(a) Port Acting as Owner of Property. Vertical Developer understands and agrees that Port is entering into this Agreement in its proprietary capacity as the holder of fee title to the Property and not as a Regulatory Agency with certain police powers. Vertical Developer agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Vertical Project can be obtained. Vertical Developer agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Vertical Project will be issued by the appropriate Regulatory Agency, and Vertical Developer understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Vertical Developer will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Vertical Project and/or the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Vertical Developer, at Vertical Developer's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Vertical Project. By entering into this Agreement, Port is in no way modifying or limiting Vertical Developer's obligations to cause the Property to be developed, restored, used and occupied in accordance with all Laws. Vertical Developer further agrees and acknowledges that any time limitations on Port review or approval within this Agreement applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Vertical Developer understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Vertical Project or other matters related to this Agreement, and any such advocacy, promotion or lobbying will be done by Vertical Developer at Vertical Developer's sole cost and expense. Vertical Developer hereby waives any Claims against the City Parties, and fully releases and discharges the City Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Vertical Project; provided, however, that nothing herein is intended to affect or otherwise alter the rights, remedies and obligations of the Parties or any City Parties arising under the Development Agreement.

(b) Regulatory Approval; Conditions.

(i) Vertical Developer understands that construction of the Vertical Project [and Deferred Infrastructure,] and Vertical Developer's contemplated uses and activities on the Property, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, SFPW, SFDPH, BAAQMD, Cal OSHA and other Regulatory Agencies. Vertical Developer is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

(ii) Port, at no cost to Port, will cooperate reasonably with Vertical Developer in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Agreement, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if (1) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could encumber, restrict or adversely change the use of any Port property other than the Property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions; or (2) Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions or restrictions under such permit that could restrict or change the use of the Property in a manner not otherwise permitted under this Agreement or the Parcel Lease or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Vertical Developer has assumed all obligations and liabilities related to such conditions and/or restrictions including the assumption of any unreimbursed costs or fees Port may be subject to as a result of such Regulatory Approval.

(iii) Vertical Developer will not seek any Regulatory Approval without first obtaining the approval of Port, which (except as set forth herein) will not be unreasonably withheld, conditioned or delayed. Throughout the Term, Vertical Developer will submit all applications and other forms of request for required Regulatory Approvals on a timely basis and will consult and coordinate with Port in Vertical Developer's efforts to obtain Regulatory Approvals. Port will provide Vertical Developer with its approval or disapproval thereof in writing to Vertical Developer within ten (10) business days after receipt of Vertical Developer's written request, or if Port's Executive Director reasonably determines that Port Commission or Board action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Vertical Developer's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Vertical Developer for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

(iv) Vertical Developer will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-site or require off-site improvements, removal, or other measures. Vertical Developer in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval; provided however, post-closing, Vertical Developer's right will be limited by Section 5.2 (CFD Matters) of the Parcel Lease. Vertical Developer will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Vertical Developer will pay or discharge

any fines, penalties or corrective actions imposed as a result of the failure of Vertical Developer to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Vertical Developer's obligation to pay all the costs of complying with any conditions or restrictions. Vertical Developer will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Property.

(v) Without limiting any other Indemnification provisions of the Parcel Lease, Vertical Developer will Indemnify the City Parties from and against any and all Losses which may arise in connection with Vertical Developer's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to develop and construct the Property in accordance with the Scope of Development, except to the extent that such Losses arise from the gross negligence or willful misconduct of any City Party.

(c) **Certain City Regulatory Approvals.** Horizontal Developer and the City have entered into the Development Agreement, which will govern certain land use matters under the Planning Code, including Impact Fees and Exactions. The Port and other City Agencies, with Horizontal Developer's consent, have entered into the ICA specifying certain procedures and standards that will apply when Horizontal Developer seeks Regulatory Approvals for the Horizontal Improvements from other City Agencies. A copy of the Development Agreement has either been made available to Vertical Developer for its review at Port's offices or has been provided to Vertical Developer.

(d) **Compliance.** Vertical Developer is solely responsible for ensuring that the design and construction of the Vertical Project and the Deferred Infrastructure (if assigned to and assumed by Vertical Developer in the VCA) comply with all Vertical Development Requirements and applicable Laws at no cost to the Port.

(e) **Noncompliance.** Vertical Developer must pay any fines and penalties and perform any corrective actions imposed for noncompliance with any applicable Laws and Indemnify the Port against any liability arising from such noncompliance, even if the Port is a co-permittee. Vertical Developer will not be entitled to reimbursement from public financing sources for any fines, penalties, and costs of corrective actions related to its construction of Deferred Infrastructure.

12.10. ***Conditions to Commencement of Construction of the Vertical Project.***

(a) **Conditions Precedent.** Unless expressly waived by Port, Vertical Developer must satisfy all of the following conditions before Commencement of Construction of the Vertical Project:

(i) *Certification.* Vertical Developer will have delivered to Port a statement certified by its officer as true, correct and complete that (1) it has obtained all Regulatory Approvals required to commence construction of the Vertical Project, (2) it has obtained sufficient financing to commence and complete the Vertical Project, (3) it has paid the City all Impact Fees and Exactions that are required to be paid prior to commencement of construction of the Vertical Project, [**add for Building 2 only:** and (4) it has paid the Master Marketing Fee in accordance with Section 12.16.

(ii) *Insurance.* Vertical Developer has in place all insurance required during construction of the Vertical Project under the terms of the Parcel Lease and has provided Port evidence thereof.

(iii) *Good Standing.* There will be no uncured Vertical Developer Default by Vertical Developer under this Agreement or uncured Event of Default under the Parcel Lease

(iv) *Security.* Vertical Developer will have provided security to Port with respect to the Vertical Improvements as provided in ***Section 6.4(a)(xx)***.

(b) **Conditions for Benefit of the Port.** The conditions in ***Section [12.10(a)]*** (Conditions Precedent) are solely for the benefit of Port. Only Port may waive any of those conditions, and only to the extent waivable under law.

(c) **Effect of Failure of Condition.** Developer's failure to satisfy any condition described in ***Section [12.9(a)]*** (Conditions Precedent) will not alone relieve either Party of any obligations that previously arose under this Agreement.

12.11. ***Commencement Estoppel.*** Vertical Developer has the right, but not the obligation, to request an estoppel certificate from Port, at no cost to Port, for the benefit of Vertical Developer and any Mortgagee or any other lender of the Vertical Project, stating that Vertical Developer has satisfied the conditions set forth in Section 12.10. Any such request will include a certification by Vertical Developer that (i) it has satisfied the requirements of Section 12.10(a)(i) and (ii) that to its actual knowledge, Port is not in default under this Agreement or the Parcel Lease. Port will have at least ten (10) business days to respond to such request.

12.12. ***Safety Matters.*** Vertical Developer will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining or nearby property, or the risk of injury to members of the public, caused by or resulting from the performance of its development of the Vertical Project. Vertical Developer will erect appropriate construction barricades to enclose the areas of such construction and maintain them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

12.13. ***Post-Closing Boundary Adjustments.*** The Parties acknowledge that, as development of the 28-Acre Site advances, the description of each parcel of real property may require further refinements, which may require minor boundary adjustments. The Parties agree to cooperate in effecting any required boundary adjustments consistent with ***Section 21.2*** (Technical Changes). Vertical Developer agrees that all conveyance agreements from Vertical Developers to any transferees of the Property will include the obligation to cooperate with Port.

12.14. ***The Construction Documents.***

(a) **Construction Documents Generally.** **"Construction Documents"** will consist of Schematic Drawings, Design Development Documents and Final Construction Documents, as described below and must also comply with ***Sections 12.13(a)(iv)*** and ***12.13(a)(v)*** and the terms and conditions of this Agreement. As used in this Agreement "Construction Documents" excludes any contracts between Vertical Developer and any contractor, subcontractor, architect, engineer or consultant.

(b) **"Design Development Documents"** means drawings and plans in sufficient detail and completeness to show that the Vertical Project and the construction thereof will comply with the Project Requirements and will generally include the following:

(1) Site plan(s) at appropriate scale showing the building, streets, walks, and other open spaces. All land uses shall be designated. All site development details and bounding streets, points of vehicular and pedestrian access shall be shown.

(2) All building plans and elevations at appropriate scale.

(3) Building sections showing all typical cross sections at appropriate scale.

(4) Floor plans.

(5) Plans for public access areas showing details of features intended to be Constructed as part of the Improvements.

(6) Outline specifications for materials and finishes.

(7) Plans for interior and exterior signs required by the Port Building Code.

(8) Site and exterior and interior (for common areas only) lighting plans.

(9) Material and color samples for exterior facades, public plazas and open space, and other public areas, generally representative of the intended finished look.

(10) Roof plans showing all proposed mechanical and other equipment, vents, photo-voltaic panels, satellite dish(es), antennae(s), and mechanical or elevator penthouses.

(11) Geotechnical, structural, and other engineering assessments and investigation reports.

(12) Stormwater management plan.

(c) **"Final Construction Documents"** means plans and specifications required under applicable building codes to be submitted with an application for a building permit or addendum upon which Vertical Developer and its general contractor will rely to construct the Vertical Project.

(d) **"Schematic Drawings"** generally means: (a) a site plan at appropriate scale showing relationships of the Improvements and their respective uses, designating public access areas, open spaces, walkways, loading areas, streets, parking, and adjacent uses--adjacent existing and proposed streets, arcades and structures also should be shown; (b) conceptual plans for public access areas showing details of features intended to be constructed as part of the Vertical Project; (c) building plans, floor plans and elevations at appropriate scale and in detail sufficient to describe the Vertical Project, the general architectural character, and the location and size of uses; (d) perspective drawings sufficient to illustrate the Vertical Project; and (e) building sections showing all typical cross sections at appropriate scale and height relationships of those areas noted above.

(e) **Preparation of Construction Documents by Licensed Architect.** The Construction Documents must be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California, in consultation with a licensed historic preservation architect for purposes of complying with the Secretary's Standards as determined by the California State Historic Preservation Officer (**"SHPO"**) and NPS. A California licensed architect will coordinate the work of any associated design professionals, including engineers and landscape architects.

(f) **Certification by Structural Engineer.** A California licensed structural engineer must review and certify (by wet-stamp on the Construction Documents) all final structural plans and the sufficiency of structural support elements to support the Vertical Project.

12.15. ***Submission of Schematic Drawings and Construction Documents.***

Vertical Developer will prepare and submit the Construction Documents meeting the requirements of ***Section 12.13*** above to Port for review and approval or disapproval, as provided in ***Sections 12.15 and 12.16***. Each stage of document submittal is intended to constitute a further development and refinement from the previous stage. The elements of the Design Development Documents requiring Port approval will be in substantial conformance with the Schematic Drawings and the Scope of Development, and will incorporate conditions, modifications, and changes specified by the Port or required as a conditions of Regulatory Approvals. Design Development Documents will be in sufficient detail and completeness to show that the Vertical Project and the construction thereof will comply with the Project

Requirements and matters previously approved. Final Construction Documents will be a final expression of, and be based upon and substantially conform to, the approved Design Development Documents.

12.16. ***Port Review of Schematic Drawings and Construction Documents.***

(a) **Scope of Review.**

(i) *Generally.* Port's review and approval or disapproval of the Construction Documents under this Agreement will be reasonable and address the following: (i) conformity and compliance with the Project Requirements, (ii) exterior architectural appearance and aesthetics of the Historic Buildings, (iii) alterations to any of the Historic Buildings (iv) design and appearance of interior and exterior historic fabric and spaces that are subject to regulation under the State's Historical Building Code and the Secretary's Standards, and (v) landscape and design of all outdoor areas, including those required under Regulatory Approvals or pursuant to this Agreement to be accessible to the public. Port will review exterior signs (which may be submitted for approval with Schematic Drawings or during or post-construction) for consistency with the Design for Development, the Building Signage Plan approved by the Port pursuant to the DDA and the Secretary's Standards. Should Port identify a conflict among the Project Requirements, it will resolve such conflicts in favor of compliance with Secretary Standards, subject to compliance with all applicable laws.

(ii) *Review of Elements Subject to Secretary Standards by SHPO.* At least thirty (30) business days before submitting to SHPO, the final Historic Preservation Certification Applications, Part 2 – Description of Rehabilitation, for the Vertical Project, if any ("**SHPO Submittals**"), Vertical Developer shall provide copies of same to Port for review and comment. Port's review of the SHPO Submittals will be subject to the standards outlined in ***Section 12.15(a)(i)***. So long as the SHPO Submittals comply with the Project Requirements, Port will co-sign the SHPO Submittals if required, and if SHPO has recommended and NPS has approved or subsequently approves elements of the SHPO Submittals as being consistent with the Secretary's Standards, Port will also agree that such SHPO approved elements are consistent with the Secretary's Standards. If Vertical Developer is seeking Historic Preservation Tax Credits for the Vertical Project, then in no event will Port condition or disapprove the Schematic Drawings or any other Construction Document on the basis of elements that have been approved by the SHPO and National Park Service for purposes of certifying the Vertical Project for Historic Preservation Tax Credits.

(b) **Effect of Review.** Subject to ***Section 12.15(a)(ii)***, Port's review and approval or disapproval of the Construction Documents will be final and conclusive. Except by mutual reasonable agreement with Vertical Developer, Port will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously.

(c) **Method of Port Action/Prior Approvals.** Port will (i) approve or (ii) provide comments, propose changes, or both on each set of Construction Documents, in writing, within 30 days of receipt, so long as each set of the applicable Construction Documents meet the requirements described in ***Section 12.13*** above. Port may propose changes to the Constructions Documents that do not conflict with Project Requirements or previously approved Construction Documents. If Port proposes changes to the applicable Construction Documents, Vertical Developer and Port will promptly meet and confer in good faith to reach an agreement on any such changes proposed for a period of not more than 21 days, as may be extended by mutual agreement. Coming out of this meet and confer process, Vertical Developer will incorporate any revisions to the Construction Documents into its subsequent submittal of Construction Documents to Port. Upon receipt of the resubmittal of the Construction Documents, Port will approve, disapprove or approve conditionally the Construction Documents, in writing. Notwithstanding any other provision of this Agreement or the Parcel Lease to the contrary, Port's approval of the Construction Documents in its proprietary capacity under this Agreement

will not, evidence or be deemed to evidence Port's approval of the Final Construction Documents in its regulatory capacity. Approval of Construction Documents by Port will not be construed as approval of such documents by SHPO or NPS.

(d) **Timing of Port Disapproval/Conditional Approval and Vertical Developer Resubmission.** If Port disapproves aspects of the Construction Documents in whole or in part, Port in the written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions will be stated in writing and a time will be stated for satisfying the conditions. Vertical Developer will resubmit as expeditiously as possible and may continue making resubmissions until the approval of the submissions. Approval of Construction Documents by Port will not be construed as approval of such documents by SHPO or NPS

12.17. *Changes in Final Construction Documents*

(a) **Approval of Changes in Required Elements.** Vertical Developer will not make or cause to be made any material or substantial changes in any Port-approved Construction Documents as to the specific elements approved by Port as provided in ***Section 12.15(a)(i)*** (each a "**Required Element**") without Port's express written approval in its reasonable discretion; provided, however, if certain materials approved by the Port are not available for construction, the Vertical Developer may substitute materials which are the architectural and environmental equivalent or superior as to aesthetic appearance, qualify, color, design and texture, as approved by the Port in its reasonable discretion. Prior to making any changes that Vertical Developer considers to be non-material to any Port approved Construction Documents as to Required Elements, including substituting materials that are the architectural equivalent as to aesthetic appearance, quality, color, transparency, design and texture, Vertical Developer must first notify Port in writing of such changes in Required Elements. If Port determines that such noticed changes are material or substantial, Port will respond to Vertical Developer within 15 days of receipt of such request.

(b) **Response.** Vertical Developer will request Port's approval for all material or substantial changes in Required Elements in writing. Any such changes proposed for any Construction Document after the approved Schematic Drawings will expressly include the request for approval, which the Port will consider with the applicable submittal under ***Section 12.15(c)***. In addition to the notice parties set forth ***Article 30*** (Notices), Vertical Developer will deliver by electronic mail (or other format reasonably requested by Port) copies of all requests for Port's approval of material or substantial changes to Required Elements to the following parties: Port's Deputy Director of Real Estate and Development, Port's in-house historic expert, and Port's project manager for the Property. If Vertical Developer requests a material or substantial change in a Required Element outside of a Construction Document submittal, then Port will respond to Vertical Developer as promptly as reasonably possible, but in no event later than twenty (20) days after receipt of Vertical Developer's request. If Port fails to respond to such request on or after fifteen (15) days after Vertical Developer's written request, Vertical Developer will submit a second written notice to Port (including the Port parties set forth in this ***Section 12.16(b)***) requesting Port's approval or disapproval within five (5) business days after receipt by Port of Vertical Developer's second notice. The second notice shall display prominently on the envelope enclosing such request and the first page of such request (or the subject line in any notice delivered by electronic mail), substantially the following: **"APPROVAL REQUEST FOR PIER 70 VERTICAL PROJECT CONSTRUCTION REVIEW MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to respond within such five (5) business day period, such changes will be deemed approved; provided, however, Port's response by electronic mail only will be deemed a sufficient response for purposes of this ***Section 12.16(b)***. All changes to the Construction Documents must be consistent with the Secretary's Standards, and

with all other Laws as determined by Port in the exercise of its reasonable discretion. Notwithstanding the foregoing, if Vertical Developer requests a material or substantial change to approved Final Construction Documents once construction of the Vertical Project has commenced, Port will respond as promptly as reasonably possible to avoid construction delays, but in no event later than five (5) business days after Vertical Developer's request. If Port fails to respond within such three business day period, Vertical Developer may submit a second notice, consistent with the requirements set forth above in this subsection (b). If Port fails to respond within a two business day period after the second notice, Port's approval, in its proprietary capacity hereunder, the changes will be deemed approved.

(c) If Port disapproves of Vertical Developer's request and Vertical Developer disagrees with Port's disapproval, both Parties agree to use their commercially reasonable effort to reach a solution expeditiously that is mutually satisfactory to Vertical Developer and Port.

12.18. ***Conflict With Other Governmental Requirements.***

(a) **Approval by Port.** Port will not withhold its approval, where otherwise required under this Agreement, of elements of the Construction Documents or changes in Construction Documents required by any other governmental body with jurisdiction if all of the following have occurred:

(i) Port receives written notice of the required change;

(ii) Port is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction of and requiring such element or change and with Vertical Developer and its design team;

(iii) Vertical Developer cooperates fully with the governmental body having jurisdiction in seeking reasonable modifications of such requirement, or reasonable design modifications of the Vertical Project, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to Port may be achieved despite the imposition of such requirement; and

(iv) any conditions imposed in connection with such requirements are subject to ***Article [11]***.

(b) **Efforts to Attempt to Resolve Disputes.** Vertical Developer and Port recognize that the foregoing kind of conflict may arise at any stage in the preparation of the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of building permits. Accordingly, time is of the essence when such a conflict arises. Both Parties agree to use their commercially reasonable efforts to reach a solution expeditiously that is mutually satisfactory to Vertical Developer and Port.

12.19. ***Progress Meetings/Consultation.*** During the preparation of Construction Documents and the Construction of the Vertical Project, Port staff and Vertical Developer agree to hold periodic progress meetings, as appropriate considering Vertical Developer's progress, to coordinate the preparation of, submission to, and review by Port of Construction Documents and the construction process. Port staff and Vertical Developer (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration. Upon reasonable prior notice to Vertical Developer, Port may, but is not obligated to, have one or more individuals present on the Property at any time and from time to time during construction, to observe the progress of Construction of the Vertical Project and to monitor Developer's compliance with this Agreement, subject to compliance with reasonable safety measures imposed by Vertical Developer.

12.20. ***Submittals after Completion.***

(a) **Record Drawings.** Vertical Developer shall furnish Port Record Drawings of the Vertical Project improvements constructed on, in, under and around the Property. Record Drawings must be in the form of full-size, hard paper copies and converted into electronic format as full-size scanned TIF files, and (2) in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "Record Drawings" means drawings, plans and surveys showing the Subsequent Construction as built on the Property and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Vertical Developer fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Subsequent Construction, and the cost of preparing such Record Drawings must reimbursed by Vertical Developer to Port as Additional Rent. Nothing in this Section shall limit Vertical Developer's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity. Vertical Developer will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Vertical Developer's request, Port will provide Vertical Developer with a release from liability for future use of the applicable materials, in a form acceptable to Vertical Developer and Port.

(b) **Record Drawing Requirements.** Record Drawings must be based on no less than 24" x 36", with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing must have a Port-assigned number placed onto the title block prior to scanning. An index of drawings shall be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings must be scanned as a test, prior to execution of this requirement in full.

12.21. ***Insurance Requirements***

(a) **Before Initial Close of Escrow.** Before the Initial Close of Escrow, Vertical Developer will procure and maintain insurance coverage set forth in the Parcel Lease for the Historic Buildings.

(b) **After Initial Close of Escrow.** From and after the Initial Close of Escrow, Vertical Developer's requirement to maintain insurance under this Agreement will be as set forth in the Parcel Lease.

(c) **Port Self-Help Right to Obtain Insurance.** After five (5) days' written notice to Vertical Developer, Port has the right, but not the obligation, to obtain, and thereafter continuously to maintain, any insurance required by this Agreement that Vertical Developer fails to obtain or maintain, and to charge the cost of obtaining and maintaining that insurance to Vertical Developer; provided, however, if Vertical Developer reimburses Port for any premiums and subsequently provides such insurance satisfactory to Port, then Port agrees to cancel the insurance it obtained and to credit Vertical Developer with any premium refund less any other costs incurred by Port resulting from Vertical Developer's failure to obtain or maintain the required insurance.

(d) **Indemnity.** The Indemnification requirements under this Agreement, the Parcel Lease, or any other agreement between Port and Vertical Developer, will in no way be limited by any insurance requirements under any such agreements.

12.22. ***Building Permit.*** Vertical Developer will submit to Port a complete application for a building permit (or site permit or equivalent) and will make deferred submittals in accordance with the Port Building Code for the remainder of the Vertical Project in a diligent and expeditious

manner. Upon any such submission, Vertical Developer will prosecute the application diligently to issuance.

12.23. ***Information Required by the County Assessor.*** The County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable transfers of property. Exhibit L lists the information that the County Assessor expects to need in order to perform the foregoing tasks (the "**Assessor Information**"). Each Party will provide to the County Assessor any Assessor Information requested in writing by the County Assessor in the format required by the County Assessor (the "**Requested Information**") within 90 days of the applicable Party's receipt of a written request for such Requested Information. Port's sole remedy with regards to a breach of this Section 12.14 is specific performance, Port hereby waiving all other rights and remedies available at law or equity. Vertical Developer waives any right to confidentiality under applicable law to the extent necessary for the County Assessor to notify Port of Vertical Developer's failure to provide the Requested Information on a timely basis and Port to exercise its right to specific performance of Vertical Developer's obligation. Promptly following the County Assessor's request, Port may, from time to time update the information requirements set forth in Exhibit L by providing Vertical Developer no less than ten (10) business days' prior notice and a replacement copy of Exhibit L.

H. **Default by Vertical Developer (Section 15.1)** of the Agreement will be supplemented to add the following event or circumstance that will constitute a Vertical Developer Default:

(k) After the Initial Close of Escrow, Vertical Developer fails to diligently proceed to commence within the times required under the Schedule of Performance, or after commencement fails to prosecute diligently to Completion (except for Deferred Items, if any), the Construction of the Vertical Project improvements in accordance with the Scope of Development, approved Construction Documents, and this Agreement, or commences construction of the Vertical Project but then abandons or ceases its work without the Approval of Port for more than one hundred and twenty (120) consecutive days or a total of one hundred and eighty (180) days (not counting any period of Force Majeure), and such failure, abandonment, or cessation continues for a period of forty-five (45) days following such Vertical Developer's receipt of notice thereof from Port;

I. **Article 22 (Definitions)** is revised to include the following new definitions:

"**Assessor Information**" is defined in ***Section 12.23***.

"**Completion Guaranty**" is defined in ***Section 6.4(a)(xix)***.

"**Construction Contract**" is defined in ***Section 6.4(a)(xvii)***.

"**Construction Documents**" is defined in ***Section 12.13(a)***.

"**Design Development Documents**" is defined in ***Section 12.13(b)***.

"**Development Budget**" is defined in ***Section 6.4(a)(xv)(1)***.

"**Final Construction Documents**" is defined in ***Section 12.13(c)***.

"**Finally Granted**" means that the action is final, binding and non-appealable and all applicable statutes of limitation relating to such action, including with respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to such action.

"**Hard Costs**" are defined in ***Section 12.7(a).***

"**Historic Building Cost**" is defined in ***Section 12.7(a).***

"**Historic Building Cost Trigger Date**" is defined in ***Section 12.7(a).***

"**Historic Building Feasibility Gap**" is defined in ***Section 12.7(a)***.

"**History Building Schedule**" is defined in ***Section 12.7(a)***.

"**Historic Preservation 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.

"**Letter of Credit**" is defined in ***Section 6.4(a)(xix)***.

"**Net Worth**" 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 generally accepted accounting principles consistently applies or the income tax basis of accounting consistently applied.

"**NPS**" is defined in ***Section 6.4(a)(xx)***.

"**Obligor Net Worth Amount**" means Ten Million Dollars ($10,000,000.00) which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Effective Date and every ten (10) years thereafter.

"**Performance Bond**" is defined in ***Section 6.4(a)(xix).***

"**Permissible Financing Costs**" is defined in ***Section 12.7(a)***.

"**Requested Information**" is defined in ***Section 12.23***.

"**Required Element**" is defined in ***Section 12.16(a)***.

"**Schematic Drawings**" is defined in ***Section 12.13(d)***.

"**SHPO Submittals**" is defined in ***Section 12.15(a)(ii)***.

"**Soft Costs**" is defined in ***Section 12.7(a)***.

"**Tenant Return**" is defined in ***Section 12.7(a).***

J. **Historic Preservation Tax Credits (Article 23)** is hereby added to the Agreement to read as follows:

23. HISTORIC PRESERVATION TAX CREDITS

23.1. Qualifying for Tax Credits. Vertical Developer will use its best efforts during the Term of this Agreement to obtain Historic Preservation Tax Credits available for the Vertical Project in a timely manner. After NPS has reviewed the Part 1 Applications and made a determination that the Vertical Project is eligible for Historic Preservation Tax Credits, Vertical Developer will timely submit to NPS, a final Historic Preservation Certification Applications, Part 2 – Description of Rehabilitation for Historic Preservation Project.

23.2. Use of Tax Credits. Vertical Developer is expected to sell Historic Preservation Tax Credits to one or more tax credit investors and, in connection therewith, shall submit to Port an executed master sublease for the Historic Buildings to a new partnership or limited liability company to be formed with one or more third parties (collectively, "Tax Credit Investors") and controlled by Vertical Developer or its Affiliate, together with an executed operating agreement or limited partnership agreement and all related authority and governing documents or such other

evidence that is reasonably satisfactory to Port, indicating that Vertical Developer has entered into, or has a binding commitment to enter into, an agreement with the Tax Credit Investors to utilize the Historic Preservation Tax Credits in such partnership or limited liability company (each, a "master subtenant"). So long as the terms and conditions of the Parcel Lease are not changed in any way, Port hereby consents to any master sublease with such master subtenant.

Exhibit [ ]

Form of Performance Bond

Exhibit [ ]

Scope of Development

Exhibit [ ]

Schedule of Performance for Buildings 12 and 21

Outside Date for Close of Escrow:	No later than three (3) years after the Effective Date hereof.*
Outside Date for Commencement of Construction:	No later than three (3) years after the Effective Date hereof.**
Completion of Construction:	From and after Commencement of Construction Vertical Developer must diligently prosecute construction of the Improvements to completion.***

*Subject to the provisions regarding time for performance and the procedures for Excusable Delay as set forth in Article 4 of the DDA (Performance Dates) including Down Market Delay (as defined in the DDA).

**Subject to the provisions regarding time for performance and the procedures for Excusable Delay as set forth in Article 4 of the DDA (Performance Dates) but expressly excluding Down Market Delay.

***Subject to allowable periods where construction may cease due to events of Excusable Delay, subject to the provisions regarding time for performance and the procedures set forth in Article 4 of the DDA (Performance Dates) but expressly excluding Down Market Delay.

Exhibit [ ]

Secretary of the Interior's Standards
for the Treatment of Historic Properties

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

[FORM PARCEL LEASE FOR 28-ACRE SITE (WITH APPENDIX FOR HISTORIC BUILDING PARCELS AND E4)]

CITY AND COUNTY OF SAN FRANCISCO
[ ], MAYOR

LEASE NO. L-[____]

BETWEEN THE

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AS LANDLORD

AND

[TENANT]

AS TENANT

DATED AS OF _____, 20[___]

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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

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Exhibits:

Exhibit N Form of Assignment and Assumption Agreement
Exhibit O Form of Significant Change Certificate
Exhibit P Form of Tenant Estoppel Certificate
Exhibit Q Form of Subtenant Estoppel Certificate
Exhibit R Form of Non-Disturbance Agreement
Exhibit S Insurance Requirements

Exhibit T Port and City Special Provisions [**Note: Port and City Special Provisions will be updated to include all requirements applicable as of execution date.**]
Exhibit U Form of Port Estoppel Certificate
Exhibit V Form of Memorandum of Lease

Schedules:

[**add if applicable**]:
Schedule 13.2 Energy Disclosure Summary Sheet

Appendices
Appendix of Parcel Lease Provisions for Historic Buildings 2, 12, and 21
Appendix of Parcel Lease Provisions for Arts Building (Parcel E4)

BASIC LEASE INFORMATION

Each reference to the Basic Lease Information in this Lease will incorporate the applicable Basic Lease Information specified herein.

Each term in this paragraph that is not defined in this Lease is defined in the Disposition and Development Agreement between the Port and FC Pier 70, LLC, dated as of May 2, 2018 (the "**DDA**"). This Lease is a **[fully prepaid lease] [or] [Hybrid Ground Lease] of unimproved property to a [Vertical Developer Affiliate of Horizontal Developer] [or] [Vertical Developer non-Affiliate of Horizontal Developer]**.

Lease No.	Lease No. L-XXXX
Effective Date:	_____, 20__
Landlord:	**THE CITY AND COUNTY OF SAN FRANCISCO** operating by and through the **SAN FRANCISCO PORT COMMISSION**
Tenant:	
Tenant's Address for Notices:	
Landlord's Address for Notices:	
Premises:	All that real property located in the City and County of San Francisco, California, as more particularly described in ***Exhibit A*** (Legal Description of Property) attached hereto (the "**Property**"). The Property contains approximately ___ square feet of unimproved land area (the "**Land**'), together with all rights and privileges appurtenant to the Property and owned by Port, and any Improvements hereafter constructed on the Property. The Property is shown generally on the Site Plan attached hereto as ***Exhibit B*** (Site Plan). The Property and all Improvements now and hereafter located on the Property are referred to in this Lease as the "**Premises.**"
Single Point of Entry for State Mineral **[Note: Not applicable if land has been transferred out of the Trust.]**	Located in Zone 3, California grid System, at a point Reservation Entry where X equals ____ and Y equals _____,

Permitted Use Before Commencement of Construction of the Project:	Construction staging only to advance either the Vertical Project or the Horizontal Improvements. Any other use requires the prior approval of Port, which approval may be withheld in its sole discretion.
Permitted Use After Commencement of Construction of the Project[1]:	The use and operation of the Premises will be [insert more tailored/specific uses] subject to the Required Uses, the limitations set forth in the Scope of Development attached hereto as ***Exhibit C-1*** (Scope of Development) and the SUD [**if applicable:** and the Affordable Housing Restrictions described in ***Exhibit C-2*** attached hereto] [If applicable: "**Required Uses**" means the use of at least the Minimum Public Benefit Area within the Premises dedicated solely to [PDR/childcare/other required public benefit] throughout the Term in accordance with ***Section 3.7*** (Required Public Benefits)] (collectively, the "**Project**") and as further specified below in ***Article 3***. "**Minimum Public Benefit Area**" means XXX square feet of the Premises dedicated solely to the Required Uses in the location identified in ***Exhibit C-3***(Minimum Public Benefit Area) attached hereto.
Commencement Date:	The Effective Date of this Lease.
Expiration Date:	_____, ___ [(99 years after the Commencement Date)]
Prepaid Rent:	$____.
Rent:	As set forth in ***Exhibit D*** (Rent) attached hereto.
[Include For Hybrid Leases only Base Rent Deposit:	An amount equal to two (2) months of Base Rent.]
[Environmental Oversight Deposit:]	[Note: May be applicable for certain leases based on hazardous materials uses]

[1] Note: it is anticipated that the Scope of Development will simply include the type of use (residential or office with accessory retail, etc....) and the maximum density and parking if applicable. It is not intended to lock in any specific development project subject to these broad limitations. The Affordable Housing restrictions would be applied to apartment projects through the recordation of applicable affordable housing agreements/restrictions recorded against title at close of escrow, which would be described and/or attached as Exhibit C-2.

[Environmental Financial Assurances Deposit:]	[Note: May be applicable for certain leases based on hazardous materials uses]
Project Approvals:	Those certain project approvals for the 28- Acre Site listed in ***Exhibit E*** (Project Approvals) attached hereto and made a part hereof, as may be amended from time to time.
Appendices for Parcel E4 (Arts Building) and Historic Buildings 2, 12 and 21	The Pier 70 Lease Appendix for the Arts Building (Parcel E4) and the Pier 70 Lease Appendix for Historic Buildings 2, 12 and 21 attached hereto sets forth special terms and obligations that apply specifically and exclusively to the lease of the Arts Building on Parcel E4 and the Historic Buildings on Parcels 2, 12 and 21, as applicable. At the time of execution, this approved form of Parcel Lease will be revised to reflect the specific terms set forth in the applicable Appendix.

LEASE NO. L-XXXX

THIS LEASE NO. L-XXXX (this "**Lease**") is dated as of the Effective Date, by and between **THE CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as landlord, and [_____] ("**Tenant**"). The Basic Lease Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this Lease and will be construed as a single instrument and referred to herein as this "**Lease.**" In the event of any conflict or inconsistency between the Basic Lease Information and the Lease provisions, the Basic Lease Information will control. All initially capitalized terms used herein are defined in ***Article 47*** or have the meanings given them when first defined.

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City's Charter. The Waterfront Plan is Port's adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Port has jurisdiction of approximately sixty-nine (69) acres of land along San Francisco's Central Waterfront, generally bounded by Mariposa Street, Illinois Street, 22nd Street, and San Francisco Bay, commonly known as Pier 70. Previously known as the San Francisco Yard and the Bethlehem Steel Shipyard, Pier 70 is a former 19th century ship building and repair facility, and the most intact historic maritime industrial complex of that era west of the Mississippi River. A portion of the site remains an active ship repair facility.

C. The Port and FC Pier 70, LLC, a Delaware limited liability company ("**Horizontal Developer**"), are parties to that certain Disposition and Development Agreement dated as of , 2018_ (the "**DDA**") and that certain Lease No. L-XX dated as of [_____], 2018 (the "**Master Lease**"). The DDA and Master Lease govern the mixed-use development of an approximately 28-acre site, known as the "**28-Acre Site,**" as more particularly described in the DDA and Master Lease. The DDA and Master Lease set forth a parcel disposition process under which the Port will enter into fully-prepaid or partially-prepaid ground leases for developable parcels within the 28-Acre Site with Horizontal Developer, on behalf of itself or through its Vertical Developer Affiliates, or, if Horizontal Developer fails to exercise its option to lease such developable parcel, to third parties selected in accordance with the requirements of the DDA.

D. This Lease is a [fully] [partially] prepaid ground lease with a [Vertical Developer Affiliate] [Vertical Developer that is not an Affiliate of Horizontal Developer]. The form of this Lease was authorized by the Port Commission by Resolution No. 17-43 and the Board of Supervisors by Resolution No. 401-17, which resolutions authorized the Port's Executive Director to enter into this Lease without further approval by the Port Commission or the Board of Supervisors under Charter Section 9.118.

E. [Include additional Recitals that describe exercise of Option, if applicable, the parcel disposition process as provided under the DDA, the escrow instructions approved and submitted by the parties, close of escrow and any other relevant facts and circumstances leading up to execution of this Lease]

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. PREMISES; TERM.

1.1. *Premises.*

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises described in the Basic Lease Information as of the Commencement Date.

(b) Permitted Title Exceptions. The interests granted by Port to Tenant pursuant to ***Section 1.1(a)*** are subject to (i) the matters reflected in ***Exhibit F*** (the "**Permitted Title Exceptions**"), (ii) such other matters as Tenant will cause or suffer to arise subject to the terms and conditions of this Lease, and (iii) the rights of Port and the public reserved under the terms of this Lease.

(c) Accessibility Inspection Disclosure. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and Port will have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

(d) San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in ***Article 7*** (Compliance with Laws), Tenant further understands and agrees that it is Tenant's obligation, at no cost to Port, to cause the Premises and Tenant's use thereof to be conducted in compliance with the Disabled Access Laws and any other federal or state disability access Laws. Tenant will notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

(e) No Right to Encroach.

(i) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant will immediately vacate such Encroachment Area and if such Encroachment Area is controlled by Port, pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period will be prorated based on a thirty (30) day month. In no event will acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the

Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease.

(ii) In addition, Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300.00), which amount will be increased by One Hundred Dollars ($100.00) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter, upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant will pay to Port, as Additional Rent, an amount equaling Four Hundred Dollars ($400.00), which amount will be increased by One Hundred Dollars ($100.00) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter, for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges will be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. **[Note: Amounts to increase by $50 every 5 years from DDA execution.]**

(iii) In addition to Port's rights and remedies under this ***Section 1.1(e)***, the terms and conditions of the Indemnity and waiver provision set forth in ***Article 19*** (Indemnification of Port) will also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant will additionally Indemnify Port from and against any and all Losses resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any Losses resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and Losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(iv) All amounts set forth in this ***Section 1.1(e)*** will be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this Lease, each Party specifically confirms the accuracy of the statements made in this ***Section 1.1(e)*** and the reasonableness of the amount of the charges described in this ***Section 1.1(e)***.

(f) **[Note: Not applicable if land has been transferred out of the Trust.]** **Subsurface Mineral Rights**. Under the terms and conditions of Article 2 of the Burton Act, the State has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Premises as identified in the Basic Lease Information, provided that such right will not be exercised so as to disturb or otherwise interfere with the Leasehold Estate or the use of the Premises, including the ability of the Premises to support the Improvements, but provided further that, without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises will be governed by ***Article 14***. Port will have no liability under this Lease arising out of any exercise by the State of such mineral rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability).

(g) **"AS IS WITH ALL FAULTS"**. TENANT AGREES THAT PORT IS LEASING THE PREMISES TO TENANT, AND THE PREMISES ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH

ALL FAULTS." TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF THE OTHER INDEMNIFIED PARTIES HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION IN, ON, UNDER, ABOVE, OR ABOUT THE PREMISES, TITLE TO THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE, OR OPERATION OF THE IMPROVEMENTS, THE COMPLIANCE OF THE PREMISES WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR ANY OTHER MATTER PERTAINING TO THE PREMISES, ANY APPURTENANCES THERETO OR THE IMPROVEMENTS, AND AS FURTHER DESCRIBED HEREIN.

Tenant further acknowledges and agrees that it has been afforded a full opportunity to inspect Port's records relating to conditions in, on, around, under, and pertaining to the Premises. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Tenant is not relying on any such information. All information contained in such records is subject to the limitations set forth in this ***Section 1.1(g)***. Tenant represents and warrants to Port that Tenant has performed a diligent and thorough inspection and investigation in, on, around, under, and pertaining to the Premises, either independently or through its own experts including: (i) the quality, nature, adequacy and physical condition in, on, around, under, and pertaining to the Premises including the structural elements, foundation, and all other physical and functional aspects in, on, around, under, and pertaining to the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition in, on, around, under, and pertaining to the Premises, including the soil and any groundwater (including any Hazardous Materials Condition (including the presence of asbestos or lead) with regard to the building, soils and any groundwater); (iii) the suitability in, on, around, under, and pertaining to the Premises for the Improvements and Tenant's planned use of the Premises; (iv) title matters, the zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction in, on, around, under, and pertaining to on the Premises; and (v) all other matters of material significance affecting in, on, around, under, and pertaining to the Premises and its development and use under this Lease.

As part of its agreement to accept the Premises in their "**As Is With All Faults**" condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port, the City, and their respective Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the development of the Improvements, the Permitted Uses, value, occupancy or enjoyment of the Premises, (iii) title matters, the zoning land use regulations, historic preservation laws, and other Laws applicable thereto, including Environmental Laws, or any other matter pertaining to the Premises, any appurtenances thereto or the Improvements; (iv) all other matters of material significance affecting in, on, around, under, and pertaining to the Premises and its development and use under this Lease; provided, however, the foregoing waiver will not apply to Losses arising from or relating to the sole negligence or willful misconduct of the Indemnified Parties.

In connection with the foregoing release, Tenant acknowledges that it is familiar with California Civil Code, Section 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant agrees that the release contemplated by this ***Section 1.1(g)*** includes unknown claims pertaining to the subject matter of this release. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the release contained in this ***Section 1.1(g)***.

Tenant Initials:_____

The provisions of this ***Section 1.1(g)*** will survive the expiration or earlier termination of this Lease.

(h) Title Defect. Port will have no liability to Tenant in the event any defect exists in Port's title to the Premises as of the Commencement Date and no such defect will be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect will be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

(i) No Light, Air or View Easement. This Lease does not include an air, light, or view easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands near or adjacent to the Premises or by any vessels berthed near the Premises will in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Rent, or affect this Lease in any way or Tenant's obligations hereunder.

(j) Unique Nature of Premises. Tenant acknowledges that: (i) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (ii) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; and (iii) there is a risk that sea level rise will increase the cost of operations, maintenance, and repair of the Premises.

(k) Memorandum of Technical Corrections. The Parties reserve the right, upon mutual agreement of Port's Executive Director and Tenant, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Premises, and upon full execution thereof, such memoranda will be deemed to become a part of this Lease.

(l) [Port's Reservation of Rights.] [Note: Include only if applicable][2]

1.2. ***Term***. The effectiveness of this Lease will commence on the Commencement Date as shown in the Basic Lease Information. The Lease will expire at 11:59 p.m. on the date that is ninety-nine (99) years thereafter, unless earlier terminated or extended in accordance with the terms of this Lease. The period from the Commencement Date until the final expiration of the Lease is referred to as the "**Term.**"

2. RENT.

During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in ***Exhibit D*** (Rent) attached hereto and incorporated herein by this reference.

3. USES.

3.1. ***Permitted Uses***. Tenant will use and operate the Premises in accordance with this Lease and solely for the Permitted Uses described in the Basic Lease Information. Tenant will not seek any amendment to the Required Uses, Project Approvals, including, without limitation, the SUD or Design for Development that would be substantially inconsistent with the land use restrictions set forth in the Scope of Development without the prior written consent of the Port

[2] Note: it is anticipated that the Reservation of Rights will be included in parcel-specific circumstances, such as where a public access area is included within the boundaries of the Premises or where City Agencies may need to access utilities or other infrastructure for maintenance, repair and replacement.

Commission and, during the term of the DDA, Horizontal Developer, each in its sole discretion. The Parties recognize that, from time to time, Tenant may desire to obtain additional use, zoning, regulatory or land use approvals or authorizations relating to the Premises. Port agrees, from time to time, to reasonably cooperate with Tenant, at no cost to Port, in pursuing such regulatory approvals or authorizations, including, but not limited to, executing documents, applications or petitions relating thereto, subject to the limitations of this ***Section 3.1,*** **[If applicable:** ***Section 3.7*** (Required Public Benefits)], and ***Article 8*** (Regulatory Approvals).

3.2. ***Prohibited Uses.*** Tenant will not conduct or permit on the Premises any of the following activities (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"):

(a) any activity, or the maintaining of any object, which is not within the Permitted Use or not previously approved by Port in writing, in its sole discretion;

(b) any activity or object which will materially overload or cause material damage to the Premises (other than which would be considered reasonable wear and tear or which is otherwise repaired by Tenant in accordance with the terms of this Lease);

(c) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any unusually objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;

(d) any activity which will in any way injure, obstruct or interfere with the rights of ingress and egress of other owners, tenants, or occupants of adjacent properties;

(e) the placement of any Sign on or near the Premises related to any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

(f) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids; provided, however, the foregoing prohibition does not apply to standard equipment maintenance for office equipment (such as printers, computer, and copiers) and residential equipment (such as washing machines, dryers, and kitchen appliances) or to charging stations for electric vehicles and equipment;

(g) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes (unless such use is reasonably required on a temporary basis to allow for the construction of the Initial Improvements, Subsequent Construction, or the repair or maintenance of the Improvements);

(h) the storage of any and all aggregate material, or bulk storage, such as wood or other loose materials (unless such use is reasonably required on a temporary basis to allow for the construction of the Initial Improvements, Subsequent Construction, or the repair or maintenance of the Improvements); or

(i) the washing of any vehicles or equipment (unless such use is (i) reasonably required on a temporary basis to comply with the Pier 70 Risk Management Plan during construction of the Initial Improvements or (ii) is ancillary to the Permitted Use and in accordance with a Port approved operations plan).

3.3. ***Liquidated Damages for Repeat Prohibited Uses.*** In addition to the other remedies available to Port under this Lease for an Event of Default under ***Section 24.1(f)***, if Tenant uses the Premises for the same type of Prohibited Use more than two (2) times within any twenty-four (24) month period, then Tenant will pay Port an amount equal to Twenty-Five Thousand Dollars ($25,000.00) (as adjusted periodically, the "**Prohibited Use Charge**") for the third such Prohibited Use and for each such Prohibited Use thereafter as liquidated damages, which Twenty-Five Thousand Dollars ($25,000.00) will be increased by fifteen percent (15%) on

the fifth (5th) anniversary of the Commencement Date and every five (5) years thereafter. **[Note: $25K will increase annually by 3% from and after the date of DDA execution until execution of this Lease.]**

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES, IN THE EVENT TENANT USES THE PREMISES FOR THE SAME TYPE OF PROHIBITED USE MORE THAN TWO (2) TIMES WITHIN A TWENTY-FOUR (24) MONTH PERIOD, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS LEASE, THE AMOUNT OF THE PROHIBITED USE CHARGE IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS LEASE WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Initials: _____ _____

Port Tenant

3.4. ***Advertising and Signs***. Subject to the prohibition on tobacco and alcohol advertising provided in ***Article 45***, (Port and City Special Provisions), Tenant will have the right to install signs and advertising inside the Premises and the Improvements in accordance with the Pier 70 Building Signage Plan, as may be amended from time to time. Tenant will have the right to place, construct or maintain any sign, flag, advertisement, awning, banner or other decoration (collectively, "**Sign**") on, or visible from, the exterior of the Premises without the prior written consent of Port acting in its proprietary capacity, provided any Sign that Tenant places, constructs or maintains on the Premises will comply with all Laws relating thereto, including but not limited to the Design for Development, the Pier 70 Building Signage Plan, and building permit requirements, and Tenant will obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant, at its sole cost and expense, will remove all Signs placed by it on the Premises at the expiration or earlier termination of this Lease.

3.5. ***Restrictions on Encumbering Port's Reversionary Interest***. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Port's reversionary interest in the Premises without Port's prior written consent, which consent may be withheld in Port's sole discretion, and subject to the provisions of ***Article 6*** (Contests).

3.6. ***Required Public Access Areas***. **[Note: Include only for leases where Public Access is required or part of the project; may include Building 21 access to 21st Street; passage between Parcels F/G; Portion of Lot D that serves as part of Market Square.]** Tenant must maintain throughout the Term, dedicated public access areas within the Premises as depicted on ***Exhibit G-1*** attached hereto. The Public Access Areas may be amended from time to time between the Parties, provided, however, in no event will the Public Access Areas be reduced from the Public Access Areas depicted on ***Exhibit G-1*** as of the Commencement Date without Port's prior written consent, or increased from the Public Access Areas depicted on ***Exhibit G-1*** as of the Commencement Date without Tenant's prior written consent, in each case which consent may be withheld in its sole discretion. Tenant must maintain the Public Access Areas in accordance with, and in compliance with, this Lease and must comply with the Rules and Regulations for Public Access Areas set forth in ***Exhibit G-2*** attached hereto.

3.7. ***Required Public Benefits***. **[Note: Include only for certain leases.]** Tenant may not use the Minimum Public Benefit Area for any use other than the Required Uses without the

prior written consent of Port, which consent may be granted, withheld or conditioned in Port's sole discretion. Tenant must include with any request to use the Minimum Public Benefit Area for uses other than the Required Uses evidence of its efforts to lease the Premises for the Required Uses, including outreach and marketing efforts. Port's consent to any one request to reduce the Minimum Public Benefit Area for Required Uses or use of such area for other uses will not be construed as consent for any subsequent request.

3.8. ***Priority Retail Along Shipways Commons.*** **[Note: Include only for Parcels E1, E2, E3, E4, and D.]** Pursuant to and as more particularly described in the Design for Development, the portion of the Premises fronting on Slipways Commons is designated as a Priority Retail Frontage zone. Tenant will use commercially reasonable efforts to sublease at least fifty percent (50%) of the rentable ground floor area within the Priority Retail Frontage zone on the Premises to "Priority Retail" uses (as defined in the Design for Development) that are also visitor-serving uses, which may include, without limitation, restaurants, cafes and specialty retail and food purveyors that will attract visitors and enhance their enjoyment of the adjoining open spaces. Tenant may not enter into any Sublease that would prevent or prohibit Tenant from achieving the foregoing without the prior written consent of Port, which may be given or withheld in Port's sole discretion.

4. DEVELOPMENT PROJECTS.

4.1. ***Generally.*** Tenant acknowledges that during the Term, other development projects will be developed or constructed in the immediate vicinity of the Premises (as generally described in ***Section 4.2*** (Pier 70)), and other development projects on or near Port property **[update as applicable:** (such as the development projects at Seawall Lot 337, Pier 48, Pier 80, SFPUC's Bay Corridor Transmission and Distribution Project along Illinois Street from 16th Street to 23rd Street and the proposed development of over 5 million square feet on the 29-acre Central Waterfront site at or around 1201 Illinois Street (bounded by Illinois, the Bay, 22nd and 23rd Streets)] also may be constructed in the vicinity of the Premises (collectively, "**Development Projects**"). Tenant is aware that construction of the Development Projects and other construction projects of Port tenants, licensees or occupants or projects of third parties in the vicinity of the Premises and the activities associated with such construction may generate adverse impacts on construction of the Initial Improvements or any Subsequent Construction, use and/or operation of the Premises after construction, or may result in inconvenience to or disturbance of Tenant and its Agents and Invitees. Said impacts may include increased vehicle and truck traffic, closure of traffic lanes, re-routing of traffic, traffic delays, loss of street and public parking, dust, dirt, construction noise, and visual obstructions (collectively, "**Construction Impacts**").

Tenant hereby waives any and all Losses against the Indemnified Parties arising out of any inconvenience or disturbance to Tenant, its Agents or Invitees, from Construction Impacts. The Parties will each use reasonable efforts to coordinate its construction efforts with each other and with others engaged in construction on such other projects in a manner that will seek, to the extent reasonably possible, to reduce construction conflicts.

4.2. ***Pier 70.***

(a) **Generally.** Tenant acknowledges that the Port Commission endorsed the vision, goals, objectives, and design criteria of the Pier 70 Master Plan. A brief description of the some of the existing and planned development in Pier 70 is as follows, all of which will create Construction Impacts:

(i) *Michigan Street.* Reconfiguration of Michigan Street, which is currently an approximately 80 foot right of way. Port is exploring alternate permanent configurations, redesign, or path of travel, of or on Michigan Street, including narrowing the width of Michigan Street to no less than sixty-eight (68) feet and the City's potential vacation all or a portion of Michigan Street. Tenant has no objections to narrowing the width of Michigan

Street to no less than sixty-eight (68) feet nor does Tenant object to the City's vacation of all or any portion of Michigan Street.

(ii) *New 19th Street.* Proposed extension of 19th Street east from Illinois Street that will accommodate heavy truck traffic for the ship repair facility and connect to the reopened Georgia Street.

(iii) *Crane Cove Park.* North of the planned 19th Street extension, Port anticipates commencing and completing construction of Crane Cove Park during the Term. The project includes construction of a new, approximately 9.8-acre shoreline park; creation of Georgia Street, which would connect 20th Street to the 19th Street extension; creation of an new primary entrance access to the Ship Repair site entrance from 20th Street to the terminus of the 19th Street extension and rerouting primary Ship Repair truck traffic from 20th Street to the 19th Street extension; and street improvements along the eastern side of Illinois Street.

(iv) *19th Street Parking Lot and Future Development Site.* Located between the Historic Core on the north side of 20th Street and the new 19th and Georgia Streets, the Port will construct an interim, approximately 180 car parking lot, including associated access points from 19th Street and Georgia Street. The parking lot will include storm water collection and treatment, landscaping and lighting. Eventually, the parcel will become a mixed-use development site, which may include the demolition of Building 36.

(v) *Building 6 and Building 11.*- Located north of 20th Street at the Bay's edge, Building 6 and Building 11 are contributing historic buildings that Port will ultimately redevelop for a use to be determined. Pedestrian and service deliveries access to Building 6 may occur on the south side of the building.

(vi) *28-Acre Site.* Port and Horizontal Developer entered into a DDA, the Master Lease, the Development Agreement, and other agreements for the Waterfront Site (collectively, the "**Forest City Agreements**"). The Forest City Agreements will, among other things, permit the construction and/or reconfiguration of streets, construction of new public open space and parks, construction of new buildings, and historic Rehabilitation, which construction will take place throughout the Term. The Premises is located within the Waterfront Site.

(vii) *Historic Core.* Port and Historic Pier 70, LLC entered into a Lease Disposition and Development Agreement dated September 16, 2014 and Lease No. L-15814 dated as of July 29, 2015 for the area referred to as the "**Historic Core**" in the Pier 70 Master Plan, located along 20th Street, East of Illinois Street. The Historic Core Project includes repair and rehabilitation of eight buildings in the Pier 70 Historic Core (Buildings 101, 102, 104, 113, 114, 115, 116, and 14) to satisfy current seismic, structural, and code requirements; reuse of the buildings as primarily light industrial and commercial uses; and addition of approximately 69,000 gross square feet of new building space primarily through the construction of mezzanines within existing buildings. The Project also includes an outdoor publicly accessible plaza and indoor atrium, plus minor roadway and sidewalk improvements for site accessibility. In total, the project will include approximately 334,000 gross square feet of existing and new building space. **[Add additional description information.]**

(viii) *Parcel K.* Parcel K, located at the southeast corner of Illinois and 20th Streets, will be subdivided into two parcels: Parcel K North and Parcel K South. Both are subject to the SUD. Under the SUD, Parcel K North will include approximately 300 residential units, 6,600 square feet of commercial uses, and 6,600 square feet of retail uses. Parcel K South will include up to 240 units of affordable housing, and 11,000 square feet of retail uses.

(ix) *Hoedown Yard.* The Hoedown Yard is a 3.6-acre parcel at the northeast corner of Illinois and 22nd Streets. The City has an option to purchase the site from its current owner, Pacific Gas and Electric. The site is also subject to the SUD. Under the SUD, the Hoedown Yard is zoned as commercial or residential. Under the residential scenario, it will include up to 335 residential units and 17,200 square feet of retail uses. Under the commercial

scenario, it will include up to 231,700 square feet of commercial uses and 28,135 square feet of retail uses.

(x) *Pier 70 Shipyard.* The Parties acknowledge that the Premises is located in proximity to the Pier 70 shipyard (the "**Pier 70 Shipyard**"), a working industrial facility that contains approximately 14.7 acres of improved land and 17.4 acres of submerged lands, including floating Dry Dock#2, floating Dry Dock Eureka, and an 8k ampere Shoreside Power System. Existing and future operations at the Pier 70 Shipyard may generate certain impacts such as noise, parking congestion, truck traffic, auto traffic, odors, dust, dirt, view and visual obstructions. In order to avoid interference with the Pier 70 Shipyard without being subject to suits by adjacent property owners, tenants, subtenants or other nearby users against Port for nuisance, inverse condemnation or similar causes of action, Tenant will include in all of its leases at the Premises, an acknowledgment of the foregoing impacts, and a waiver of rights relating to commencing or maintaining a lawsuit for common law or statutory nuisance, inverse condemnation, or other legal action based upon the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard.

(b) **Cooperation.** Tenant acknowledges and agrees that it will reasonably cooperate with Port, the tenant or operator of the Pier 70 Shipyard, Historic Pier 70 LLC, Forest City, and any future tenants or occupants of Pier 70 (collectively, the "**Pier 70 Parties**") in the implementation of the Pier 70 Master Plan, which includes the development and/or rehabilitation of the Historic Core, 28-Acre Site and Crane Cove Park, and continued operation of the Pier 70 Shipyard; provided, however, that such cooperation will be at no material out-of-pocket cost to Tenant.

5. TAXES AND ASSESSMENTS.

5.1. *Payment of Taxes and Other Impositions.*

(a) **Payment of Taxes.** Tenant will pay or cause to be paid to the proper authority prior to delinquency, all Impositions assessed, levied, confirmed, or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or on its Leasehold Estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), or on any use or occupancy of the Premises hereunder, to the full extent of installments or amounts payable or arising during the Term, whether in effect at the Commencement Date or which become effective thereafter. Tenant further recognizes and agrees that the Leasehold Estate may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code and the special taxes described in ***Section 5.2*** (CFD Matters and Shortfall Provisions). Tenant will not permit any such Impositions to become a defaulted lien on the Premises or the Improvements thereon; provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant will have the right to contest the validity, applicability or amount of any such taxes in accordance with ***Article 6*** (Contests). In the event of any such dispute, Tenant will Indemnify and hold the Indemnified Parties harmless from and against all Losses, including Attorneys' Fees and Costs, resulting therefrom.

(i) *Acknowledgment of Possessory Interest.* Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the County Assessor. Tenant further acknowledges that any Sublease, Transfer, or Assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership,

within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(ii) *Reporting Requirements*. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successive or replacement ordinance) requires that Port report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant will provide such information as may reasonably be requested by Port to enable Port to comply with such requirements. Without limiting the foregoing, the County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable transfers of property, as listed in the Assessor Information attached hereto as ***Exhibit H-1***. ***Exhibit H-1*** lists the information that the County Assessor expects to need in order to perform the foregoing tasks (the "**Assessor Information**"). Each Party will provide to the County Assessor any Assessor Information requested in writing by the County Assessor in the format required by the County Assessor (the "**Requested Information**") within 90 days of the applicable Party's receipt of a written request for such Requested Information. Port sole remedy with regards to a breach of this ***Section 5.1(a)(ii)*** is specific performance, Port hereby waiving all other rights and remedies available at law or equity for such breach. Tenant waives any right to confidentiality under applicable law to the extent necessary for the County Assessor to notify Port of Tenant's failure to provide the Requested Information on a timely basis and Port to exercise its right to specific performance of Tenant's obligation. Promptly following the County Assessor's request, Port may, from time to time, update the information requirements set forth in ***Exhibit H-1*** by providing Tenant no less than ten (10) business days' prior notice and a replacement copy of ***Exhibit H-1***.

(b) Other Impositions. Without limiting the provisions of ***Section 5.1(a)*** (Payment of Taxes), and except as otherwise provided in this ***Section 5.1(b)*** and ***Article 6*** (Contests), Tenant will pay or cause to be paid all Impositions, to the full extent of installments or amounts payable or arising during the Term which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the Leasehold Estate, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of ***Article 6*** (Contests), Tenant will pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. As used herein, "**Impositions**" means all taxes (including possessory interest, real, personal, and special taxes), assessments, liens, levies, fees, charges or expenses of every description, levied, assessed, confirmed or imposed by a governmental or quasi-governmental entity on the Premises, any of the Improvements or Personal Property located on the Premises, the Leasehold Estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions includes all such taxes, assessments, liens, levies, fees charged or expenses of every description, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character including, without limitation, special taxes under the CFD. The foregoing or subsequent provisions notwithstanding, Tenant will not be responsible for any Impositions arising from or related to, Port's fee ownership interest in the Property or Premises, Port's interest as landlord under this Lease, or any transfer thereof, including but not limited to,

Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Port's fee interest or transfer thereof.

(c) Proof of Compliance. Within a reasonable time following Port's written request which Port may give at any time and give from time to time, Tenant will deliver to Port copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

5.2. *CFD Matters and Shortfall Provisions.*

(a) Section 53341.5 Acknowledgment. Prior to Tenant's execution and delivery of this Lease, Horizontal Developer and Port delivered to Tenant, and Tenant executed and delivered to Horizontal Developer and Port, a notice of special tax pursuant to California Government Code Section 53341.5 (the "**Notice of Special Tax**") confirming that Tenant has been advised of the terms and conditions of the CFD, including that the Premises are subject to Special Taxes. A copy of the executed Notice of Special Tax is attached hereto as ***Exhibit H-2*** (Notice of Special Tax).

(b) Facilities and Maintenance CFD. As material consideration for Port entering into this Lease, Tenant will comply with all of the covenants and acknowledgements set forth in ***Exhibit H-3*** (CFD Matters) attached hereto and Tenant and Port acknowledge that Horizontal Developer is an explicit third-party beneficiary of the covenants and acknowledgements set forth in ***Exhibit H-3*** (CFD Matters) attached hereto.

(c) Shortfall Provisions.

(i) *Tenant Waiver and Covenant.* Tenant agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Premises until the IFD Termination Date. In addition, Tenant covenants that should Tenant initiate a Reassessment on a Taxable Parcel in the SUD in violation of the waiver in this Section, and subject to ***Section 5.2(c)(ii)*** (Circumstances Causing Shortfall), Tenant and Port will take the following measures to avoid shortfalls:

(1) Tenant will pay Port the Assessment Shortfall within twenty (20) days after Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

(2) The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

(ii) *Circumstances Causing Shortfall.* This Section will apply if Tenant initiates a Reassessment on the Premises in violation of ***Section 5.2(c)(i)*** (Tenant Waiver and Covenant).

(iii) *Tax Exemption.* Tenant and Port do not intend for this Section to affect the tax-exempt status of any bonds. Should the Tax Code change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt bonds to be deemed taxable due to the requirements under this Section, Port will release the obligations under this Section and it will be deemed severed from this Lease.

(iv) *Mutual Expectations as to Shortfall Measures.* Neither Tenant nor Port expects Port to make demand for payment under this Section. In light of the Parties' mutual expectations, Tenant has agreed to the waiver in ***Section 5.2(c)(i)*** (Tenant Waiver and Covenant).

(v) *No Negotiation.* Tenant understands that Port would not be willing to enter into this Lease without this ***Section 5.2***.

5.3. ***Port's Right to Pay***. Unless Tenant is exercising its right to contest in accordance with the provisions of ***Article 6*** (Contests), if Tenant fails to pay and discharge any Imposition (including fines, penalties and interest) prior to delinquency, Port, at its sole option, may (but is not obligated to) pay or discharge the same; provided that prior to paying any such delinquent Imposition, Port will give Tenant written notice specifying a date that is at least ten (10) days following the date such notice is given after which Port intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Port that it is contesting such Imposition pursuant to ***Article 6*** (Contests), then Port may thereafter pay such Imposition, and the amount so paid by Port (including any interest and penalties thereon paid by Port), together with interest at the Default Rate computed from the date Port makes such payment, will be payable by Tenant as Additional Rent.

6. CONTESTS.

6.1. ***Right of Tenant to Contest Impositions and Liens***. Subject to ***Section 5.2*** (CFD Matters and Shortfall Provisions), Tenant has the right to contest the amount, validity or applicability, in whole or in part, of any Imposition, mechanics' lien, or encumbrance (including any arising from work performed or materials provided to Tenant or any Subtenant to improve all or a portion of the Premises) by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, prior to commencement of such contest, Tenant notifies Port of such contest. Tenant must notify Port of the final determination of such contest within fifteen (15) days after such determination. Subject to ***Section 5.2*** (CFD Matters and Shortfall Provisions), nothing in this Lease requires Tenant to pay any Imposition, mechanics' lien, or encumbrance so long as Tenant contests the validity, applicability or amount of such Imposition, mechanics' lien, or encumbrance in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition, mechanics' lien, or encumbrance to be forfeited to the entity levying such Imposition, mechanics' lien, or encumbrance as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant must comply with such condition as a condition to its right to contest. Tenant is responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Tenant must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Premises may be subjected to such lien or claim. Tenant is not required to pay any Imposition, mechanics' lien, or encumbrance being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Premises. Port will not be subjected to any liability for the payment of any fines or penalties, and except as provided in the preceding sentence, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. Without limiting ***Article 19*** (Indemnification of Port) Tenant will Indemnify the Indemnified Parties for all Losses resulting from Tenant's contest of any Imposition.

6.2. ***Port's Right to Contest Impositions***. At its own cost and after notice to Tenant of its intention to do so, Port may, but in no event will be obligated to, contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this section will require Port to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow any portion of the Premises to be forfeited to the entity levying such Imposition as a result of its nonpayment and so long as such activities do not cause a default under any Mortgage in effect at the time. Port will give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Port will reimburse Tenant within thirty (30) days after demand from Tenant for any such fines, penalties, costs, interest, expenses or fees, including Attorney's Fees and Costs,

which Tenant may be legally obligated to pay solely as a result of Port's contest of such Impositions.

7. COMPLIANCE WITH LAWS.

7.1. ***Obligation to Comply***. During the Term, Tenant will comply with, at no cost to Port, (i) all applicable Laws (taking into account any variances or other deviations properly approved), (ii) the Pier 70 Risk Management Plan, (iii) the Mitigation Monitoring and Reporting Program, (iv) the Vertical DDA (so long as the Vertical DDA remains in effect), and (v) all applicable requirements of the Transportation Program **[note: add other requirements imposed in connection with Project Approvals, if any, including if applicable: all applicable requirements for qualification of the Project for Historic Preservation Tax Credits, including compliance with the Secretary's Standards.]** The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses do not limit Tenant's responsibility to obtain Regulatory Approvals for such Permitted Uses, nor do such Permitted Uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Tenant's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws relating to or affecting the Premises.

7.2. ***Unforeseen Requirements***. The Parties acknowledge and agree that Tenant's obligation under this ***Section 7.2*** to comply with all Laws and the other requirements set forth in ***Section 7.1*** (Obligation to Comply) is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws and the other requirements set forth in ***Section 7.1*** (Obligation to Comply) includes the obligation to make substantial improvements (including any barrier removal work or other work required to all or any portion of the Premises under Disabled Access Laws as a result of Tenant's specific use of the Premises, the Improvements, **[If applicable: Deferred Infrastructure until accepted by the applicable public agency]** or any Subsequent Construction performed by or on behalf of Tenant, or substructural repairs to the Premises), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law or the other requirements set forth in ***Section 7.1*** (Obligation to Comply) and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any Law or the other requirements set forth in ***Section 7.1*** (Obligation to Comply), however extraordinary, relieves Tenant of its obligations hereunder, nor gives Tenant any right to terminate this Lease (except for the Termination Option set forth in ***Section 7.3*** (Right to Terminate Lease)) in whole or in part or to otherwise seek redress against Port. Tenant waives any rights now or hereafter conferred upon it by any Law to terminate this Lease (except for the Termination Option set forth in ***Section 7.3*** (Right to Terminate Lease)), to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

7.3. ***Right to Terminate Lease***.

(a) **Termination Option**. Notwithstanding any other provision of ***Article 7.1*** (Compliance with Laws), in the event of any change in Laws during the last ten (10) years of the Term that would require capital repairs or improvements, including upgrades or other capital expenditures for reconstruction, replacement, expansion, Restoration, alteration or modification of the Premises (including the Improvements), Tenant will have the option, but not the obligation, to terminate this Lease (the "**Termination Option**") on the following terms and conditions:

(i) If Tenant desires to exercise the Termination Option, Tenant will deliver written notice thereof to Port of its election, at least one hundred twenty (120) days prior to the termination date specified therein ("**Termination Notice for Change in Laws**").

(ii) On or prior to the effective date of termination of this Lease in accordance with this ***Section 7.3***, Tenant must:

(1) cure all Tenant monetary Events of Default and any Events of Default relating to the provisions of ***Section 7.1*** (Obligation to Comply) (other than making the capital repairs or improvements necessitated by the change in Laws leading to Tenant's exercise of the Termination Option) and ***Section 10.1*** (Covenant to Repair and Maintain the Premises);

(2) cure all Events of Default or Unmatured Events of Defaults under ***Article 21*** (Hazardous Materials);

(3) pay in full all utility charges and Impositions due and owing up to and including the effective date of termination;

(4) maintain all the insurance required to be maintained under ***Section 20*** (Insurance) until the effective date of termination; and

(5) if requested by Port, Demolish and Remove the Improvements in accordance with this ***Section 7.3***.

(b) **Demolition and Removal Requirement.** If Port desires Tenant to Demolish and Remove the Improvements, Port will notify Tenant within ninety (90) days following receipt of the Termination Notice for Change in Laws, which election may be made by Port in its sole discretion. If Tenant Demolishes and Removes the Improvements in accordance with this ***Section 7.3***, Tenant will have no obligation to cure any Events of Default under ***Sections 7.1***. (Obligation to Comply) or ***10.1*** (Covenant to Repair and Maintain the Premises).

(c) **Termination Date.** If Tenant exercises its Termination Option, this Lease will terminate on the later of the date set forth in the Termination Notice for Change in Laws or the date Tenant cures all of the Events of Default required to be cured and completes the Demolition and Removal in compliance with all Laws; provided, however, if Port requests Tenant to Demolish and Remove the Improvements, and such work cannot reasonably be completed prior to termination of this Lease, then Tenant's access to the Premises to perform such work will be under Port's license, as further described in ***Section 36.2*** (Demolition of Improvements). Tenant's obligation to Demolish and Remove the Improvements in accordance with this ***Section 7.3*** will survive the earlier termination of this Lease.

8. REGULATORY APPROVALS.

8.1. Port Acting as Owner of Property. Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity as the holder of fee title to the Premises and not as a Regulatory Agency with certain police powers. Tenant acknowledges and agrees that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Initial Improvements can be obtained. Tenant acknowledges and agrees that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Initial Improvements will be issued by the appropriate Regulatory Agency, and Tenant understands and agrees that neither entry by Port into this Lease nor any approvals given by Port under this Lease will be deemed to imply that Tenant will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Initial Improvements and/or the Premises, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Tenant, at Tenant's own cost and

initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Initial Improvements. By entering into this Lease, Port is in no way modifying or limiting Tenant's obligations to cause the Premises to be developed, Restored, used and occupied in accordance with all Laws. Tenant further acknowledges and agrees that any time limitations on Port review or approval within this Lease applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Tenant understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Initial Improvements or other matters related to this Lease, and any such advocacy, promotion or lobbying will be done by Tenant at Tenant's sole cost and expense. Tenant hereby waives any claims against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Initial Improvements.

8.2. Regulatory Approval; Conditions. Tenant understands that construction of the Initial Improvements and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any Subsequent Construction, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, RWQCB, SFPUC, and other Regulatory Agencies. Tenant is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

Port, at no cost to Port, will cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Lease, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (i) encumber, restrict or adversely change the use of any Port property other than the Premises, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Tenant has assumed all obligations and liabilities related to such conditions and/or restrictions; or (ii) restrict or change the use of the Premises in a manner not otherwise permitted under this Lease or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Tenant has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees Port may be subject to).

Port will provide Tenant with its approval or disapproval thereof in writing to Tenant within ten (10) business days after receipt of Tenant's written request, or if Port's Executive Director reasonably determines that Port Commission or Board action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Tenant's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Tenant for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above in this section.

Tenant will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-Premises or require off-Premises improvements, removal, or other measures. Tenant in its sole discretion has the right to appeal or contest any condition in any manner

permitted by Law imposed by any such Regulatory Approval; provided, however, if Port is a co-permittee, then Tenant will have first obtained Port's prior consent, not to be unreasonably withheld, prior to commencing any such appeal or contest. Tenant will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Tenant will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval. No Port Approval will limit Tenant's obligation to pay all the costs of complying with any conditions or restrictions. Tenant will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Premises.

Without limiting any other Indemnification provisions of this Lease, Tenant will Indemnify the Indemnified Parties from and against any and all Losses which may arise in connection with Tenant's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to develop and construct the Premises in accordance with the Scope of Development, except to the extent that such Losses arise solely from the negligence or willful acts or omissions of Port acting in its proprietary capacity.

8.3. Regulatory Permit Coverage. Except as may otherwise be agreed upon between Tenant and Horizontal Developer pursuant to separate agreement(s), Tenant will not be entitled to rely upon Regulatory Approvals previously obtained by Horizontal Developer for any portion of the 28-Acre Site, but will be required to obtain its own Regulatory Approvals in accordance with all applicable Laws. This includes, without limitation, Stormwater Pollution Prevention Plans (SWPPP), Dust Control Plans (DCP), Asbestos Dust Mitigation Plans (ADMP), and compliance with the City's Maher Ordinance (SFDPH Article 22A). Notwithstanding the foregoing, in accordance with its approved ADMP, Horizontal Developer will provide a sitewide air monitoring network positioned on ongoing horizontal and vertical construction work within the 28-Acre Site.

9. TENANT'S MANAGEMENT AND OPERATING COVENANTS.

9.1. ***Operating Standards.*** From and after Completion of the Initial Improvements, Tenant will maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco and in accordance with this Lease. Tenant is exclusively responsible, at no cost to Port, for the management and operation of the Premises.

9.2. ***Leasing of Premises.*** Tenant will use reasonable efforts to keep as much of the space in the Premises leased, taking into account marketplace conditions and applying in the exercise of such efforts, the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco.

9.3. ***Reporting of Subleases.***

(a) Leasing Activity Reports. Tenant will deliver to Port within sixty (60) days following the end of each calendar year commencing in the calendar year a certificate of occupancy is issued for the Improvements until and including the calendar year that includes the twenty-fifth (25th) anniversary of the Commencement Date, a leasing activity report for immediately prior calendar year for the Premises substantially in the form attached hereto as ***Exhibit I*** (the "**Leasing Activity Report**"). To the extent gross revenues from the Premises is made available in other public forums such as government filings, Tenant will include such information in the Leasing Activity Report. Each Leasing Activity Report will be certified by an officer of Tenant that it is a true and correct copy.

(b) Audited Financial Statements. Tenant will deliver to Port within ninety (90) days following the end of the calendar year that includes the twenty-sixth (26th)

anniversary of the Commencement Date and within ninety (90) days following the end of each calendar year thereafter until the calendar year that includes the Expiration Date, Tenant's audited financial statement for the Premises, certified by Tenant's chief financial officer as being true, correct, and complete. The Parties agree and acknowledge that the audited financial statements need not include a line item for each Sublease and the pertinent financial terms related to such Sublease, but may instead, include a summary of the aggregate revenues generated by the Subleases.

(c) Port Representative. Throughout the Term, upon no less than forty-eight (48) hours' prior notice to Tenant, a representative of Port may review at the property manager's offices at the Premises during regular business hours, a complete copy of the Subleases at the Premises. Other than any Subleases Port has agreed to recognize pursuant to a Non-Disturbance Agreement, Port's representative will not be permitted to copy any of the Subleases or take any written notes of any Sublease terms during the first twenty-nine (29) years of the Term.

(d) Appraiser. Until Port sells its fee interest or enters into a long-term lease, as applicable, for the last development parcel within the 28-Acre Site, Port's appraiser may review at the management office at the Premises or at another San Francisco location where Tenant may keep copies of Subleases, all current Subleases and rent roll, provided Port's appraiser has entered into a customary confidentiality agreement that does not limit his or her ability to use the information in a manner necessary to inform the appraisal. The information gathered by the appraiser will be used solely to inform the appraiser in determining the fair market value of the development parcel to be sold or leased, as applicable.

9.4. ***Restaurant/Retail Businesses Open to the General Public.*** Throughout the Term, restaurants and other facilities for the exclusive use of the members of any invitation-only membership organization is prohibited on the ground floor of the Premises; provided, however, the foregoing does not prohibit amenities available only to employees of Tenant or any Subtenant (e.g., an employee cafeteria) or facilities for the exclusive use of membership organizations that are open to the general public (e.g., a membership-based gym).

9.5. ***Flags.*** **[Note: Include only for leases of Buildings 12, 21, 2 and Parcel E4]** Throughout the Term, a Port flag will fly on each flagpole within the Premises ("**Flagpoles**"). Port will provide Port flags to Tenant. Tenant will promptly, at no charge, install, raise, lower and remove Port flags at Port's request. The dimensions of Port flags will be similar to the dimensions of Port flags flown in the Central Waterfront. Tenant also may use the Flagpoles to fly other flags on each Flagpole, provided that such other flags, other than the flags of the United States and the State of California, must be placed beneath the Port flag and Port must first reasonably approve the dimensions, color, text, design, and materials for such flag. If Port determines that Tenant's response to Port's request to raise or lower Port flags is inadequate, then at Port's election, Port may access the Flagpoles to adjust the Port flags accordingly without notice to Tenant.

Tenant will have no responsibility to maintain any Port flags. Port will provide Tenant with replacement Port flags to replace worn Port flags on the Flagpoles. If Port does not provide a replacement flag to replace a worn flag, then Tenant will provide Port with notice requesting that a replacement flag be provided ("**Replacement Notice**"). If Port reasonably believes the flag in question is not worn sufficiently enough to warrant its replacement, Port will notify Tenant within five (5) days following receipt of the Replacement Notice, and such flag will remain in place and not be replaced. If Port has not timely notified Tenant that Port disputes the need to replace the flag and if Port does not provide Tenant with a replacement flag within thirty (30) days following the Replacement Notice, then Tenant will deliver to Port a second notice, which notice will include a statement in bold, all caps and underlined that if Port does not provide Tenant with a replacement flag within ten (10) days of such second notice, then Tenant will have the right to remove the worn flag. If Port does not provide Tenant with a replacement flag within

ten (10) days of such second notice, then Tenant will have the right to remove the worn flag; provided, however, if Port notifies Tenant that Port cannot provide Tenant with a replacement flag due to unavailability of a replacement flag, Tenant will not remove the worn flag until Port is able to obtain a replacement flag. If Tenant removes Port's flag, then Tenant will promptly fly a replacement flag provided by Port to Tenant.

9.6. ***Graffiti Removal***. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Tenant agrees to commence removal of graffiti from the Premises within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from San Francisco Public Works. This ***Section 9.6*** is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the Premises. The term "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the Planning Code, or the Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

9.7. ***Mitigation Monitoring and Reporting Program***. In order to mitigate any potential significant environmental impacts of the Initial Improvements and operation of the Premises, Tenant agrees that the development and operation of the Improvements will be in accordance with mitigation measures set forth in the Mitigation Monitoring and Reporting Program attached as ***Exhibit J*** (Mitigation and Improvement Measures) that are applicable to the Project. As appropriate, Tenant will incorporate the Mitigation Monitoring and Reporting Program into any contract (including any Sublease) for the development and/or operation of the Improvements and the Premises.

9.8. ***Transportation Program***. Tenant will comply with all applicable requirements of the Transportation Program, a copy of which is attached hereto as ***Exhibit K*** (Transportation Program), throughout the Term.

9.9. ***Pier 70 Risk Management Plan***. Tenant will comply, and will cause its Agents to comply, with all applicable provisions of the Pier 70 Risk Management Plan, a copy of which has been provided to Tenant, including requirements to notify all site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually. Any and all Subleases will require Subtenants (including its Agents) to comply with all applicable provisions of the Pier 70 Risk Management Plan.

10. REPAIR AND MAINTENANCE; FACILITIES CONDITION REPORT; CAPITAL RESERVES.

10.1. ***Covenants to Repair and Maintain the Premises***. Except as may otherwise be provided under ***Articles 14*** (Damage and Destruction) and ***15*** (Condemnation), throughout the

Term, Tenant will maintain and repair, at no cost to Port, the Premises, all Improvements within the Premises (including, without limitation, all Material Systems) and Subsequent Construction thereon in accordance with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco (less reasonable wear and tear), and in compliance with all applicable Laws and this ***Article 10*** (Repair and Maintenance; Facilities Condition Report; Capital Reserves). Tenant will with reasonable promptness make (or cause others to make) all repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, required to comply with this ***Section 10.1***, except as set forth in ***Article 14*** (Damage and Destruction) or ***Article 15*** (Condemnation). For purposes of this Lease, the term "**reasonable wear and tear**" will not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease.

10.2. ***Facilities Condition Report.***

(a) **Additional Definitions.**

"**Capital Items**" mean replacements, repairs, and/or improvements to the Premises, the foundation and structural integrity of the Improvements and Material Systems serving the Premises, and other Improvements within the Premises that would be deemed capital assets under general accounting principles consistently applied.

"**Capital Reserves**" means funds in a bank account where all funds will be used solely to replace, repair, and improve Capital Items within the Premises.

"**Capital Reserve Deposits**" means the deposits into an account for Capital Reserves.

"**FCR Date**" means the twentieth (20th) anniversary of the Commencement Date and every ten (10) years thereafter until and including the sixtieth (60th) anniversary of the Commencement Date and every five (5) years thereafter until the expiration of the Term.

(b) **Facilities Condition Report.** No less than ninety (90) days before each FCR Date, Tenant will deliver to Port a facilities condition report (the "**Facilities Condition Report**") prepared by a qualified team of construction professionals including, without limitation, a structural and mechanical engineer, each with at least ten (10) years of experience in constructing, renovating and/or evaluating major [**use for residential leases:** residential] [**use for commercial leases:** commercial] buildings in California. The Facilities Condition Report will be substantially in the form is attached hereto as ***Exhibit L*** (Form of Facilities Condition Report). Additionally, if a Facilities Condition Report is prepared by Tenant or another party in connection with any Transfer or Refinancing, then Tenant will provide or cause the other party to provide, a copy of such Facilities Condition Report to Port.

(c) **Failure to Revise or Submit Report.** If Port reasonably believes the Facilities Condition Report does not satisfy the requirements set forth in ***Section 10.2(b)*** (Facilities Condition Report), then Port will notify Tenant of such deficiency within forty-five (45) days following receipt of the Facilities Condition Report and Tenant will revise the Facilities Condition Report, to address Port's concerns within sixty (60) days. If Tenant fails to provide a Facilities Condition Report, or a revised Facilities Condition Report to Port within such period of time, Port after giving thirty (30) days' notice to Tenant will have the right, but not the obligation, to cause the preparation of a Facilities Condition Report by construction professionals of Port's choice, satisfying the experience requirements set forth in ***Section 10.2(b)*** (Facilities Condition Report) at Tenant's sole cost. Upon Port's delivery to Tenant of an invoice for such Facilities Condition Report, Tenant will promptly reimburse Port the amount set forth in such invoice.

(d) **Maintenance and Repair of Identified Items.** Tenant will use commercially reasonable efforts to perform the recommended repairs identified in the Facilities

Condition Report in accordance with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco.

10.3. ***Capital Reserves***. Throughout the Term, Tenant will maintain commercially reasonable Capital Reserves as may be required for the repair of Capital Items from time to time consistent with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco.

10.4. ***No Obligation of Port; Waiver of Rights***. From and after the Commencement Date, Tenant will be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including the Initial Improvements, [**if applicable:** Deferred Infrastructure until accepted by the applicable public agency,] Subsequent Construction, and any and all other Improvements. Port will not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or any portion of any of them. Tenant waives the benefit of any Law that would permit Tenant to make repairs or replacements at Port's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Port's expense as may be provided by California Civil Code Sections 1932(1), 1941 and 1942, as any such provisions may from time to time be amended, replaced or restated.

10.5. ***Port's Right to Repair***. In the event Tenant fails to maintain and repair the foundation, the structural integrity of the Improvements, the roofs, and building systems necessary for the operation of the Improvements (including plumbing, sewer, mechanical, electrical and other utility systems) (collectively, "**Material Systems**") within the Premises in accordance with ***Section 10.1*** (Covenants to Repair and Maintain the Premises) and such failure is likely to cause imminent physical harm to any Person or constitutes a violation of applicable Law, Port may repair the same at Tenant's cost and expense and Tenant will reimburse Port therefor as provided in this ***Section 10.5***. Except in the event of an emergency, Port will first provide no less than fifteen (15) days prior notice to Tenant before commencing any maintenance to or repair of a Material System ("**Port's Repair Notice**"). If Tenant does not commence maintenance or repair of the affected Material System or provide assurances reasonably satisfactory to Port that Tenant will commence maintenance or repair of the same within such fifteen (15) day period, then Port may proceed to take the required action. If Port elects to proceed with such repair or maintenance, then promptly following completion of any work taken by Port pursuant to this ***Section 10.5***, Port will deliver a detailed invoice of the work completed, the materials used and the costs relating thereto. Tenant also will pay to Port an administrative fee equal to ten percent (10%) of the total "hard costs" of the work. "**Hard costs**" include the cost of materials and installation, but exclude any costs associated with design, such as architectural fees. Tenant will pay to Port the amount set forth in the invoice within thirty (30) days after delivery of Port's invoice.

In the event Port notifies Tenant of a failure to maintain and repair the Premises ("**Maintenance Notice**"), Tenant will pay to Port, as Additional Rent, an amount equaling [**Note: amount to increase by $50 every 5 years after DDA execution:** Three Hundred Dollars ($300)], which amount will be increased by one hundred dollars on the tenth (10^{th}) anniversary of the Commencement Date and every ten (10) years thereafter, upon delivery of the Maintenance Notice. In the event Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance with this ***Article 10*** (Repair and Maintenance; Facilities Condition Report; Capital Reserves) then Tenant will pay to Port, as Additional Rent, an amount equaling [**Note: amount to increase by $50 every 5 years after DDA execution**: Four Hundred Dollars ($400)], which amount will be increased by one hundred dollars on the tenth (10^{th}) anniversary of the Commencement Date and every ten (10) years thereafter, for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and

expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges is in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. The amounts set forth in this ***Section 10.5*** are due within five (5) days following delivery of the applicable Maintenance Notice.

Tenant Initials: _____

11. IMPROVEMENTS.

11.1. ***Tenant's Obligation to Construct the Initial Improvements***. Construction of the Initial Improvements [if applicable: and Deferred Infrastructure] will be governed by the terms and conditions of the Vertical DDA and the VCA, and subject to (i) this Lease and all applicable Laws, including without limitation, the SUD and the Design for Development, (ii) the Pier 70 Risk Management Plan, (iii) the Mitigation Monitoring and Reporting Program, [and] (iv) the Transportation Program [if applicable: and (v) all applicable requirements for qualification of the Project for Historic Preservation Tax Credits, including compliance with the Secretary's Standards. Any Subsequent Construction will be performed in accordance with ***Article 12*** (Construction).

11.2. ***Title to Improvements***. During the Term, Tenant will own all of the Improvements within the Premises, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein (except for Subtenant improvements to the extent owned by any Subtenant pursuant to the applicable sublease, trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants other than Port), will vest in Port without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants will have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes material damage to the Premises, Tenant will promptly cause the repair of such damage at no cost to Port.

12. CONSTRUCTION.

12.1. ***Port Approval.***

(a) **Generally.** Tenant will have the right, from time to time during the Term, to construct the Initial Improvements and perform Subsequent Construction (collectively, "**Construction**") in accordance with the provisions of this ***Article 12*** (Construction).

(b) **Construction Requiring Port's Prior Approval.** Tenant has the right during the Term to perform Subsequent Construction in accordance with the provisions of this ***Article 12*** (Construction), provided that Tenant cannot do any of the following without Port's prior approval, which approval may be withheld by Port in its sole discretion:

(i) **[Note: Include only for leases with historic buildings:** Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(ii) **[Note: Include only for leases with historic buildings:** Materially alter the Historic Fabric unless pursuant to the requirements of an approved Regulatory Approval;]

(iii) **[Note: Include only for leases with historic buildings:** Perform Subsequent Construction that would, cause a decertification of all or a portion of the Premises for Historic Preservation Tax Credits, or that does not comply with the Secretary's Standards;]

(iv) **[Note: Include only in leases where public access area is required:** Perform Subsequent Construction to the Public Access Areas that would adversely

affect (other than temporarily during the period of such Subsequent Construction) the public access to, or the use or appearance of such Public Access Areas].

12.2. ***Permits/Design Review/Tenant Improvements***. Tenant must obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from Port itself. Without limiting the foregoing, Tenant acknowledges that the Initial Improvements and any major alterations or additions (as defined in the Design for Development) are further subject to conformance with the Port of San Francisco Union Iron Works Historic District at Pier 70, the Pier 70 Building Signage Plan and the design review process set forth in the SUD, which requires review and approval by Port for certain improvements, for consistency with the SUD and Design for Development. Without limiting anything else in this ***Article 12*** (Construction), Port's approval, in its proprietary capacity, will not be required for the installation or alteration of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing does not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from Port, in its regulatory capacity.

12.3. ***Construction Schedule***.

(a) **Performance**. Once commenced, Tenant will prosecute all Construction with reasonable diligence, subject to Force Majeure, and subject to any other applicable provisions regarding timing as set forth in the Vertical DDA and the VCA.

(b) **Reports and Information**. During periods of Construction, Tenant will submit to Port written progress reports when and as reasonably requested by Port.

12.4. ***Construction***.

(a) **Commencement of Construction**. Tenant will not commence any Construction until all the following conditions have been satisfied or waived by Port:

(i) Tenant has obtained and paid for all required building permits (or site permits and necessary addenda) and any other required Regulatory Approvals to commence with Construction; and

(ii) If any bond, sub-guard insurance (or other insurance product), guaranty, or other security is obtained by or for the benefit of Tenant with respect to the payment of any funds or performance obligations associated with the Initial Improvements or any Subsequent Construction, Tenant will cause to have (1) Port named as a co-obligee to any performance and/or payment bond, (2) Port named as an additional insured or third-party beneficiary with respect to any sub-guard or other insurance product, and (3) Port named as an additional beneficiary to any guaranty provided by a guarantor of any Subtenant's obligations that is granted a Non-Disturbance Agreement in accordance with ***Section 18.4*** (Non-Disturbance of Subtenants and Attornment); provided, however, Port's rights under such bond, insurance product or guaranty will (x) remain subordinate to the rights of any Lender, and (y) not be exercised by Port before an Event of Default.

(b) **Construction Standards**. All Construction will be performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

(c) **Compliance with Secretary's Standards. [Note: Include only for leases with historic buildings:** Tenant expressly acknowledges that the Building within the Premises is a contributing resource to the Port of San Francisco Union Iron Works Historic District at Pier 70 which is listed on the National Register of Historic Places. Accordingly, all Construction affecting the interior or exterior of the Premises (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of any of the Buildings) is subject to review by Port for consistency with the design policies and criteria set forth in the

Waterfront Plan, Secretary's Standards, and the Mitigation Monitoring and Reporting Program. Tenant expressly agrees to comply with the Secretary's Standards to Port's satisfaction for all Construction affecting the interior and exterior of the Premises.

(d) Reports and Information. During periods of Construction, Tenant will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

(e) Costs of Construction. Port will have no responsibility for costs of any Construction and Tenant will pay (or cause to be paid) all such costs.

(f) Construction Rights of Access. During any period of Construction, Port and its Agents will have the right to enter areas in which Construction is being performed, on reasonable prior written notice during customary construction hours, subject to the rights of Subtenants, to inspect the progress of the work; provided, however, that Port and its Agents will conduct their activities in such a way to minimize interference with Tenant and its operations to the extent feasible. Nothing in this Lease, however, will be interpreted to impose an obligation upon Port to conduct such inspections or any liability in connection therewith.

(g) Prevailing Wages. Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Premises comprise a public work if paid for in whole or part out of public funds. The terms "**public work**" and "**paid for in whole or part out of public funds**" as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Tenant agrees that any person performing labor for Tenant on any public work at the Premises will be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant will include in any contract for such labor a requirement that all persons performing labor under such contract will be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant will require any contractor to provide, and will deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

(h) Compliance with Workforce Development Plan. Tenant agrees that it will comply with the applicable provisions of the Workforce Development Plan, which provisions are attached hereto as ***Exhibit M***.

12.5. ***Safety Matters***. Tenant, while performing any Construction or maintenance or repair of the Improvements (for purposes of this ***Section 12.5*** only, "**Work**"), will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant will erect appropriate construction barricades to enclose the areas of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

12.6. ***Record Drawings***.

(a) With respect to any Construction requiring a building permit, Tenant will furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to such Construction within ninety (90) days following completion of the applicable Construction and Port's written notice to Tenant requesting same. Record Drawings must be in the form of full-size, hard paper copies and converted into electronic format as (1) full-size scanned TIF files, and (2) AutoCad files of the completed and updated Construction Documents, as further described below, and in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "**Record Drawings**" means drawings,

plans and surveys showing the Construction as built on the Premises and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Tenant fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following an additional written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Construction, and the actual, third-party cost of preparing such Record Drawings must be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section will limit Tenant's obligations, if any, to provide plans and specifications in connection with Construction under applicable regulations adopted by Port in its regulatory capacity. Tenant will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Tenant's request, Port will provide Tenant with a release from liability for future use of the applicable materials, in a form acceptable to Tenant and Port.

(b) Record Drawing Requirements. Record Drawings must be no less than (24" x 36"), with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing will have a Port-assigned number placed onto the title block prior to scanning. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings will be scanned as a test, prior to execution of this requirement in full.

(c) AutoCad Requirements. The AutoCad files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s) or DVD(s), as requested by Port. All X-REF, block and other referenced files must be coherently addressed within the environment of the compact disc or DVD, at Port's election. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting. A minimum of ten (10) complete drawing files, including all referenced files, is required to be transmitted to Port as a test, prior to execution of this requirement in full.

(d) Changes in Technology. Port reserves the right to revise the format of the required submittals set forth in this ***Section 12.6*** as technology changes and new engineering/architectural software is developed.

12.7. ***Certification of Entitlement Costs and Total Development Costs. Attachment 1 to Exhibit D*** (Rent) includes the provisions to certify Entitlement Costs and Total Development Costs of the Tenant that constructed the Initial Improvements.

13. UTILITY AND TELECOMMUNICATIONS SERVICES.

13.1. ***Utility Services.*** Tenant acknowledges and agrees that Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, will not provide any utility services to the Premises or any portion of the Premises. In accordance with the requirements under the DDA, the Premises will be served by the Horizontal Improvements constructed by Horizontal Developer, construction of which may occur simultaneously with construction of Initial Improvements. If Tenant desires to coordinate construction activities with Horizontal Developer or construction of the Initial Improvements with the Horizontal Improvements, Tenant will include such provision in the VCA. Tenant, at its sole expense, will (i) arrange for the provision and construction of all on-site and any off-site utilities necessary to construct, operate and use all of the Improvements and any other portion of the Premises for their intended use, (ii) be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which all of the Improvements and the Premises are put (it being acknowledged that City (including its SFPUC) is the sole and exclusive provider to the Premises of certain public utility services), and (iii) maintain and repair all utilities serving the Premises to the point provided by the respective utility service provider (whether on or off the Premises). Tenant also must coordinate with the respective utility service provider with

respect to the installation of utility services, including providing advance notice to appropriate parties of trenching requirements.

Tenant will pay or cause to be paid as the same become due, all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance, repair, replacement, and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, will abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent to preserve its rights hereunder that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing will not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

Notwithstanding the foregoing, to the extent installed by Horizontal Developer and included in the Master CC&Rs to be recorded against the Premises, Tenant will be required to participate in the districtwide utility systems serving the 28-Acre Site, including, without limitation, procuring recycled water from the district blackwater system and electricity from the district energy system.

13.2. ***Energy Consumption.*** **[Note: Applicable for Buildings 2, 12 and 21 only.]** Tenant acknowledges and agrees that City has delivered a Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Premises no less than 24 hours prior to Tenant's execution of this Lease. The Disclosure Summary Sheet is attached as ***Schedule 13.2*** (Energy Disclosure Summary Sheet).

13.3. ***Rooftop and Other District-Wide Equipment.***

(a) **Telecommunications Equipment and Satellite Dish.** Tenant will have the right to install Satellite Dish(es) on the roof of the Premises and to sublease such portions to an operator, provided that Tenant (i) complies with all Laws, and (ii) obtains all required Regulatory Approvals. The Parties will cooperate in connection with the location of any Satellite Dish installed pursuant to this ***Section 13.3(a)*** and the location of any Satellite Dish installed by Port or City pursuant to ***Section 13.3(b)(i)*** (Communication Facilities) so as to minimize interference with the systems serviced by such Satellite Dish.

(b) **Other Equipment.**

(i) *Communications Facilities.* Tenant agrees that Port and City have the right to install, at no charge, Satellite Dish(es) and other telecommunications facilities reasonably required for Port's or City's operations and/or District-wide programs and systems, including, without limitation, (1) facilities for City's emergency or 700-Mhz and 800-Mhz City-wide radio system communications facilities (or its successor), (2) public Wi-Fi networks, and (3) a horizontal cellular network, which may require installation on the roof or exterior of any building within the Premises, provided that Port (A) complies with all Laws, (B) obtains all required Regulatory Approvals, and (C) obtains Tenant's prior reasonable approval with respect to the size, location, dimensions, color, text (if any), screening, reflectivity, and method of installation of the applicable Satellite Dish or telecommunications facility. The installation of any such Satellite Dish(es) and other telecommunications facilities will be at Port's or City's sole cost. If the installation of any such Satellite Dish or other telecommunications facility requires

alterations and/or improvements of any portion of the Premises, including, without limitation, the relocation of any photo-voltaic panels or any other Satellite Dish previously installed on the roof of the Premises, such alterations and/or improvements will be at Port's sole cost and expense, and Port will promptly repair, at its sole cost, any damage to the Premises including, without limitation, to any photo-voltaic panels. All aspects and phases of Port's installation, other equipment, wiring, conduit, roof mount and base, will at all times be subject to supervision and approval by Tenant, not to be unreasonably withheld, conditioned or delayed. All approval and supervision rights of Tenant are intended solely to protect Tenant's interests. Port will be responsible for procuring, prior to any installation, and maintaining in force at all times thereafter, any and all Regulatory Approvals as may be required for the lawful installation, use and operation of Port's or City's system. Port will be permitted access to the areas on the roof where any such installation is made, as necessary for the installation, repair, maintenance, and replacement thereof. Any access, interruptions or disturbance for the foregoing purposes will be temporary only. Port's access to the roofs will not unreasonably interfere with or disturb Tenant's or Subtenants' use and enjoyment of the Premises, will be subject to the reasonable building security procedures adopted by Tenant, and will require prior written consent for access occurring during regular business hours (except in cases of emergency). Port's access may be subject to temporary interruption in cases of emergency. Port will promptly repair and restore any damage to persons or property caused as a result of Port's access to and activities on the roof. Port will be solely responsible for all maintenance, utilities and other costs of operation of any such facility installed pursuant to the terms of this ***Section 13.3***.

(ii) *Solar*. [placeholder for any requirements to install Rooftop Solar Thermal connected to District Energy System and Rooftop Solar PV connected to District Microgrid]

(iii) *District Blackwater System*. [placeholder for Tenant obligations to install facilities for an participate in district blackwater system]

(iv) *District Energy System*. [placeholder for Tenant obligations to install facilities for and participate in district energy system]

13.4. ***Electricity***. Other than as set forth in the Development Agreement, Tenant will procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the San Francisco Public Utilities Commission. If the San Francisco Public Utilities Commission determines that it cannot feasibly provide service to Tenant or as otherwise set forth in the Development Agreement, Tenant may seek another provider. Nothing herein limits any remedy Tenant may have at law or in equity to recover damages for City utility's failure to deliver utility services hereunder.

13.5. ***Waiver***. Tenant hereby waives any benefits of any applicable Law, including the provisions of California Civil Code Section 1932(1), permitting the termination of this Lease due to any interruption or failure of utility services. The foregoing does not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

14. DAMAGE OR DESTRUCTION.

14.1. *Damage or Destruction*.

(a) **Tenant to Give Notice.** If at any time during the Term any damage or destruction occurs to all or any portion of the Premises from fire or other casualty (each a "**Casualty**"), Tenant will promptly give telephonic and written notice ("**Casualty Notice**") thereof to Port generally describing the nature and extent of such Casualty.

(b) **No Effect on Lease.** Except as set forth in ***Section 14.3*** (Termination Due to Major or Uninsured Casualty), this Lease will not terminate or be forfeited or be affected in any manner by reason of Casualty, and Tenant, notwithstanding any law or statute present or

future (including without limitation, California Civil Code Sections 1932(2) and 1933(4)), waives any and all rights to quit or surrender the Premises or any part thereof, Tenant acknowledging and agreeing that the provisions of this ***Article 14*** (Damage or Destruction)will govern the rights and remedies of the Parties in the event of a Casualty. Tenant expressly agrees that its obligations hereunder, including the payment of any and all Base Rent, Additional Rent and any other sums due hereunder, will continue as though said Premises and/or Improvements had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind.

14.2. ***Restoration Obligation.*** In the event of a.Casualty, unless Tenant terminates this Lease in accordance with ***Section 14.3*** (Termination Due to Major or Uninsured Casualty), Tenant will commence and diligently Restore the Improvements to the condition they were in immediately before such Casualty in accordance with then applicable Laws (including any required code upgrades) **[if applicable:** and Secretary's Standards], without regard to the amount or availability of insurance proceeds, subject to Force Majeure; provided, however, subject to the rights of Lenders in accordance with ***Article 40*** (Mortgages), all all-risk coverage insurance proceeds, earthquake and flood insurance proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Tenant by reason of Casualty (other than business or rental interruption insurance), must be first used by Tenant for Restoration of the Premises. All Restoration must be performed in accordance with the procedures set forth in ***Article 12*** (Construction) relating to Construction and at Tenant's sole expense and must be completed within five (5) years following the event of Casualty, subject to Force Majeure. In connection with any Restoration, any Restoration that would otherwise require Port approval under ***Section 12.1(b)*** (Construction Requiring Port's Prior Approval) will require Port's prior approval subject to the standards set forth in such section. The Restored Improvements must be at least equivalent in quality, appearance, public safety, and durability to the Initial Improvements and provide similar public benefits as the original Initial Improvements, subject to the Permitted Uses.

14.3. ***Termination Due to Major or Uninsured Casualty.***

(a) Additional Definitions.

"**Major Casualty**" means damage to or destruction of all or any portion of the Premises to the extent that the hard costs of Restoration will exceed thirty percent (30%) of the hard costs to replace the Improvements in their entirety. The calculation of such percentage will be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Casualty.

"**Uninsured Casualty**" means any of the following: (i) a Casualty event occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured or insurable under the policies of insurance that Tenant is required to carry under ***Article 20*** (Insurance) and such costs exceed One Million Dollars ($1,000,000.00), which amount will be increased by an additional Five Hundred Thousand Dollars ($500,000.00) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter, or (ii) a Casualty event occurring at any time during the Term which is covered under Tenant's policies of insurance that Tenant is required to carry under ***Article 20*** (Insurance) but where the cost of Restoration (including the cost of any required code upgrades) will exceed the sum of (A) the net proceeds of any insurance payable, (B) the amount of any applicable policy deductibles, and (c) One Million Dollars ($1,000,000.00), which amount will be increased by an additional Five Hundred Thousand Dollars ($500,000.00) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter. Any Casualty event not insured due to Tenant's failure to maintain the requisite insurance policies and coverage requirements under ***Article 20*** (Insurance) will not be considered an Uninsured Casualty.

(b) **Tenant's Election to Terminate.** If an event of Major Casualty or Uninsured Casualty occurs at any time during the Term, then within ninety (90) days following

Tenant's delivery to Port of the Casualty Notice, Tenant may, by written notice to Port, terminate this Lease upon satisfaction of all the following conditions unless waived by Port:

(i) Unless otherwise requested by Port, in its sole discretion, Demolish and Remove the Improvements prior to the effective termination date at Tenant's sole cost and expense;

(ii) Unless the Improvements are to be demolished as set forth in ***Section 14.3(b)(i)***, provide Port the estimated cost of Restoration;

(iii) Cure all monetary Events of Defaults and any Events of Default or Unmatured Events of Default relating to the provisions of ***Article 21*** (Hazardous Materials);

(iv) Pay in full all utility charges and Impositions incurred up to and including the effective date of termination;

(v) Maintain all the insurance required to be maintained under ***Article 20*** (Insurance) until the effective date of termination;

(vi) Pay or cause to be paid the following amounts solely from the insurance proceeds as and to the extent available arising from each Casualty promptly following receipt of such proceeds, in the order required by any senior Mortgage, and if none, in the following order of priority:

(1) First, to Port (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred for any work required to alleviate any conditions caused by such Casualty that could cause an immediate or imminent threat to the public safety and welfare or damage to the environment, including any demolition or hauling of rubble or debris;

(2) Second, to Port, for all accrued and unpaid amounts owed to Port under this Lease, if any, by Tenant, up to the effective date of the termination;

(3) Third, to each non-affiliate Lender demanding payment, in order of priority, a portion of the remaining casualty insurance proceeds arising out of or in connection with the Casualty in an amount not to exceed the aggregate amounts that are secured by the applicable non-affiliate Mortgage then owed to each such non-affiliate Lender;

(4) Fourth, to the appropriate governmental or quasi-governmental entity, all Impositions due up to the effective date of termination; and

(5) Fifth, the balance of the proceeds will be divided proportionately between Port, for the value of Port's reversionary interest in the Premises and Improvements (in their condition immediately prior to the Casualty event) as of the date the Term would have expired but for the Casualty event, and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term (in their condition immediately prior to the event of damage or destruction) less any proceeds distributed in repayment of any Mortgages as provided in ***Section 14.3(b)(vi)(3)***.

(vii) Upon termination in accordance with this ***Article 14.3*** (Termination Due to Major or Uninsured Casualty), Tenant will deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements. Upon such termination, the Parties will be released thereby without further obligation to the other Party as of the effective date of such termination; provided, however, that the Indemnification provisions hereof or any other provision that explicitly survives the expiration or earlier termination of this Lease will survive any such termination with respect to matters arising before the effective date of any such termination.

14.4. ***Distribution Upon Lease Termination Due to Tenant Failure to Restore.*** If Tenant is obligated to and fails to Restore the Improvements as provided herein and commits an

Event of Default in failing to Restore the Improvements and this Lease is thereafter terminated due to such Event of Default, all insurance proceeds remaining after application pursuant to ***Section 14.3(b)(vi)(1)—14.3(b)(vi)(4)*** will be paid to and retained by Port.

15. CONDEMNATION.

15.1. ***General; Notice; Waiver.***

(a) **General.** If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties will be determined pursuant to this ***Article 15*** (Condemnation).

(b) **Notice.** In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings will promptly give written notice of such proceedings or negotiations to the other Party. Such notice will describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

(c) **Waiver.** Except as otherwise provided in this ***Article 15*** (Condemnation), the Parties intend that the provisions of this Lease will govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this ***Article 15*** (Condemnation), Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under California Code of Civil Procedure Sections 1265.120 and 1265.130, as such section may from time to time be amended, replaced or restated.

15.2. ***Total Condemnation.*** If there is a Condemnation of the entire Premises or the Leasehold Estate (a "**Total Condemnation**"), this Lease will terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties will be released without further obligations to the other Party as of the Condemnation Date, subject to the payment to Port of accrued and unpaid Rent up to the Condemnation Date and the provisions that explicitly survive the expiration or earlier termination of this Lease.

15.3. ***Substantial Condemnation, Partial Condemnation.*** If there is a Condemnation of any portion but less than all of the Premises or the Leasehold Estate, the rights and obligations of the Parties will be as follows:

(a) **Substantial Condemnation.** If there is a Substantial Condemnation of a portion of the Premises or the Leasehold Estate, this Lease will terminate, at Tenant's option (which must be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port), as of the Condemnation Date, as further provided below. For purposes of this ***Article 15*** (Condemnation), "**Substantial Condemnation**" means a Condemnation of (i) less than the entire Premises or Leasehold Estate which renders the Project untenantable, unsuitable, or economically infeasible for the Permitted Uses as reasonably determined by Tenant, or (ii) of property located outside the Premises that, in any case, substantially and materially eliminates access to the Premises where no alternative access can be constructed or made available. Notwithstanding the foregoing, Tenant will have no right to terminate this Lease under this Section if the Substantial Condemnation, as the case may be: (x) can be cured by the performance of Restoration (unless such Substantial Condemnation occurs during the last ten (10) years of the Term or if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with Port that at the time of completion of the Restoration, less than ten (10) years would remain in the Term), and (y) the cost of such Restoration does not exceed by at least One Million Dollars ($1,000,000.00), which amount will be increased by an additional Five Hundred Thousand Dollars ($500,000.00) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter, the portion of the Award fairly allocable to severance damages suffered by Tenant. In such case, this Lease will not terminate, and, upon a determination that

the Lease will continue based upon the availability and amount of Award, Tenant will commence and complete such Restoration as promptly as reasonably practicable by using commercially reasonable diligence and pursuant to the provisions of ***Article 12*** (Construction) and ***Section 15.4*** (Awards), subject to events of Force Majeure.

(b) **Partial Condemnation**. If there is a Condemnation of any portion of the Premises or the Leasehold Estate which does not result in a termination of this Lease under ***Section 15.2*** (Total Condemnation) or ***Section 15.3(a)*** (Substantial Condemnation) (a "**Partial Condemnation**"), this Lease will terminate only as to the portion of the Premises (or of the Leasehold Estate) taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, this Lease will remain in full force and effect as to the portion of the Premises (or of the Leasehold Estate) remaining immediately after such Condemnation, and Tenant will promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration will be performed in accordance with the provisions of ***Article 12*** (Construction).

15.4. ***Awards***. Except as provided in ***Sections 15.5*** (Temporary Condemnation) and ***15.6*** (Relocation Benefits; Personal Property), Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including, without limitation, reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") will be allocated between Port and Tenant as follows:

(a) First, to Port for the payment of all unpaid Rent.

(b) Second, in the event of a Partial Condemnation, to pay costs of Restoration incurred by Tenant, in which case, the portion of the Net Awards and Payments allocable to Restoration will be payable to Tenant, or a Lender, in accordance with the requirements governing payment of insurance proceeds set forth in ***Section 14.3(b)(vi);***

(c) Third, to Port for the value of the condemned land only, subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and without reference to, or inclusion of, Port's reversionary interest in the value of the Improvements (the "**Condemned Land Value**");

(d) Fourth, to any non-affiliate Lender pursuant to a non-affiliate Mortgage as and to the extent provided therein, for payment of all sums secured by its non-affiliate Mortgage that remain outstanding, together with its reasonable out of pocket expenses and charges in collecting the Net Award and Payment, including without limitation, its reasonable attorneys' fees incurred in the Condemnation;

(e) Fifth, to Tenant to the extent that the Net Awards and Payments are attributable to Tenant's Leasehold Estate, not including the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date; and

(f) Sixth, the balance of the Net Awards and Payment will be divided proportionately between Port, for the value of Port's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date.

Notwithstanding anything to the contrary set forth above, any portion of the Net Awards and Payments which has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the value of Port's reversionary interest in the land and Improvements, the Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, will be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment.

15.5. ***Temporary Condemnation.*** If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease will remain in full force and effect, there will be no abatement of Rent, and the entire Award will be payable to Tenant.

15.6. ***Relocation Benefits, Personal Property.*** Notwithstanding ***Section 15.4*** (Awards), Port will not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants.

16. LIENS.

16.1. ***Liens.*** Tenant will not create or permit the attachment of, and will promptly discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or the Leasehold Estate, other than (i) this Lease, permitted Subleases, and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants or are being contested in accordance with ***Article 6*** (Contests)), and (iii) Mortgages.

16.2. ***Mechanics' Liens.*** Tenant will keep the Premises and the Leasehold Estate free from any liens arising out of any work performed, materials or services furnished, or obligations incurred by Tenant or any of its Agents. Tenant will provide thirty (30) days' advance written notice to Port of any Subsequent Construction to allow Port to post a notice of non-responsibility on the Premises. Subject to ***Article 6*** (Contests), if Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to Port, it will constitute an Event of Default, and Port will have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by Port (including interest at the Default Rate computed from the date of payment) for such purpose and all expenses incurred by Port in connection therewith must be reimbursed to Port by Tenant within ten (10) days following demand by Port. Port will include with its demand, supporting documentation.

17. DEPOSITS.

17.1. ***Base Rent Deposit.*** **[Note: Applicable only for Hybrid Leases]**

(a) On or before the Commencement Date, Tenant will pay to Port in addition to Base Rent, a security deposit (as adjusted from time to time, the "**Base Rent Deposit**") for the Premises in an amount equal to **[insert an amount equal to two times the monthly base rent** ($XXX)]. The Base Rent Deposit will be increased on each Adjustment Date so that the Base Rent Deposit held by Port always equals no less than twice the monthly installment of Base Rent. Tenant will deliver to Port within five (5) days following each Adjustment Date, the difference between the Base Rent Deposit currently held by Port and increased Base Rent Deposit.

(b) Tenant agrees that Port may, but will not be required to, apply the Base Rent Deposit in whole or in part to (i) remedy any failure by Tenant to pay Rent as and when due, (ii) cure, or attempt to cure, any Event of Default by Tenant in the performance of the terms, covenants and conditions of this Lease, (iii) repair, or attempt to repair, any damage to the Premises caused by Tenant, its Subtenants, Agents or Invitees, or (iv) compensate Port for any expense incurred or damage caused by Tenant, its Subtenants, Agents, or Invitees.

17.2. ***Environmental Financial Performance Deposit.*** **[Note: Parties may explore additional provisions, with corresponding required mitigations, for particular subtenant uses that increase environmental liability/risk.]** On or prior to the commencement of any Sublease with a Subtenant that will engage in activities on the Premises involving the use of Hazardous Materials (other than (a) standard building materials and equipment that do not contain asbestos

or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), and (b) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential, or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws), Tenant will deliver to Port an amount determined by Port to be reasonable security for increased environmental liabilities to Port arising out of the Subtenant's specific use of non-Excepted Hazardous Materials at the Premises (the "**Environmental Financial Performance Deposit**") as additional collateral for the full and faithful performance by Tenant of its obligations under ***Article 21*** (Hazardous Materials). Port's determination of the amount of the Environmental Financial Performance Deposit will be consistent with the Port Commission's adoption of the Environmental Risk Policy and Financial Assurance Requirements for Real Property Agreements on [**Note: update as necessary**: November 13, 2007, pursuant to Resolution No. 07-81, as may be amended or updated from time to time] (the "**Port Environmental Risk Policy**"). In the event Port determines in its sole but reasonable discretion that any proposed change(s) to Tenant's (or its Subtenants') use and operation of Hazardous Materials (other than Excepted Hazardous Materials) on the Premises increase Port's risk of Loss, then prior to commencement of such Sublease, Port may require Tenant to increase the Environmental Financial Performance Deposit in a manner consistent with the Port Environmental Risk Policy. Port also has the right to increase every five (5) years the amount of the Environmental Financial Performance Deposit in a manner consistent with the Port Environmental Risk Policy if Port reasonably believes after review of Tenant's and Subtenants' use and operation of Hazardous Materials (other than Excepted Hazardous Materials) that the then current amount is insufficient.

17.3. ***Environmental Oversight Deposit.***

(a) If Tenant is required to provide an Environmental Financial Performance Deposit in accordance with ***Section 17.2***, (Environmental Financial Performance Deposit) then prior to commencement of the Sublease necessitating such deposit, Tenant will also deliver to Port an environmental oversight deposit ("**Environmental Oversight Deposit**") in cash, in an amount equaling [**Note: Adjust if Port Commission increases this amount for all new leases**: Ten Thousand Dollars ($10,000)], as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration of Tenant's performance of its obligations under ***Article 21*** (Hazardous Materials); provided, however, the Environmental Oversight Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default concerning Tenant's obligations under ***Article 21*** (Hazardous Materials).

(b) Port at its option may demand reimbursement from Tenant within five (5) business days following demand, or may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port, for Port's costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("**Environmental Notice**") to Tenant and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Tenant has not begun to cure or comply with the Environmental Notice or is not working actively to cure or comply with the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, Attorneys' Fees and Costs, and inspection, collection, and laboratory analysis of environmental samples and monitoring the Hazardous Material Condition.

(c) If an Environmental Notice is delivered to Tenant, and Tenant has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port at its option may demand payment from Tenant within five (5) days following demand, or apply the sum of [**Note: amount to increase by $50 every 5 years after DDA execution**: Five Hundred Dollars ($500)] (which amount will be increased by one hundred dollars on the tenth (10^{th})

anniversary of the Commencement Date and every ten years thereafter) from the Environmental Oversight Deposit, as Additional Rent for each Environmental Notice delivered to Tenant to reimburse Port for its administrative costs.

17.4. ***Generally.***

(a) The Base Rent Deposit, Environmental Financial Performance Deposit (if any) and the Environmental Oversight Deposit (if any), are collectively referred to as the "**Security Deposit.**" Tenant will not be entitled to any interest on the Security Deposit.

(b) The amount of the Security Deposit will not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease nor be a measure of Port's damages upon an Event of Default. Port may apply the Security Deposit as provided herein without waiving any of Port's other rights and remedies hereunder or at Law or in equity.

(c) The Security Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, or a security deposit subject to the California Civil Code.

(d) Should Port use any portion of the Security Deposit, Tenant must replenish the Security Deposit to the full extent of the required amount within five (5) business days following Port's demand.

(e) Port's obligations with respect to the Security Deposit are those of a debtor and not a trustee. Port will not be required to keep the Security Deposit separate from its general funds.

(f) Upon the expiration or earlier termination of this Lease, Port will return the unused balance of the Security Deposit to Tenant (less any amounts then due and payable from Tenant to Port under this Lease) within thirty (30) days after Tenant surrenders possession of the Premises to Port.

18. ASSIGNMENT AND SUBLETTING.

18.1. ***Transfer.***

(a) **Additional Definitions.**

"**Assignment**" means an assignment, conveyance, hypothecation, pledge (other than a pledge in connection with any mezzanine financing which will not require prior Port approval), or otherwise transfer all or any of Tenant's interest in this Lease or Leasehold Estate.

"**Control**" means, with respect to any Person, any of the following: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the day to day management, policies or activities of such Person whether through ownership of voting securities, by contract or otherwise (excluding customary limited partner or non-managing member approval rights); (ii) the ownership (direct or indirect) of more than fifty percent (50%) of the profits or capital of another Person; or (iii) the ownership (direct or indirect) of more than fifty percent (50%) of the ownership interest of such Person (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof). "**Controlled**", "**Controlling**" and "**Common Control**" have correlative meanings.

"**Excluded Transfer**" means any of the following: (i) the exercise of customary remedies under mezzanine financing of Tenant or any constituent owner thereof; (ii) the exercise of customary limited partner or non-managing member remedies under a partnership or limited liability company operating agreement, as applicable; (iii) a change resulting from death or legal incapacity of a natural person; or (iv) the sale, transfer or issuance of less than the Controlling interest of stock listed on a nationally or internationally recognized stock exchange in a single transaction or a related series of transactions.

"**Managing Party**" means, with respect to any Person, both (a) the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management, policies or activities of Tenant (excluding customary limited partner or non-managing member approval rights) and (b) the ownership (direct or indirect) of more than ten percent (10%) of the profits or capital of Tenant.

"**Minimum Net Worth Amount**" means Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000.00), which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter. [**NOTE: $27.5 million to increase by 5% every 5 years after DDA execution**]

"**Net Worth Guarantor**" means a Person, in combination with Tenant or the proposed transferee, as applicable, satisfying the Net Worth Requirement that is the guarantor under the Net Worth Guaranty.

"**Net Worth Guaranty**" means a guaranty of performance of all the obligations under this Lease, in an amount not to exceed the Net Worth Requirement (less the net worth of Tenant or the proposed transferee, as applicable), and otherwise in form and substance reasonably satisfactory to Port, delivered to Port by the Net Worth Guarantor.

"**Net Worth Requirement**" means, with respect to a proposed transferee, the proposed transferee has (i) prior to issuance of a Certificate of Completion, a net worth (inclusive of its equity in the Property) equal to at least the Minimum Net Worth Amount, less any debt to be secured by (A) the proposed transferee's interest in the Premises or Leasehold Estate, or (B) a pledge of the proposed transferee's ownership interest, or (ii) following the issuance of a Certificate of Completion, a net worth (inclusive of its equity in the Property) equal to or at least the lesser of (A) Minimum Net Worth Amount and (B) thirty percent (30%) of the fair market value of the Premises.

"**Qualified Transferee**" means any transferee that satisfies each of the following criterion: (i) has, or has engaged a property manager with at least ten (10) years' experience operating [**use for commercial leases**: major commercial projects] [**use for residential leases**: residential projects]; (ii) satisfies the Net Worth Requirement; and (iii) is subject to jurisdiction of the courts of the State.

"**Significant Change**" means any change in the direct or indirect ownership of Tenant that results in a change in Control of Tenant provided, however, in no event will any Excluded Transfer be deemed a Significant Change.

"**Transfer**" means an Assignment and Significant Change.

(b) Conditions to Transfer Before Certificate of Completion. Subject to ***Sections 18.1(e)***, (Mortgaging of Leasehold), [**if applicable**: ***18.1(h)*** (Assignment to Accommodate Sale of Historic Tax Credits of Low-Income Housing Tax Credits)] and ***18.1(i)*** (Transfers Not Requiring Port Consent Before Certificate of Completion), before Port's issuance of a Certificate of Completion, Tenant will not (A) suffer or permit any Significant Change to occur, or (B) consummate an Assignment, in each case without the prior written consent of Port, which consent may not be unreasonably withheld by Port if each of the following conditions is satisfied:

(i) In the case of an Assignment only, the proposed transferee executes and delivers an Assignment and Assumption Agreement in substantially the form attached hereto as ***Exhibit N*** (an "**Assignment and Assumption Agreement**"), which Assignment and Assumption Agreement must contain:

(1) an express assumption by the proposed transferee, for itself and its successors and assigns, and expressly for the benefit of Port, of all of the obligations of Tenant arising from or after the effective date of the Transfer under this Lease, the Vertical DDA if in effect, and any other agreements or documents entered into by and between Port and Tenant

pursuant to this Lease directly relating to the Project, and an express agreement by the proposed transferee to be subject to all of the conditions and restrictions to which Tenant is subject;

(2) a representation by the proposed transferee that it has conducted a thorough investigation and due diligence of the Improvements, including the condition of the real property, of all Material Systems, the roof and structural integrity of the Improvements, and if the Transfer occurs after the twentieth (20th) anniversary of the Commencement Date, has reviewed the most recent Facilities Condition Report prepared by Tenant; and

(3) a release by the proposed transferee of the Indemnified Parties and the State Lands Indemnified Parties and waiver of any and all Losses against the Indemnified Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the Indemnified Parties arising prior to the effective date of the Transfer.

(ii) In the case of a Significant Change only, Tenant delivers to Port, a certificate setting forth the purchaser or purchasers of the ownership interest resulting in the Significant Change, purchase price of such interest, any Net Sale Proceeds owed to Port, and a reaffirmation from Tenant that it will continue to be obligated under all the terms and conditions of this Lease, all certified by Tenant's chief financial officer as true, accurate, and complete, the form of which is attached hereto as ***Exhibit O*** (**"Significant Change Certificate"**).

(iii) All instruments and other legal documents involved in effectuating the Transfer reasonably requested by Port, including all documentation necessary for Port to confirm the amount of Port's share of Net Sale Proceeds, has been submitted to Port for its review and reasonable approval, or at the request of Tenant, such documents are made available for Port's review at Tenant's office in San Francisco.

(iv) There is no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease or any of the other documents or obligations to be assigned to the proposed transferee where Tenant or proposed transferee have not made provisions to cure the applicable default, which provisions are satisfactory to Port in its sole discretion.

(v) If the effective date of the Transfer is prior to Port's issuance of a Certificate of Completion, there is no Developer Event of Default or an Unmatured Developer Event of Default (as such terms are defined in the Vertical DDA) on the part of Developer under the Vertical DDA, where Tenant or the proposed transferee has not made provisions to cure the default, which provisions are satisfactory to Port.

(vi) Subject to ***Section 18.1(b)(vii)***, (1) in the case of a Significant Change, Tenant is a Qualified Transferee immediately following the consummation of such Significant Change and (2) in the case of an Assignment, the proposed transferee is a Qualified Transferee.

(vii) If Tenant (in the case of a Significant Change) or proposed transferee (in the case of an Assignment) does not satisfy the Net Worth Requirement, Tenant or the proposed transferee, as applicable, will have the right to deliver a Net Worth Guaranty in lieu of satisfying the Net Worth Requirement. Under the Net Worth Guaranty, the Net Worth Guarantor, among other things, will:

(1) guaranty performance of all of Tenant's obligations under this Lease in an amount not to exceed the Net Worth Requirement;

(2) covenant that it will throughout the term of the Net Worth Guaranty, maintain the Net Worth Requirement; and

(3) provide Port as of the first day of each calendar year, a statement certified by its chief financial officer, or if the Net Worth Guarantor is an individual, a

certified public accountant, that the Net Worth Guarantor continues to meet the Net Worth Requirement and that to his/her actual knowledge, he/she is not aware of any facts that would cause the Net Worth Guarantor to not meet the Net Worth Requirement.

The Net Worth Guaranty will otherwise be in form and substance reasonably satisfactory to Port. The Net Worth Guaranty will terminate when the Tenant benefiting from the Net Worth Guaranty meets the Net Worth Requirement. Tenant and the Net Worth Guarantor will provide Port with its financial statements and other information necessary to substantiate its position that it meets the Net Worth Requirement and that the Net Worth Guaranty should terminate.

(viii) Tenant provides to Port an estoppel certificate substantially in the form attached hereto as ***Exhibit P*** (Form of Tenant Estoppel Certificate), which estoppel certificate will be effective as of the effective date of Transfer.

(ix) Port receives on or prior to the effective date of Transfer (A) Port's share of Net Sale Proceeds, as described in ***Section 3.6 of Exhibit D*** (Port Participation in Sale Proceeds) and (B) a settlement statement relating to the Transfer or other evidence, reasonably satisfactory to Port, of Port's share of Net Sale Proceeds.

(x) Port receives on or prior to the effective date of Transfer sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Transfer provided, however, if Port has not delivered to Tenant an invoice for Attorney's Fees and Costs prior to the effective date of Transfer, Tenant will reimburse Port for same within ten (10) business days of receipt of such invoice.

(c) Transfer After Certificate of Completion. From and after Port's issuance of a Certificate of Completion, Tenant may Transfer without the prior consent of Port so long as:

(i) in the case of a Significant Change, Tenant is a Qualified Transferee immediately following the consummation of such Significant Change as certified in the Significant Change Certificate delivered pursuant to clause (v) below; or

(ii) in the case of an Assignment, the proposed transferee is a Qualified Transferee; provided, however, if Tenant (in the case of a Significant Change pursuant to ***Section 18.1(c)(i)*** above) or proposed transferee (in the case of an Assignment pursuant to this ***Section 18.1(c)(ii)***) does not satisfy the Net Worth Requirement, Tenant or the proposed transferee, as applicable, will have the right to deliver a Net Worth Guaranty in lieu of satisfying the Net Worth Requirement in accordance with ***Section 18.1(b)(vii)***;

(iii) Tenant provides Port prior notice before the effective date of the Transfer;

(iv) in the case of an Assignment, within thirty (30) days after such Assignment, Tenant delivers an Assignment and Assumption Agreement to Port, executed by transferor and the transferee; and

(v) in the case of a Significant Change, within thirty (30) days after such Significant Change, Tenant delivers a Significant Change Certificate to Port.

(d) No Limitation. It is the intent of this Lease, to the fullest extent permitted by Law and equity, that no Transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of the benefits under this Lease or any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises that Port would have had, had there been no such Transfer

(e) Mortgaging of Leasehold. Notwithstanding anything herein to the contrary, at any time during the Term, Tenant has the right, without Port's consent, to sell, assign, encumber or transfer its interest in this Lease to a Lender or other purchaser in

connection with the exercise of remedies under the provisions of a Mortgage, subject to the limitations, rights and conditions set forth in ***Article 40*** (Mortgages) hereof.

(f) Limitation on Liability. From and after an Assignment of all of the transferor's interest in this Lease or Leasehold Estate, the transferor will be released from all obligations and liability under this Lease to the extent first arising after the date of such Assignment. In no event will the transferor be liable for a new default first arising after the date of such Assignment. The effectiveness of any Assignment hereunder is not in any way to be construed to relieve the transferor tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor tenant hereunder before the date of such Assignment. In connection with any such Assignment, upon request from the transferor, Port will promptly execute documentation evidencing the foregoing release of obligations and liabilities; provided, failure to do so will not invalidate or limit the effect of the release set forth in this ***Section 18.1(f)***.

(g) Notice of Significant Changes; Reports to Port. Tenant will promptly notify Port of any and all Significant Changes. At such time or times as Port may reasonably request, Tenant must furnish Port with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest substantially in the form set forth in the attached ***Exhibit O*** (Significant Change Certificate).

(h) Assignment to Accommodate Sale of Historic Tax Credits or Low-Income Housing Tax Credits. Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Transfer to an entity solely for the purpose of taking advantage of the Historic Preservation Tax Credit or Low Income Housing Tax Credit, as applicable, subject to all of the following conditions: (i) at least thirty (30) days prior to such Transfer, Tenant furnishes Port with the name of the proposed assignee, together with evidence reasonably satisfactory to Port indicating that the proposed Transfer is solely for the purpose of taking advantage of the Historic Preservation Tax Credit or Low Income Housing Tax Credit, as applicable; and (ii) the conditions set forth in ***Sections 18.1(b)(i)—18.1(b)(viii) and 18.1(b)(x)*** have all been met.

(i) Transfers Not Requiring Port Consent Before Certificate of Completion. Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Transfer to a Tenant Affiliate or a Significant Change in which there is no change of the Managing Party of Tenant, subject to all of the following conditions: (i) at least five (5) business days prior to such Transfer, Tenant provides notice thereof to Port; and (ii) the conditions set forth in ***Section 18.1(b)(i)—18.1(b)(viii) and 18.1(b)(x)*** have all been met.

18.2. ***Assignment of Rents.*** Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any present or future Subtenant as security for Tenant's obligations hereunder prior to actual receipt thereof by Tenant; provided, however, the foregoing assignment will be subject and subordinate to any assignment made to a Lender under ***Article 40*** (Mortgages) until such time as Port has terminated this Lease (subject to the Port's agreement to enter into a New Lease with Lender and all other provisions of this Lease protecting Lender's interests in this Lease), at which time the rights of Port in all rents and other payments assigned pursuant to this ***Section 18.2*** will become prior and superior in right; provided, further, any rents collected by any Lender from any Subtenants pursuant to any assignment of rents or subleases made in its favor will promptly remit to Port the rents so collected (less the actual cost of collection) to the extent necessary to pay Port any Rent, including any and all Additional Rent, through the date of termination of this Lease.

18.3. ***Subletting by Tenant.***

(a) **Qualifying Subleases.** Tenant has the right to sublet all or any portion of the Improvements to one or more Subtenants by written Subleases from time to time without the necessity of obtaining the prior written consent of Port for each applicable Sublease upon satisfaction of all the conditions set forth in this ***Section 18.3(a)***

(i) The Sublease (and any further sub-subleases of the Sublease Space) are all subject to the terms and conditions of this Lease and the terms and conditions of the Sublease and further sub-subleases are consistent with the provisions of this Lease, provided that Subtenants need not be obligated for Restoration, and, provided further that the Subtenant need not be obligated to undertake any obligations with respect to the Subleased Space that is Tenant's obligation under such Sublease;

(ii) The term of the Sublease does not extend beyond the Term;

(iii) The Sublease rental rates reflect an arms-length transaction at fair market rents for subleases as reasonably determined by Tenant, taking into account, among other things, market conditions, vacancy rates, tenant mix, preferred amenities, creditworthiness of the subtenant and other factors that prudent institutional landlords of buildings of comparable age, size, type and use located in San Francisco would use to determine Sublease rental rates;

(iv) If the sublease is for property management services at the Premises, then the size of the Sublease space is comparable to the size of property management offices for buildings of prudent institutional landlords that are of comparable age, size, type and use located in San Francisco, and the Sublease rental rates reflect an arms-length transaction at fair market rents as reasonably determined by Tenant;

(v) The Sublease contains an Indemnification and waiver of claims provision benefitting Port that is substantially and materially the same as ***Article 19*** (Indemnification of Port) except that the term "**Tenant**" in such provision means "**Subtenant**;"

(vi) The Sublease requires that under all liability and other insurance policies "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES**" are additional insureds by written endorsement and acknowledging Port's rights to demand increased coverage to normal amounts consistent with the Subtenant's business activities on the Premises;

(vii) Subject to the rights of any Lender, the Sublease requires Subtenant to pay the Sublease rent and other sums due under the Sublease directly to Port upon receiving written notice from Port that an Event of Default has occurred;

(viii) The Sublease requires the Subtenant to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease;

(ix) The Sublease contains a provision similar to ***Article 39*** (Right to Enter) requiring Subtenant to permit Port to enter its Subleased Space for the purposes specified in ***Article 39*** (Right to Enter);

(x) The Sublease contains a provision similar to ***Article 31*** (Tenant Estoppel)) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as ***Exhibit Q*** (Form of Subtenant Estoppel Certificate) in accordance with the requirements of ***Section 31(d)***;

(xi) The Sublease requires Subtenant to comply with the City and Port Requirements set forth in ***Article 45*** (Port and City Special Provisions);

(xii) The Sublease contains a provision that if for any reason whatsoever this Lease is terminated, unless Port has agreed otherwise in a Non-Disturbance

Agreement between Port and the Subtenant, such termination will result in the automatic termination of the Sublease and any existing subleases for the Subleased Space; and

(xiii) Entering into the applicable Sublease would not cause Tenant to fall below the Minimum Public Benefit Area or prevent the use of the Premises for the Required Use.

(b) Sublease with Tenant Affiliate Requires Port Approval. All Subleases (i) with a Tenant Affiliate; (ii) Controlled by Tenant or a Tenant Affiliate; or (iii) owned either directly or indirectly by Tenant or a Tenant Affiliate, require the prior written consent of Port, which consent may not be unreasonably withheld if the Sublease is on rental rates that reflect an arms' length transaction at fair market rents, as reasonably determined by Port.

(c) Required Sublease Information. Within fifteen (15) days of executing any Sublease, Tenant must provide Port with all information related to such Sublease necessary for Port to comply with Administrative Code Sections 23.38 and 23.39 (or any successor statute).

18.4. ***Non-Disturbance of Subtenants and Attornment.***

(a) Generally. Subject to the provisions of this ***Section 18.4***, from time to time upon the request of Tenant, Port will enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease resulting from an Event of Default, Port will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between Port and such Subtenant ("**Non-Disturbance Agreements**").

(b) Conditions for Issuance of Non-Disturbance Agreements. Port will enter into a Non-Disturbance Agreement with a particular Subtenant if all of the following conditions are satisfied:

(i) The applicable Sublease is for a term of at least five (5) years (not including any renewal terms);

(ii) The applicable Sublease Space is comprised of at least 10,000 rentable square feet;

(iii) The performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease;

(iv) The applicable Sublease term, including options, does not extend beyond the scheduled Term;

(v) The applicable Sublease complies with all the conditions of ***Section 18.3(a)*** (Qualifying Subleases);

(vi) The Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant will attorn to Port (provided Port agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease, except as otherwise set forth in the Non-Disturbance Agreement), and the Sublease will be deemed a direct lease between the Subtenant and Port, except that (x) any subleases entered into by Subtenant (or its subtenants) for the Sublease Space will be terminated and (y) Port will not be:

(1) liable to the Subtenant for any security deposit or prepaid rent or other charges previously paid by such Subtenant to Tenant unless such deposits, rent or charges are transferred to Port;

(2) bound by any indemnification obligations or any waivers and releases made by the sublandlord in the Sublease for the benefit of Subtenant or any other party;

(3) bound by any requirement or obligation of the sublandlord under the Sublease to pay any (A) unpaid or unreimbursed tenant improvement allowance (provided, however, if the Subtenant incurs costs after termination of this Lease that are reimbursable from any remaining and unpaid tenant allowance ("**Reimbursable Subtenant Costs**"), then so long as Subtenant is not in default under the Sublease, provides Port with all the information required in the Sublease for the Sublandlord to confirm or validate the Reimbursable Subtenant Costs and Port has validated such costs, then Subtenant may receive a rent credit of up to fifty percent (50%) of the monthly base rent then payable until the Reimbursable Subtenant Costs are fully reimbursed, as further refined and agreed to between the parties in the Non-Disturbance Agreement), or (B) liquidated damages;

(4) bound by any Subtenant right of first offer to purchase, first negotiation to purchase or first refusal to purchase Tenant's interest in the Subleased Premises;

(5) bound by any Sublease term, including options to renew, that extend beyond the Expiration Date;

(6) liable to Subtenant for any indirect, consequential, incidental, punitive or special damages;

(7) bound by any limitation on Subtenant's obligation to indemnify any sublandlord parties based on Subtenant's insurance coverage;

(8) bound by any limitation on sublandlord's ability to transfer its interest in the Sublease (including any requirement to deliver prior notice to Subtenant or obtain Subtenant's prior approval);

(9) bound by any requirement or obligation to keep records or documents confidential that violates the Public Records Act or the City's Sunshine Ordinance; and

(10) bound by any amendment or modification of the Sublease that increase Tenant's obligations under the Sublease or decrease the Subtenant's obligations under the Sublease unless such amendment or modification has previously been approved by Port in writing:

(vii) During the continuance of any Event of Default, Port may, in its sole discretion, withhold or condition its agreement to provide a Non-Disturbance Agreement on the cure of such default as Port may specify either in a notice of default given under ***Section 24.1*** (Events of Default) or in a notice withholding or conditioning its agreement to provide a Non-Disturbance Agreement;

(viii) Concurrently with its request for a Non-Disturbance Agreement from Port, Tenant will submit to Port:

(1) an electronic copy of the Sublease in the form to be executed in Microsoft Word format (or other comparable format);

(2) a summary of basic terms of the Sublease, in all material respects, certified by an officer of Tenant's as true and correct;

(3) an electronic draft of a Non-Disturbance Agreement in Microsoft Word format (or other comparable format), redlined against the form required by ***Section 18.4(d)*** (Form of Non-Disturbance Agreement);

(4) a statement certifying that the Sublease satisfies all the conditions and requirements set forth in ***Section 18.3(a)*** (Qualifying Subleases) including that the Sublease rental rates reflect an arms-length transaction at fair market rents as reasonably determined by Tenant, and the proposed Non-Disturbance Agreement complies with all the conditions and requirements set forth in this ***Section 18.4(b);***

(5) an executed Tenant estoppel certificate substantially in the form attached hereto as ***Exhibit P***, and Tenant will certify as of the effective date of the Non-Disturbance Agreement that the certifications made by Tenant in the estoppel certificate remains unchanged; and

(6) all relevant information requested by Port including reasonable financial information establishing the ability of the proposed Subtenant to perform its contemplated obligations under such Sublease, and relevant information concerning the business character and operating history of the proposed Subtenant; provided, however, in lieu of submitting the Subtenant's financial information to Port, Tenant may make such information available for review (but not duplication) at Port's office or at Tenant's office in the City of San Francisco (and, if at Tenant's office, Tenant shall pay to Port Port's additional costs of reviewing such information at Tenant's office (including travel time) of the Port representative reviewing such Subtenant financial information).

(ix) Tenant deposits sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Non-Disturbance Agreement (which, for avoidance of doubt, includes any additional administrative fees, or outside counsel or contractors engaged by Port to review such request for a Non-Disturbance Agreement);

(x) Subtenant agrees that notwithstanding any Non-Disturbance Agreement, the Sublease will terminate as of the Lease termination date (1) if the Lease terminates (A) as a result of Tenant exercising its Termination Option due to change in Laws, as further described in ***Section 7.3***, (Right to Terminate Lease) or (B) in the event of Casualty or Condemnation, as further described in ***Articles 14*** (Damage or Destruction) ***and 15*** (Condemnation); or (2) if there is an uncured Subtenant event of default, giving effect to any notice and cure period provided therein (which agreement will be evidenced by acceptance of a Non-Disturbance Agreement reflecting the matters described in this clause (x));

(xi) If a guarantor guaranties any Subtenant obligation under the Sublease, Port will be named as an additional beneficiary to such guaranty; provided, however, Port's rights under such guaranty will not be effective until termination of this Lease;

(xii) The applicable Sublease will provide that the Subtenant will deliver to Port as of the Lease termination date or promptly following request by Port an executed estoppel certificate, substantially in the form attached hereto as ***Exhibit Q*** (Form of Subtenant Estoppel Certificate) certifying as of the Lease termination date, among other things: (A) that the Sublease, including all amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) which amendments, if any, to the Sublease have been previously approved by Port in writing, including the dates of approval, (C) the dates, if any, to which any rent and other sums payable thereunder have been paid, (D) that the Subtenant is not aware of any Tenant defaults under the Sublease which have not been cured, except as to defaults specified in said certificate, and (E) that the Subtenant is not aware of any Subtenant defaults which have not been cured; and

(xiii) In connection with any Sublease pursuant to which Tenant, as sublandlord, is obligated to perform tenant improvement work for the benefit of the applicable Subtenant ("**Sublandlord Work**") and for which Tenant requests a Non-Disturbance Agreement from Port, (A) concurrently with such request, Tenant will submit to Port the estimated cost to complete the Sublandlord Work, and (B) Tenant hereby agrees that, from and after the effective date of such Sublease until such time as the Sublandlord Work is complete, Tenant will deliver to Port on a quarterly basis (or, if a notice of default has been delivered by Port to Tenant hereunder, on a monthly basis) a written summary of the progress of such Sublandlord Work including the estimated cost to complete the Sublandlord Work as of such date.

(c) **Copy of Sublease.** To the extent a Sublease has been provided to Port in connection with a request for a Non-Disturbance Agreement, Tenant will provide Port a true and complete copy of the executed Sublease and summary of the Sublease basic terms attached to the Tenant estoppel certificate, in accordance with ***Section 18.4(b)(viii)(5)*** within five (5) business days after the execution thereof, which Sublease will contain substantially the same (or more favorable to the landlord) business terms as in the form of Sublease, statement, and other information previously provided to Port.

(d) **Form of Non-Disturbance Agreement.** Each Non-Disturbance Agreement will be substantially in the form of ***Exhibit R*** (Form of Non-Disturbance Agreement) and, if not in such form, will be in form and substance agreed upon by Tenant and Port, not to be unreasonably withheld by either Party. With each request for a Non-Disturbance Agreement, Tenant will submit a copy of the form, showing any requested interlineations or deletions.

(e) **Response Period.**

(i) Port will respond to any request for a Non-Disturbance Agreement within fifteen (15) business days after receipt of all the materials described in ***Section 18.4(b)(viii)***; provided, however, if Tenant requests three (3) or more Non-Disturbance Agreements whose response time overlaps at any given time, (1) Port will have an additional five (5) business days to respond for each Non-Disturbance Agreement, and (2) Tenant will pay to Port an additional administrative processing fee of One Thousand Dollars ($1,000) for every overlapping Non-Disturbance Agreement request above two (2), which amount will be increased by Five Hundred Dollars ($500) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter.

(ii) If Port fails to respond to such request within such fifteen (15) business day period (or twenty (20) business days if so extended), then Tenant will deliver to Port a second notice requesting Port's response ("**Second NDA Notice**"). The Second NDA Notice must display prominently on the envelope enclosing such notice and the first page of such notice, substantially the following: "**APPROVAL REQUEST FOR [INSERT ADDRESS OF LEASED PREMISES]/PIER 70 SUBLEASE MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.**" If Port fails to respond within five (5) business days after Port's receipt of the Second NDA Notice, then such non-response will be deemed to be approval of such Non-Disturbance Agreement and the applicable Subtenant will be entitled to rely on the terms of the applicable Non-Disturbance Agreement, provided, however, if there are any conflicts between the provisions in the Sublease and the deemed approved Non-Disturbance Agreement, on the one hand, and ***Sections 18.3*** (Subletting by Tenant) and ***18.4(b)*** (Conditions for Issuance of Non-Disturbance Agreement) on the other hand, ***Sections 18.3*** (Subletting by Tenant) and ***18.4(b)*** (Conditions for Issuance of Non-Disturbance Agreement) will control.

18.5. ***No Further Amendment or Consent Implied.*** No material amendment of the terms of a Sublease after Port's execution of a Non-Disturbance Agreement will be binding upon Port unless Port has granted its written consent thereto, which consent shall not be withheld if the amendment conforms to the requirements of ***Section 18.3*** (Subletting by Tenant) and ***Section 18.4(b)*** (Conditions for Issuance of Non-Disturbance Agreement). Consent to one Sublease or amendment, as applicable, will not be construed as consent to a subsequent Sublease or amendment, as applicable.

18.6. ***No Release of Tenant.*** The acceptance by Port of Rent or other payment from any other person will not be deemed to be a waiver by Port of any provision of this Lease or to be a release of Tenant from any obligation under this Lease. Except as set forth in ***Section 18.2*** (Limitation on Liability), no Transfer or Sublease will in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease.

18.7. ***Acknowledgement.*** Tenant acknowledges and agrees that each of the rights of Port set forth in this ***Article 18*** (Assignments and Subletting) is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

19. INDEMNIFICATION OF PORT.

19.1. ***General Indemnification of the Indemnified Parties.*** Subject to ***Section 19.4*** (Exclusions from Indemnifications, Waivers and Releases), Tenant agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons or loss or destruction of or damage to property occurring in, on, under, around, or about the Premises or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the Premises, or any acts or omissions of Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

(b) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises or any part thereof by Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

(c) any latent, design, construction or structural defect relating to the Improvements, any other Subsequent Construction, or any other matters relating to the condition of the Premises caused directly or indirectly by Tenant or any of its Agents, Invitees, or Subtenants;

(d) any failure on the part of Tenant or its Agents, Invitees, or Subtenants, as applicable, to perform or comply with any of the terms, covenants, or conditions of this Lease or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents or Subtenants;

(f) any acts, omissions, or negligence of Tenant, its Agents, Invitees, or Subtenants; and

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use or occupancy.

19.2. ***Hazardous Materials Indemnification.***

(a) In addition to its obligations under ***Section 19.1*** (General Indemnity) and subject to ***Section 19.4*** (Exclusions from Indemnifications, Waivers and Releases), Tenant, for itself and on behalf of the Related Third Parties and their respective Invitees, agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition during the Term;

(ii) any Handling or Release of Hazardous Materials in, on, under, around or about the Premises;

(iii) **[Add if Tenant responsible for Deferred Infrastructure:** without limiting Tenant's Indemnification obligations in this ***Section 19.2(a)***, any Handling or Release of Hazardous Materials in, on, under, around or about any area outside the Premises boundary used by Tenant or its Agents to perform the Deferred Infrastructure (**"Deferred Infrastructure Area"**) at any time prior to Acceptance of such Deferred Infrastructure; or

(iv) without limiting Tenant's Indemnification obligations in ***Sections 19.2(a)(ii)*** [**if applicable:** ***or 19.2(a)(iii)***], any Handling or Release of Hazardous Materials outside of the Premises, but in, on, under, around or about the 28-Acre Site, by Tenant or any Related Third Party during the Term; or

(v) any Exacerbation of any Hazardous Material Condition during the Term; or

(vi) failure by Tenant or its Agent, Subtenant, or any of their respective Agents (individually "**Related Third Party**" and collectively "**Related Third Parties**") to comply with the Pier 70 Risk Management Plan during the Term or failure by Tenant's Invitees or any Related Third Party's Invitees to comply with the Pier 70 Risk Management Plan within the Premises during the Term; or

(vii) claims by Tenant or any Related Third Party for exposure from and after [**for leases with third parties:** the Commencement Date.] [**for leases with Vertical Developer Affiliates:** the effective date of the Master Lease] to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site during the Term.

(b) Losses under ***Section 19.2(a)*** includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this ***Section 19.2***, Tenant must reimburse Port for Port's costs, plus interest at the Default Rate from the date Port incurs each cost until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(c) Tenant understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this ***Section 19.2*** subject to ***Section 19.4*** (Exclusions from Indemnifications, Waivers and Releases), arises upon the earlier to occur of:

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises, [**Add if Tenant responsible for Deferred Infrastructure:** and the Deferred Infrastructure Area;]

(ii) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises [**Add if Tenant responsible for Deferred Infrastructure:** the Deferred Infrastructure Area;]

(iii) the Exacerbation of any Hazardous Material Condition, or

(iv) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

19.3. ***Scope of Indemnities; Obligation to Defend.*** Except as otherwise provided in ***Section 19.4*** (Exclusions from Indemnifications, Waivers and Releases), Tenant's Indemnification obligations under this Lease are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Tenant, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such

claim is tendered to Tenant and continues at all times thereafter until finally resolved. Tenant's Indemnification obligations under this Lease are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Tenant constitute Additional Rent owing from Tenant to Port hereunder and are due and payable from time to time immediately upon Port's request, as incurred.

19.4. ***Exclusions from Indemnifications, Waivers and Releases.***

(a) Nothing in this ***Article 19*** (Indemnities) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in ***Section 19.1*** (General Indemnification of Indemnified Parties), ***19.2*** (Hazardous Materials Indemnification), or the defense obligations set forth in ***Sections 19.3*** (Scope of Indemnities) and ***Section 19.6***, (Defense), extend to Losses:

(i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties; or

(ii) from third parties' claims for exposure to Hazardous Materials prior to [**for leases with third parties:** the Commencement Date] [**for leases with Vertical Developer Affiliates:** the effective date of the Master Lease]; or

(iii) without limiting Tenant's Indemnification obligations under ***Sections*** [**if applicable:** ***19.2(a)(iii)], 19.2(a)(iv), 19.2(a)(vi), or 19.2(a)(vii)***, and to the extent the applicable Loss was not caused by the failure of Tenant or any of its Related Third Parties to comply with the Pier 70 Risk Management Plan or the failure of the Invitees of Tenant or the Invitees of the Related Third Parties to comply with the Pier 70 Risk Management Plan within the Premises, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Deferred Infrastructure Area after the Acceptance Date for the Deferred Infrastructure Area (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Deferred Infrastructure Area and is not also present in, on or around the Premises); provided, however, the foregoing limitation on Tenant's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Hazardous Materials by the acts or omissions of Tenant or any of its Related Third Parties.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under ***Section 19.2*** (Hazardous Materials Indemnification) is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Tenant in asserting a claim or claims under such insurance policy but without waiving any of its rights under ***Section 19.2*** (Hazardous Materials Indemnification). Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Tenant, the Indemnification from Tenant under ***Section 19.2*** (Hazardous Materials Indemnification) will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Tenant pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Tenant.

19.5. ***Survival.*** Tenant's Indemnification obligations under this Lease and the provisions of this ***Article 19*** (Indemnification of Port) survive the expiration or earlier termination of this Lease.

19.6. ***Defense.*** Tenant will, at its option but subject to Approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Tenant's

choice; provided, that in all cases Port will be entitled to participate in such defense, compromise or settlement at its own expense. If Tenant fails, however, in Port's reasonable judgment, within a reasonable time following notice from the Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port has the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise or settlement, which expense is due and payable to Port within fifteen (15) days after receipt by Tenant of a detailed invoice for such expense.

19.7. ***Waiver***. As a material part of the consideration of this Lease, Tenant hereby assumes the risk of, and waives, discharges, and releases and will include in any contract with Related Third Parties an assumption of the risk of, and waiver, discharge and release of, any and all claims against the Indemnified Parties and the State Lands Indemnified Parties from any Losses, including: (a) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging; (b) goodwill; (c) business opportunities; (d) any act or omission of persons occupying adjoining premises; (e) theft; (f) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination; (g) Building defects (including stopped, leaking or defective Material Systems); (h) inability to use all or any portion of the Premises due to sea level rise or flooding or seismic events; (i) arising from the interference with the comfortable enjoyment of life or property arising out of the existence of the Pier 70 Shipyard; [and] (j) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the Premises **[Add if Tenant responsible for Deferred Infrastructure:** and the Deferred Infrastructure Area.], including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, [**Add for any parcel fronting a raised street**: and (k) any damage to the Premises resulting or arising from the design of raised streets within the 28-Acre Site]. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of the Indemnified Parties or the State Lands Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties or the State Lands Indemnified Parties, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Tenant or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties or the State Lands Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties or the State Lands Indemnified Parties arising out of this Lease or the uses authorized hereunder, including, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the waivers and releases in this Lease will remain effective. Therefore, with respect to the claims released in this Lease, Tenant waives any rights or benefits provided by California Civil Code, Section 1542, which reads as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

By placing its initials below, Tenant specifically acknowledges and confirms the validity of the waivers and releases made above and the fact that Tenant was represented by counsel who explained the consequences of the waivers and releases at the time this Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

Tenant's Initials: _____

Tenant acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any other statute or other similar law now or later in effect.

20. INSURANCE.

Tenant will comply with the insurance requirements set forth in ***Exhibit S*** (Insurance Requirements) attached hereto throughout the Term.

21. HAZARDOUS MATERIALS.

21.1. ***Compliance with Environmental Laws***. Tenant will comply and cause its Agents, Invitees and all Persons under any Sublease, to comply with all Environmental Laws, operations plans (if any), the Pier 70 Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials on, under or about the Premises, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable laws and any reasonable conditions or limitations required by Port, (c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential, or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency (collectively, "**Excepted Hazardous Material.**")

21.2. ***Tenant Responsibility***. Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the Premises except as permitted under ***Section 21.1*** (Compliance with Environmental Laws);

(b) Will not cause or permit any Hazardous Material Condition; and

(c) Will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the Premises, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles used in connection with the Premises in violation of any Environmental Laws;

(d) Tenant will be the "**Generator**" of any waste, including hazardous waste, resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the Premises;

(e) Will comply with all provisions of the Pier 70 Risk Management Plan with respect to its Premises, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually; and

(f) Will comply, and will cause all of its Subtenants that are subject to an operations plan, to comply with the operations plan applicable to Tenant or such Subtenant.

21.3. ***Tenant's Environmental Condition Notification Requirements.*** The following requirements are in addition to the notification requirements specified in the (i) operations plan(s), if any, (ii) the Pier 70 Risk Management Plan, and (iii) Environmental Laws:

(a) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under ***Section 21.1*** (Compliance with Environmental Laws), Handled, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Tenant's notice to Port by oral or other means, Tenant must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Tenant's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Tenant's receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant's occupancy of the Premises, that Tenant or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or Tenant's occupancy of the Premises;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant or its Agents and Invitees use in, on, under, or about the Premises during the Term or Tenant's occupancy of the Premises; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises. Tenant must provide Port with copies of any of the documents within the scope of this ***Section 21.3(d)*** upon Port's request.

(e) Tenant must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises; provided, however, at Tenant's request, in lieu of providing Port with copies of non-privileged communications with other persons that are not Environmental Regulatory Agencies, Tenant will (i) make available for Port's review such non-privileged communications at Tenant's San Francisco office or at Port's office, and (ii) reimburse Port for additional costs related to review at Tenant's San Francisco office (including but not limited to additional time related to travel to and from Tenant's office).

(f) Port may from time to time request, and Tenant will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

21.4. ***Remediation Requirement.***

(a) After notifying Port in accordance with ***Section 21.3*** (Tenant's Environmental Condition Notification Requirements) and subject to ***Section 21.4(d)***, Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises; provided Tenant must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with ***Section 21.3*** (Tenant's Environmental Condition Notification Requirements). Except as provided in the previous sentence, Tenant must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under ***Section 21.4(a)***, before this Lease terminates for any reason, Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease: (i) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Tenant's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Tenant's use of the Premises, or due to Subsequent Construction or construction of the Initial Improvements.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take actions that are reasonably necessary in Port's reasonable judgment to protect

the value of the Premises, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises.

(d) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, under, around or about the Premises, Tenant will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

21.5. ***Pesticide Prohibition.*** Tenant will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, as further described in [***Section XX*** [(IPM Plan)]] of ***Exhibit T*** (Port and City Special Provisions).

21.6. ***Additional Definitions.***

"**Environmental Laws**" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this Lease. "**Environmental Laws**" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials 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, including both administrative and judicial proceedings.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"**Environmental Regulatory Approval**" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"**Exacerbate**" or "**Exacerbating**" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure 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, it being understood that the mere discovery of Hazardous Materials does not cause "**Exacerbation**". "**Exacerbate**" also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, construction of Improvements and Alterations under this Lease. "**Exacerbate**" also means failure to comply with the Pier 70 Risk Management Plan. "**Exacerbation**" has a correlative meaning.

"**Handle**" when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. "**Handling**" has a correlative meaning.

"**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 substance", "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 reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing materials, and any 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 Materials**" also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"**Hazardous Material Claim**" means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"**Hazardous Material Condition**" means the Release or Exacerbation, or threatened Release or Exacerbation of Hazardous Materials in, on, under, or about the Premises or the environment, or from any vehicles Tenant or its Agents and Invitees use in, on, under, or about the Premises during the Term or Tenant's occupancy of the Premises.

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"**New Hazardous Material**" means a Hazardous Material that is not a Pre-Existing Hazardous Material.

"**Pier 70 Risk Management Plan**" means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

"**Release**" means when used with respect to Hazardous Materials, any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

"**Remediate**" or "**Remediation**" when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of "**remedy**" or "**remedial action**" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

22. DELAY DUE TO FORCE MAJEURE.

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure will not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this ***Article 22*** (Delay Due to Force Majeure) will not apply to Tenant's obligation to pay Rent. A Party seeking an extension of time pursuant to the provisions of this section will give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than fifteen (15) days) after knowledge of the beginning of such enforced delay or (b) promptly after the other Party's demand for performance.

23. PORT'S RIGHT TO PAY SUMS OWED BY TENANT.

23.1. ***Port May Pay Sums Owed by Tenant Following Tenant's Failure to Pay.*** Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any Event of Default, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Port (other than any Imposition, mechanics' lien or encumbrance with respect to which the provisions of ***Article 6*** (Contests) apply, or any other sum required to be paid by Tenant which Tenant is contesting in good faith and with due diligence, and which would not become a lien on the Property). Port may, at its sole option, but will not be obligated to, upon ten (10) days prior notice to Tenant, pay such sum for and on behalf of Tenant.

23.2. ***Tenant's Obligation to Reimburse Port.*** If pursuant to ***Section 23.1***(Port May Pay Sums Owed by Tenant Following Tenant's Failure to Pay), Port pays any sum required to be paid by Tenant hereunder, Tenant will reimburse Port as Additional Rent, the sum so paid. All such sums paid by Port are due from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date, will bear interest at the lesser of the Default Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed in full by Tenant. Port's rights under this ***Article 23*** (Port's Right to Pay Sums Owed by Tenant) are in addition to its rights under any other provision of this Lease or under applicable Laws. The provisions of this ***Section 23.2*** will survive the expiration or earlier termination of this Lease.

24. EVENTS OF DEFAULT.

24.1. ***Events of Default.*** Subject to the provisions of ***Section 24.2*** (Special Provisions Concerning Lenders and Events of Default) the occurrence of any one or more of the following events which remain uncured after the passage of time set forth pursuant to this ***Article 24*** (Events of Default) will constitute an "**Event of Default**" under the terms of this Lease:

(a) Tenant fails to pay any Rent or Imposition when due, which failure continues for five (5) business days following written notice from Port; provided, however, Port will not be required to give such notice on more than two (2) occasions during any calendar year, and failure to pay any Rent or Imposition thereafter when due will be deemed an Event of Default without need for further notice;

(b) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Port;

(c) [Intentionally blank];

(d) Prior to the issuance of a Certificate of Completion, a Developer Event of Default (as such term is defined in the Vertical DDA) occurs under the Vertical DDA and remains uncured but such Event of Default under this Lease will be deemed cured if the Developer Event of Default is cured pursuant thereto;

(e) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2, which abandonment is not cured within thirty (30) days after notice from Port of Port's belief of abandonment;

(f) The Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion, and such Prohibited Use(s) continues for a period of one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such one (1) business day, Tenant will not be in default of this Lease if Tenant commences to cure the default within such one (1) business day and diligently and in good faith continues to cure the default;

(g) **[Note: Include only if applicable:]** Tenant uses the Minimum Public Benefit Area for a use other than the Required Uses, except as otherwise set forth in ***Section 3.7*** (Required Public Benefits);

(h) Tenant fails to comply with the provisions of ***Section 10.1*** (Covenants to Repair and Maintain the Premises) within five (5) days following written notice from Port; provided, however, if such default cannot reasonably be cured within such five (5) day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such five (5) day period and diligently and in good faith continues to cure the default provided, further, without limitation of the foregoing, the Parties agree that Tenant's internal meetings to determine the path to cure such default will be deemed to be a commencement of cure;

(i) Tenant fails to restore the Improvements after an event of Casualty in accordance with and within the time frame set forth in ***Section 14.2*** (Restoration Obligation) and such failure continues for a period of fifteen (15) days following written notice from Port; provided, however, if such default cannot reasonably be cured within such fifteen (15) days period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such fifteen (15) day period and diligently and in good faith continues to cure the default;

(j) Tenant fails to comply with the provisions of ***Article 21.1***(Hazardous Materials) and such failure continues for a period of one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such one (1) business day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such one (1) business day period and diligently and in good faith continues to cure the default; provided, further without limitation of the foregoing, the Parties agree that Tenant's internal meetings to determine the path to cure such default will be deemed to be a commencement of cure;

(k) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which

proceedings if filed against Tenant are not dismissed or stayed within one hundred eighty (180) days;

(l) A writ of execution is levied on the Leasehold Estate which is not released within one hundred eighty (180) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred eighty (180) days; provided, however, that the exercise by a Lender of any of its remedies under its Mortgage will not, in and of itself, constitute a default under this ***Section 24.1(l)***;

(m) Tenant makes a general assignment for the benefit of its creditors; [or]

(n) **[Note: Include only where Deferred Infrastructure assigned to and assumed by Tenant in the VCA.]** Tenant fails to complete construction of the Deferred Infrastructure within the timeframe required in the VCA, but such default under this Lease will be deemed cured if such default is cured pursuant to the VCA; or

(o) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation and Improvement Measures that Tenant is required to comply with) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Port specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Tenant does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

24.2. ***Special Provisions Concerning Lenders and Events of Default.*** Notwithstanding anything in this Lease to the contrary, the exercise by a Lender of any of its remedies under its Mortgage will not, in and of itself, constitute a default under this Lease. Port will also accept a cure of an Event of Default by any Tenant investor or mezzanine lender; provided, however, such parties will not have any additional time to cure any Event of Default.

25. REMEDIES.

25.1. ***Port's Remedies Generally.*** Upon the occurrence and during the continuance of an Event of Default under this Lease, Port has all rights and remedies provided in this Lease or available at Law or in equity (including the right to seek injunctive relief or an order for specific performance, where appropriate), including the right to self-help to the extent provided for herein; provided, however, notwithstanding anything to the contrary in this Lease, any right to cure and any remedy available to Port regarding any Event of Default under the Workforce Development Plan, is limited to those rights and remedies provided in the applicable Law for such Workforce Development Plan; provided, further, Port's right to terminate this Lease for an Event of Default will be limited to Events of Default described in ***Sections 24.1(a) and 24.1(d)—24.1(m)***.

All of Port's rights and remedies are cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights will not preclude the exercise of any other.

25.2. ***Right to Keep Lease in Effect.***

(a) **Continuation of Lease.** Port has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations) under which Port may continue this Lease in full force and effect following the occurrence of an Event of Default. In the event Port elects this remedy, Port has the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Port's rights, including the right to collect Rent

when due. Upon the occurrence of an Event of Default, Port may, following written notice to Tenant, enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant will be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including Attorneys' Fees and Costs, brokers' fees or commissions, expenses of remodeling the Premises required by the reletting and similar costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port determines in its sole discretion.

(b) No Termination Without Notice. No act by Port allowed by this ***Section 25.2***, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, will terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Port elects to relet the Premises as provided in ***Section 25.2(a)*** (Continuation of Lease) the rent that Port receives from reletting will be applied to the payment of:

(i) First, all costs incurred by Port in enforcing this Lease, whether or not any action or proceeding is commenced, including Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing Personal Property, costs in connection with reletting the Premises, or any portion thereof, altering, installing, modifying and constructing tenant improvements required for a new tenant, and costs of repairing, securing and maintaining the Premises to the standards set forth in this Lease or any portion thereof;

(ii) Second, the payments of any Imposition or any other indebtedness other than Rent due and unpaid hereunder from Tenant to Port;

(iii) Third, Rent due and unpaid under this Lease;

(iv) After deducting the payments referred to in this ***Section 25.2(c)***, any sum remaining from the rent Port receives from reletting will be held by Port and applied to monthly installments of future Rent as such amounts become due under this Lease. In no event will Tenant be entitled to any excess rent received by Port. If on a date Rent or other amount is due under the Lease, the rent received by Port as of such date from any reletting is less than the Rent or other amount due on that date, or if any costs incurred by Port in reletting, remain after applying the rent received from such reletting, Tenant will pay to Port such deficiency. Such deficiency will be calculated and paid monthly.

(d) Payment of Rent. Tenant will pay to Port Rent on the dates the Rent is due, less the rent Port has received from any reletting which exceeds all costs and expenses described in ***Section 25.2(c)***(Application of Proceeds of Reletting).

25.3. ***Port's Right to Cure Tenant's Default.*** Port, at any time after Tenant commits an Event of Default, may, at Port's sole option, cure the default at Tenant's cost. If Port at any time following an Event of Default, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, Attorneys' Fees and Costs), all such sums, costs, damages or liabilities paid by Port will be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date will bear interest at the lesser of the Default Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

25.4. ***Termination of Tenant's Right to Possession.***

(a) Before exercising any right to terminate this Lease and Tenant's right to possession of the Premises for the following Events of Default, Port will provide Tenant with a second written notice (**"Second Default Notice"**) and the additional cure period set forth below:

(i) For an Event of Default under ***Section 24.1(a),*** Tenant will have five (5) business days following delivery of the Second Default Notice to cure;

(ii) For an Event of Default under ***Sections 24.1(d), 24.1(e), 24.1(h), or 24.1(i)***, Tenant will have ten (10) days following delivery of the Second Default Notice to cure; provided, however, if such default cannot reasonably be cured within such ten (10) day period, then Port will not exercise its termination right if Tenant diligently and in good faith continues to cure the default to completion;

(iii) For an Event of Default under ***Sections 24.1(f), 24.1(g), or 24.1(j)***, Tenant will have one (1) business day following delivery of the Second Default Notice to cure; provided, however, if such default cannot reasonably be cured within such one (1) business day period, then Port will not exercise its termination right if Tenant diligently and in good faith continues to cure the default to completion;

(iv) For an Event of Default under ***Sections 24.1(k), 24.1(l), or 24.1(m)***, Tenant will have thirty (30) days following delivery of the Second Default Notice to cure, which may include a dismissal or stay, as applicable;

(b) Port may terminate this Lease and Tenant's right to possession of the Premises for the Events of Default described in ***Section 25.4(a)*** at any time following expiration of the cure periods set forth in ***Section 25.4(a)*** for the applicable Event of Default by providing Tenant with a written notice of termination.

(c) Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease will not constitute a termination of Tenant's right to possession.

(d) If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following:

(i) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(ii) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could be reasonably avoided; plus

(iv) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result therefrom. Efforts by Port to mitigate the damages caused by Tenant's breach of this Lease do not waive Port's rights to recover damages upon termination.

The "**worth at the time of award**" of the amounts referred to in ***Sections 25.4(d)(i)*** and ***25.4(d)(ii) above*** will be computed by allowing interest at an annual rate equal to the lesser of the Default Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "**worth at the time of award**" of the amount referred to in ***Section 25.4(d)(iii)*** (Termination of Tenant's Right to Possession) above will be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

25.5. ***Continuation of Subleases and Other Agreements.*** Port has the right, at its sole option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises(to the extent assignable) following an Event of Default and termination of Tenant's interest in this Lease. Tenant hereby further covenants that, upon request of Port following an Event of Default and termination of Tenant's interest in this Lease,

Tenant will execute, acknowledge and deliver to Port such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Port the then existing Subleases and other agreements then in force, as above specified.

25.6. ***Appointment of Receiver.*** During the continuance of an Event of Default, Port has the right to have a receiver appointed to collect Rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself will constitute an election by Port to terminate this Lease.

25.7. ***Waiver of Redemption.*** Tenant hereby waives, for itself and all Persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any Event of Default.

25.8. ***Liquidated Damages for Repeat Prohibited Uses.*** In addition to the other remedies available to Port under this Lease for an Event of Default under ***Section 24.1(f)***, if Tenant uses the Premises for the same type of Prohibited Use more than two (2) times within a twenty-four (24) month period, then Tenant will pay Port the Prohibited Use Charge, as further described in ***Section 3.3*** (Liquidated Damages for Repeat Prohibited Uses).

25.9. ***Horizontal Developer Right to Perform Deferred Infrastructure.*** If Tenant fails to complete the Deferred Infrastructure within the time frame set forth in the VCA, then Tenant will grant, and hereby does grant, Horizontal Developer and its Agents a right of access to the Premises for purposes of constructing, completing and maintaining (prior to acceptance by the applicable governmental agency) the Deferred Infrastructure. **[Note: Provision applicable only in leases where Tenant has obligation to complete Deferred Infrastructure.]**

25.10. ***Remedies Not Exclusive.*** The remedies set forth in this ***Article 25*** (Remedies) are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by other terms and provisions of this Lease, Law or in equity. Tenant's obligations hereunder will survive any termination of this Lease.

26. EQUITABLE RELIEF.

In addition to the other remedies provided in this Lease, either Party is entitled at any time after a default or threatened default by the other Party to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an event of default by the other Party, the non-defaulting Party is entitled to any other equitable relief which may be appropriate to the circumstances of such event of default.

27. NO WAIVER.

27.1. ***No Waiver by Port or Tenant.*** No failure by Port or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, will be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach will affect or alter this Lease, which will continue in full force and effect, or the respective rights of Port or Tenant with respect to any other then existing or subsequent breach.

27.2. ***No Accord or Satisfaction.*** No submission by Tenant or acceptance by Port of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder will waive any of Port's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Port had knowledge of any such failure except with respect to the Rent so paid. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment will operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Port. Port may accept

such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Port to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) will be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments will be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

28. DEFAULT BY PORT; TENANT'S REMEDIES.

28.1. ***Default by Port***. Port will be deemed to be in default hereunder only if Port fails to perform or comply with any obligation on its part hereunder, and (a) such failure continues for more than the time of any cure period provided herein, or (b) if no cure period is provided herein, for more than sixty (60) days after written notice thereof from Tenant (provided that, Port will use reasonable efforts to cure such default within a thirty (30) day period) after receipt of such written notice from Tenant, or (c) if such default cannot reasonably be cured within such sixty (60) day period, Port does not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter fails or neglects to prosecute or complete with diligence and dispatch the curing of such default.

28.2. ***Tenant's Exclusive Remedies***. Upon the occurrence of default by Port described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder or materially obstructs the realization of the Project, Tenant has the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, or if no Rent is due hereunder, then the amount of the damage award will be amortized over a ten (10) year period and payable by Port on a monthly basis, but in either event only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, or (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Port or its Agents; provided, however, (x) in no event will Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages (including, without limitation, any indirect or consequential, incidental, punitive or special damages proximately arising out of a default by Port hereunder) or Losses other than Tenant's actual damages as described in the foregoing clause (a), (y) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder constitutes Tenant's sole and absolute right and remedy for a default by Port hereunder, and (z) Tenant has no remedy of self-help.

29. TENANT'S RECOURSE AGAINST PORT.

29.1. ***No Recourse Beyond Value of Property Except as Specified***. Tenant agrees that notwithstanding any other term or provision of this Lease, (a) Tenant will have no recourse with respect to, and Port will not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease) and (b) neither Port nor the Indemnified Parties will be liable under any circumstances for injury or damage to, or interference with Tenant's business, including loss or profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring. By Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability.

29.2. ***No Recourse Against Specified Persons***. No commissioner, officer or employee of Port or City will be personally liable to Tenant, or any successor in interest, for any event of default by Port, and Tenant agrees that it will have no recourse with respect to any obligation of

Port under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

29.3. ***Nonliability of Tenant's Members, Partners, Shareholders, Directors, Officers and Employees***. No member, officer, partner, shareholder, director, board member, agent, or employee of Tenant will be personally liable to Port, and Port will have no recourse against any of the foregoing, in an Event of Default by Tenant or for any amount which may become due to Port or on any obligations under the terms of this Lease or any claim based upon this Lease.

30. LIMITATIONS ON LIABILITY.

30.1. ***Waiver of Indirect or Consequential, Incidental, Punitive or Special Damages***. As a material part of the consideration for this Lease, neither Party (including the Indemnified Parties) will be liable for, and each Party hereby waives any claims against the other Party for any indirect or consequential, incidental, punitive, special damages.

30.2. ***Limitation on Port's Liability Upon Transfer***. In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port (or such transferor, as the case may be), but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer; provided, however, that Port (or such subsequent transferor) has transferred to the transferee any funds in Port's possession (or in the possession of such subsequent transferor) in which Port (or such subsequent transferor) has an interest, in trust, for application pursuant to the provisions hereof, and such transferee has assumed all liability for all such funds so received by such transferee from Port (or such subsequent transferor).

31. ESTOPPEL CERTIFICATES BY TENANT AND SUBTENANT.

(a) Tenant will execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser or mortgagee of Port's interest in the Premises), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as ***Exhibit P*** (Form of Tenant Estoppel Certificate) stating to the best of Tenant's knowledge after diligent inquiry (i) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (ii) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (iii) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (iv) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Port.

(b) Unless otherwise requested, Tenant will attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of Tenant's knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto.

(c) Any such certificate may be relied upon by any Port, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Port's interest therein.

(d) Tenant will insert a provision similar to this ***Article 31*** into each Sublease, requiring Subtenants under Subleases to execute, acknowledge and deliver to Port, within twenty (20) business days after request, an estoppel certificate substantially in the form attached hereto as ***Exhibit Q***, (Form of Subtenant Estoppel Certificate) covering, among other things, the matters described in clauses (a), (b), and (c) above with respect to such Sublease, along with a true and correct copy of the applicable Sublease and all amendments thereto.

32. ESTOPPEL CERTIFICATES BY PORT.

Port will execute, acknowledge and deliver to Tenant (or at Tenant's request, to any prospective Subtenant that is entitled to obtain a Non-Disturbance Agreement from Port in accordance with ***Section 18.4(b)*** (Conditions for Issuance of Non-Disturbance Agreements), prospective Lender meeting the requirements of ***Article 40*** (Mortgages) prospective purchaser, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as ***Exhibit U*** (Form of Port Estoppel Certificate) stating to Port's actual knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of Port, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Port will attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any prospective Subtenant, Lender, prospective Lender, prospective purchaser, or other prospective transferee of Tenant's interest under this Lease.

33. APPROVALS BY PORT; STANDARD OF REVIEW; FEES FOR REVIEW.

33.1. ***Approvals by Port.*** The Port's Executive Director or his or her designee, is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Port hereunder, if the Executive Director reasonably determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Port's best interests. The Port Executive Director's signature of any such documents will conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Port of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Port, the Executive Director, or his or her designee, is authorized to execute such instrument on behalf of Port, except as otherwise provided by applicable Law, including the City's Charter to the extent applicable, or if the Executive Director determines, in his or her sole discretion, that Port Commission action approving execution of such instrument is necessary.

33.2. ***Standard of Review.*** Except as expressly provided otherwise or when Port is acting in its regulatory capacity, the following standards will apply to the Parties' conduct under this Lease.

(a) **Advance Writings Required.** Whenever a Party's approval or waiver is required: (i) the approval or waiver must be obtained in advance and in writing; and (ii) the Party whose approval or waiver is sought may not unreasonably withhold, condition, or delay its approval or waiver, as applicable.

(b) **Commercial Reasonableness.** Whenever a Party is permitted to make a judgment, form an opinion, judge the sufficiency of the other Party's performance, exercise discretion in taking (or refraining from taking) any action or making any determination, or grant or withhold its approval or consent, unless otherwise stated in this Lease, that Party must employ commercially reasonable standards in doing so. In general, the Parties' conduct in implementing this Lease, including construction of Improvements, disapprovals, demands for performance, requests for additional information, and any exercise of an election or option, must be commercially reasonable.

33.3. ***Fees for Review.*** Unless a different time period is required in this Lease, within thirty (30) days after Port's written request, Tenant will pay Port, as Additional Rent, Port's reasonable costs, including, without limitation, Attorneys' Fees and Costs and costs for Port staff time incurred in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer, Sale, Mortgage, estoppel certificate, Non-Disturbance Agreement, Refinancing, other certificate, or Subsequent Construction (excluding any such costs incurred by Port's regulatory capacity, which costs will be paid separately by Tenant to the extent required in connection with the review or processing of such regulatory request). Tenant will pay such costs regardless of whether or not Port consents to such proposal.

34. NO MERGER OF TITLE.

There will be no merger of the Leasehold Estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the Leasehold Estate or any interest in such Leasehold Estate, and (b) any interest in such fee estate. No such merger will occur unless and until all Persons having any interest in the Leasehold Estate and the fee estate in the Premises join in and record a written instrument effecting such merger.

35. QUIET ENJOYMENT.

Subject to the Permitted Title Exceptions, the terms and conditions of this Lease, the Vertical DDA (while in effect), and applicable Laws, Port agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, will lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by Port. Notwithstanding the foregoing, Port has no liability to Tenant in the event any defect exists in the title of Port as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to City's willful misconduct). Tenant's sole remedy with respect to any such existing title defect is to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

36. SURRENDER OF PREMISES.

36.1. ***Condition of Premises.*** Except as set forth in ***Section 36.2*** (Demolition of Improvements), upon the expiration or earlier termination of this Lease, Tenant will quit and surrender to Port the Premises (i) in good order and condition consistent with the requirements of ***Section 10.1*** (Covenants to Repair and Maintain the Premises), reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder [**Add if applicable:** and the requirements hereunder with respect to historic preservation standards]; (ii) clean, free of debris, waste, and Hazardous Materials (other than any Pre-Existing Hazardous Materials that have not been Handled, Released, or Exacerbated), and (iii) free and clear of all liens and encumbrances other than the Permitted Title Exceptions and other licenses, easements or access rights approved or consented to by Port in accordance with ***Section 3.5*** (Restrictions on Encumbering Port's Reversionary Interest). If it is determined by Port that the condition of all or any portion of the Premises is not in compliance with the provisions of this Lease with respect to Hazardous Materials at the expiration or earlier termination of this Lease, then at Port's sole option, Port may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Port in the condition required herein. Except as set forth in ***Section 36.2*** (Demolition of Improvements), the Premises will be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto. Tenant hereby agrees to execute all documents as Port may deem necessary to evidence or confirm any such other termination.

36.2. ***Demolition of Improvements.***

(a) **Notice.** At the expiration or earlier termination of this Lease, at Port's sole election (**"Demolition Option"**), Port may require Tenant, at Tenant's sole cost, to Demolish and Remove the Improvements and surrender the Premises as a vacant parcel of unimproved real

property. Port will notify Tenant of Port's election to exercise the Demolition Option (i) no later than twenty-four (24) months prior to the expiration of this Lease, (ii) within ninety (90) days following Tenant's election to terminate this Lease in accordance with ***Section 7.3*** (Termination for Cost Associated with Change in Laws), ***Section 14.3(b)*** (Termination for Major or Uninsured Casualty), or ***Article 15*** (Condemnation), or (iii) upon termination of this Lease due to an Event of Default described in ***Section 25.4*** (Termination of Tenant's Right to Possession).

(b) Access After Termination. If Port exercises the Demolition Option in accordance with ***Section 36.2(a)*** (Notice), then if Port agrees that Tenant will complete the Demolition and Removal after the expiration or earlier termination of this Lease (or promptly thereafter if the Lease is terminated due to an Event of Default described in ***Section 25.4***) (Termination of Tenant's Right to Possession), Port and Tenant will enter into Port's standard license granting Tenant non-possessory access to the Premises in order for Tenant to perform the Demolition and Repair following the expiration or earlier termination of this Lease; provided, however, Tenant will perform the Demolition and Removal in compliance with ***Article 12*** (Construction) and Port may require insurance, bond, guaranty, Indemnification, and other requirements that exceed the coverage amounts or licensee obligations set forth in Port's standard license, that Port determines are reasonably appropriate to protect its interest in light of the risks and liabilities associated with the Demolition and Removal.

(c) Period to Complete. Tenant must commence and complete the Demolition and Removal in a timely manner, with due diligence and care, and complete the same within the time period agreed to between the Parties, but in no event longer than six (6) months following the expiration of earlier termination of this Lease. The provisions of this ***Section 36.2*** will survive the expiration or earlier termination of this Lease.

36.3. ***Personal Property.*** On or before expiration or earlier termination of this Lease, Tenant will remove, and will cause all Subtenants to remove (other than any Subtenants that are permitted to remain on the Premises beyond the termination of this Lease in accordance with a Non-Disturbance Agreement previously entered into between the applicable Subtenant and Port), all of their respective Personal Property and Signs within the Premises. If the removal of such Personal Property causes damage to the Premises, Tenant must promptly repair such damage, at no cost to Port. Any items not removed by Tenant as required herein will be deemed abandoned and may be stored, removed, and disposed of by Port at Tenant's sole cost and expense, and Tenant waives all claims against Port for any Losses resulting from Port's retention, removal or disposition of such Personal Property; provided, however, that Tenant will be liable to Port for all costs incurred in storing, removing and disposing of such abandoned property or repairing any damage to the Premises resulting from such removal.

36.4. ***Quitclaim.*** Upon the expiration or earlier termination of this Lease, the Premises will automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and will be surrendered to Port upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by Port, Tenant will promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effectuate the termination of the Leasehold Estate and to effectuate such transfer or vesting of title to the Premises, the Improvements and Personal Property that Port agrees are to remain within the Premises.

37. HOLD OVER.

Any holding over by Tenant after the expiration or termination of this Lease will not constitute a renewal hereof but will be deemed a month-to-month tenancy and will be upon each and every one of the other terms, conditions and covenants of this Lease, except that Minimum Rent payable for the applicable month will be equal to the higher of: (i) twenty percent (20%) of the average Modified Gross Income for the three (3) Lease Years immediately prior to the Expiration Date, or (ii) eight hundred percent (800%) of the monthly Minimum Rent payable for

the month immediately preceding the Expiration Date. Either Party may cancel said month-to-month tenancy upon thirty (30) days written notice to the other Party.

38. NOTICES.

38.1. ***Notices***. All notices, demands, consents, and requests which may or are to be given by any Party to the other must be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder will be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is two (2) days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Port:	Port of San Francisco Pier 1 San Francisco, CA 94111 Attention: Deputy Director of Real Estate and Development (Reference: [Insert Address of Premises/Pier 70] Telephone: (415) 274-0400
With a copy to:	Port of San Francisco Pier 1 San Francisco, CA 94111 Attention: Port General Counsel (Reference: [Insert Address of Premises/Pier 70] Telephone: (415) 274-0400
To Tenant:	
With a copy to:	

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by electronic-mail to the electronic-mail address set forth above (or such other number or address as may be provided from time to time by notice given in the manner required hereunder); however, neither Party may give official or binding notice by electronic-mail.

38.2. ***Form and Effect of Notice***. Every notice given to a Party or other Person under this ***Article 38*** must state (or be accompanied by a cover letter that states):

(a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any; and

(b) if applicable, the period of time within which the recipient of the notice must respond thereto.

In no event will a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this ***Section 38.2***.

39. ACCESS TO THE PREMISES BY PORT.

39.1. ***Entry by Port***. Port and its authorized Agents have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that Tenant or Tenant's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease.

39.2. ***General Entry***. In addition to its rights pursuant to ***Section 39.3*** (Emergency Entry) subject to the rights of any Subtenants, Port and its authorized Agents will have the right to enter the Premises at all reasonable times and upon reasonable notice as stated below for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises or to perform any services which Port has the right or obligation to perform in accordance with ***Section 10.1*** (Covenants to Repair and Maintain the Premises) or ***25.2*** (Right to Keep Lease in Effect)

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

(c) To post "**For Sale**" signs at any time during the Term; to post "**For Lease**" signs during the last six (6) months of the Term or during any period in which an Event of Default is continuing;

(d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties during the last eighteen (18) months of the Term; and

(e) To obtain environmental samples and perform equipment and facility testing.

Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises except in an emergency for the purposes set forth above. Such notice will be not less than three (3) business days' prior notice. Tenant will have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice will be required for Port's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in ***Section 39.2*** (General Entry).

39.3. ***Emergency Entry***. Port may enter the Premises at any time, without notice, in the event of an emergency. Port will have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these means, or otherwise, will not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion of the Premises.

39.4. ***No Liability***. Port will not be liable in any manner, and Tenant hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in this ***Article 39*** (Access to the Premises by Port) or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

39.5. ***Non-Disturbance***. Port will use its commercially reasonable efforts to conduct its activities on the Premises as allowed in this ***Article 39*** (Access to the Premises by Port) in a

manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

39.6. ***Subtenant Agreement.*** Tenant will require each Subtenant to permit Port to enter its premises for the purposes specified in ***Section 39.1*** (Entry by Port) through ***Section 39.3*** (Emergency Entry).

40. MORTGAGES.

40.1. *Mortgages.*

(a) Right to Grant Mortgages. Tenant has the right during the Term, to grant a mortgage, deed of trust or other security instrument (each a "**Mortgage**") encumbering (i) all or a portion of the Leasehold Estate in all or a portion of the Premises, (ii) Tenant's interest in any permitted Subleases thereon, (iii) any Personal Property of Tenant, (iv) products and proceeds of the foregoing, and (v) any other rights and interests of Tenant arising under or in connection with this Lease for the benefit of a Bona Fide Institutional Lender (together with its successors and assigns, a "**Lender**") as security for one or more loans related solely to the Project or the Property, the proceeds from which are used in whole or in part to pay or reimburse costs incurred in connection with the Project and/or the Property, subject to the terms and conditions contained in this ***Article 40*** (Mortgages)

"**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 pension fund, an investment banking or merchant banking 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 Mortgage is recorded in favor of such entity, owns or manages assets of at least Five Hundred Million Dollars ($500,000,000) in the aggregate (or the equivalent in foreign currency), or (ii) any Affiliate of any of the foregoing, or (iii) an Historic Preservation Tax Credit or Low Income Housing Credit investor or Affiliate thereof that has given a loan to Tenant to optimize or utilize effectively the Historic Preservation Tax Credits or Low Income Housing Tax Credits, as applicable.

(b) Restrictions on Financing. No Mortgage will be granted to secure obligations unrelated to the Project and/or the Property or to provide compensation or rights to a Lender in return for matters unrelated to the Project and/or the Property.

(c) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Lenders in this ***Article 40*** (Mortgages) the execution and delivery of a Mortgage will not give or be deemed to give a Lender any greater rights than those granted to Tenant hereunder.

(d) Transfer by Lenders. A Lender may transfer or assign all or any part of or interest in any Mortgage to a Bona Fide Institutional Lender without the consent of or notice to any Party; provided, however, that Port will have no obligations under this Agreement to a Lender unless Port is notified of such Lender. Furthermore, Port's receipt of notice of a Lender following Port's delivery of a notice or demand to Tenant or to one or more Lenders under ***Section 40.4*** (Lender's Obligations with Respect to the Property) will not result in an extension of any of the time periods in this ***Article 40*** (Mortgages) including the cure periods specified in ***Section 40.5*** (Provisions of Any Mortgage).

(e) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever will a Lender place or suffer to be placed any lien or encumbrance on Port's fee interest in the Land in connection with any financing permitted hereunder, or otherwise. Port will not subordinate its interest in the Premises, nor its right to receive Rent, to any Lender.

(f) **Violation of Covenant.** Any Mortgage not permitted by this ***Article 40*** (Mortgages) will be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

40.2. ***Copy of Notice of Default to Lender.***

(a) **Copy to Lender.** Whenever Port delivers any notice or demand to Tenant for any breach or default by Tenant in its obligations or covenants under this Lease, Port will at the same time forward a copy of such notice or demand to each Lender that has previously made a written request to Port for a copy of any such notices in accordance with ***Section 40.2(b)*** (Notice from Lender to Port). A delay or failure by Port to provide such notice or demand to any Lender that has previously made a written request therefor will extend, by the number of days until notice is given, the time allowed to such Lender to cure.

(b) **Notice From Lender to Port.** Each Lender is entitled to receive notices in accordance with ***Section 40.2(a)*** (Copy to Lender) provided such Lender has delivered a notice to Port in substantially the following form:

"The undersigned does hereby certify that it is a Lender, as such term is defined in that certain lease entered into by and between the City and County of San Francisco, operating by and through the San Francisco Port Commission, as landlord, and [insert name of Tenant], as tenant (the "**Lease**"), of tenant's interest in the Lease demising the property, a legal description of which is attached hereto as ***Exhibit A*** and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to tenant by Port be sent to the undersigned at the following address:

_____."

If Lender desires to have Port acknowledge receipt of Lender's name and address delivered to Port pursuant to this ***Section 40.2(b)***, then such request must be made in bold, underlined and in capitalized letters.

40.3. ***Lender's Option to Cure Defaults.***

(a) Before or after receiving any notice of failure to cure referred to in ***Section 40.2*** (Copy of Notice of Default to Lender), each Lender will have the right (but not the obligation), at its option, to commence to cure or cause to be cured any Event of Default, within the same period afforded to Tenant hereunder plus an additional period of (i) fifteen (15) days with respect to a monetary Event of Default and (ii) forty-five (45) days with respect to a non-monetary Event of Default that is susceptible of cure by such Lender without obtaining title to the applicable property subject to the applicable Mortgage or acquiring the ownership interests in Tenant, as applicable.

(b) If a non-monetary Event of Default cannot be cured by Lender without obtaining title to the Leasehold Estate, or applicable portion thereof, Port will refrain from exercising its right to terminate this Lease and will permit the cure by a Lender of such Event of Default if, within the cure period set forth in ***Section 40.3(a)***: (i) such Lender notifies Port in writing that such Lender intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property or ownership interests, as applicable; (ii) such Lender commences foreclosure proceedings whether by non-judicial foreclosure, judicial foreclosure, by appointment of a receiver, or deed (or assignment) in lieu of foreclosure, within sixty (60) days after giving such notice, and diligently pursues such proceedings to completion; and (iii) after obtaining title, such Lender, subject to ***Section 40.4*** (Lender's Obligations with Respect to the Property), diligently proceeds to cure those Events of Default that are susceptible of cure by such Lender. The period from the date Lender so notifies Port until a Lender acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is herein called the "**Foreclosure Period.**"

(c) Nothing in this ***Article 40*** (Mortgages) will preclude Port from exercising any rights or remedies under this Lease against Tenant (other than a termination of this Lease) with respect to any other Events of Default during the Foreclosure Period.

(d) Notwithstanding the foregoing, no Lender will be required to cure any non-monetary Event of Default that is specific or personal to Tenant which cannot be cured by Lender (by way of example and not limitation, Tenant bankruptcy, or the failure to submit required information in the possession of Tenant). Lender's acquisition of title to the Leasehold Estate, or the completion of a foreclosure (or assignment in lieu thereof), as applicable, will be deemed to be a cure of such Events of Default specific or personal to Tenant. The foregoing will not excuse a Lender's failure to cure any continuing default that is curable by Lender.

(e) If a Lender is prohibited by any law, injunction, or any bankruptcy, insolvency or other judicial proceeding from commencing or prosecuting a foreclosure action, then the times specified for commencing or prosecuting such foreclosure action, as applicable, will be extended by each day of such prohibition.

40.4. ***Lender's Obligations with Respect to the Property.***

(a) **Rights and Obligations upon Lender Acquisition.** Except as set forth in this ***Article 40*** (Mortgages), no Lender will have any obligations or other liabilities under this Lease unless and until it acquires title by any method to the Leasehold Estate (referred to as "**Foreclosed Property**"). Except as otherwise provided herein (including, without limitation, ***Sections 40.4(b)—(d)***, a Lender (or its designee, successor or assign) or other winning bidder at a foreclosure sale (collectively, a "**Successor Owner**") that acquires title to any Foreclosed Property (a "**Lender Acquisition**") will take title subject to all of the terms and conditions of this Lease to the extent applicable to the Foreclosed Property. Upon completion of a Lender Acquisition, Port will recognize the Successor Owner as Tenant under this Agreement. Such recognition will be effective and self-operative without the execution of any further instruments; provided, upon request, at no cost to Port, Port will execute a written agreement recognizing Successor Owner. A Successor Owner, upon a Lender Acquisition, will be required promptly to cure all monetary defaults and all other ongoing defaults then reasonably susceptible of being cured by such Successor Owner to the extent not cured prior to completion of the Lender Acquisition. The foregoing obligation includes any obligation to Restore, except as set forth in ***Section 40.4(c)*** (No Obligation to Restore).

(b) **Obligations of Lender Prior to Lender Acquisition.** Prior to a Lender Acquisition, Port will have no right to enforce any obligation under this Lease against any Lender unless such Lender expressly assumes and agrees to be bound by this Lease in a form reasonably approved in writing by Lender and Port, which form will be consistent with the terms of this Lease (for the avoidance of doubt, the foregoing will not limit Port's rights and remedies against Tenant notwithstanding any interest Lender may have in Tenant or any right against any successor owner of the Property for a continuing default, as set forth in and subject to the limitations of this ***Article 40*** (Mortgages). However, Lender agrees to comply during a Foreclosure Period with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by Lender prior to acquiring possession of the Lease, including the payment of all Impositions and any other sums due and owing hereunder.

(c) **No Obligation to Restore.** Subject to ***Sections 40.4(d)*** (Obligation to Sell If Not Restore) and ***(e)*** (Lender Agreement to Complete or Restore), Lender, including any Lender who obtains title to Foreclosed Property through a Lender Acquisition will not be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements beyond the extent necessary to preserve or protect the Improvements already made, to remove any debris and to perform other reasonable measures to protect the public; provided, however, any other Person who thereafter obtains title to the Leasehold Estate, or any interest therein from or through such Lender (or its designee), or any other Successor Owner (other than such Lender) will be obligated to Restore any damage or destruction to the

Improvements in accordance with this Lease, except that any time period for such Restoration shall be reset as if the applicable casualty or condemnation occurred as of the date of the Lender Acquisition.

(d) **Obligation to Sell If Not Restore**. In the event that Lender acquires the Foreclosed Property through a Lender Acquisition and Lender chooses not to complete or Restore the Improvements following a casualty event, it will notify Port in writing of its election within one hundred twenty (120) days following the later of the Lender Acquisition or the casualty, and will therefore use good faith efforts to sell its interest with reasonable diligence to a purchaser that will be obligated to Restore the Improvements, but in any event Lender will use good faith efforts to cause such sale to occur within nine (9) months following Lender's written notice to Port of its election not to Restore (the "**Sale Period**").

(e) **Lender Agreement to Restore**. If Lender fails to sell its interest in the Leasehold Estate within the Sale Period, such failure will not constitute a default hereunder but Lender will be obligated to Restore the Improvements to the extent this Lease obligates Tenant to so Restore (except that, if the applicable casualty or condemnation occurred prior to the Lender Acquisition, any time period for such Restoration shall be reset as if the applicable casualty or condemnation occurred as of the date of the Lender Acquisition). In the event Lender agrees, or is deemed to have agreed, to Restore the Improvements, (i) all such work will be performed in accordance with all the requirements set forth in this Lease, (ii) Lender shall engage a qualified construction manager with at least ten (10) years' experience managing construction projects of a similar nature, and (iii) Lender shall confirm to Port in writing that its construction manager satisfies the foregoing requirement.

40.5. ***Provisions of Any Mortgage***. Each Mortgage must provide that Lender will during the Term, (i) promptly provide Port by registered or certified mail a copy of any notice delivered by Lender to Tenant of a borrower event of default (i.e., following the expiration of all notice and cure periods) under the Mortgage, and (ii) give Port prior notice before Lender initiates any Mortgage foreclosure action with respect to the Property or the Project.

40.6. ***No Impairment of Mortgage***. No default by Tenant under this Lease will invalidate or defeat the lien of any Lender. Neither a breach of any obligation in a Mortgage, nor a foreclosure under any Mortgage will defeat, diminish, render invalid or unenforceable or otherwise impair Tenant's rights or obligations under this Lease or constitute, by itself, a default under this Lease.

40.7. ***Multiple Mortgages***.

(a) If at any time there is more than one Mortgage constituting a lien on a single portion of the Property or any interest therein, the lien of Lender prior in time to all others (the "**Senior Lender**") will be vested with the rights under ***Sections 40.3*** (Lender's Option to Cure Defaults), ***40.10*** (New Lease), ***40.13*** (Consent of Lender), and ***40.14*** (Cooperation) to the exclusion of the holder of any other Mortgage except if the Senior Lender fails to exercise the rights set forth in ***Sections 40.3*** (Lender's Option to Cure Defaults) and ***40.10*** (New Lease) as applicable, then the holder of a junior Mortgage that has provided notice to Port in accordance with ***Section 40.2*** (Copy of Notice of Default to Lender) will succeed to the rights set forth in ***Sections 40.3*** (Lender's Option to Cure Defaults) and ***40.10*** (New Lease) as applicable, only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in ***Sections 40.3*** (Lender's Option to Cure Defaults) and ***40.10*** (New Lease) as applicable.

(b) A Senior Lender's failure to exercise its rights under ***Sections 40.3*** (Lender's Option to Cure Defaults) ***40.10*** (New Lease), ***40.13*** (Consent of Lender) ***or 40.14*** (Cooperation) as applicable, or any delay in the response of any Lender to any notice by Port will not extend (i) any cure period, (ii) period to enter into a New Lease, or (iii) Tenant's or any Lender's rights under this ***Article 40*** (Mortgages) For purposes of this ***Section 40.7***, in the absence of an order of a court of competent jurisdiction that is served on Port, a title report

prepared by a reputable title company licensed to do business in the State of California and having an office in the City, setting forth the order of priorities of the liens of Mortgages on real property, may be relied upon by Port as conclusive evidence of priority.

40.8. ***Cured Defaults***. Port will accept performance by a Lender with the same force and effect as it performed by Tenant. No such performance on behalf of Tenant in and of itself will cause Lender to become a "mortgagee in possession" or otherwise cause it to be bound by or liable under this Lease.

40.9. ***Limitation on Liability of Lender***. Notwithstanding anything herein to the contrary, no Lender will become liable under the provisions of this Lease unless and until such time as it becomes the owner of the Leasehold Estate and then only for so long as it remains the owner of the Leasehold Estate and only with respect to the obligations arising during such period of ownership.

If a Lender becomes the owner of the Leasehold Estate under this Lease or under a New Lease, (i) except as set forth in ***Sections 40.4(c)*** (No Obligation to Restore) and ***40.4(d)*** (Obligation to Sell if Not Restore), such Lender will be liable to Port for the obligations of Tenant hereunder only to the extent such obligations arise during the period that such Lender remains the owner of the Leasehold Estate, and (ii) in no event will Lender have personal liability under this Lease or New Lease, as applicable, greater than Lender's interest in this Lease or such New Lease, and Port will have no recourse against Lender's assets other than its interest herein or therein.

40.10. ***New Lease***. In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except (i) by Total Condemnation, (ii) as the result of damage or destruction as provided in ***Article 14*** (Damage or Destruction), or (iii) as a result of Tenant exercising its option to terminate this Lease due to change in Laws as provided in ***Section 7.3*** (Right to Terminate Lease), Port will serve upon Lender written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. The Senior Lender will thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions ("**New Lease**"):

(i) Upon the written request of Lender, within thirty (30) days after service of such notice that this Lease has been terminated ("**New Lease Execution Period**"), Port will enter into a New Lease of the Premises with the most senior Lender giving notice within such period or its designee, provided that Lender assumes Tenant's obligations as Sublandlord under any Subleases then in effect; and

(ii) Such New Lease will be entered into at the Lender's cost, will be effective as of the date of termination of this Lease, and will be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). The New Lease will have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. The New Lease will require Lender to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the New Lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is continuing and is reasonably susceptible of being performed by such Lender, including any obligation to Restore subject to ***Sections 40.4(d)*** (Obligation to Sell If Not Restore) and ***40.4(e)*** (Lender Agreement to Restore). Upon the execution of the New Lease, Lender will pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and will pay all expenses, including reasonable Attorneys' Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the

Premises, and the preparation, execution and delivery of such New Lease. The provisions of this ***Section 40.10(ii)*** will survive any termination of this Lease (except as otherwise expressly set out in the first sentence of ***40.10***) (New Lease)), and will constitute a separate agreement by Port for the benefit of and enforceable by Lender.

40.11. ***Nominee***. Any rights of a Lender under this ***Article 40*** (Mortgages), as amended hereby, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Lender; provided, however, no Lender will acquire title to the Lease through a nominee or designee which is not a Person otherwise permitted to become Tenant hereunder; provided, further that a Lender may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Lender.

40.12. ***Subleases and Other Property Agreements***. Effective upon the commencement of the term of any New Lease executed pursuant to ***Subsection 40.10*** (New Lease), any Sublease then in effect will be assigned and transferred without recourse by Port to Lender. Between the date of termination of this Lease and expiration of the New Lease Execution Period, Port will not (1) enter into any new management agreements or agreements for the maintenance of the Premises or the supplies therefor (collectively, "**Other Property Agreements**") or Subleases which would be binding upon Lender if Lender enters into a New Lease, (2) cancel or materially modify any of the existing Subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, termination or surrender of any Subleases subject to a Non-Disturbance Agreement with the Subtenant of such Sublease or Other Property Agreement without the written consent of Lender, which consent will not be unreasonably withheld or delayed; provided, however Lender's prior approval will not be required for any Other Property Agreement entered into, cancelled, or modified by Port due to an emergency. Effective upon the commencement of the term of the New Lease, Port will also quitclaim to Lender, its designee or nominee (other than Tenant), without recourse, all of Tenant's Personal Property remaining on the Premises.

40.13. ***Consent of Lender***. Port will not (i) modify this Lease in a manner that increases base rent or percentage rent owed to Port, decreases the Term, amends any provision of this ***Article 40***, or otherwise amends the terms of this Lease in a manner that creates a material adverse effect upon Senior Lender, or (ii) terminate or cancel this Lease without Senior Lender's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any such modification, termination or cancellation of this Lease without Senior Lender's consent will be effective against Senior Lender.

No merger of this Lease and the fee estate in the Premises will occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Lender.

40.14. ***Cooperation***. Port, through its Executive Director, and Tenant will cooperate in including in this Lease by suitable written amendment or agreement from time to time any provision which may be reasonably requested by the Senior Lender and customarily included in such amendment or agreement to implement the provisions and intent of this ***Article 40*** (Mortgages) provided, however, that any such amendment or agreement will not adversely affect in any material respect any of Port's rights and remedies under this Lease. Port's execution of any such amendment or agreement is conditioned on Port's receipt of its share of Net Refinancing Proceeds (if any), and Attorneys' Fees and Costs incurred in connection with the review and negotiation of such document.

40.15. ***Reliance***. The provisions of this ***Article 40*** are for the benefit of the Lender and may be relied upon and shall be enforceable by the Lender.

40.16. ***Priority of Lender Protections*** In the event of a conflict between a provision in ***Section 18.1(e)*** (Mortgaging of Leasehold) and/or this ***Article 40***, on the one hand, and any other

provision of this Lease, on the other hand, the provision set forth in ***Section 18.1(e)*** (Mortgaging of Leasehold) and or this ***Article 40*** will control.

41. NO JOINT VENTURE.

Nothing contained in this Lease will be deemed or construed as creating a partnership or joint venture between Port and Tenant or between Port and any other Person, or cause Port to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the Agent of the other Party in any respect.

42. ECONOMIC ACCESS.

Tenant will comply with the Workforce Development Plan attached hereto as ***Exhibit M*** (collectively, the "**Workforce Development Plan**"). The Workforce Development Plan is designed to afford opportunities for San Francisco residents to participate in the construction and operation of the Initial Improvements. Tenant will comply with the Workforce Development Plan with respect to the operation and leasing of the Premises, and will include in its Subleases, applicable provisions of the Workforce Development Plan in accordance with the same.

43. REPRESENTATIONS AND WARRANTIES.

Tenant represents, warrants and covenants to Port as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a [_____] duly organized and validly existing under the laws of the State of [_____]. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

(b) Port. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Port in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Port and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under,

any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, and (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein will survive any termination of this Lease to the extent specified in this Lease.

44. MITIGATION AND IMPROVEMENTS MEASURES.

In order to mitigate the significant environmental impacts of this Lease and operation of the Premises, Tenant agrees that the operation of the Project will be in accordance with the Mitigation and Improvement Measures attached to this Lease as ***Exhibit J*** (Mitigation and Improvement Measures) applicable to the Premises and the Project. As appropriate, Tenant will incorporate such Mitigation and Improvement Measures into any contract (including any Sublease) for the operation of the Improvements.

45. PORT AND CITY SPECIAL PROVISIONS.

Tenant will comply with the Port and City Special Provisions attached hereto as ***Exhibit T*** (Port and City Special Provisions).

46. GENERAL

46.1. ***Time of Performance.***

(a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) **Weekend or Holiday.** A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working day.

(c) **Days for Performance.** All periods for performance or notices specified herein in terms of days will be calendar days, and not business days, unless otherwise provided herein.

(d) **Time of the Essence.** Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of ***Article 22*** relating to Force Majeure.

46.2. ***Interpretation of Agreement.***

(a) **Exhibits and Schedule.** Whenever an "**Exhibit**" or "**Schedule**" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such exhibits and schedules are incorporated herein by reference.

(b) **Captions.** Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of this Lease.

(c) **Words of Inclusion.** The use of the term "**include**", "**including**", "**such as**", or words of similar import, when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) **No Presumption Against Drafter**. This Lease has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Lease will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including California Civil Code Section 1654).

(e) **Fees and Costs**. The Party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) **Lease References**. Wherever reference is made to any provision, term or matter "**in this Lease**," "**herein**" or "**hereof**," or words of similar import, the reference will be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered article, section or paragraph of this Lease or any specific subdivision thereof.

(g) **Legal References**. Wherever reference is made to a specific code or section of a specific Law, the reference will be deemed to include any amendment, restatement or replacement.

46.3. ***Successors and Assigns***. This Lease is binding upon and will inure to the benefit of the successors and assigns of Port, Tenant, and any Lender. Where the term "**Tenant**," "**Port**," "**Lender**" is used in this Lease, it means and includes their respective successors and assigns, including, as to any Lender, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or a the entity which has succeeded to Port's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Port for purposes of this Lease.

46.4. ***No Third-Party Beneficiaries***. This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and will not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in ***Article 40*** (Mortgages) with regard to Lenders and ***Section 25.9*** (Horizontal Developer Right to Perform Deferred Infrastructure) with regard to Horizontal Developer's ability to complete the Deferred Infrastructure under certain limited circumstances.

46.5. ***Real Estate Commissions***. Port is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease (except as provided in the DDA with respect to Public Offerings (DDA Section 7.5)) or any Sublease. In the event any broker, agent or finder makes a claim through Tenant or Subtenant (except with respect to a Public Offering managed by a Qualified Broker selected jointly by Port and Horizontal Developer under the DDA), Tenant will Indemnify Port from any Losses arising out of such claim.

46.6. ***Counterparts***. This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

46.7. ***Entire Agreement***. This Lease (including the Exhibits) constitute the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement will be permitted to contradict or vary the terms of this Lease.

46.8. ***Amendment***. Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

46.9. ***Governing Law; Selection of Forum***. This Lease will be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Port's entering into this Lease, Tenant agrees that all actions or proceedings arising directly

or indirectly under this Lease may, at the sole option of Port, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

46.10. ***Recordation***. This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as ***Exhibit V*** (Form of Memorandum Lease). Promptly upon Port's request following the expiration of the Term or any other termination of this Lease, Tenant will deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Port and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Port may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

46.11. ***Attorneys' Fees***. The Prevailing Party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, will be entitled to recover from the other party its costs and expenses of suit, including but not limited to Attorneys' Fees and Costs, which will be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section includes, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' Fees and Costs under this Section includes attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney 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.

46.12. ***Effective Date***. This Lease will become effective on the date (the "**Effective Date**") the Parties duly execute and deliver this Lease. The Effective Date will be inserted by Port on the cover page and on page 1 hereof, provided, however, that either Party's failure to insert the Effective Date will not invalidate this Lease. Where used in this Lease or in any of its exhibits, references to "the date of this Lease," the "reference date of this Lease," "Lease Date" or "Effective Date" will mean the Effective Date determined as set forth above and shown on the first page hereof.

46.13. ***Severability***. If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision will not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease will continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

47. DEFINITIONS OF CERTAIN TERMS.

For purposes of this Lease, initially capitalized terms will have the meanings ascribed to them in this ***Article 47***.

"**28-Acre Site**" is defined in ***Recital C***.

"Additional Rent" means any and all sums (other than Base Rent and Percentage Rent) that may become due or be payable by Tenant under this Lease.

"Affiliate" means any Person directly or indirectly Controlling, Controlled by or under Common Control with the other Person in question.

"Agents" means, when used with reference to either Party to this Lease, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"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 Information" is defined in ***Section 5.1(a)(ii)***.

"Assessor's Office" means the Office of the Assessor-Recorder in the City and County of San Francisco, or any successor agency responsible for assessing real property in the City and County of San Francisco.

"Assignment" is defined in ***Section 18.1(a).***

"Assignment and Assumption Agreement" is defined in ***Section 18.1(b)(i).***

"Attorneys' Fees and Costs" means reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

"Award" means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

"Baseline Assessed Value" means the assessed value of a Taxable Parcel in the SUD in the City Fiscal Year in which the Chief Harbor Engineer issues the related Final Certificate of Occupancy.

"Base Rent" is defined in ***Section 3.3*** of ***Exhibit D.***

"Base Rent Deposit" is defined in ***Section 17.1(a).***

"Bona Fide Institutional Lender" is defined in ***Section 40.1(a)***.

"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" is defined in ***Section 3.8*** of ***Exhibit D***.

"Capital Items" is defined in ***Section 10.2(a).***

"Capital Reserves" is defined in ***Section 10.2(a).***

"Capital Reserve Deposits" is defined in ***Section 10.2(a).***

"CASp" is defined in ***Section 1.1(c)***.

"Casualty" is defined in ***Section 14.1***.

"Casualty Notice" is defined in ***Section 14.1(a)***.

"**Certificate of Completion**" is defined in the Vertical DDA"

"**City**" means the City and County of San Francisco, a municipal corporation.

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

"**Commencement Date**" is defined in the Basic Lease Information.

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

"**Completion**" means completion of construction of all or any applicable portion of the Initial Improvements [**Note: Use if Deferred Infrastructure included in VCA:** including the Deferred Infrastructure], in accordance with the terms hereof, as conclusively evidenced by the issuance of a temporary certificate of occupancy. "**Complete**" has a correlative meaning.

"**Condemnation**" means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

"**Condemnation Date**" means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

"**Condemned Land Value**" is defined in ***Section 15.4(c)***.

"**Construction**" is defined in ***Section 12.1(a).***

"**Construction Impacts**" is defined in ***Section 4.1***.

"**Control**" is defined in ***Section 18.1(a)***. "**Controlled**" and "**Controlling**" have correlative meanings.

"**Current Assessed Value**" means a Taxable Parcel's Baseline Assessed Value as escalated or reassessed on the date of determination.

"**DDA**" is defined in ***Recital C***.

"**Default Rate**" is defined in ***Section 3.11*** of ***Exhibit D***.

[**Insert if Tenant has obligation to perform Deferred Infrastructure.**] "**Deferred Infrastructure**" has the meaning ascribed to such term in the Vertical DDA.

"**Deferred Infrastructure Area**" is defined in ***Section 19.2(a)(iii)***.

"**Demolish and Remove**" means the demolition of the Improvements and the removal and disposal of all debris in accordance with all Laws. "**Demolition and Removal**" has a correlative meaning.

"**Demolition Option**" is defined in ***Section 36.2(a)***.

"**Design for Development**" means the Pier 70 Design for Development that the Port Commission and the Planning Commission approved.

"**Development Agreement**" means that certain Development Agreement between the City and Horizontal Developer dated as of _____, 2018, as may be amended from time to time.

"**Development Projects**" is defined in ***Section 4.1***.

"Disabled Access Laws" means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. and disabled access laws under the Port's building code.

"Effective Date" is defined in ***Section 46.12***.

"Encroachment Area" is defined in ***Section 1.1(e)(i).***

"Encroachment Area Charge" is defined in ***Section 1.1(e)(i).***

"Environmental Financial Performance Deposit" is defined in ***Section 17.2***.

"Environmental Laws" is defined in ***Section 21.6***.

"Environmental Notice" is defined in ***Section 17.3(b)***.

"Environmental Oversight Deposit" is defined in ***Section 17.3(a)***.

"Environmental Regulatory Action" is defined in ***Section 21.6***.

"Environmental Regulatory Agency" is defined in ***Section 21.6.***

"Event of Default" is defined in ***Section 24.1***.

"Exacerbate" or **"Exacerbating"** is defined in ***Section 21.6.***

"Excepted Hazardous Material" is defined in ***Section 21.1***.

"Excluded Transfer" is defined in ***Section 18.1(a)***.

"Executive Director" means the Executive Director of the Port or his or her designee.

"Exempt Parcel" means any assessor's parcel that is exempt from taxation, including any levy of Mello-Roos Taxes under an RMA (as defined in the Financing Plan), or under any state or federal tax exempt determination.

"Facilities Condition Report" is defined in ***Section 10.2(b)***.

"FCR Date" is defined in ***Section 10.2(a)***.

"Final Construction Documents" means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

"Flagpoles" is defined in ***Section 9.5.***

"FOG Ordinance" means Sections 140-140.7 of Article 4.1 of the San Francisco Public Works Code, or any subsequent amendment or replacement of the same that sets forth prohibitions, limitations and requirements for the discharge of fats, oils and grease into the City's sewer system by food service establishments.

"Force Majeure" means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of such Party, including, but not restricted to, acts of nature or of the public enemy, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, and unusually severe weather. Force Majeure does not include (i) failure to obtain financing or failure to have adequate funds, (ii) sea level rise, or (iii) any event that does not cause an actual delay. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make additional repairs or obtain additional Regulatory Approvals that would not have otherwise been required but for the Force Majeure Event.

"Foreclosed Property" is defined in ***Section 40.4(a)***.

"Foreclosure" means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

"Foreclosure Period" is defined in ***Section 40.3(b).***

"Forest City Agreements" is defined in ***Section 4.2(a)(vi)***

"graffiti" is defined in ***Section 9.6***.

"Gross Income" is defined in ***Section 3.5(a)(iii)*** of ***Exhibit D***.

"Handle" is defined in ***Section 21.6***.

"Hard costs" is defined in ***Section 10.5***.

"Hazardous Material" is defined in ***Section 21.6***.

"Hazardous Material Claim" is defined in ***Section 21.6.***

"Hazardous Material Condition" is defined in ***Section 21.6.***

"Historic Core" is described in ***Section 4.2(a)(vi)***.

"Horizontal Developer" is defined in ***Recital C***.

"IFD" is an acronym for Infrastructure Financing District No. 2 (Port of San Francisco), formed by Ordinance No. 27-16.

"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.

"Impositions" is defined in ***Section 5.1(b)***.

"Improvements" means all buildings, structures, fixtures and other improvements erected, built, placed, installed, constructed, renovated, Restored, or Rehabilitated, located upon or within the Premises on or after the Commencement Date, including, but not limited to, the Initial Improvements and any Subsequent Construction.

"Indemnified Parties" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Port; all of the Agents of the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, all other Person acting on their behalf, and each of them.

"Indemnify" means indemnify, protect and hold harmless.

"Index" is defined in ***Section 3.4(a)(iv)*** of ***Exhibit D***.

"Infrastructure CFD" means the City and County of San Francisco Community Facilities District No. [__] (Pier 70 Public Improvements).

"Initial Improvements" means all Improvements to be built on the Premises or portion(s) thereof **[Note: add if included in VCA:** including the Deferred Infrastructure] in accordance with the Vertical DDA, Scope of Development, and SUD, [**Note: include for historic buildings:** including, without limitation, all renovation and Rehabilitation work on the existing building(s)].

"Investigate" or **"Investigation** is defined in ***Section 21.6.***

"Invitees" when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and Subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of Subtenants.

"Land" is defined in Basic Lease Information.

"Late Charge" is defined in ***Section 3.12*** of ***Exhibit D.***

"Law" or **"Laws"** means any one or more present and future laws, (including Environmental Laws) ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

"Lease" means this lease, as it may be amended from time to time.

"Leasehold" or **"Leasehold Estate"** means Tenant's leasehold estate created by this Lease.

"Leasing Activity Report" is defined in ***Section 9.3***.

"Lease Year" means each calendar year during the Term.

"Lender Acquisition" is defined in ***Section 40.4(a)***.

"Lender" means the holder or holders of a Mortgage in compliance with ***Article 40*** (Mortgages) and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage will be deemed a single Lender for purposes of this Lease.

"Loss" or **"Losses"** when used with reference to any Indemnity means any and all claims, demands, losses, liabilities (including direct or vicarious liabilities), damages (including foreseeable and unforeseeable, incidental and consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

"Low Income Housing Tax Credit" means a tax credit obtained in accordance with 26 U.S. Code §42 (as amended from time to time), or an equivalent federal or state tax credit program for affordable housing.

"Maintenance Notice" is defined in ***Section 10.5***.

"Major Casualty" means damage to or destruction of all or any portion of the Premises to the extent that the hard costs of Restoration will exceed thirty percent (30%) of the hard costs to replace the Premises in their entirety. The calculation of such percentage will be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Casualty.

"Managing Party" is defined in ***Section 18.1(a)***.

"Master Lease" is defined in ***Recital C***.

"Material Systems" is defined in ***Section 10.5***.

"Memorandum of Lease" means the Memorandum of this Lease, between Port and Tenant, recorded in the Official Records, in the form of ***Exhibit V*** attached hereto.

"Minimum Net Worth Amount" is defined in ***Section 18.1(a)***.

"Minimum Public Benefit Area" is defined in the Basic Lease Information.

"**Mitigation and Improvement Measures**" means the Mitigation and Monitoring Program described in ***Exhibit J***.

"**Mortgage**" means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of the Leasehold Estate recorded in the Official Records.

"**Net Awards and Payments**" is defined in ***Section 15.4***.

"**Net Sale Proceeds**" is defined in ***Section 3.6(c)(i)*** of ***Exhibit D***.

"**Net Worth Guarantor**" is defined in ***Section 18.1(a)***.

"**Net Worth Guaranty**" is defined in ***Section 18.1(a)***.

"**Net Worth Requirement**" is defined in ***Section 18.1(a)***.

"**New Hazardous Material**" is defined in ***Section 21.6***.

"**New Lease**" is defined in ***Section 40.10***.

"**New Lease Execution Period**" is defined in ***Section 40.10(i)***.

"**Non-Disturbance Agreements**" is defined in ***Section 18.4(a)***.

"**Notice of Special Tax**" is defined in ***Section 5.2(a).***

"**Notice to Vacate**" is defined in ***Section1.1(e)(i).***

"**Official Records**" means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the City and County of San Francisco.

"**Other Property Agreements**" is defined in ***Section 40.12***.

"**Partial Condemnation**" is defined in ***Section 15.3(b)***.

"**Party**" means Port or Tenant, as a party to this Lease; "**Parties**" means both Port and Tenant, as Parties to this Lease.

"**PCBs**" is defined in ***Section 21.6.***

"**Percentage Rent**" is defined in ***Section 3.5(b)(i) Exhibit D***.

"**Percentage Rent Commencement Date**" is defined in ***Section 3.5(b)(i)*** of ***Exhibit D***.

"**Percentage Rent Statement**" is defined in ***Section 3.5(c)(i)*** of ***Exhibit D***.

"**Permitted Title Exceptions**" is defined in ***Section 1.1(b)***.

"**Permitted Uses**" means, as applicable, the Permitted Uses Before Commencement of Construction of the Project or the Permitted Uses After Construction of the Project, in each case as defined in the Basic Lease Information.

"**Person**" means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

"**Personal Property**" means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

"**Pesticide Ordinance**" is defined in ***Section 21.5***.

"**Pier 70 Building Signage Plan**" means a Signage Plan for buildings within the Pier 70 SUD adopted by the Port in accordance with DDA Section 13.7(c) Building Signage).

"**Pier 70 Parties**" is defined in ***Section 4.2(b)***.

"**Pier 70 Risk Management Plan**" is defined in ***Section 21.6***

"**Pier 70 Shipyard**" is defined in ***Section 4.2(a)(x)***.

"**Port**" means the San Francisco Port Commission.

"**Port Environmental Risk Policy**" is defined in ***Section 17.2***.

"**Port Representative**" is defined in ***Section 3.9*** of ***Exhibit D***.

"**Port's Repair Notice**" is defined in ***Section 10.5***.

"**Pre-Existing Hazardous Materials**" means any Hazardous Material existing on the Premises as of the Effective Date and identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"**Premises**" is defined in the Basic Lease Information.

"**Prevailing party**" is defined in ***Section 46.11***.

"**Prime Rate**" means the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks, as published by the Wall Street Journal, or if the Wall Street Journal has ceased to publish the Prime Rate, then such other equivalent recognized source.

"**Prohibited Use**" is defined in ***Section 3.2***.

"**Prohibited Use Charge**" is defined in ***Section 3.3***.

"**Project**" means the project described in the Scope of Development attached hereto as ***Exhibit C-1***, including all Improvements.

"**Project Approvals**" are the project approvals for the 28-Acre Site listed in ***Exhibit E*** (Project Approvals) attached hereto and made a part hereof, as may be amended from time to time.

"**Property**" is defined in Basic Lease Information.

"**public work**" is defined in ***Section 12.4(g)***.

"**Qualified Transferee**" is defined in ***Section 18.1(a)***.

"**Qualifying Refinancing**" is defined in ***Exhibit D***.

"**reasonable wear and tear**" is defined in ***Section 10.1***.

"**Reassessment**" means a reduction in ad valorem taxes assessed against a Taxable Parcel through a proceeding under the California Revenue & Taxation Code.

"**Record Drawings**" is defined in ***Section 12.6(a)***.

"**Refinancing Proceeds**" is defined in ***Section 3.7(e)*** of ***Exhibit D***.

"**Refinancing**" is defined in ***Section 3.7(e)*** of ***Exhibit D***.

"**Regulatory Approval**" means any authorization, approval or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, RWQCB, SFPW, the Army Corps of Engineers, and any Environmental Regulatory Agency.

["**Rehabilitation**" means the repair or alteration of an historic building that does not damage or destroy materials, features, or finishes considered important in defining the building's historic character.] [**Note: Applicable for leases with historic buildings**]

"**Reimbursable Subtenant Costs**" is defined in ***Section 18.4(b)(vi)(3)***.

"**Related Third Party**" and "**Related Third Parties**" are defined in ***Section 19.2(a)(vi)***.

"**Release**" is defined in ***Section 21.6***.

"**Remediate**" or "**Remediation**" is defined in ***Section 21.6***.

"**Rent**" means the sum of Prepaid Rent, Base Rent (including all adjustments), Percentage Rent, Sale Proceeds, Refinancing Proceeds, Additional Rent and all other sums payable by Tenant to Port hereunder, including any Late Charges and interest assessed at the Default Rate.

"**Replacement Notice**" is defined in ***Section 9.5***.

"**Requested Information**" is defined in ***Section 5.1(a)(ii)***.

"**Required Uses**" is defined in the Basic Lease Information.

"**Restoration**" means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable. All Restoration will be conducted in accordance with the provisions of ***Section 12***. "**Restore**" and "**Restored**" have correlative meanings.

"**RWQCB**" will mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

"**Sale**" is defined in ***Section 3.6(f)*** of ***Exhibit D***.

"**Sale Period**" is defined in ***Section 40.4(d)***.

"**Sale Proceeds**" is defined in ***Section 3.6(f)*** of ***Exhibit D***.

"**Second Default Notice**" is defined in ***Section 25.4(a)***.

"**Second NDA Notice**" is defined in ***Section 18.4(e)(ii)***.

"**Secretary's Standards**" means the Standards for Rehabilitation of Historic Properties and related Guidelines published in the Secretary of the Interior's Standards for the Treatment of Historic Properties.

"**Security Deposit**" is defined in ***Section 17.4(a)***.

"**Senior Lender**" is defined in ***Section 40.7(a)***.

"**SFPUC**" means the San Francisco Public Utilities Commission.

"**SFPW**" means San Francisco Public Works.

"**Sign**" is defined in ***Section 3.4***.

"**Significant Change**" is defined in ***Section 18.1(a)***.

"**Significant Change Certificate**" is defined in ***Section 18.1(b)(ii)***.

"**Special Taxes**" means the special taxes to be levied on the Land (and other property in the Pier 70 area) in accordance with the terms and conditions of the "Rate and Method of Apportionment of Special Tax" applicable to the Infrastructure CFD and other applicable CFDs, as more particularly disclosed in ***Exhibit H-3*** (CFD Matters) attached hereto.

"**State**" means the State of California.

"**State Lands Indemnified Parties**" means the State of California, the California State Lands Commission, all of its heirs, legal representatives, successors and assigns, and all other Persons acting on its behalf.

"**Sublease**" means any lease, sublease, license, concession or other agreement (including, without limitation, a Sublease to Port) by which Tenant leases, subleases, demises, licenses or

otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons), and any amendment, modification or supplement thereto.

"**Subleased Space**" means the portion of the Premises subject to a Sublease.

"**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-3.

"**Sub-Project Area G 4**" means the sub-project area of IFD Project Area G described in Appendix G-4.

"**Subsequent Construction**" means all repairs to and reconstruction, replacement, addition, expansion, Restoration, [if applicable Rehabilitation,] alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Initial Improvements.

"**Substantial Condemnation**" is defined in ***Section 15.3(a)***.

"**Subtenant**" means any Person leasing, using, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

"**Successor Owner**" is defined in ***Section 40.4(a)***.

"**SUD**" means Planning Code Section 249.79 establishing the Pier 70 Special Use District, as it may be amended from time to time.

"**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 (as such terms are defined in the Appendix to the DDA).

"**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.

"**Tenant**" is defined in the Basic Lease Information, and its permitted successors and assigns.

"**Term**" is defined in ***Section 1.2***.

"**Termination Notice for Change in Laws**" is defined in ***Section 7.3(a)(i)***.

"**Termination Option**" is defined in ***Section 7.3(a)***.

"**Total Condemnation** is defined in ***Section 15.2***.

"**Transfer**" is defined in ***Section 18.1(a)***.

"**Transportation Program**" means the Transportation Program (including the Transportation Demand Management Program) attached hereto as ***Exhibit K*** as the same may be amended from time to time in accordance with the terms thereof.

"**Triggering Event**" is defined in ***Section 3.6(d)*** of ***Exhibit D***.

"**Uninsured Casualty**" is defined in ***Section 14.3(a)***.

"**Unmatured Event of Default**" means any default that, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

"**VCA**" means the Vertical Cooperation Agreement dated [_____] between Tenant and Horizontal Developer as the same may be amended from time to time in accordance with its terms.

"**Vertical DDA**" means the Vertical Disposition and Development Agreement between Port and Tenant, as developer, dated as of [_____], as the same may be amended from time to time in accordance with its terms.

"**Work**" is defined in ***Section 12.5***.

"**Workforce Development Plan**" is defined in ***Article 42***.

"**worth at the time of award**" is defined in ***Section 25.4***.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT:

By:_____
Name:
Title:

PORT:

By:_____
Name:
Title:

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:_____

Port Commission Resolution No. 17-43

Board of Supervisors Resolution No. 401-17

PARCEL LEASE EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

[To be prepared and inserted prior to execution]

PARCEL LEASE EXHIBIT B
SITE PLAN

[To be prepared and inserted prior to execution]

PARCEL LEASE EXHIBIT B-2

DEPICTION OF PUBLIC ACCESS AREAS (*IF APPLICABLE)*

[To be prepared and attached prior to execution]

PARCEL LEASE EXHIBIT C-1
SCOPE OF DEVELOPMENT

[To be prepared and inserted prior to execution]

PARCEL LEASE EXHIBIT C-2
AFFORDABLE HOUSING REQUIREMENTS
[if applicable]

[To be prepared and inserted prior to execution]

PARCEL LEASE EXHIBIT C-3
MINIMUM PUBLIC BENEFIT AREA
[if applicable]

[To be prepared and inserted prior to execution]

EXHIBIT D

ARTICLE 3

RENT

3.1 Prepaid Rent.

The Parties acknowledge that this Lease is a **[Prepaid][Hybrid] Lease**, as that term is defined in the Financing Plan attached as Exhibit C-1 to the DDA. On or before the Commencement Date, Tenant will pay to Port the Prepaid Rent as set forth in the Basic Lease Information.

3.2 Tenant's Covenant to Pay Rent.

During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in this Article 3.

3.3 [Note: include this section for Hybrid Leases only] Base Rent.

From and after the Commencement Date and continuing thereafter throughout the Term, Tenant will pay to Port, in advance on the first day of each calendar month during the Term, without further notice or demand and, except as expressly set forth in ***Section 28.2*** without abatement, offset, rebate, credit or deduction for any reason whatsoever, monthly installments of rent equal to _____ Dollars ($_____.00) (the **"Base Rent"**). Base Rent will be further adjusted after the Commencement Date in accordance with Section 3.4.

3.4 [Note: include this section for Hybrid Leases only] Adjustments to Base Rent.

(a) Definitions

(i) **"Adjustment Date"** means the fifth (5th) anniversary of the Commencement Date and each five (5)-year anniversary thereafter; provided, however, that if the Commencement Date is other than the first day of a month, then the first Adjustment Date will be the first day of the sixty-first (61st) month thereafter.

(ii) **"Adjustment Period"** means each five-year period during the Term commencing on each Adjustment Date.

(iii) **"Current Index"** means the Index for the calendar month immediately preceding the applicable Adjustment Date.

(iv) **"Index"** means the **[Note: Use following for commercial leases:** Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area] **[Note: Use the following for residential leases:** Consumer Price Index for All Urban Consumers: Housing (base years 1982-1984=100) for the San Francisco-Oakland-San Jose area], published by the United States Department of Labor, Bureau

of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the prior Adjustment Date, the Index will be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued during the Term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued; provided, however, if there is no replacement government index or computation, then Port will select another similar published index, generally reflective of increases in the cost of living, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

(v) **"Initial Published Index"** means the Index published October 2012. [Note: Update to reflect 5 years prior to Effective Date]

(vi) **"Prior Index"** means the Index published closest (but prior) to the month five (5) years prior to the applicable Adjustment Date, provided however, for the first Adjustment Date, the Index used will be the Initial Published Index.

(b) Adjustment to Base Rent. On each Adjustment Date, the Base Rent payable under this Lease will be adjusted to equal the greater of (i) one hundred ten percent (110%) of the Base Rent in effect immediately prior to such Adjustment Date, or (ii) one hundred percent (100%) of the amount determined by multiplying the Base Rent in effect immediately prior to such Adjustment Date by a fraction, the numerator of which is the Current Index and the denominator of which is the Prior Index as shown below:

Current Index/Prior Index x Base Rent = Adjusted Base Rent

In no event will any adjustments to Base Rent in accordance with this Section 3.4(b) (being the increase from the amount of the Base Rent payable for the Adjustment Period immediately prior to such Adjustment Date) exceed twenty percent (20%) of the Base Rent payable for the immediately preceding Adjustment Period.

3.5 Participation of Gross Rent from and after Year 30. [Note: does not apply to Buildings 12 and 21, and Parcel E-4]

(a) Definitions.

(i) **"Adjustments"** means the following items (without duplication):

(1) all Impositions paid by Tenant and allocated on a straight-line basis during the Lease Year in which the applicable Imposition was paid;

(2) all taxes, assessments, charges, and bills for utilities, including, without limitation, charges for water, gas, oil, sanitary and storm sewer, and electricity paid by Tenant;

(3) insurance premiums for insuring the Improvements in compliance with ***Article 20*** (Insurance) and allocated on a straight-line basis during the Lease Year in which the applicable insurance premium was paid; and

(4) all costs (not including cost of capital, debt service or other financing costs) paid by Tenant for Capital Items and allocated on a straight-line basis during the Lease Years over which the applicable Capital Item is amortized in accordance with this ***clause (4)***. In any Lease Year, the amount of cost for Capital Items will be limited to the portion of the amortized costs of the Capital Items attributable to such Lease Year. For purposes hereof, the amortized costs of the Capital Items will be determined by dividing the original direct costs of such Capital Items by the number of years of useful life of the applicable Capital Items, based on generally accepted accounting principles consistently applied, irrespective of Tenant's actual method of accounting. The minimum amortization period will be five (5) years. Capital Items must have been unanticipated on the Commencement Date of this Lease (*i.e.*, specifically excluding any costs related to the development and construction of the Initial Improvements).

(ii) **"Capital Items"** means replacements, repairs, and/or improvements to the Premises, the foundation and structural integrity of the Buildings, and all Material Systems serving the Improvements within the Premises that would be deemed capital assets under generally accepted accounting principles consistently applied.

(iii) **"Gross Income"** means for any reporting period or portion thereof during the Term, the following: all payments, revenues, fees or amounts received by Tenant or by any other party for the account of Tenant from any Person for any Person's use or occupancy of any portion of the Premises (excluding security or other deposits to be returned to such Person upon the termination of such use or occupancy), or from any other sales, advertising, concessions, licensing or programming generated from the Premises, including, without limitation, all base rent, percentage rent, payments made to Tenant from any Subtenant to reimburse Tenant for operating expenses, common area maintenance expenses, insurance expenses, Impositions, or, in the case of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by such Subtenant, license fees, parking charges, advertising revenues, event or promotional fees, charges and permit fees. Without limiting the foregoing, "Gross Income" does not include payments of insurance proceeds to or for the benefit of Tenant that are used to restore the Premises except any and all payments made to Tenant from the Business Interruption or delayed opening insurance proceeds, which shall be included as "Gross Income".

(iv) **"Modified Gross Income"** means Gross Income less Adjustments.

(b) Payment of Percentage Rent.

(i) Tenant will pay to Port percentage rent (**"Percentage Rent"**) in accordance with this Section 3.5. From and after the thirtieth (30th) anniversary of the Commencement Date (**"Percentage Rent Commencement Date"**) and continuing thereafter throughout the Term until the sixtieth (60th) anniversary of the Commencement Date, Tenant will pay to Port Percentage Rent equal to one and one-half percent (1.5%) of Modified Gross Income generated at or from the Premises for each month. From and after the sixtieth (60th) anniversary of the Commencement Date and continuing thereafter throughout the remainder of the Term, Tenant will pay to Port Percentage Rent equal to two and one-half percent (2.5%) of Modified Gross Income generated at or from the Premises for each month. Tenant will in good faith, estimate the monthly Percentage Rent due Port on a quarterly basis and pay such estimate in advance, on a quarterly

basis, by the first (1st) day of each calendar quarter (i.e., January 1, April 1, July 1, and October 1);

(ii) In the event this Lease expires or terminates on a day other than the last day of a calendar quarter, Percentage Rent for such fractional part of the calendar quarter preceding such expiration or termination date will be prorated to account for the partial calendar quarter and paid within twenty (20) days after such expiration or termination date, but if this Lease terminates as a result of a Tenant Event of Default, any amounts due hereunder will be payable immediately upon termination.

(c) Reporting and Reconciliation of Percentage Rent.

(i) Tenant will deliver to Port a complete statement setting forth in reasonable detail its Modified Gross Income for each calendar month in each calendar quarter, including an itemized list of all Adjustments from Gross Income that Tenant claims and which are expressly permitted under this Lease, and a computation of the Percentage Rent for each calendar month in a calendar quarter (the **"Quarterly Percentage Rent Statement"**) by the twentieth (20th) day of the immediately following calendar quarter. A financial officer or other accountant employed by Tenant who is authorized and competent to prepare such Quarterly Percentage Rent Statement must certify each Quarterly Percentage Rent Statement as accurate, complete and current. Tenant will provide Port within ninety (90) days after the end of each calendar year, a complete statement, showing the actual Percentage Rent for the immediately preceding calendar year (**"Annual Percentage Rent Statement;"** together with the Quarterly Percentage Rent Statement, **"Percentage Rent Statement"**) substantially in the form of ***Exhibit XX***. Each Annual Percentage Rent Statement will be certified as accurate, complete and current by Deloitte & Touche, Ernst & Young, KPMG, PwC, or an independent certified public accounting firm reasonably acceptable to Port. Tenant must submit payment of the balance owing together with any Annual Percentage Rent Statement showing that Tenant has underpaid Percentage Rent. At Port's option, overpayments may be refunded to Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant's delivery of any Annual Percentage Rent Statement showing an overpayment. The Annual Percentage Rent Statement is for verification and certification of Quarterly Percentage Rent Statements only and will not result in any averaging of monthly Percentage Rent. Each Quarterly Statement and Annual Percentage Rent Statement will set forth in reasonable detail Gross Income for such immediately preceding calendar quarter or year, as applicable, including an itemized list of any and all Adjustments that Tenant may claim at that time and which are expressly permitted under this Lease.

(ii) If Port receives the Percentage Rent payment but does not receive the applicable Quarterly Percentage Rent Statement by the twentieth (20th) day of the immediately following calendar quarter or expiration or earlier termination of this Lease, or the Annual Percentage Rent Statement by sixtieth (60) day following the end of each calendar year or the expiration or earlier termination date, such failure, until cured, will be treated as a late payment of Percentage Rent, subject to a Late Charge.

(iii) If Tenant fails to deliver any Percentage Rent Statement within the time period set forth in this Section 3.5(c) (irrespective of whether any Percentage Rent is actually

paid or payable by Tenant to Port) and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port will have the right, among its other remedies under this Lease, to have a Port Representative examine Tenant's Books and Records (and, to the extent permitted by the applicable Sublease, the Books and Records of any other occupant of the Premises) as may be necessary to determine the amount of Percentage Rent due to Port for the period in question. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant will promptly pay to Port the total cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge and interest at the Default Rate.

(iv) If the Percentage Rent Statement reflects that the estimated monthly Percentage Rent paid by Tenant during the applicable calendar quarter is greater or less than the Percentage Rent actually due for such period, the same shall be reconciled through an adjustment to the Percentage Rent amount that is due for the month following delivery of the Percentage Rent Statement.

3.6 Port Participation in Sale Proceeds.

(a) **[Note: Applicable only for Horizontal Developer Affiliates]** Distribution of, and Port's Participation in, Sale Proceeds of Qualifying Early Sale. One Hundred Percent (100%) of the Qualifying Early Sale Proceeds from a Qualifying Early Sale by Initial Tenant occurring at any time prior to the Early Transfer Date, less the following deductions in this ***Section 3.6(a)***, will be treated as Land Proceeds in accordance with Section 3.2 of the Financing Plan (Exhibit C-1 to the DDA):

(i) Tenant's Purchase Price;

(ii) Port's Attorneys' Fees and Costs associated with Port's review of the Qualifying Early Sale;

(iii) Costs of Sale;

(iv) Tenant's Certified Entitlement Costs; and

(v) A 12% annual return on the Certified Entitlement Costs.

(b) Distribution of, and Port's Participation in, Sale Proceeds from a Recapitalization Prior to Early Transfer Date. Unless a Recapitalization is a Qualifying Early Sale subject to the terms of ***Section 3.6(a)***, Tenant will pay Port from each Recapitalization occurring before the Early Transfer Date, one and one-half percent (1.5%) of the Sale Proceeds less the following deductions: (i) Tenant's Purchase Price multiplied by the ownership interests in Tenant transferred in connection with the Recapitalization (expressed as a percentage of total ownership interests in Tenant); and (ii) Costs of Sale.

(c) Distribution of, and Port's Participation in, Net Sale Proceeds.

(i) *Sales on or after the Early Transfer Date.* Tenant will pay Port one and one-half percent (1.5%) of the "**Net Sale Proceeds**" (as defined below) from each Sale occurring on or after the Early Transfer Date.

(ii) *Reappraisal Event Prior to Early Transfer Date.* If (A) a Reappraisal Event occurs prior to the Early Transfer Date and (B) the Reappraisal Event does not qualify as a Qualifying Early Sale subject to the terms of ***Section 3.6(a)***, then Tenant will pay Port one and one-half percent (1.5%) of the Net Sale Proceeds from the Reappraisal Event.

(iii) *Special Rules for Calculating Sale Proceeds for a Reappraisal Event.* For purposes of calculating Net Sale Proceeds on a Reappraisal Event, Tenant's Sale Proceeds from such Reappraisal Event will be deemed to be an amount equal to (1) the total ownership interests in Tenant after the Reappraisal Event held by the Person causing the Reappraisal Event (expressed as a percentage of total ownership interests in Tenant), multiplied by (2) the value assigned to the Leasehold Estate, as evidenced by (A) the estimated fair market value of the Leasehold Estate provided to the Assessor's Office in connection with the Reappraisal Event, or (B) if no such estimate is provided to the Assessor's Office, the appraised value of the Leasehold Estate established in an Appraisal Report reasonably approved by Port and Tenant.

(d) Manner of Payment. The estimated closing statement will be updated as of the date of closing of the Qualifying Early Sale, Sale, or Recapitalization prior to the Early Transfer Date, as applicable (each a "**Triggering Event**"), to show the actual (i) proceeds from such event, and (ii) line item description of the deductions and exclusions from such proceeds to arrive at Port's share of such proceeds. If escrow is opened for a Triggering Event, then Port's share of the proceeds from such Triggering Event must be distributed through escrow. If no escrow is opened for a Triggering Event, Port's share of proceeds from such Triggering Event must be paid upon the closing of any such Triggering Event.

This provision constitutes notice to Tenant that Port is to be paid in full its share of proceeds through the close of escrow or the closing of the applicable Triggering Event. If Port is not paid full by such closing date, the amount due Port will be subject to a Late Charge and will accrue interest at the Default Rate from and after the closing until paid in full to Port. Port may reference in any estoppel certificate or other representation requested from Port that payment to Port of Port's share of proceeds from a Triggering Event is a material obligation under the Lease, due and owing upon the closing of any Triggering Event, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's share of such proceeds.

Within forty-five (45) days after any Triggering Event, transferor Tenant will submit to Port a statement prepared in accordance with sound accounting principles consistently applied, and certified by transferor Tenant's chief executive officer or chief financial officer (or equivalent position), as current, complete and correct, confirming the actual amount of proceeds received and line item description of the deductions and exclusions from proceeds to arrive at Port's share of such proceeds. At Port's option, any overpayments may be either refunded to transferor Tenant or applied to any other amount due and unpaid under the Lease as of the

closing date. Tenant will accompany the statement of Triggering Event proceeds with the amount of any underpayments. The statements delivered to Port under this Section 3.7(c) are subject to the audit provisions of Section 3.9 (Audit) for determination of the accuracy of Tenant's reporting of Port's share of proceeds from a Triggering Event.

(e) Survival. The provisions of this Section 3.6 will survive the earlier termination or expiration of this Lease. Additionally, any release by Port of Tenant's obligations under this Lease in connection with any Sale is conditioned on Port's receipt of Port's share of Sale Proceeds.

(f) Additional Definitions. The following definitions apply for purposes of this Section 3.6:

"**Appraisal Report**" means a third-party appraisal report prepared by a Qualified Appraiser in compliance with the then current version of the Uniform Standards of Professional Appraisal Practice and based on joint appraisal instructions provided by Port and Tenant, and Port and Tenant will have reasonable review and approval rights over the final appraisal report.

"**Building Permit Date**" means the date Tenant obtains all entitlements necessary to pull the building permit to commence construction of the Initial Improvements.

"**Cash Consideration**" means (i) cash, or (ii) cash equivalents.

"**Certified Entitlement Costs**" means Entitlement Costs, as certified in accordance with ***Attachment 1 to this Exhibit D***.

"**Certified Total Development Costs**" means the Total Development Costs, as certified in accordance with ***Attachment 1 to this Exhibit D***.

"**CofO Issuance Date**" means the date Port, in its regulatory capacity, issues a certificate of occupancy for the Initial Improvements.

"**Costs of Sale**" means only the following costs incurred by Tenant in connection with a Transfer: (i) brokerage commissions paid to licensed real estate brokers (provided, however, that in the case of brokerage commissions paid to Affiliate brokers, such commissions must be commercially reasonable), (ii) finder's fees (provided that in the case of finder's fees to Affiliates, such finder's fees must be commercially reasonable), (iii) reasonable and customary closing fees and costs including recording fees and transfer taxes, title insurance premiums and survey fees, (iv) reasonable advertising and marketing costs, (v) reasonable Attorneys' Fees and Costs, and (vi) amounts needed to pay Port's Attorneys' Fees and Costs associated with Port's review of the Transfer. "**Costs of Sale**" excludes adjustments to reflect prorations of rents, taxes or other items of income or expense customarily prorated in connection with sales of real property.

"**Early Transfer Date**" means the earlier of: (1) three years after the Commencement Date of this Lease; or (2) the date that Port issues a site permit and first building permit addendum to allow commencement of construction of the Initial Improvements.

"**Entitlement Costs**" means Tenant's reasonable out-of-pocket costs actually incurred from and after the effective date of the Vertical DDA until the Building Permit Date and attributable to the following only: designing the Initial Improvements; costs related to all land use approvals and entitlements, including preparation and processing of design review applications under the SUD and the Design for Development, subdivision maps, and costs of compliance with all conditions of approval and CEQA mitigation measures legally required by the City, Port or any other Regulatory Authority as a condition to obtaining the entitlements; and architectural, engineering, consultants, community outreach, attorney and other professional fees reasonably necessary to obtain the entitlements.

"**Hard Costs**" means reasonable out-of-pocket costs actually incurred by Tenant attributable solely to the cost of labor, materials and construction of the Initial Improvements described in the Scope of Development. "**Hard Costs**" do not include the cost of any improvements for any specific or speculative Subtenant or any costs incurred after the CofO Issuance Date.

"**Initial Tenant**" means **[insert name of initial tenant entity]**.

"**Net Sale Proceeds**" means Sale Proceeds less:

(i) Costs of Sale; and

(ii) for the transferor Tenant that constructed the Initial Improvements and each subsequent Tenant, Capital Items, except to the extent previously deducted from Modified Gross Income pursuant to ***Section 3.5*** (Participation of Gross Rent from and after Year 30); and

(iii) either:

(A) if the transferor Tenant constructed the Initial Improvements, the greater of:

(1) Tenant's Purchase Price (but only if such amount is not included in Certified Total Development Costs) plus the Certified Total Development Costs, or

(2) the indebtedness secured by a Mortgage on the Premises in accordance with ***Article 40*** (Mortgages); or

(B) if transferor Tenant did not construct the Initial Improvements, the greater of:

(1) Tenant's Purchase Price, or

(2) the indebtedness secured by a Mortgage on the Premises in accordance with ***Article 40*** (Mortgages).

"**Non-Cash Consideration**" means consideration received by Tenant in connection with a Sale that is not Cash Consideration.

"**Qualified Appraiser**" means an appraiser that meets the following qualifications:

(i) is licensed in the State of California as a Certified General Appraiser;

(ii) is a member of the Appraisal Institute;

(iii) has at least 10 years' experience in the San Francisco Bay Area valuing commercial-office or multiple occupancy residential properties or both, depending on the Permitted Uses of the Leasehold Estate being appraised; and

(iv) is a principal in either a national or regional firm based in California that: (1) is not a Tenant Affiliate; (2) does not have an equity investment in Tenant, any Tenant Affiliate, or any Person Controlling Tenant; and (3) does not have a conflict of interest by virtue of a contractual relationship with Tenant either then existing or in the 24 months immediately preceding the engagement, unless the Port in its sole discretion waives the conflict.

"**Qualifying Early Sale**" means (i) an Assignment of the Leasehold Estate to any Person that is not an Affiliate of Tenant, or (ii) a Recapitalization that results in a change in the Managing Party of Tenant or of the Managing Party owning ten percent (10%) or less of the profits or capital of Tenant.

"**Qualifying Early Sale Proceeds**" means the Sale Proceeds from a Qualifying Early Sale.

"**Reappraisal Event**" means a change in ownership of real property as described in [Cal. Revenue and Taxation Code, [Chapter 2 (Change in Ownership and Purchase), Section 64], as that law is in effect as of [_____, 2017] and attached hereto as ***Schedule 2*** to ***Exhibit D***. For

the avoidance of doubt, neither an Assignment nor a Recapitalization will be deemed to be a Reappraisal Event.

"**Recapitalization**" means a transfer, in a single transaction or a related series of transactions that results in a change in the Person that had more than fifty percent (50%) of the ownership interest in Tenant (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof, and whether direct or indirect).

"**Sale**" means either (i) an Assignment of the entirety of the Leasehold Estate, other than an Assignment of the Leasehold Estate to a Tenant Affiliate, or (ii) a Reappraisal Event, or (iii) a Recapitalization.

"**Sale Proceeds**" means all consideration received by or for the account of Tenant in connection with a Sale, including Cash Consideration, the principal amount of any loan made by Tenant to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price. "**Sale Proceeds**" do not include a commitment by an owner (whether direct or indirect) of Tenant to fund its share of future capital calls to construct the Initial Improvements or Capital Items, which, in and of itself, will not be considered or deemed to be Sale Proceeds.

"**Soft Costs**" means reasonable out-of-pocket costs actually incurred by the Tenant that actually constructs the Initial Improvements and attributable solely to architectural, engineering, consultant, attorney, and other professional fees, regulatory fees, CEQA mitigation measures, community benefits, Impact Fees (as defined in the DDA), Port Costs and Other City Costs (as defined in the Vertical DDA), builder's risk insurance, performance and payment bonds, safety and security measures, and third party costs to prepare Certified Total Development Costs, in each case in connection with the Initial Improvements described in the Scope of Development. "**Soft Costs**" do not include costs already included in Certified Entitlement Costs, costs associated with the design or construction any specific or speculative Subtenant improvements or any costs incurred after the CofO Issuance Date.

"**Tenant's Purchase Price**" means (i) in the case of the Initial Tenant, the "**Acquisition Price**" under the Vertical DDA and (ii) in the case of each subsequent tenant following the Initial Tenant, the Sale Proceeds paid by such Tenant to the immediately prior tenant for the Leasehold Estate.

"**Total Development Costs**" means Certified Entitlement Costs, Soft Costs, and Hard Costs. "**Total Development Costs**" do not include the cost of any improvements for any specific or speculative Subtenant.

3.7 Port Participation in Refinancing Proceeds.

(a) Port's Participation. In connection with any Qualifying Refinancing, Tenant will pay to Port an amount equal to one and one-half percent (1.5%) of Net Refinancing Proceeds.

(b) Reporting of Refinancing Proceeds. No less than fifteen (15) days prior to the close of escrow for each Refinancing, Tenant will deliver to Port, an estimated closing statement that includes the best estimate of the following items:

(i) Refinancing Proceeds;

(ii) The estimated Net Refinancing Proceeds including a separate line item for each of the costs permitted to be deducted from the gross proceeds from the Refinancing, as applicable, to arrive at Net Refinancing Proceeds; and

(iii) The estimated Net Refinancing Proceeds allocated to Port and Tenant.

(c) Manner of Payment. The estimated closing statement will be updated as of the date for close of escrow under the Refinancing to show the actual (i) gross Refinancing Proceeds, (ii) Net Refinancing Proceeds and Port's share thereof, as applicable, and (iii) line item description of the deductions and exclusions from Refinancing Proceeds to arrive at Net Refinancing Proceeds. Tenant must pay Port from the close of escrow of any Refinancing, Port's share of the Net Refinancing Proceeds. Port may reference in any estoppel certificate or other representation requested from Port by a Lender, that payment to Port of Port's share of Net Refinancing Proceeds is a material obligation under the Lease, due and owing at close of escrow of any Refinancing hereunder, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's share of Net Refinancing Proceeds. This provision constitutes notice to Tenant that Port is to be paid in full its share of Refinancing Proceeds through the close of escrow. If Port is not paid full by such closing date, the amount due Port will be subject to a Late Charge and will accrue interest at the Default Rate from and after the closing until paid in full to Port. Within forty-five days (45) after any Refinancing, Tenant will submit to Port a statement, prepared in accordance with sound accounting principles consistently applied, and certified by Tenant's chief executive officer or chief financial officer (or equivalent position) as current, complete and correct, confirming the actual amount of Refinancing Proceeds, disbursed, permitted deductions made from such proceeds, and the amount of Net Refinancing Proceeds due to Port and actually paid to Port. At Port's option, any overpayments will be either refunded to Tenant, applied to any other amount then due and unpaid, under the Lease, or credited against Rent due under the Lease. Tenant will accompany the statement of Net Refinancing Proceeds with the amount of any underpayments. The statements delivered to Port under this Section 3.7(c) will be subject to the audit provisions of Section 3.9 (Audit) for determination of the accuracy of Tenant's reporting of Net Refinancing Proceeds.

(d) Survival. The provisions of this Section 3.7 will survive the earlier termination or expiration of this Lease.

(e) Additional Definitions. The following additional definitions will apply for purposes of this Section.

A **"First Permanent Loan"** means the first permanent financing following Completion of the Initial Improvements.

B **"Net Refinancing Proceeds"** means all Refinancing Proceeds of any Refinancing occurring after the First Permanent Loan, after subtracting the following:

(1) (x) in the case of the first (1st) Refinancing following the First Permanent Loan, the greater of (i) the outstanding indebtedness secured by a Mortgage to be paid off by the Refinancing and (ii) 65% of the appraised, as-built value as of the date of the First Permanent Loan and (y) in the case of any subsequent Refinancing, the outstanding indebtedness secured by a Mortgage to be paid off by the Refinancing;

(2) amounts needed to pay the lenders' actual costs of such Refinancing paid by Tenant including application fees, closing costs, points and other customary lenders' fees such as lenders' Attorneys' Fees and Costs and title insurance costs paid at close of escrow for such Refinancing;

(3) amounts needed to pay Port's Attorneys' Fees and Costs associated with Port's review of the Refinancing; and

(4) amounts needed to pay Tenant's Attorneys' Fees and Costs associated with the Refinancing;

(5) brokerage commissions paid to licensed real estate brokers and/or finder's fees (provided, however, that in the case of brokerage commissions or finder's fees paid to Affiliate brokers, such commissions and fees must be commercially reasonable); and

(6) any portion of the Refinancing Proceeds that will be used for Capital Items in accordance with ***Section 10.2(d)*** (Maintenance and Repair of Identified Items) and ***Article 12*** (Construction).

C **"Qualifying Refinancing"** means a Refinancing occurring at any time there has been an increase in the as-built value of the Premises since the date on which the named Tenant acquired the Leasehold Estate. The as-built value of the Premises as of such date and as of the date of the Refinancing will be based upon an appraisal prepared by a third-party appraiser for the benefit of the Lender providing the Refinancing or if there is no Lender requirement for an appraisal or, if Tenant is not in possession of such appraisal, Port will have reasonably approved the appraisal instructions for such appraisal.

D **"Refinancing"** means any secured debt financing or refinancing incurred by Tenant and secured by any Mortgage, which may include secured financing from an Affiliate of Tenant and any refinancing or replacement of existing debt secured by a Mortgage (including any permanent take-out financing for financing the construction of the Initial Improvements), other than (1) Mortgages placed upon the Premises prior to Completion of the Initial Improvements, (2) the First Permanent Loan, and (3) Mortgages placed upon the Premises concurrently with any Sale.

E **"Refinancing Proceeds"** means all sums actually disbursed by a lender in connection with a Refinancing.

3.8 Books and Records. Tenant will keep books and records according to generally accepted accounting principles consistently applied or such other method as is reasonably acceptable to Port. **"Books and Records"** means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Property, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises or in connection with any Sale or Refinancing. Tenant will maintain a separate set of accounts, including bank accounts, to allow a determination of expenses incurred and revenues generated directly from the Premises, including proceeds and costs incurred from any Sales and Refinancings. If Tenant operates all or

any portion of the Premises through a Subtenant or Agent (other than Port), Tenant will cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

3.9 Audit. Tenant agrees to make its Books and Records (and, to the extent within Tenant's control, the Books and Records of any other person relating to the matters identified in Section 3.6(b)) available in the City and County of San Francisco to Port, or to any accountant employed or retained by Port or the City who is competent to examine and audit the Books and Records (hereinafter collectively referred to as "**Port Representative**"), for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Gross Income, Modified Gross Income, Recapitalization Proceeds, Qualifying Early Sale Proceeds, Sale Proceeds, Refinancing Proceeds and Port's share of the foregoing, for a period of five (5) years after the applicable Percentage Rent Statement (or closing statement with respect to a Sale or Refinancing) was delivered to Port. Tenant will reasonably cooperate with Port Representative during the course of any audit; provided however, once commenced, such audit will be diligently pursued to completion by Port within a reasonable time after its commencement. If an audit has commenced and Port claims that errors or omissions have occurred, Tenant will retain the Books and Records and make them available until those matters are resolved.

If an audit reveals that Tenant has understated its Gross Income, Modified Gross Income, Recapitalization Proceeds, Qualifying Early Sale Proceeds, Sale Proceeds, Net Sale Proceeds, Refinancing Proceeds, or Net Refinancing Proceeds for said audit period, Tenant will pay Port, within fifteen (15) days after receipt of such audit results, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Default Rate from and after the date of understatement. If Tenant understates its Gross Income, Recapitalization Proceeds, Qualifying Early Sale Proceeds, Sale Proceeds, Refinancing Proceeds, or Port's share of the foregoing proceeds for any audit period by five percent (5%) or more of Tenant's understated amount, Tenant will pay Port's cost of the audit. Any overpayments revealed by an audit will be credited towards Rent payments due subsequent to the audit until credited in full.

3.10 Manner of Payment. Tenant will pay all Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other Person or at such other place as Port may from time to time designate by notice to Tenant. Minimum Rent, Participation Rent, and Port's share of Sale Proceeds and Refinancing Proceeds are payable without prior notice or demand. Rent is due and payable at the times provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Additional Rent is due thirty (30) days following the giving by Port and the receipt by Tenant of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

3.11 Interest on Delinquent Rent. Rent not paid when due will bear interest from the date due until paid at an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date payment is due (the "**Default Rate**"). However, interest will not be payable on Late Charges incurred by Tenant or to the extent such payment would violate any applicable usury or similar law. Payment of interest will not excuse or cure any default by Tenant.

3.12 Late Charge. Tenant acknowledges and agrees that late payment by Tenant to Port of Rent, or Tenant's failure to provide the Percentage Rent Statement to Port, will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, without limiting any of Port's rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, Tenant will pay a late charge (the **"Late Charge"**) equal to the higher of (a) five percent (5%) of all Rent or any portion thereof which remains unpaid more than five (5) days following the date it is due (or with respect to a failure by Tenant to deliver the Percentage Rent Statement to Port within five (5) days following the date it is due, five percent (5%) of Participation Rent due for the subject period of the Percentage Rent Statement), or (b) **[Note: Increase following amount by $500 every 5 years after execution of the DDA:** One Thousand Dollars ($1,000)], which amount will be increased by an additional One Thousand Dollars ($1,000) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter; provided, however, Tenant will not be subject to a Late Charge more than once every calendar year if Tenant pays the unpaid Rent or delivers the Monthly Statement to Port, as applicable, within five (5) days of written notice from Port of such failure. The Parties agree that the Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant.

3.13 No Abatement or Setoff. Tenant will pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, credit, deduction, or counterclaim, except as expressly set forth in ***Section 28.2*** (Tenant's Exclusive Remedies).

3.14 Net Lease. It is the purpose of this Lease and intent of Port and Tenant that all Rent is absolutely net to Port, so that this Lease yields to Port the full amount of Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties is Port expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises. Without limiting the foregoing, Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, use or occupancy of the Premises, or any portion thereof. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease, or except as set forth in this Lease, gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease.

3.15 Survival. Tenant's obligation to pay any unpaid Rent due and payable will survive the expiration or earlier termination of this Lease.

ATTACHMENT 1 TO EXHIBIT D

PROCEDURES TO CERTIFY ENTITLEMENT COSTS AND DEVELOPMENT COSTS

1. CERTIFIED COST STATEMENT.

(a) Certified Entitlement Cost Statement. [Note – Include bracketed language for Vertical Developer Affiliates only] Within thirty (30) days prior to a Qualifying Early Sale (for the Initial Tenant only) or sixty (60) days following the Building Permit Date for the Tenant that constructs the Initial Improvements, as applicable, Tenant will furnish Port with an itemized statement setting forth in detail the Entitlement Cost incurred by Tenant to the Building Permit Date or thirty (30) days prior to a Qualifying Early Sale, as applicable, certified as true, accurate and complete by an independent certified public accountant (the "**Certified Entitlement Cost Statement**").

(b) Certified Total Development Cost Statement. Within the earlier of one hundred twenty (120) days following the CofO Issuance Date and thirty (30) days prior to a Sale, the Tenant that constructed the Initial Improvements will furnish Port with an itemized statement setting forth in detail the Total Development Cost incurred by such Tenant to the CofO Issuance Date, certified as true, accurate and complete by an independent certified public accountant (the "**Certified Total Development Cost Statement**").

(c) Port Review. Port will notify the Tenant within sixty (60) days following Port's receipt of the Certified Entitlement Cost Statement or the Certified Total Development Cost Statement, as applicable, of Port's agreement or disagreement with such statement. If Port disagrees with any such statement, the Parties will meet to resolve the disagreement. If the Parties are unable to resolve their disagreement, either may Party exercise its rights under Section 3 (Audit Rights) of this Attachment 1 to Exhibit D. For the avoidance of doubt, no such disagreement or audit shall delay any Sale or the issuance of any building permit, certificate of completion or certificate of occupancy.

2. Port Representative.

If Tenant fails to deliver either the Certified Entitlement Cost Statement or Certified Total Development Cost Statement as applicable, within the time periods set forth herein, and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port has the right, among its other remedies under this Lease, to have a Port Representative examine Tenant's books and records as may be necessary to determine all the information required in the Certified Entitlement Cost Statement or Certified Total Development Cost Statement, as applicable. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant must promptly pay to Port the total cost of the examination.

3. AUDIT RIGHTS.

If Port disagrees with either the Certified Entitlement Cost Statement or the Certified Total Development Cost Statement, Port may request that such records be audited by an independent certified public accounting firm mutually acceptable to Port and Tenant, or if the Parties are unable to agree, either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an auditor meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent auditor. Such audit will be binding on the Parties, except in the case of fraud, corruption or undue influence. Port will pay the entire cost

of the audit unless the audit discovers that Tenant has overstated the Entitlement Cost or the Total Development Cost, as applicable, by more than three percent (3%) of the lower amount, in which case Tenant will pay the entire cost of the audit.

4. BOOKS AND RECORDS RELATED TO TOTAL DEVELOPMENT COSTS.

Tenant must keep accurate books and records of the Entitlement Costs and Total Development Costs incurred to date, funds expended by Tenant, outstanding Tenant capital, Tenant capital return accrued, and debt or other third-party proceeds received by or on behalf of Initial Tenant in connection with the development of the Initial Improvements, all in accordance with accounting principles generally accepted in the construction industry. Port, including its Agents, has the right to inspect Tenant's books and records regarding the development of the Initial Improvements, the costs incurred in connection therewith, and all other Entitlement Costs and Total Development Costs, including funds expended by Tenant, return accrued on such funds, and debt or other third party proceeds received by or on behalf of Tenant in connection with the development of the Initial Improvements in a location within San Francisco during regular business hours and upon reasonable advance notice.

ATTACHMENT 2 TO PARCEL LEASE EXHIBIT D

REAPPRAISAL EVENT

West's Annotated California Codes
Revenue and Taxation Code (Refs & Annos)
Division 1. Property Taxation (Refs & Annos)
Part 0.5. Implementation of Article XIII a of the California Constitution (Refs & Annos)
Chapter 2. Change in Ownership and Purchase (Refs & Annos)

West's Ann.Cal.Rev. & T.Code § 64

§ 64. Purchase or transfer of ownership interests in legal entities; transfer of real property of legal entity; corporate reorganizations by merger or consolidation within affiliated group; control of corporation through purchase or transfer of stock

Effective: January 1, 2000

Currentness

(a) Except as provided in subdivision (i) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, shall not be deemed to constitute a transfer of the real property of the legal entity. This subdivision is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or a dissolved partnership.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and that qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and that is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, or any reorganization of farm credit institutions pursuant to the federal Farm Credit Act of 1971 (Public Law 92-181), as amended, shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision, "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if both of the following conditions are met:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations.

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(c)(1) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

(2) On or after January 1, 1996, when an owner of a majority ownership interest in any partnership obtains all of the remaining ownership interests in that partnership or otherwise becomes the sole partner, the purchase or transfer of

the minority interests, subject to the appropriate application of the step-transaction doctrine, shall not be a change in ownership of the real property owned by the partnership.

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

A transfer of shares or other ownership interests that results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) To assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question in substantially the following form on returns for partnerships, banks, and corporations (except tax-exempt organizations):

If the corporation (or partnership or limited liability company) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership or limited liability company capital and partnership or limited liability company profits)(1) been transferred by the corporation (or partnership or limited liability company) since March 1, 1975, or (2) been acquired by another legal entity or person during the year? (See instructions.)

If the entity answers "yes" to (1) or (2) in the above question, then the Franchise Tax Board shall furnish the names and addresses of that entity and of the stock or partnership or limited liability company ownership interest transferees to the State Board of Equalization.

Credits

(Added by Stats.1979, c. 242, p. 506, § 4, eff. July 10, 1979. Amended by Stats.1979, c. 1161, p. 4365, § 4, eff. Sept. 29, 1979; Stats.1980, c. 1349, p. 4769, § 2; Stats.1982, c. 1465, p. 5635, § 5; Stats.1984, c. 678, § 6; Stats.1988, c. 560, § 1; Stats.1994, c. 1200 (S.B.469), § 42, eff. Sept. 30, 1994; Stats.1994, c. 1243 (S.B.1805), § 2.3, eff. Sept. 30, 1994, operative Jan. 1, 1994; Stats.1994, c. 1243 (S.B.1805), § 2.5, eff. Sept. 30, 1994; Stats.1995, c. 497 (S.B.722), § 2; Stats.1998, c. 583 (S.B.1103), § 1; Stats.1998, c. 591 (S.B.2237), § 3; Stats.1999, c. 83 (S.B.966), § 170.)

West's Ann. Cal. Rev. & T. Code § 64, CA REV & TAX § 64
Current with all 2017 Reg.Sess. laws.

PARCEL LEASE EXHIBIT E

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.

PARCEL LEASE EXHIBIT F
PERMITTED TITLE EXCEPTIONS

[To be prepared and inserted prior to execution]

PARCEL LEASE EXHIBIT
G-1 PUBLIC ACCESS AREAS
[if applicable]

[To be prepared and inserted prior to execution]

PARCEL LEASE EXHIBIT G-2
RULES AND REGULATIONS FOR PUBLIC ACCESS AREAS
[if applicable]

[To be prepared and inserted prior to execution]

PARCEL LEASE EXHIBIT H-1
ASSESSOR INFORMATION

Document Outline

Assessable/actionable events for Assessor ("ASR")

1. Initial land sale/ transfer of title
2. Mapping
3. Tax certificates
4. Lien date new construction
5. Completed new construction
6. Final ownership changes/sales to users

Assessable/Actionable Event information

1. Initial land sale / transfer of title [Include if event is applicable.]

a. Assessable: any recorded change in ownership or ground lease/changes to existing ground lease

b. Information needed:

i. Deeds (transfer maps do not convey title for ASR purposes)

ii. Subdivision maps and how they correspond to recorded deeds

iii. Appraisal for transfers from government entities or non-arm's length transactions

c. Timing: at the time of recording for a basis of calculating transfer tax **[or include applicable timeline from Assessor]**

2. Mapping [Include if event is applicable.]

a. Justification/Purpose: ASR needs this information to reserve new block and lot numbers for the project.

b. Information needed:

i. Tentative maps that overlay future parcel changes and project phases (with current APNs and future reserved APNs)

ii. Federal/state maps if applicable

iii. Timeline of subdivision activity and how the current parcels will be divided/combined/adjusted in each phase of the subdivision

iv. Initial subdivision maps and what deeds they correspond to

c. Timing:

i. Upon request to reserve APNs for new project **[or include applicable timeline from Assessor]**

3. Tax certificates (Treasurer & Tax Collector's Office provides to ASR) [Include if event is applicable.]

a. Justification: ASR needs this information to (1) ensure that any outstanding changes in ownership have been recorded and any completed or anticipated new construction has been valued and (2) to generate a new assessed value for TTX to use for tax pre-payment purposes.

b. Information needed:

i. Pre-final map

ii. TTX Form A and B (depending on how complicated the development is)

c. Timing: whenever requested by the taxpayer, ASR has four weeks to review and determine new value **[or include applicable timeline from Assessor]**

4. Lien date new construction

a. Justification/Purpose: ASR needs this information to accurately assess the value of new construction in progress as of January 1st as required by the Revenue & Taxation Code.

b. Information needed:

i. The date construction started and the estimated completion date. If construction was in progress on January 1st, the percentage of construction completed.

ii. A complete list of all the construction and/or demolition cost incurred as of this date, including direct and indirect costs and entrepreneurial profit. *(sample provided for reference See Attachment 1)*

iii. Copies of any leases signed.

iv. A detailed description of all work to be completed or any changes to the work description.

v. A copy of the pro forma, feasibility study or appraisal used to support the building of this project.

vi. Copies of all application for building permits.

vii. Certified copy of the lender's disbursement of funds.

viii. Cost not funded by construction loan.

ix. Details on any current or anticipated efforts to sell the property, if applicable.

x. Any additional information, if not referenced above, that would influence the market value of the property.

xi. Name, mailing address, phone number and e-mail of person(s) to contact regarding additional questions and inspection of property.

c. Timing:

i. By January 31st of each year the construction is in progress **[or include applicable timeline from Assessor.]**

5. Completed new construction

a. Justification: ASR needs this information to accurately assess the value of completed new construction as of the date of completion as required by the Revenue & Taxation Code.

b. Information needed:

i. All property types

A. The date construction started and completion date.

B. A detailed description of all work completed (attach referenced floor plans, etc.)

C. Copies of all applications for building permits.

D. A complete list of all construction costs *(see Attachment 1)* including direct, indirect costs and anticipated or actual entrepreneurial profit.

E. Detailed information on costs not funded by construction loans.

F. A copy of the pro forma, feasibility study or appraisal used to support the building of this project.

G. Details on any current or anticipated efforts to sell the property, if applicable.

H. Copies of any leases signed or currently in negotiation. Please include asking rents for spaces not leased.

I. A copy of the land lease or other document that indicates the value of the land, if applicable.

J. Projected or actual income and expense statement and a schedule of asking rent, if applicable. For actual statements, please provide the source document.

K. Certified copy of the lender's disbursement of funds.

L. Details on parking stall rents and any miscellaneous income.

M. Any appraisal completed.

N. Any additional information, if not referenced above, that would influence the market value of the property.

O. Name, address, phone number and email of person to contact for questions/arrange for a site inspection.

ii. Office

A. Rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

B. The gross and net rentable areas of the building.

C. Projected or actual sales volume of the property.

D. A copy of any existing operating agreements, if applicable.

E. A copy of the feasibility study.

F. A copy of the stacking plan, if applicable.

G. XFactor or BOMA recalculation of square footage, if applicable.

H. If the construction project includes a parking garage:

a. How will it be operated (i.e. leased to a second party for contract rent or net income to the owner)?

b. What is the anticipated number of spaces and vehicle capacity (with valet services if applicable)?

c. What will be the monthly fee for parking?

iii. Retail

A. Rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

B. The gross and net rentable areas of the building.

C. Details on parking stall rents and any miscellaneous income.

D. Projected or actual sales volume of the property.

E. A copy of the operating agreement signed with the mall owner, if applicable.

iv. Apartments

A. Tenant Rent Roll for residential and commercial units that includes the unit number, unit type (number of beds/baths), number of rooms, market rate or BMR unit, occupancy, square footage, contract rental rate, date lease signed, market rental rate, other fees collected – parking, storage, pet. Overall parking spaces, any upgrades, floor and view premiums (if applicable). Please provide a rent roll as of the certificate of occupancy and/or when stabilized occupancy is achieved.

B. A finish schedule.

C. Total square footage of improvements allocated by use (residential, retail, common area, parking, etc.). Area (sq. ft.) of each floor including basement, mezzanine, penthouse, etc.

v. Condos

A. The Parcel Split/Condo Conversion Questionnaire (See Attachment 2, Excel is strongly preferred.)

B. For any units retained by the developer (i.e. parking, storage, retail, etc.), please provide copies of any signed leases, details on any leases in negotiation or proposed, or a summary of asking rents. Include a tenant rent roll, projected or actual income and expense statements, and net rentable area of each retained unit.

C. Condo map/plan (if applicable) – required for us to split a new condo project or condo conversion

vi. Hotel

A. A list of the number of hotel rooms, the average daily rates, and projected occupancy levels.

B. Percentage of guest segmentation.

C. A copy of the Management Agreement.

D. A copy of the Franchise Fee Agreement, specifically identifying the franchise fees and how they are determined.

E. Breakdown of real property and personal property.

F. Current or projected rent roll showing any net rentable areas of the building by floor and area leased by each retail tenant (if any); the type of lease (FSG, NNN, or IG); the date and terms of each lease, the move in date; options to renew, escalation clauses, tax clauses, free rent or any lease concessions, or landlord/tenant improvement allowances. If there are no leasable office or retail areas on the property, so state.

c. Timing: within 60 days upon completion of construction for each project phase **[or include applicable timeline from Assessor.]**

6. Final ownership changes/sales to users

a. Event: any recorded change in ownership or new lease/changes to existing lease

b. Information needed:

i. All property types

A. Information about the sale:

a. The purchase agreement and closing statement

b. Identify the broker or agent on the sale

c. Original list price

d. Days on market

B. Details and terms of financing the property.

C. Details on any anticipated deferred maintenance costs or capital expenditures anticipated by buyer at the time of the sale (i.e. renovations, major repairs, seismic retrofitting, and asbestos abatement) and a detailed schedule of when the work is to be completed.

D. If the purchase price was not considered market value for the property, an explanation of why.

E. Detailed anticipated income and expense operating statements of the new owner at time of purchase and/or acquisition and the prior two (2) years.

F. Copies of any leases or lease abstracts, amendments or renewals, including free rent and tenant improvement allowances agreed to.

G. Marketing materials and/or asking rents to lease vacant space as of the transfer date

H. Any anticipated changes in use.

ii. Office

A. A copy of the Offering Memorandum distributed by selling agent.

B. Copies of any appraisal prepared for purchase financing.

C. The investor's pro-forma and market rent assumptions generated by Argus investment analysis or other format (Excel preferred).

D. A rent roll as of the change in ownership date showing; all tenants with corresponding suite numbers, suite sizes (sf), monthly or annual rent, date and terms of leases, scheduled rent escalations and any vacant rentable space (Excel format preferred).

E. Indicate if any lease expense agreements are other than full-service gross with a base year (FSG).

F. If vacancy is above 10%, provide historical vacancy or occupancy ratios (on an annual or bi-annual basis) over the previous three (3) years.

G. A detailed annual income and expense summary for the year of sale and the prior two (2) years. If historical income and operating statements were not provided by the seller, please substitute your operating budget as of the purchase date (Excel format preferred).

iii. Retail

A. Any cash flow analysis, pro forma worksheets or investment analysis in the acquisition of the property.

B. Any appraisal prepared for the acquisition or financing of the subject property.

C. Details on the financing involved for the purchase and/or acquisition of the subject property.

D. Current rent roll showing net rentable areas by floor and area leased by each tenant; the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances.

E. The gross and net rentable areas of the building.

F. At the time of transfer, indicate the amount of net rentable vacant space, identify its location within the building and indicate the asking rental rates.

G. The anticipated sales volume of the property.

iv. Apartments

A. Rent roll as of the change in ownership date, showing the list of all tenants with monthly rent and move-in date. For retail tenants, please provide copies of the lease(s), including any amendments or renewals (Excel format preferred).

B. The anticipated rental rates for any vacant units.

C. The anticipated operating income and expenses at the time of purchase/change in ownership. If available, provide the operating income and expenses statements for the two (2) years preceding change in ownership (Excel format preferred).

D. Details on any miscellaneous income (parking, laundry, storage, etc.)

E. A copy of any appraisal prepared for any purpose (financing, insurance, investment) within two (2) years of the event date.

F. A description of each unit; number of rooms, bedrooms, bathrooms, furnished or unfurnished.

v. Hotel

A. Any appraisal, pro forma or feasibility study made to assist in the acquisition of the subject property, or for any other purpose (i.e. insurance, investment, financing) prepared within two (2) years of the event date.

B. List of the number of hotel rooms, the average daily rates and occupancy levels as of the change in ownership date and for the previous two (2) years.

C. The guest segmentation, by percentage.

D. Detailed, historic income and expense statement for the two (2) years prior to the event date, and the budgeted or anticipated income and expense statement for the first year following the change in ownership date.

E. Copy of the Management Agreement.

F. Copy of the Franchise Agreement, specifically identifying the franchise fees and how they are determined.

G. Copy of the Smith Travel Report for the property, as of the same year as the change in ownership.

H. The current rent roll showing net rentable areas by floor and area leased by each retail tenant (if any); the type of lease (FSG, NNN or IG); the date and terms of each lease; the move in date; options to renew; escalation clauses; tax clauses; free rent or any lease concessions, landlord tenant improvement allowances. If there are no leasable areas of the property, so state.

I. Copy of the sale agreement with detailed itemizations of all real property and business personal property components included in the sale.

vi. Single Family Homes/Condos

A. No additional information needed, recorded deed is sufficient

c. Timing: within 60 days of a change to the fee owner of the property **[or include applicable timeline from Assessor.]**

Attachments

1. **In Progress and Completed New Construction Cost Report template**

2. **Parcel Split/Condo Conversion Questionnaire**

PARCEL LEASE EXHIBIT H-1
ATTACHMENT 1

City and County of San Francisco
San Francisco Assessor-Recorder

Carmen Chu
Assessor-Recorder

Please check one of the following:

A.P.N. _____
(Block) (Lot)

☐ **As of Lien Date** _____

Address _____

☐ **As of Date of Completion** _____

COST REPORT

DESCRIPTION	Contract Amount	% Complete	Total Cost Completed To Date	Reported Previously	This Report
DIRECT COST: (Includes)					
Building Permits/Fees					
Contractor's Profit and Overhead					
Equipment Used in Construction					
Labor Used in Construction					
Material, Products and Equipment					
Performance Bonds					
SUBTOTAL DIRECT COST					
TENANT IMPROVEMENT:					
Owners Cost					
Tenants Cost					
SUBTOTAL TENANT IMROVEMENT					
INDIRECT COST: (Includes)					
Architect Fees					
Construction Insurance					
Contingency					
Engineer Fees					
Financing Fees					
Interest Expense					
Lease-Up Costs					
Legal/Professional Fees					
Marketing/Sales Costs					
Other Misc.Fees					
Project Administration/Management					
Property Taxes					
SUBTOTAL INDIRECT COST					
LAND COST					
ENTREPRENEURIAL PROFIT					
TOTAL PROJECT COST					

_____ _____
Print Name and Title Phone

_____ _____
Signature Date

CONFIDENTIAL

UNIT NO.	USE	YEAR BUILT	TOTAL AREA	DECK AREA	STORIES	CONDO FLOOR	TOTAL ROOMS	BEDROOMS	BATHROOMS	HALF BATHROOMS	FIREPLACES	KITCH QLTY	PARKING SPACES	PARKING TYPE	VIEW TYPE	SALE DATE

Parcel Lease Exhibit H-3: CFD Matters

All matters addressed in this Exhibit relate to the following actions, all of which the City has undertaken in accordance with the San Francisco Special Tax Financing Law (San Francisco Administration Code ch. 43, art. X), which incorporates the Mello-Roos Community Facilities Act of 1982 (Cal. Gov't Code §§ 53311-53368) (collectively, the "**CFD Law**"), by Board of Supervisors Resolution No. XX-XX (the "**Formation Resolution**") to implement the Financing Plan in the DDA between the Master Developer and the Port (collectively, the "**CFD Provisions**"). Unless specified otherwise, all statutory references in this Exhibit are to the California Government Code.

1. Formation of a Special Tax District. The City's actions in relation to the CFD Provisions include:

(a) formation of a community facilities district designated as "*City and County of San Francisco Special Tax District No. 2018-3 (Pier 70 Leased Properties)*" (the "**Special Tax District**") that includes the Premises within its boundaries;

(b) designation of property for potential future annexation to the Special Tax District (the "**Future Annexation Area**");

(c) approval of a rate and method of apportionment (the "**Rate and Method**"), a copy of which is attached to the Formation Resolution, for the calculation and levy of the Facilities Special Tax, the Shoreline Special Tax, the Arts Building Special Tax, and the Services Special Tax (as each term is defined in the Rate and Method) against all taxable property in the Special Tax District (collectively, the "**Special Taxes**");

(d) recordation of the "**Notice of Special Tax Lien**" against the real property in the Special Tax District in the Official Records of the City and County of San Francisco, as document number _____ pursuant to California Government Code Section 53328.3;

(e) authorization to issue bonds secured by one or more of the Special Taxes ("**Bonds**");

(f) authorization to use Bond proceeds and Special Taxes to finance the construction, completion, and acquisition of improvements described in the Formation Resolution (the "**CFD Improvements**"); and

(g) authorization to levy and use Special Taxes in perpetuity to finance services described in the Formation Resolution such as capital maintenance and repair of the CFD Improvements (the "**Services**").

2. Leasehold Subject to CFD Provisions. The Tenant acknowledges and agrees as follows.

(a) Its leasehold interest in the Premises is subject to the levy of Special Taxes and the Tenant will not have any right to amend the CFD Provisions.

(b) It is critical to each of the City, the Port, the Master Developer, and Tenant that the construction and completion of the CFD Improvements required to develop the

Premises be coordinated in all respects (including cost, timing, capacity, function, and type) with the construction and completion of the CFD Improvements for other property in the Special Tax District.

(c) If the Premises were excluded from the Special Tax District, or the Special Taxes to be levied on the Premises were reduced or eliminated, coordination of CFD Improvements required to develop the Premises with CFD Improvements for other property in the Special Tax District would be materially adversely affected.

3. Cooperation with CFD Matters. The Tenant agrees to the following with respect to the Special Tax District, the levy of the Special Taxes, and the issuance of any Bonds, at the Tenant's sole expense.

(a) The Tenant will:

i. if determined necessary by the City, and at the request of the City, cooperate with the City if the City decides to enter into a joint community facilities agreement or any other agreement necessary to finance CFD Improvements and Services (collectively, the "**JCFA**") that will be owned or operated by government agencies other than the City or its agencies.

(b) The Tenant will not, at any time or in any manner, contest, protest, or otherwise challenge any of the following:

i. the formation of the Special Tax District;

ii. the designation of the Future Annexation Area;

iii. the authorization, levy, or amount of the Special Taxes on the Premises;

iv. the authorization to issue the Bonds;

v. the CFD Improvements and Services to be financed by the Special Tax District; and

vi. the establishment of an appropriations limit for the Special Tax District.

(c) If required for the Special Tax District to levy Special Taxes or issue Bonds, the Tenant will acknowledge that the Premises are subject to the lien of the Special Tax District and the levy of Special Taxes and that the Special Tax District is authorized to issue Bonds.

(d) The Tenant will not bring any action, suit, or proceeding against the Special Tax District or the City; provided, however, that after exhausting its appeal rights under the Rate and Method, the Tenant may bring an action, suit, or proceeding against the Special Tax District or the City if it relates solely to an allegation that the Special Taxes have not been levied in accordance with the Rate and Method.

(e) The Tenant will not take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken with respect to the Special Tax District's formation or the issuance of Bonds, including when Special

Taxes are first levied, the amount of Special Taxes, the apportionment of Special Taxes, and the use of the Special Taxes collected by the Special Tax District.

4. The following definitions apply to this Exhibit.

(a) "**Actual Knowledge**" means the knowledge that the person signing this Lease has on the date of execution of this Lease or has obtained from:

i. interviews with current officers and responsible employees of the Tenant and its Affiliates that the person has determined are likely, in the ordinary course of their respective duties, to have knowledge of the matters set forth in this Lease;

ii. a review of documents that the person determined were reasonably necessary to obtain knowledge of the matters set forth in this Lease; or

iii. both, in any case without conducting any extraordinary inspection or inquiry except as prudent and customary in connection with the ordinary course of the Tenant's current business and operations or contacting individuals who are no longer employees of the Tenant or its Affiliates.

(b) "**Affiliate**" means any person that directly or indirectly, through one or more intermediaries:

i. exercises managerial control over the Tenant; or

ii. is under managerial control of the Tenant; and

iii. in each case, about whom information could be material to potential investors deciding whether to invest in future Bonds.

(c) "**Related Property**" means any real property interest owned or held by the Tenant or any of its Affiliates.

5. Compliance. The Tenant represents and warrants as follows and agrees that if its representations and warranties are discovered to be untrue after the Effective Date of this Lease, the Port may, in its discretion, elect to terminate this Lease.

(a) With respect to Related Property located within the boundaries of a development project in California, except as set forth in **Attachment 1**, to Tenant's Actual Knowledge, neither Tenant nor Tenant's Affiliates within the last five years have:

i. intentionally failed to pay when due any property taxes, special taxes, or assessments levied or assessed against the Related Property; or

ii. owned any interest in Related Property that became either tax-deeded to California or the subject of foreclosure proceedings for failure to pay property taxes, special taxes, or assessments levied or assessed against the Related Property.

(b) With respect to Related Property located within the boundaries of a development project outside of California, except as set forth in **Attachment 1**, to Tenant's Actual Knowledge, neither Tenant nor Tenant's Affiliates within the last five years have owned any interest in Related Property that became either tax-deeded to a governmental agency or the subject of foreclosure proceedings for failure to pay special

taxes or assessments that secure the payment of bonds and that were levied or assessed against the Related Property.

(c) Except as set forth in **Attachment 1**, neither the Tenant nor its Affiliates have failed to comply in the last five years under any continuing disclosure agreement relating to Related Property in projects in California.

6. Acknowledgment of the Rate and Method. The Rate and Method has been provided to the Tenant prior to the Effective Date of this Lease. The Tenant has read and, if deemed necessary, consulted with counsel, regarding the provisions of the Rate and Method.

7. Issuance of Bonds. This Section will apply to the Special Tax District's issuance of Bonds at any time.

(a) The Tenant will provide, at the request of the City or any Financing Participant (as defined in subsection (c) below), certificates or other documents executed by each secured lender that provided funds for the Tenant's development of the Premises signifying the lender's acknowledgment of:

i. the imposition of the Special Taxes on the Premises;

ii. the issuance of Bonds; and

iii. the Special Tax District's foreclosure rights if the Tenant is delinquent in the payment of Special Taxes.

(b) The Tenant acknowledges that Bonds may be issued in one or more series over time, that the issuance of each series of Bonds may require information and documents to be provided by the Tenant, and that the timely provision of that information and documents for each series of Bonds is critical for the Master Developer and the Port to achieve their respective financial goals. The Tenant's obligations will arise with the issuance of each series of Bonds and continue as provided in any related continuing disclosure agreement.

(c) The Tenant will not interfere with or impede the issuance of any series of Bonds issued by or in connection with the Special Tax District and will, at the Tenant's expense, provide information in connection with each series of Bonds as requested by any of the following (collectively, the "**Financing Participants**"):

i. the City, the Port, and any other JCFA Party, or any of their agents, including bond counsel and disclosure counsel;

ii. appraisers engaged to appraise the Leasehold;

iii. market absorption consultants;

iv. underwriters and underwriters' counsel;

v. financial advisors associated with the Bonds or the Special Tax District; and

vi. persons providing credit enhancement for the Bonds or the Special Tax District.

(d) The Tenant will provide, at Tenant's expense, required information, which may include:

i. a description of the Tenant's financing sources to develop the Premises;

ii. a description of the proposed development project and the ownership structure of the Tenant;

iii. the status of the Premises, including the rent roll and vacancy history;

iv. any history of delinquencies and defaults by the Tenant and its Affiliates, including the information disclosed in **Attachment 1**;

v. the Tenant's financial statements, which may be consolidated with its parent company and, for publicly traded companies where the Tenant's financial statements are consolidated with the publicly traded company, may be limited to those financial statements required by SEC Regulations;

vi. other financial and operating information, including a development pro forma, with respect to the Tenant and the Premises;

vii. certificates requested by the Financing Participants, which may include representations on:

1. the due formation of the Tenant;

2. the due execution of documents executed by the Tenant in connection with the Special Tax District or any Bonds;

3. no material litigation or investigation by or against the Tenant or its Affiliates that seeks to prohibit, restrain, or enjoin the development of the Premises, or in which the Tenant or its Affiliates may be adjudicated as bankrupt or discharged from any or all debts or obligations or granted an extension of time to pay or a reorganization or readjustment of its debts, or which, if determined adversely to the Tenant or its Affiliates, could adversely affect the development of the Premises and the payment of the Special Taxes; and

4. the accuracy of the information provided in connection with the issuance of any series of Bonds, including the information in all disclosure documents; and

viii. opinions of counsel to the Tenant requested by any of the Financing Participants, which may include any matter listed in **clause (vii)** of this Subsection and a 10b-5 opinion regarding any disclosure about the Tenant and its Affiliates in the offering statement used to market the Bonds.

(e) The City will decide on the amount and application of any capitalized interest in consultation with the Master Developer, and the Tenant will not contest the amount and application of capitalized interest.

(f) This Subsection will apply if any of the Financing Participants requires a renewable letter of credit, cash, or other form of credit enhancement ("**Special Tax Security**") in connection with the issuance of the Bonds.

i. The Tenant will provide Special Tax Security that is acceptable to the Financing Participants in an amount no greater than two years' levy of Special Taxes against the Premises by the Special Tax District, as reasonably determined by any of the Financing Participants,

ii. In addition, if the Master Developer (or any current owner of the Premises) posted Special Tax Security with respect to the Premises before the Close of Escrow, the Tenant will provide replacement Special Tax Security with respect to the Premises acceptable to the Financing Participants. The Tenant's posting of replacement Special Tax Security will be a condition precedent to the Effective Date of this Lease.

iii. The Tenant acknowledges that the Special Tax Security is intended to secure the Special Tax payments by the Tenant and its successors and assigns, but not any sub-tenants of less than the whole of the Premises or apartment dwellers.

iv. Any letter of credit must be provided by an issuer acceptable to the Financing Participants and have a minimum "A" long-term debt rating (or the equivalent "A" designation) from both Standard & Poor's and Moody's Investors Service, unless the Financing Participants agree to a lower rating.

(g) Any reimbursements from the proceeds of any Bonds or directly from any Special Taxes (or prepayments of Special Taxes) for the costs of authorized CFD Improvements, returns of deposits, or payments of the costs of issuance will be the property of the Master Developer (as between the Master Developer and the Tenant), regardless of the time of the original payment or the identity of the party that made the payment. Should the Tenant receive any such reimbursements, or should the Tenant receive the return or reimbursement of any deposits with any governmental entity or utility related to authorized CFD Improvements, the Tenant will endorse and tender the payment to the Master Developer immediately.

(h) The Tenant will execute and perform under any continuing disclosure agreement as requested by any of the Financing Participants. In addition, if, prior to the Effective Date, the Master Developer has entered into a continuing disclosure agreement, the Tenant will assume the obligations under the continuing disclosure agreement with respect to the Premises, in the form and manner required by the Financing Participants and the continuing disclosure agreement. The assumption of any continuing disclosure agreement will be a condition precedent to the Effective Date of this Lease.

8. Cooperation to Amend the Special Tax District.

(a) The Tenant acknowledges that the Port, the Master Developer, or the City may request proceedings to amend any CFD Provisions ("**Change Proceedings**"). **Subsection 8(b)** will apply so long as the changes contemplated by the Change Proceedings:

i. do not increase the Special Tax rates to be levied on the Premises above Special Tax rates for the Premises, escalated to the date of calculation, under the Rate and Method;

ii. do not change the Rate and Method so that the Tenant is taxed sooner than under the current version of the Rate and Method; and

iii. do not result in more favorable treatment of one or more other tenants or property owners in the Special Tax District compared to the treatment of the Tenant and the Premises.

(b) Subject to **Subsection 8(a)**, the Tenant shall not contest, protest, or otherwise challenge Change Proceedings to the Special Tax District.

9. Annexation of Property to the Special Tax District.

(a) The Tenant acknowledges that in accordance with the CFD Law:

i. the City has designated certain property as a Future Annexation Area to the Special Tax District;

ii. from time to time, parcels of the Future Annexation Area may be annexed to the Special Tax District by execution of a unanimous written consent of the owners of the parcels of Future Annexation Area to be annexed without a public hearing or election; and

iii. the Master Developer, City, and Port may also request annexation of additional property to the Special Tax District.

(b) The Tenant will not:

i. contest, protest, or otherwise challenge the annexation of any additional property to the Special Tax District as described in **Section 9(a)** above, or the imposition of the levy of Special Taxes on the annexed property; or

ii. take any action that would in any way interfere with the operation of the Special Tax District or decisions made or actions taken by the Master Developer or the owners of property (including the owners of the Future Annexation Area) with respect to the annexation of additional property to the Special Tax District.

10. Activity in Other Special Tax Districts. The Tenant acknowledges that other parcels in the SUD are included in a separate special tax district formed by the City (the "**Other STD**") and agrees not to:

(a) contest, protest, or otherwise challenge the formation, implementation, levy of special taxes in, or issuance of bonds by the Other STD, or the annexation of additional property to, or any Change Proceedings conducted with respect to, the Other STD; or

(b) take any other action that would in any way interfere with the operation of the Other STD or decisions made or actions taken by the City, the Port, and the Master Developer with respect to the Other STD.

11. Shortfall Provisions.

(a) All capitalized terms used in this Section 11 that are not otherwise defined herein shall have the meaning given such terms in the Appendix to the DDA (the "**Appendix**").

(b) The Tenant agrees to refrain from initiating a Reassessment to reduce the Baseline Assessed Value or later Current Assessed Value of the Premises until the IFD Termination Date.

(c) If the Tenant initiates a Reassessment on the Premises in violation of Section 11(b) above, then the following shall occur:

a. Tenant will pay the Port the Assessment Shortfall within 20 days after the Port delivers its payment demand. Amounts not paid when due will bear interest at the rate of 10%, compounded annually, until paid.

b. The obligation to pay the Assessment Shortfall will begin in the City Fiscal Year following the Reassessment and continue until the earlier to occur of the following dates: (A) the applicable IFD Termination Date; and (B) when the Assessment Shortfall is reduced to zero.

12. Acquisition Agreement.

The Tenant acknowledges that the Tenant is not and will not become either a party, a third-party beneficiary, or an assignee to the Acquisition and Reimbursement Agreement between the Master Developer and the Port (the "**Acquisition Agreement**"), and that any reimbursements from the proceeds of Bonds or Special Taxes for the costs of authorized CFD Improvements under the Acquisition Agreement will be the property of the Master Developer, regardless of the time of the original payment or the identity of the party that made the payment. Should the Tenant receive any reimbursements, or should the Tenant receive the return or reimbursement of any deposits that were intended to be financed with Special Taxes or Bonds, the Tenant shall endorse and tender the payment to the Master Developer promptly. The Tenant further agrees not to contest, protest or otherwise challenge the rights or obligations of the Master Developer or the Port under the Acquisition Agreement.

13. General Provisions.

(a) The Tenant will pay prior to delinquency all Special Taxes levied on the Premises while the Tenant or any Affiliate has a leasehold interest in the Premises.

(b) The Tenant will not petition, support, encourage, consent to, or implement any action seeking to reduce or repeal the levying of all or any part of the Special Taxes in the Special Tax District, except at the written request of the Port, the Master Developer, and the City.

(c) The Tenant will disclose the requirements of this Exhibit to any Subtenant of the entirety of the Premises and require each such Subtenant to enter into an agreement with the Tenant, the Port, and the Master Developer assuming the Tenant's obligations under this Exhibit. This paragraph will not apply to any rentals to apartment dwellers or Subtenants of less than all of the Premises. If required, the Tenant will comply with disclosures required by Section 53341.5.

(d) The Master Developer is an express third-party beneficiary of the covenants and agreements of this Exhibit and may enforce each provision against the Tenant as if the Master Developer were a party to this Lease.

(e) The Port is required to provide to the Tenant a notice of special tax pursuant to Section 53341.5 regarding the Special Taxes in the Rate and Method (the

"**Notice of Special Tax**"). The Notice of Special Tax is attached as **Exhibit XXXX** and the Tenant shall execute and return to the Port a copy of the Notice of Special Tax within three business days after executing this Lease.

(f) The covenants and provisions contained in this Exhibit remain in effect for the term of this Lease.

Attachment 1: Certain Representations of Tenant
Exhibit XXXX: Notice of Special Tax

Parcel Lease Exhibit I
Form of Leasing Activity Report

LEASING ACTIVITY REPORT
Parcel [ ]
Date: [ ]

This Leasing Activity Report is being delivered to Port pursuant to Section 9.3(a) of that certain Lease dated _____ by and between _____ ("Tenant") and the Port. Initially capitalized terms used herein are defined in the Lease.

	As of the Above-Listed Date
Total square footage available for Sublease at the Premises	
Total square footage of Subleased Space	
Number of Subtenants	
Average rental rate for Subleased Space (expressed as monthly rate of dollars per square foot of Subleased Space)	
Gross revenues from the Premises [Note: If gross revenues have not been made available in other public forums, such as government filings, then Tenant is not required to disclose the same in this Leasing Activity Report and may write "N/A" in the column at right]	

The contents of this Leasing Activity Report were prepared by the undersigned, who, as an officer of Tenant, certifies that to the best of his/her knowledge this Leasing Activity Report is a true and correct copy. The undersigned has executed this Leasing Activity Report in his/her capacity as an officer of Tenant, and shall incur no personal liability in connection herewith.

By:_____
Name:_____
Title:_____

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[1]**
MITIGATION MEASURES FOR THE PIER 70 MIXED-USE DISTRICT PROJECT					
Cultural Resources (Archaeological Resources) Mitigation Measures					
M-CR-1a: Archeological Testing, Monitoring, Data Recovery and Reporting Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources. The project sponsors shall retain the services of an archeological consultant from rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsors shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the	Project sponsors[2] to retain qualified professional archaeologist from the pool of archaeological consultants maintained by the Planning Department. The archaeological consultant shall undertake an archaeological testing program as specified herein. Project sponsors,	Prior to the issuance of site permits, submittal of all plans and reports for approval by the ERO.	Archaeological consultant's work shall be conducted in accordance with this measure at the direction of the ERO.	Considered complete when project sponsor retains a qualified professional archaeological consultant and archeological consultant has approved scope by the ERO for the archeological testing program	Planning Department

[1] Both the City and the Port have jurisdiction over portions of the Project Site. This column identifies the agency or agencies with monitoring responsibility for each mitigation and improvement measure. The 28-Acre Site and 20th/Illinois Parcels are located within the Port's building permit jurisdiction. The Hoedown Yard parcel is located within the San Francisco Department of Building Inspection (DBI).

[2] Note: For purposes of this MMRP, unless otherwise indicated, the term "project sponsor" shall mean the party (*i.e.*, the Developer under the DDA, a Vertical Developer (as defined in the DDA) or Port, as applicable, and their respective contractors and agents) that is responsible under the Project documents for construction of the improvements to which the Mitigation Measure applies, or otherwise assuming responsibility for implementation of the mitigation measure

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[1]
suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in State CEQA Guidelines Section 15064.5 (a) and (c). Consultation with Descendant Communities On discovery of an archeological site associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to consult with the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.	archaeological consultant shall contact the ERO and descendant group representative upon discovery of an archaeological site associated with descendant Native Americans or the Overseas Chinese. The representative of the descendant group shall be given the opportunity to monitor archaeological field investigations on the site and consult with the ERO regarding appropriate archaeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archaeological site.	For the duration of soil-disturbing activities.	Archaeological Consultant shall prepare a Final Archaeological Resources Report in consultation with the ERO (per below). A copy of this report shall be provided to the ERO and the representative of the descendant group.	Considered complete upon submittal of Final Archaeological Resources Report.	
Archeological Testing Program	Development of	Prior to any	Archaeological	Considered	Planning

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[1]
The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the Proposed Project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA. At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.	<u>ATP:</u> Project sponsors and archaeological consultant in consultation with the ERO. <u>Archeological Testing Report:</u> Project sponsors and archaeological consultant in consultation with the ERO.	excavation, site preparation or construction, and prior to testing, an ATP for a defined geographic area and/or specified construction activities is to be submitted to and approved by the ERO. A single ATP or multiple ATPs may be produced to address project phasing. At the completion of each archaeological testing program.	consultant to undertake ATP in consultation with ERO. Archaeological consultant to submit results of testing, and in consultation with ERO, determine whether additional measures are warranted. If significant archaeological	complete with approval of the ATP by the ERO and on finding by the ERO that the ATP is implemented. Considered complete on submittal to ERO of report(s) on ATP findings.	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**
			resources are present and may be adversely affected, project sponsors, at its discretion, may elect to redesign a project, or implement data recovery program, unless ERO determines the archaeological resource is of greater interpretive than research significance and that interpretive use is feasible.		
Archeological Monitoring Program If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented, the AMP would minimally include the following provisions: • The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the AMP prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. A single AMP or multiple AMPs may be produced to address project phasing. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring	Project sponsors and archaeological consultant at the direction of the ERO.	The archaeological consultant, project sponsors, and ERO shall meet prior to the commencement of soil-disturbing activities for a defined geographic area and/or specified construction	If required, archaeological consultant to prepare the AMP in consultation with the ERO.	Considered complete on approval of AMP(s) by ERO; submittal of report regarding findings of AMP(s); and finding by ERO that AMP(s) is implemented.	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[1]**
because of the risk these activities pose to potential archeological resources and to their depositional context. The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource; • The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; • The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis; If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, pile driving activity that may affect the archeological resource shall be suspended until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the Proposed Project, at the		activities. The ERO in consultation with the archaeological consultant shall determine what archaeological monitoring is necessary. A single AMP or multiple AMPs may be produced to address project phasing.			

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**
discretion of the project sponsors either: A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible. Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.					
Archeological Data Recovery Program If the ERO, in consultation with the archeological consultant, determines that an archeological data recovery programs shall be implemented based on the presence of a significant resource, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. The archeological consultant, project sponsors, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, shall be limited to the portions of the historical property that could be adversely affected by the Proposed Project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.	Project sponsors and archaeological consultant at the direction of the ERO.	Upon determination by the ERO that an ADRP is required. A single ADRP or multiple ADRPs may be produced to address project phasing.	If required, archaeological consultant to prepare an ADRP(s) in consultation with the ERO.	Considered complete on submittal of ADRP(s) to ERO.	

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**
The scope of the ADRP shall include the following elements: • *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations. • *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures. • *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies. • *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. • *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. • *Final Report.* Description of proposed report format and distribution of results. • *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.					
Human Remains and Associated or Unassociated Funerary Objects The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the coroner of the City and County of San Francisco and in the event of the coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project	Project sponsors and archaeological consultant, in consultation with the San Francisco Coroner, NAHC, ERO, and MLD.	In the event human remains and/or funerary objects are encountered.	Archaeological consultant/ archaeological monitor/project sponsors or contractor to contact San Francisco County Coroner and ERO.	Ongoing during soils disturbing activity. Considered complete on notification of the San Francisco County Coroner	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
sponsors, ERO, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (State CEQA Guidelines Section 15064.5(d)). The agreement shall take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such an agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.			Implement regulatory requirements, if applicable, regarding discovery of Native American human remains and associated/unassociated funerary objects. Contact archaeological consultant and ERO.	and NAHC, if necessary.	
Final Archeological Resources Report The archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report. The FARR may be submitted at the conclusion of all construction activities associated with the Proposed Project or on a parcel-by-parcel basis. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high	Project sponsors and archaeological consultant at the direction of the ERO. The ERO shall provide to the archaeological consultant(s) preparing the FARR reports and relevant data obtained through implementation of this Mitigation Measure M-CR-1a.	For Horizontal Developer-prio r to determination of substantial completion of infrastructure at each sub-phase For Vertical Developer-prio r to issuance of Certificate of Temporary or Final Occupancy, whichever occurs first	If applicable, archaeological consultant to submit a Draft and final FARR to ERO based on reports and relevant data provided by the ERO Archaeological consultant to distribute FARR.	Considered complete on submittal of FARR and approval by ERO. Considered complete when archaeological consultant provides written certification to the ERO that the required FARR	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
public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.		If applicable, upon approval of the FARR by the ERO.		distribution has been completed.	
M-CR-1b: Interpretation Based on a reasonable presumption that archeological resources may be present within the project site, and to the extent that the potential significance of some such resources is premised on CRHR Criteria 1 (Events), 2 (Persons), and/or 3 (Design/Construction), the following measure shall be undertaken to avoid any potentially significant adverse effect from the Proposed Project on buried or submerged historical resources if significant archeological resources are discovered. The project sponsors shall implement an approved program for interpretation of significant archeological resources. The interpretive program may be combined with the program required under Mitigation Measure M-CR-4b: Public Interpretation. The project sponsors shall retain the services of a qualified archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist having expertise in California urban historical and marine archeology. The archeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. The particular program for interpretation of artifacts that are encountered within the project site will depend upon the results of the data recovery program and will be the subject of continued discussion between the ERO, consulting archeologist, and the project sponsors. Such a program may include, but is not limited to, any of the following (as outlined in the ARDTP): surface commemoration of the original location of resources; display of resources and associated artifacts (which may offer an underground view to the public); display of interpretive materials such as graphics, photographs, video, models, and public art; and academic and popular publication of the results of the data recovery. The interpretive program shall include an on-site	Project sponsors and archaeological consultant at the direction of the ERO.	Prior to issuance of final certificate of occupancy	Archaeological consultant shall develop a feasible, resource-specific program for post-recovery interpretation of resources. All plans and recommendations for interpretation by the archaeological consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until deemed final by the ERO. The ERO to approve final interpretation program. Project sponsors to implement an approved	Considered complete upon installation of approved interpretation program, if required.	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[1]**
component. The archeological consultant's work shall be conducted at the direction of the ERO, and in consultation with the project sponsors. All plans and recommendations for interpretation by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.			interpretation program.		
Mitigation Measure M-CR-5: Preparation of Historic Resource Evaluation Reports, Review, and Performance Criteria. Prior to Port issuance of building permits associated with Buildings 2, 12 and 21, Port of San Francisco Preservation staff shall review and approve future rehabilitation design proposals for Buildings 2, 12, and 21. Submitted rehabilitation design proposals for Buildings 2 and 12 shall include, in addition to proposed building design, detail on the proposed landscaping treatment within a 20-foot-wide perimeter of each building. The Port's review and analysis would be informed by Historic Resource Evaluation(s) provided by the project sponsors. The Historic Resource Evaluation(s) shall be prepared by a qualified consultant who meets or exceeds the Secretary of the Interior's Professional Qualification Standards in historic architecture or architectural history. The scope of the Historic Resource Evaluation(s) shall be reviewed and approved by Port Preservation staff prior to the start of work. Following review of the completed Historic Resource Evaluation(s), Port preservation staff would prepare one or more Historic Resource Evaluation Response(s) that would contain a determination as to the effects, if any, on historical resources of the proposed renovation. The Port shall not issue buildings permits associated with Buildings 2, 12, and 21 until Port preservation staff conclude that the design (1) conforms with the Secretary of the Interior's Standards for Rehabilitation; (2) is compatible with the UIW Historic District; and (3) preserves the building's historic materials and character-defining features, and repairs instead of replaces deteriorated features, where feasible. Should alternative materials be proposed for replacement of historic materials, they shall be in keeping with the size, scale, color, texture, and general appearance. The performance criteria shall ensure	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Prior to the issuance of building permits associated with Buildings 2, 12 and 21.	Qualified historian to prepare historic resource evaluation documentation and present to Port staff to determine conformance to the Secretary's Standards.	Considered complete upon approval by the Port staff.	Port

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retention of the following character-defining features of each historic building: • **Building 2**: (1) board-formed concrete construction; (2) six-story height; (3) flat roof; (4) rectangular plan and north-south orientation; (5) regular pattern of window openings on east and west elevations; (6) steel, multi-pane, fixed sash windows (floors 1-5); (7) wood sash windows (floor 6); (8) elevator/stair tower that rises above roofline and projects slightly from west façade. • **Building 12**: (1) steel and wood construction; (2) corrugated steel cladding (except the as-built south elevation which was always open to Building 15); (3) 60-foot height; (4) Aiken roof configuration with five raised, glazed monitors; (5) clerestory multi-lite steel sash awning windows along the north and south sides of the monitors; (6) multi-lite, steel sash awning widows, arranged in three bands (with a double-height bottom band) on the north and west elevations, and in four bands on the east elevation; (7) 12-bay configuration of east and west elevations; (8) north-south roof ridge from which roof slopes gently (1/4 inch per foot) to the east and west • **Building 21**: (1) steel frame construction; (2) corrugated metal cladding; (3) double-gable roof clad in corrugated metal, with wide roof monitor at each gable; (4) multi-lite, double hung wood or horizontal steel sash windows; and (5) two pairs of steel freight loading doors on the north elevation, glazed with 12 lites per door. Port staff shall not approve any proposal for rehabilitation of Buildings 2, 12, and 21 unless they find that such a scheme conforms to the Secretary's Standards as specified for each building.					
Mitigation Measure M-CR-11: Performance Criteria and Review Process for New Construction In addition to the standards and guidelines established as part of the Pier 70	Project sponsors	Prior to issuance of a building permit for new	San Francisco Preservation Planning staff, in consultation with	Considered complete when Planning and Port Preservation	Planning Department

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SUD and *Design for Development*, new construction and site development within the Pier 70 SUD shall be compatible with the character of the UIW Historic District and shall maintain and support the District's character-defining features through the following performance criteria (terminology used has definition as provided in the *Design for Development*): 1. New construction shall comply with the Secretary of the Interior's Rehabilitation Standard No. 9: "New Addition, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the integrity of the property and its environment." 2 New construction shall comply with the Infill Development Design Criteria in the Port of San Francisco's *Pier 70 Preferred Master Plan* (2010) as found in Chapter 8, pp 57-69 (a policy document endorsed by the Port Commission to guide staff planning at Pier 70). 3. New construction shall be purpose-built structures of varying heights and massing located within close proximity to one another. 4. New construction shall not mimic historic features or architectural details of contributing buildings within the District. New construction may reference, but shall not replicate, historic architectural features or details. 5. New construction shall be contextually appropriate in terms of massing, size, scale, and architectural features, not only with the remaining historic buildings, but with one another. 6. New construction shall reinforce variety through the use of materials, architectural styles, rooflines, building heights, and window types and through a contemporary palette of materials as well as those found within the District.		construction.	the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning and Port staff that confirms compliance of all proposed new construction with these guiding plans and policies. San Francisco	staff note compliance with the Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, outlined in the written memorandum.	

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7. Parcel development shall be limited to the new construction zones identified in *Design for Development* Figure 6.3.1: Allowable New Construction Zones. 8. The maximum height of new construction shall be consistent with the parcel heights identified in *Design for Development* Figure 6.4.2: Building Height Maximum. 9. The use of street trees and landscape materials shall be limited and used judiciously within the Pier 70 SUD. Greater use of trees and landscape materials shall be allowed in designated areas consistent with *Design for Development* Figure 4.8.1: Street Trees and Plantings Plan. 10. New construction shall be permitted adjacent to contributing buildings as identified in *Design for Development* Figure 6.3.2: New Construction Buffers. 11. No substantive exterior additions shall be permitted to contributing Buildings 2, 12, or 21. Building 12 did not historically have a south-facing façade; therefore, rehabilitation will by necessity construct a new south elevation wall. Building 21 shall be relocated approximately 75 feet east of its present placement, to maintain the general historic context of the resource in spatial relationship to other resources. Building 21's orientation shall be maintained. <u>Building Specific Standards</u> Each development parcel within the Pier 70 SUD has a different physical proximity and visual relationship to the contributing buildings within the UIW Historic District. For those façades immediately adjacent to or facing contributing buildings, building design shall be responsive to identified character-defining features in the manner described in the *Design for Development* Buildings chapter. All other façades shall have greater freedom in the expression of scale, color, use of material, and overall appearance, and shall be permitted if consistent with Secretary Standard No. 9 and the *Design*			Preservation Planning staff must make determination in compliance with the timelines outlined in the Pier 70 Special Use District section of the Planning Code for review of vertical design.		

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for Development. Table M.CR.1: Building-Specific Responsiveness, indicates resources that are located adjacent to, and have the greatest influence on the design of, the noted development parcel façade.					

Table M.CR.1: Building-Specific Responsiveness

Façade/Parcel Name-Number	Contributing Building (Building No.)
North and West; A	113
North and Northeast; B	113, 6
North; C1	116
East and South; C2	12
South and West; D	2, 12
East and South; E1	21
West; E2	12
West; E4	21
North; F/G	12
East; PKN	113-116

Source: ESA 2015.

Palette of Materials

In addition to the standards and guidelines pertaining to application of

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materials in the *Design for Development*, the following material performance standards would apply to the building design on the development parcels (terminology used has definition as provided in the *Design for Development*): • Masonry panels that replicate traditional nineteenth or twentieth century brick masonry patterns shall not be allowed on the east façade of Parcel PKN, north and west façades of Parcel A or on the north façade of Parcel C1. • Smooth, flat, minimally detailed glass curtain walls shall not be allowed on the façades listed above. Glass with expressed articulation and visual depth or that expresses underlying structure is an allowable material throughout the entirety of the Pier 70 SUD. • Coarse-sand finished stucco shall not be allowed as a primary material within the entirety of the UIW Historic District. • Bamboo wood siding shall not be allowed on façades listed above or as a primary façade material. • Laminated timber panels shall not be allowed on façades listed above. • When considering material selection immediately adjacent to contributing buildings (e.g., 20th Street Historic Core, Buildings 2, 12, and 21; and Buildings 103, 106, 107, and 108 located within or immediately adjacent to the BAE Systems site), characteristics of compatibility and differentiation shall both be taken into account. Material selection shall not duplicate adjacent building primary materials and treatments, nor shall they establish a false sense of historic development. • Avoid conflict of new materials that appear similar or attempt to replicate historic materials. For example, Building 12 has character-defining corrugated steel cladding. As such, the eastern					

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façade of Parcel C2, the northern façade of Parcels F and G, and the southern façade of Parcel D1 shall not use corrugated steel cladding as a primary material. As another example, Building 113 has character-defining brick-masonry construction. As such, the northern and western façades of Parcel A and the eastern façade of Parcel K North shall not use brick masonry as a primary material. • Use of contemporary materials shall reflect the scale and proportions of historic materials used within the UIW Historic District. • Modern materials shall be designed and detailed in a manner to reflect but not replicate the scale, pattern, and rhythm of adjacent contributing buildings' exterior materials. <u>Review Process</u> Prior to Port issuance of building permits associated with new construction, San Francisco Preservation Planning staff, in consultation with the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD *Design for Development* Standards, including Secretary Standard No. 9, to evaluate all future development proposals within the project site for proposed new construction within the UIW Historic District. As part of this effort, project sponsors shall also submit a written memorandum for review and approval to San Francisco Preservation Planning staff that confirms compliance of all proposed new construction with these guiding plans and policies.					
Transportation and Circulation Mitigation Measures					
Mitigation Measure M-TR-5: Monitor and increase capacity on the 48 Quintara/24th Street bus routes as needed. Prior to approval of the Proposed Project's phase applications, project sponsors shall demonstrate that the capacity of the 48 Quintara/24th Street bus route has not exceeded 85 percent capacity utilization, and that future demand associated with build-out and occupancy of the phase will not cause	Developer, TMA, and SFMTA. Documentation of capacity of the 48 Quintara/24th Street	<u>Demonstration of capacity</u>: Prior to approval of the project's phase applications.	Project sponsors to demonstrate to the SFMTA that each building for which temporary certificates of occupancy are	Considered complete upon approval of the project's phase application.	Planning Department, SFMTA

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the route to exceed its utilization. Forecasts of travel behavior of future phases could be based on trip generation rates forecast in the EIR or based on subsequent surveys of occupants of the project, possibly including surveys conducted as part of ongoing TDM monitoring efforts required as part of Air Quality Mitigation Measure M-AQ-1f: Transportation Demand Management. If trip generation calculations or monitoring surveys demonstrate that a specific phase of the Proposed Project will cause capacity on the 48 Quintara/24th Street route to exceed 85 percent, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA through the following means: • At SFMTA's request, the project sponsors shall pay the capital costs for additional buses (up to a maximum of four in the Maximum Residential Scenario and six in the Maximum Commercial Scenario). If the SFMTA requests the project sponsor to pay the capital costs of the buses, the SFMTA would need to find funding to pay for the added operating cost associated with operating increased service made possible by the increased vehicle fleet. The source of that funding has not been established. Alternatively, if SFMTA determines that other measures to increase capacity along the route would be more desirable than adding buses, the project sponsors shall pay an amount equivalent to the cost of the required number of buses toward completion of one or more of the following, as determined by SFMTA: • Convert to using higher-capacity vehicles on the 48 Quintara/24th Street route. In this case, the project sponsors shall pay a portion of the capital costs to convert the route to articulated buses. Some bus stops along the route may not currently be configured to accommodate the longer articulated buses. Some bus zones could likely be extended by removing one or more parking spaces; in some locations, appropriate space may not be available. The	bus route shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using a methodology approved by SFMTA and Planning. If documentation of capacity is based on monitoring surveys, the transportation consultant shall submit raw data from such surveys concurrently to SFMTA, the Planning Department, and project sponsors.	If project sponsors demonstrate to the SFMTA that the phase would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR, further monitoring is not required during that phase. Capital Costs: Payment required after SFMTA affirms via letter to the project sponsors that mitigation funds will be	requested would not generate a number of transit trips on the 48 Quintara/24th Street bus route that would exceed the significance thresholds outlined in the EIR. If the project demonstrates (using trip generation rates forecasted in the EIR or through surveys of existing travel behavior at the site) that a specific building would cause capacity to exceed 85 percent based on the Baseline scenario in the EIR or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline		

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project sponsors' contribution may not be adequate to facilitate the full conversion of the route to articulated buses; therefore, a source of funding would need to be established to complete the remainder, including improvements to bus stop capacity at all of the bus stops along the route that do not currently accommodate articulated buses. • SFMTA may determine that instead of adding more buses to a congested route, it would be more desirable to increase travel speeds along the route. In this case, the project sponsors' contribution would be used to fund a study to identify appropriate and feasible improvements and/or implement a portion of the improvements that would increase travel speeds sufficiently to increase capacity along the bus route such that the project's impacts along the route would be determined to be less than significant. Increased speeds could be accomplished by funding a portion of the planned bus rapid transit system along 16th Street for the 22 Fillmore between Church and Third streets. Adding signals on Pennsylvania Street and 22nd Street may serve to provide increased travel speeds on this relatively short segment of the bus routes. The project sponsors' contribution may not be adequate to fully achieve the capacity increases needed to reduce the project's impacts and SFMTA may need to secure additional sources of funding. Another option to increase capacity along the corridor is to add new a Muni service route in this area. If this option is selected, project sponsors shall fund purchase of the same number of new vehicles outlined in the first option (four for the Maximum Residential Alternative and six for the Maximum Commercial Alternative) to be operated along the new route. By providing an additional service route, a percentage of the current transit riders on the 48 Quintara/24th Street would likely shift to the new route, lowering the capacity utilization below the 85 percent utilization threshold. As for the first option, funding would need to be secured to pay for operating the new route.		spent on implementation of M-TR-5 through purchase of additional buses or alternative measure in accordance with M-TR-5. Capital costs for more than four buses, up to a maximum of six buses, shall only be required if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR, and if project sponsors demonstrate that the	scenario without the Proposed Project, and the SFMTA has committed to implement M-TR-5, the project sponsors shall provide capital costs for increased capacity on the route in a manner deemed acceptable by SFMTA.		

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		building would cause capacity to exceed 85 percent or would contribute more than 5 percent of capacity on the line if it was already projected to exceed 85 percent capacity utilization in the Baseline scenario without the Proposed Project.			
Mitigation Measure M-TR-10: Improve pedestrian facilities on Illinois Street adjacent to and leading to the project site. As part of construction of the Proposed Project roadway network, the project sponsors shall implement the following improvements: • Install ADA curb ramps on all corners at the intersection of 22nd Street and Illinois Street • Signalize the intersections of Illinois Street with 20th and 22nd Street. • Modify the sidewalk on the east side of Illinois Street between 22nd and 20th streets to a minimum of 10 feet. Relocate	Project sponsors shall implement the improvements.	During construction of street improvements adjacent to pedestrian facilities on Illinois Street identified in Mitigation Measure M-TR-10.	SFMTA reviews signal and site plans and maps for improvements identified in Mitigation Measure M-TR-10.	Considered complete when street improvements have been built.	SFMTA, Port

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obstructions, such as fire hydrants and power poles, as feasible, to ensure an accessible path of travel is provided to and from the Proposed Project.					
Mitigation Measure M-TR-12A: Coordinate Deliveries The Project's Transportation Coordinator shall coordinate with building tenants and delivery services to minimize deliveries during a.m. and p.m. peak periods. Although many deliveries cannot be limited to specific hours, the Transportation Coordinator shall work with tenants to find opportunities to consolidate deliveries and reduce the need for peak period deliveries, where possible.	Transportation Management Agency Transportation Coordinator.	On-going.	Transportation Management Agency Transportation Coordinator to coordinate with building tenants and delivery services to consolidate deliveries and reduce the need for peak period deliveries, where possible.	On-going during project operations.	Port
Mitigation Measure M-TR-12B: Monitor loading activity and convert general purpose on-street parking spaces to commercial loading spaces, as needed. After completion of the first phase of the Proposed Project, and prior to approval of each subsequent phase, the project sponsors shall conduct a study of utilization of on- and off-street commercial loading spaces. Prior to completion, the methodology for the study shall be reviewed and approved by either: (a) Port Staff in consultation with SFMTA Staff for areas within Port jurisdiction; or (b) SFMTA Staff in consultation with Port Staff for areas within SFMTA jurisdiction. If the result of the study indicates that fewer than 15 percent of the commercial loading spaces are available during the peak loading period, the project sponsors shall incorporate measures to convert existing or proposed general purpose on-street parking spaces to commercial parking spaces in addition to the required off-street spaces.	Developer, TMA or Port.	Prior to approval of the project's phase applications after completion of the first phase.	Project sponsors or TMA to conduct a commercial loading study for the Port.	Considered complete after the Port Staff reviews and approves the study and the project sponsors, Port or TMA incorporates any additional measures necessary for commercial loading.	Port

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Mitigation Measure M-C-TR-4A: Increase capacity on the 48 Quintara/24th bus route under the Maximum Residential Scenario. The project sponsors shall contribute funds for one additional vehicle (in addition to and separate from the four prescribed under Mitigation Measure M-TR-5 for the Maximum Residential Scenario) to reduce the Proposed Project's contribution to the significant cumulative impact to not cumulatively considerable. This shall be considered the Proposed Project's fair share toward mitigating this significant cumulative impact. If SFMTA adopts a strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA and SFMTA Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	Demonstration of Capacity: If necessary, prior to approval of the project's phase applications. Capital Costs: Payment confirmed prior to issuance of building permit for building that would result in exceedance of 85 percent capacity utilization. Capital costs for more than four buses, up to a maximum of six buses, shall be paid if the total gsf of commercial use exceeds the Maximum Residential Scenario total gsf of commercial	If the Maximum Residential Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors	SFMTA

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		use, identified in Table 2.3 of the EIR.			
Mitigation Measure M-C-TR-4B: Increase capacity on the 22 Fillmore bus route under the Maximum Commercial Scenario. The project sponsors shall contribute funds for two additional vehicles to reduce the Proposed Project's contribution to the significant cumulative impact to not considerable. This shall be considered the Proposed Project's fair share toward mitigating this cumulative impact. If SFMTA adopts an alternate strategy to increase capacity along this route that does not involve purchasing and operating additional vehicles, the Proposed Project's fair share contribution shall remain the same, and may be used for one of those other strategies deemed desirable by SFMTA.	Developer, TMA, and SFMTA. Documentation of capacity shall be prepared by a consultant from the Planning Department's Transportation Consultant Pool, using the methodology approved by SFMTA and Planning pursuant to Mitigation Measure M-TR-5.	If necessary, prior to approval of the project's final phase application. <u>Funds shall be contributed</u> if the total gsf of commercial use for the Project in the final phase application exceeds the Maximum Residential Scenario total gsf of commercial use, identified in Table 2.3 of the EIR.	If the Maximum Commercial Scenario is implemented, the project sponsors shall contribute funds for one additional vehicle or a fair share contribution to the SFMTA.	If necessary, considered complete when SFMTA receives funds from the project sponsors.	SFMTA
Noise and Vibration Mitigation Measures					
Mitigation Measure M-NO-1: Construction Noise Control Plan. Over the project's approximately 11-year construction duration, project	Project sponsors.	Prior to the start of construction activities;	Project sponsors to submit the Construction Noise	Considered complete upon submittal of the	Port or DBI

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contractors for all construction projects on the Illinois Parcels and 28-Acre Site will be subject to construction-related time-of-day and noise limits specified in Section 2907(a) of the Police Code, as outlined above. Therefore, prior to construction, a Construction Noise Control Plan shall be prepared by the project sponsors and submitted to the Port. The construction noise control plan shall demonstrate compliance with the Noise Ordinance limits. Noise reduction strategies that could be incorporated into this plan to ensure compliance with ordinance limits may include, but are not limited to, the following: • Require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds). • Require the general contractor to locate stationary noise sources (such as the rock/concrete crusher or compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise by as much as 5 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, to the maximum extent practicable. • Require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which would reduce noise levels by as much as 10 dBA.		implementation ongoing during construction.	Control Plan to the Port. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Construction Noise Control Plan to the Port.	

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• Include noise control requirements for construction equipment and tools, including concrete saws, in specifications provided to construction contractors to the maximum extent practicable. Such requirements could include, but are not limited to, erecting temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses; utilizing noise control blankets on a building structure as the building is erected to reduce noise levels emanating from the construction site; the use of blasting mats during controlled blasting periods to reduce noise and dust; performing all work in a manner that minimizes noise; using equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants; and selecting haul routes that avoid residential uses. • Prior to the issuance of each building permit, along with the submission of construction documents, submit to the Port , as appropriate, a plan to track and respond to complaints pertaining to construction noise. The plan shall include the following measures: (1) a procedure and phone numbers for notifying the Port, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing permitted construction days and hours, noise complaint procedures, and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area and the American Industrial Center (AIC) at least 30 days in advance of extreme noise-generating activities (such as pile driving) about the estimated duration of the activity.	Project sponsors	Prior to the issuance of each building permit for duration of the project.	Project sponsors to submit a plan to track and respond to complaints pertaining to construction noise. A single plan or multiple plans may be produced to address project phasing.	Considered complete upon review and approval plan by the	
Mitigation Measure M-NO-2: Noise Control Measures During Pile	Project sponsors and construction	Prior to receiving a.	Project sponsors to submit to the Port	Considered complete upon	Port or DBI

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Driving. The Construction Noise Control Plan (required under Mitigation Measure M-NO-1) shall also outline a set of site-specific noise and vibration attenuation measures for each construction phase when pile driving is proposed to occur. These attenuation measures shall be included wherever impact equipment is proposed to be used on the Illinois Parcels and/or 28-Acre Site. As many of the following control strategies shall be included in the Noise Control Plan, as feasible: • Implement "quiet" pile-driving technology such as pre-drilling piles where feasible to reduce construction-related noise and vibration. • Use pile-driving equipment with state-of-the-art noise shielding and muffling devices. • Use pre-drilled or sonic or vibratory drivers, rather than impact drivers, wherever feasible (including slipways) and where vibration-induced liquefaction would not occur. • Schedule pile-driving activity for times of the day that minimize disturbance to residents as well as commercial uses located on-site and nearby. • Erect temporary plywood or similar solid noise barriers along the boundaries of each Proposed Project parcel as necessary to shield affected sensitive receptors. • Other equivalent technologies that emerge over time. • If CRF (including rock drills) were to occur at the same time as pile driving activities in the same area and in proximity to noise-sensitive receptors, pile drivers shall be set back at least 100 feet while rock drills shall be set back at least 50 feet (or vice versa)	contractor(s).	building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	submittal of documentation incorporating identified practices.	

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from any given sensitive receptor.					
Mitigation Measure M-NO-3: Vibration Control Measures During Construction. As part of the Construction Noise Control Plan required under Mitigation Measure M-NO-1, appropriate vibration controls (including pre-drilling pile holes and using smaller vibratory equipment) shall be specified to ensure that the vibration limit of 0.5 in/sec PPV can be met at adjacent or nearby existing structures and Proposed Project buildings located on the Illinois Parcels and/or 28-Acre Site, except as noted below: • Where pile driving, CRF, and other construction activities involving the use of heavy equipment would occur in proximity to any contributing building to the Union Iron Works Historic District, the project sponsors shall undertake a monitoring program to minimize damage to such adjacent historic buildings and to ensure that any such damage is documented and repaired. The monitoring program, which shall apply within 160 feet where pile driving would be used, 50 feet of where CRF would be required, and within 25 feet of other heavy equipment operation, shall include the following components: o Prior to the start of any ground-disturbing activity, the project sponsors shall engage a historic architect or qualified historic preservation professional to undertake a pre-construction survey of historical resource(s) identified by the Port within 160 feet of planned construction to document and photograph the buildings' existing conditions. o Based on the construction and condition of the resource(s), a structural engineer or other qualified entity shall establish a maximum vibration level that shall not be exceeded at each building, based on existing conditions, character-defining features, soils conditions and anticipated construction practices in use at the time (a common standard is 0.2 inch per	Project sponsors and construction contractor(s).	Prior to receiving a building permit, incorporate feasible practices identified in M-NO-1 into the construction contract agreement documents. Control practices should be implemented throughout the pile driving duration.	Project sponsors to submit to Port documentation of compliance of implemented control practices that show construction contractor agreement with specified practices. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.	Considered complete upon submittal of documentation incorporating identified practices.	Port or Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
second, peak particle velocity). o To ensure that vibration levels do not exceed the established standard, a qualified acoustical/vibration consultant shall monitor vibration levels at each structure within 160 feet of planned construction and shall prohibit vibratory construction activities that generate vibration levels in excess of the standard. Should vibration levels be observed in excess of the standard, construction shall be halted and alternative construction techniques put in practice. (For example, pre-drilled piles could be substituted for driven piles, if soil conditions allow; smaller, lighter equipment could possibly also be used in some cases.) The consultant shall conduct regular periodic inspections of each building within 160 feet of planned construction during ground-disturbing activity on the project site. Should damage to a building occur as a result of ground-disturbing activity on the site, the building(s) shall be remediated to its pre-construction condition at the conclusion of ground-disturbing activity on the site. o In areas with a "very high" or "high" susceptibility for vibration-induced liquefaction or differential settlement risks, the project's geotechnical engineer shall specify an appropriate vibration limit based on proposed construction activities and proximity to liquefaction susceptibility zones and modify construction practices to ensure that construction-related vibration does not cause liquefaction hazards at these homes.					
Mitigation Measure M-NO-4a: Stationary Equipment Noise Controls. Noise attenuation measures shall be incorporated into all stationary equipment (including HVAC equipment and emergency generators) installed on buildings constructed on the Illinois Parcels and 28-Acre Site as well as into the below-grade or enclosed wastewater pump station as necessary to meet noise limits specified in Section 2909 of the Police Code.* Interior	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for each building located on the Illinois Parcels	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port	Port or Planning Department/DBI

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
noise limits shall be met under both existing and future noise conditions, accounting for foreseeable changes in noise conditions in the future (i.e., changes in on-site building configurations). Noise attenuation measures could include provision of sound enclosures/barriers, addition of roof parapets to block noise, increasing setback distances from sensitive receptors, provision of louvered vent openings, location of vent openings away from adjacent commercial uses, and restriction of generator testing to the daytime hours. * Under Section 2909 of the Police Code, stationary sources are not permitted to result in noise levels that exceed the existing ambient (L90) noise level by more than 5 dBA on residential property, 8 dBA on commercial and industrial property, and 10 dBA on public property. Section 2909(d) states that no fixed noise source may cause the noise level measured inside any sleeping or living room in a dwelling unit on residential property to exceed 45 dBA between 10:00 p.m. and 7:00 a.m. or 55 dBA between 7:00 a.m. and 10:00 p.m. with windows open, except where building ventilation is achieved through mechanical systems that allow windows to remain closed.		or the 28-Acre Site, along with the submission of construction documents, the project sponsors shall submit to the Port and the DBI plans for noise attenuation measures on all stationary equipment.			
Mitigation Measure M-NO-4b: Design of Future Noise-Generating Uses near Residential Uses. Future commercial/office and RALI uses shall be designed to minimize the potential for sleep disturbance at any future adjacent residential uses. Design approaches such as the following could be incorporated into future development plans to minimize the potential for noise conflicts of future uses on the project site: • <u>Design of Future Noise-Generating Commercial/Office and RALI Uses.</u> To reduce potential conflicts between sensitive receptors and new noise-generating commercial or RALI uses located adjacent to these receptors, exterior facilities such as loading areas/docks, trash enclosures, and surface parking lots shall be located on the sides of buildings facing away from existing or planned sensitive receptors (residences or passive open space). If	Project sponsors and construction contractor(s).	Prior to the issuance of a building permit for commercial, RALI, and parking uses, along with the submission of construction documents, the project sponsors shall submit to the and DBI plans to minimize	Port to review construction plans.	Considered complete after submittal and approval of plans by the Port.	Port or Planning Department/DBI

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
this is not feasible, these types of facilities shall be enclosed or equipped with appropriate noise shielding. • Design of Future Above-Ground Parking Structure. If parking structures are constructed on Parcels C1 or C2, the sides of the parking structures facing adjacent or nearby existing or planned residential uses shall be designed to shield residential receptors from noise associated with parking cars.		noise conflicts with sensitive receivers,			
Mitigation Measure M-NO-6: Design of Future Noise-Sensitive Uses Prior to issuance of a building permit for vertical construction of specific residential building design on each parcel, a noise study shall be conducted by a qualified acoustician, who shall determine the need to incorporate noise attenuation measures into the building design in order to meet Title 24's interior noise limit for residential uses as well as the City's (Article 29, Section 2909(d)) 45-dBA (Ldn) interior noise limit for residential uses. This evaluation shall account for noise shielding by buildings existing at the time of the proposal, potential increases in ambient noise levels resulting from the removal of buildings that are planned to be demolished, all planned commercial or open space uses in adjacent areas, any known variations in project build-out that have or will occur (building heights, location, and phasing), any changes in activities adjacent to or near the Illinois Parcels or 28-Acre Site (given the Proposed Project's long build-out period), any new shielding benefits provided by surrounding buildings that exist at the time of development, future cumulative traffic noise increases on adjacent roadways, existing and planned stationary sources (i.e., emergency generators, HVAC, etc.), and future noise increases from all known cumulative projects located with direct line-of-sight to the project building. To minimize the potential for sleep disturbance effects from tonal noise or nighttime noise events associated with nearby industrial uses, predicted noise levels at each project building shall account for 24/7 operation of the BAE Systems Ship Repair facility, 24/7 transformer noise at Potrero Substation (if it remains an open air facility), and industrial activities at the AIC, to the	Project sponsors and qualified acoustician.	Prior to the issuance of the building permit for vertical construction of any residential building on each parcel, a noise study shall be prepared by a qualified acoustician.	Port Staff to review the noise study. A single noise study or multiple noise studies may be produced to address project phasing.	Considered complete after submittal and approval of the noise study by the Port.	Port or Planning Department/DBI

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extent such use(s) are in operation at the time the analysis is conducted. Noise reduction strategies such as the following could be incorporated into the project design as necessary to meet Title 24 interior limit and minimize the potential for sleep disturbance from adjacent industrial uses: • Orient bedrooms away from major noise sources (i.e., major streets, open space/recreation areas where special events would occur, and existing adjacent industrial uses, including but not limited to the AIC, PG&E Hoedown Yard (if it is still operating at that time), Potrero Substation, and the BAE site) and/or provide additional enhanced noise insulation features (higher STC ratings) or mechanical ventilation to minimize the effects of maximum instantaneous noise levels generated by these uses even though there is no code requirement to reduce Lmax noise levels. Such measures shall be implemented on Parcels D and E1 (both scenarios), Building 2 (Maximum Residential Scenario only), Parcels PKN (both scenarios), PKS (both scenarios), and HDY (Maximum Residential Scenario only); • Utilize enhanced exterior wall and roof-ceiling assemblies (with higher STC ratings), including increased insulation; • Utilize windows with higher STC / Outdoor/Indoor Transmission Class (OITC) ratings; • Employ architectural sound barriers as part of courtyards or building open space to maximize building shielding effects, and locate living spaces/bedrooms toward courtyards wherever possible; and Locate interior hallways (accessing residential units) adjacent to noisy streets or existing/planned industrial or commercial development.					
Mitigation Measure M-NO-7: Noise Control Plan for Special Event	Developer, Port, parks management	Prior to operation of a	Developer, Port, parks management	Considered complete upon	Port

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Outdoor Amplified Sound. The project sponsors shall develop and implement a Noise Control Plan for operations at the proposed entertainment venues to reduce the potential for noise impacts from public address and/or amplified music. This Noise Control Plan shall contain the following elements: • The project sponsors shall comply with noise controls and restrictions in applicable entertainment permit requirements for outdoor concerts. • Speaker systems shall be directed away from the nearest sensitive receptors to the degree feasible. • Outdoor speaker systems shall be operated consistent with the restrictions of Section 2909 of the San Francisco Police Code, and conform to a performance standard of 8 dBA and dBC over existing ambient L90 noise levels at the nearest residential use.	entity, and/or parks programming entity.	special outdoor amplified sound, the project sponsors, parks management entity, and/or parks programming entity to develop a Noise Control Plan prior to issuance of event permit.	entity, and/or parks programming entity shall submit the Noise Control Plan to the Port.	submission and approval of the NCP by the Port.	
Air Quality Mitigation Measures					
Mitigation Measure M-AQ-1a: Construction Emissions Minimization The following mitigation measure is required during construction of Phases 3, 4, and 5, or after build-out of 1.3 million gross square feet of development, whichever comes first: A. *Construction Emissions Minimization Plan.* Prior to issuance of a site permit, the project sponsors shall submit a Construction Emissions Minimization Plan (Plan) to the Port or Planning Department. The Plan shall detail project compliance with the following requirements: 1. Where access to alternative sources of power is available, portable diesel generators used during construction shall be prohibited. Where portable diesel engines are required because alternative sources of power are not available, the	Project sponsors and construction contractor(s).	Prior to issuance of a site permit, the project sponsors must submit Construction Emissions Minimization Plan Prior to the commencement of construction activities	Project sponsors or contractor to submit a Construction Emissions Minimization Plan. Quarterly reports shall be submitted to Port Staff or Planning Department indicating the construction phase and off-road equipment	Considered complete upon Port or Planning Staff review and approval of Construction Emissions Minimization Plan or alternative measures that achieve the same emissions reduction.	Port or Planning Department

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diesel engine shall meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available, as defined below. 2. All off-road equipment greater than 25 horsepower that operates for more than 20 total hours over the entire duration of construction activities shall have engines that meet the EPA or CARB Tier 4 off-road emission standards and be fueled with renewable diesel (at least 99 percent renewable diesel or R99), if commercially available. If engines that comply with Tier 4 off-road emission standards are not commercially available, then the project sponsors shall provide the next cleanest piece of off-road equipment as provided by the step-down schedules in Table M-AQ-1-1.		during Phase 3, 4, and 5, or prior to construction following build-out of 1.3 million gross square feet of development, the project sponsors must certify (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications. The Plan shall be kept on site and available for review. A sign shall be posted at the perimeter of the construction site indicating the basic	information used during each phase. For off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used. Within six months of the completion of construction activities, the project sponsors shall submit to Port Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.		

Table M-AQ-1-1: Off-Road Equipment Compliance Step-Down Schedule

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 3	CARB PM VDECS (85%)[1]
2	Tier 2	CARB PM VDECS (85%)

How to use the table: If the requirements of (A)(2) cannot be met, then the project sponsors would need to meet Compliance Alternative 1. Should the project sponsors not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met.

[1] CARB: Currently Verified Diesel Emission Control Strategies (VDECS).

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Available online at http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm. Accessed January 14, 2016. i. With respect to Tier 4 equipment, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; and (ii) geographic proximity of equipment to the project site. ii. With respect to renewable diesel, "commercially available" shall mean the availability taking into consideration factors such as: (i) critical path timing of construction; (ii) geographic proximity of fuel source to the project site; and (iii) cost of renewable diesel is within 10 percent of Ultra Low Sulfur Diesel #2 market price. iii. The project sponsors shall maintain records concerning its efforts to comply with this requirement. Should the project sponsor determine either that an off-road vehicle that meets Tier 4 emissions standards or that renewable diesel are not commercially available, the project sponsor shall submit documentation to the satisfaction of Port or Planning Staff and, for the former condition, shall identify the next cleanest piece of equipment that would be use, in compliance with Table M-AQ-1-1. 3. The project sponsors shall ensure that future developers or their contractors require the idling time for off-road and on-road equipment be limited to no more than 2 minutes, except as provided in exceptions to the applicable State regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in		requirements of the Plan and where copies of the Plan are available to the public for review.			

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multiple languages (English, Spanish, and Chinese) in designated queuing areas and at the construction site to remind operators of the 2-minute idling limit. 4. The project sponsors shall require that each construction contractor mandate that construction operators properly maintain and tune equipment in accordance with manufacturer specifications. 5. The Plan shall include best available estimates of the construction timeline by phase with a description of each piece of off-road equipment required for every construction phase and shall be updated pursuant to the reporting requirements in Section B below. Reporting requirements for off-road equipment descriptions and information shall include as much detail as is available, but are not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For Verified Diesel Emission Control Strategies (VDECS) installed, descriptions and information shall include technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date and hour meter reading on installation date. The Plan shall also indicate whether renewable diesel will be used to power the equipment. The Plan shall also include anticipated fuel usage and hours of operation so that emissions can be estimated. 6. The project sponsors and their construction contractors shall keep the Plan available for public review on site during working hours. Each construction contractor shall post at the perimeter of the project site a legible and visible sign summarizing the requirements of the Plan. The sign shall also state that the public may ask to inspect the Plan at any time					

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during working hours, and shall explain how to request inspection of the Plan. Signs shall be posted on all sides of the construction site that face a public right-of-way. The project sponsors shall provide copies of the Plan to members of the public as requested. B. *Reporting*. Quarterly reports shall be submitted to Port or Planning Staff indicating the construction activities undertaken and information about the off-road equipment used, including the information required in Section A(5). In addition, reporting shall include the approximate amount of renewable diesel fuel used. Within 6 months of the completion of all project construction activities, the project sponsors shall submit to Port or Planning Staff a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. The final report shall include detailed information required in Section A(5). In addition, reporting shall include the actual amount of renewable diesel fuel used. C. *Certification Statement and On-site Requirements*. Prior to the commencement of construction activities, the project sponsors shall certify through submission of city-standardized forms (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.					
Mitigation Measure M-AQ-1b: Diesel Backup Generator Specifications To reduce NOx associated with operation of the Maximum Commercial or Maximum Residential Scenarios, the project sponsors shall implement the following measures. A. All new diesel backup generators shall: 1. have engines that meet or exceed CARB Tier 4 off-road emission standards which have the lowest NOx emissions of commercially	Project sponsors	Prior to approval of a generator permit by Port Staff.	Anticipated location and engine specifications of a proposed diesel backup generator shall be submitted to the Port Staff for review and approval prior to	Considered complete upon review and approval by Port Staff.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
available generators; and 2. be fueled with renewable diesel, if commercially available, which has been demonstrated to reduce NOx emissions by approximately 10 percent. B. All new diesel backup generators shall have an annual maintenance testing limit of 50 hours, subject to any further restrictions as may be imposed by the BAAQMD in its permitting process. C. For each new diesel backup generator permit submitted to BAAQMD for the project, anticipated location, and engine specifications shall be submitted to the Port Staff for review and approval prior to issuance of a permit for the generator from the San Francisco DBI or the Port. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment and any future replacement of the diesel backup generators shall be required to be consistent with these emissions specifications. The operator of the facility at which the generator is located shall maintain records of the testing schedule for each diesel backup generator for the life of that diesel backup generator and provide this information for review to the Port within 3 months of requesting such information.			issuance of a generator permit.		
Mitigation Measure M-AQ-1c: Use Low and Super-compliant VOC Architectural Coatings in Maintaining Buildings through Covenants Conditions and Restrictions (CC&Rs) and Ground Lease The Project sponsors shall require all developed parcels to include within their CC&R's and/or ground leases requirements for all future interior spaces to be repainted only with "Super-Compliant" Architectural Coatings (http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings). "Low-VOC" refers to paints that meet the more stringent regulatory limits in South Coast AQMD Rule 1113; however, many manufacturers have reformulated to levels well below these limits. These are referred to as "Super-Compliant" Architectural Coatings.	Project sponsors and construction contractor(s).	Project sponsors submit to the Port documentation of CC&R's and/or ground lease requirements prior to building occupancy	Project sponsors to include in CC&R's and/or ground lease requirements with buildings tenants prior to building occupancy.	Considered complete upon project sponsor submittal to the Port of documentation of CC&R's and/or ground lease requirements	Port or Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
		permit.			
Mitigation Measure M-AQ-1d: Promote use of Green Consumer Products The project sponsors shall provide education for residential and commercial tenants concerning green consumer products. Prior to receipt of any certificate of final occupancy and every five years thereafter, the project sponsors shall work with the San Francisco Department of Environment (SF Environment) to develop electronic correspondence to be distributed by email annually to residential and/or commercial tenants of each building on the project site that encourages the purchase of consumer products that generate lower than typical VOC emissions. The correspondence shall encourage environmentally preferable purchasing and shall include contact information and links to SF Approved. The website may also be used as an informational resource by businesses and residents.	Project sponsors.	Prior to occupancy of the building by tenants and every five years thereafter, project sponsors to distribute educational materials to tenants.	Project sponsors to work with SF Environment to develop educational materials.	Considered complete after distribution of educational materials to residential and commercial tenants.	Port or Planning Department
Mitigation Measure M-AQ-1e: Electrification of Loading Docks The project sponsors shall ensure that loading docks for retail, light industrial or warehouse uses that will receive deliveries from refrigerated transport trucks incorporate electrification hook-ups for transportation refrigeration units to avoid emissions generated by idling refrigerated transport trucks.	Project sponsors	Prior to issuance of a building permit for a building containing loading docks for retail, light industrial or warehouse uses.	Project sponsors to provide construction plans to DBI or the Port to ensure compliance..	Considered complete upon approval of construction plans by DBI or the Port.	Port or Planning Department
Mitigation Measure M-AQ-1f: Transportation Demand Management. 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	Developer to prepare and implement the TDM Plan, which will be implemented by the Transportation Management Association and will	Developer to prepare TDM Plan and submit to Planning Staff prior to approval of the project	Project sponsors to submit the TDM Plan to Planning Staff for review. Transportation Demand Management	The TDM Plan is considered complete upon approval by the Planning Staff. Annual monitoring	Planning Department

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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: • 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 memberships for project occupants; • 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	be binding on all development parcels.		Association to submit monitoring report annually to Planning Staff and implement TDM Plan Adjustments (if required).	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.	

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
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. 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. 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. *TDM Plan Monitoring and Reporting*: 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. • 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					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
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: o 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					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency[1]**
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. o 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. o 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. o 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.) o 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. *TDM Plan Adjustments.* The TDM Plan shall be adjusted based on the					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
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.					
Mitigation Measure M-AQ-1g: Additional Mobile Source Control Measures The following Mobile Source Control Measures from the BAAQMD's 2010 Clean Air Plan shall be implemented: • Promote use of clean fuel-efficient vehicles through preferential (designated and proximate to entry) parking and/or installation of charging stations beyond the level required by the City's Green Building code, from 8 to 20 percent. • Promote zero-emission vehicles by requesting that any car share program operator include electric vehicles within its car share	Project sponsors and TMA.	On-going.	Project sponsors and TMA to implement measures	On-going.	Port or Planning Department/DBI

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program to reduce the need to have a vehicle or second vehicle as a part of the TDM program that would he required of all new developments.					
Mitigation Measure M-AQ-1h: Offset of Operational Emissions Prior to issuance of the final certificate of occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, the project sponsors, with the oversight of Port Staff, shall either: **(1) Directly fund or implement a specific offset project within San Francisco** to achieve reductions of 25 tons per year of ozone precursors and 1 ton of PM10. This offset is intended to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3. To qualify under this mitigation measure, the specific emissions offset project must result in emission reductions within the SFBAAB that would not otherwise he achieved through compliance with existing regulatory requirements. A preferred offset project would he one implemented locally within the City and County of San Francisco. Prior to implementation of the offset project, the project sponsors must obtain Port Staff's approval of the proposed offset project by providing documentation of the estimated amount of emissions of ROG, NOx, and PM10 to be reduced (tons per year) within the SFBAAB from the emissions reduction project(s). The project sponsors shall notify Port Staff within 6 months of completion of the offset project for verification; or **(2) Pay a one-time mitigation offset fee** to the BAAQMD's Strategic Incentives Division in an amount no less than $18,030 per weighted ton of ozone precursors and PM10 per year above the significance threshold, calculated as the difference between total annual emissions at build out under mitigated conditions and the	Project sponsors.	Offsets for Phase 3/build-out of 1.3 million square feet: Upon completion of construction, and prior to issuance of a Certificate of Occupancy for the final building associated with Phase 3, or after build out of 1.3 million square feet of development, whichever comes first, developer shall demonstrate to the satisfaction of Port Staff that offsets have been funded or implemented,	Port Staff to approve the proposed offset project.	If project sponsor directly funds or implements a specific offset project, considered complete when Port Staff approves the proposed offset project prior to individual Certificates of Occupancy. If project sponsor pays a one-time mitigation offset fee, considered complete when documentation of payment is provided to Port Staff.	Port

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significance threshold in the EIR air quality analysis, which is 25 tons per year of ozone precursors and 1 ton of PM10, plus a 5 percent administrative fee, to fund one or more emissions reduction projects within the SFBAAB. This one-time fee is intended to fund emissions reduction projects to offset the estimated annual tonnage of operational ozone precursor and PM10 emissions under the buildout scenario realized at the time of completion of Phase 3 or after completion of 1.3 million sf of development, whichever comes first. Documentation of payment shall be provided to Port Staff. Acceptance of this fee by the BAAQMD shall serve as an acknowledgment and commitment by the BAAQMD to implement one or more emissions reduction project(s) within 1 year of receipt of the mitigation fee to achieve the emission reduction objectives specified above, and provide documentation to Port Staff and to the project sponsors describing the project(s) funded by the mitigation fee, including the amount of emissions of ROG, NOx, and PM10 reduced (tons per year) within the SFBAAB from the emissions reduction project(s). If there is any remaining unspent portion of the mitigation offset fee following implementation of the emission reduction project(s), the project sponsors shall be entitled to a refund in that amount from the BAAQMD. To qualify under this mitigation measure, the specific emissions retrofit project must result in emission reductions within the SFBAAB that would not otherwise be achieved through compliance with existing regulatory requirements.		or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date. <u>Offsets for subsequent phases/build-out</u>: Upon completion of construction of each subsequent phase, and prior to issuance of a Certificate of Occupancy for the final building associated with such phase, developer shall demonstrate to the satisfaction of Port Staff , that offsets			

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		have been funded or implemented, or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date and taking into account offsets previously funded, implemented, and/or purchased.			
Wind and Shadow Mitigation Measures					
Mitigation Measure M-WS-1: Identification and Mitigation of Interim Hazardous Wind Impacts When the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted, the requirements described below apply: **Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies**	Project sponsors, qualified wind consultant.	As outlined in Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies: a wind impact analysis shall be	Qualified wind consultant to prepare a scope of work to be approved by Port Staff and following approval of a scope of work submit a wind impact analysis to Port Staff for approval	Considered complete upon approval or issuance of building permit.	Port

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Subject Parcel Proposed for Construction	**Circumstance or Condition**	**Related Upwind Parcels**					
Parcel A	Construction of any new buildings on Parcel A.	NA		prepared for the listed circumstances prior to issuance of a building permit for any proposed building when the circumstances or conditions listed in Table M.WS.1 are present at the time a building Schematic Design is submitted.	of feasible design changes to minimize interim hazardous wind impacts.		
Parcel B	Construction of any new buildings on Parcel B.	NA					
Parcel E2	Construction of any new buildings on Parcel E2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1 and G					
Parcel E3	Construction of any new buildings on Parcel E3 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building	Parcels E2 and G					

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	Schematic Design submittal.						
Parcel F	Construction of any new buildings on Parcel F.	NA					
Parcel G	Construction of any new buildings on Parcel G.	NA					
Parcel H1	Construction of any new buildings on Parcel H1 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels E2 and G that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels E2 and G					
Parcel H2	Construction of any new buildings on Parcel H2 over 80 feet in height, prior to any construction of new buildings on approximately 80% of the combined total parcel area of Parcels H1, E2, and E3 that would be completed by the estimated time of occupancy of the subject building, as estimated on or about the date of the building Schematic Design submittal.	Parcels H1, E2, and E3					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
Source: SWCA. Requirements A wind impact analysis shall be required prior to building permit issuance for any proposed new building that is located within the project site and meets the conditions described above. All feasible means (e.g., changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, adding architectural canopies or screens, or street furniture) to eliminate hazardous winds, if predicted, shall be implemented. After such design changes and features have been considered, the additional effectiveness of landscaping may also be considered. 1. Screening-level analysis. A qualified wind consultant approved by Port Staff shall review the proposed building design and conduct a "desktop review" in order to provide a qualitative result determining whether there could be a wind hazard. The screening-level analysis shall have the following steps: For each new building proposed that meets the criteria above, a qualified wind consultant shall review and compare the exposure, massing, and orientation of the proposed building(s) on the subject parcel to the building(s) on the same parcel in the representative massing models of the Proposed Project tested in the wind tunnel as part of this EIR and in any subsequent wind analysis testing required by this mitigation measure. The wind consultant shall identify and compare the potential impacts of the proposed building(s) to those identified in this EIR, subsequent wind testing that may have occurred under this mitigation measure, and to the City's wind hazard criterion. The wind consultant's analysis and evaluation shall consider the proposed building(s) in the context of the "Current Project Baseline," which, at any given time during construction of the Proposed Project, shall be defined as any existing buildings at the site, the as-built designs of all previously-completed structures and the then-current designs of					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
approved but yet unbuilt structures that would be completed by the time of occupancy of the subject building. (a) If the qualified wind consultant concludes that the building design(s) could not create a new wind hazard and could not contribute to a wind hazard identified by prior wind tunnel testing for the EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If there could be a new wind hazard, then a quantitative assessment shall be conducted using wind tunnel testing or an equivalent quantitative analysis that produces comparable results to the analysis methodology used in this EIR. (b) If the qualified wind consultant concludes that the building design(s) could create a new wind hazard or could contribute to a wind hazard identified by prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, but in the consultant's professional judgment the building(s) can be modified to reduce such impact to a less-than-significant level, the consultant shall notify Port Staff and the building applicant. The consultant's professional judgment may be informed by the use of "desktop" analytical tools, such as computer tools relying on results of prior wind tunnel testing for the Proposed Project and other projects (i.e., "desktop" analysis does not include new wind tunnel testing). The analysis shall include consideration of wind location, duration, and speed of wind. The building applicant may then propose changes or supplements to the design of the proposed building(s) to achieve this result. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting to include podiums and roof terraces, and/or the addition of architectural canopies or screens, or					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
street furniture. The effectiveness of landscaping may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design and landscaping for the building(s) could not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. (c) If the consultant is unable to demonstrate to the satisfaction of Port Staff that no increase in wind hazards would occur, wind tunnel testing or an equivalent method of quantitative evaluation producing results that can be compared to those used in the EIR and in any subsequent wind analysis testing required by this mitigation measure is required. The building(s) shall be wind tunnel tested in the context of a model that represents the Current Project Baseline, as described in Item 1, above. The testing shall include all the test points in the vicinity of a proposed building or group of buildings that were tested in this EIR, as well as all additional points deemed appropriate by the consultant to determine the wind performance for the building(s). Testing shall occur in places identified as important, e.g., building entrances, sidewalks, etc., and there may need to be additional test point locations considered. At the direction and approval of the Port, the "vicinity" shall be determined by the wind consultant, as appropriate for the circumstances, e.g., a starting concept for "vicinity" could be approximately 350 feet around the perimeter of the subject parcel(s), subject to the wind consultant's reducing or increasing this radial distance. The wind tunnel testing shall test the proposed building design(s), as well as the Current Project Baseline, in					

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order to clearly identify those differences that would be due to the proposed new building(s). In the event the wind tunnel testing determines that design of the building(s) would increase the hours of wind hazard or extent of area subject to hazardous winds beyond those identified in prior wind testing conducted for this EIR and in subsequent wind tunnel analysis required by this mitigation measure, the wind consultant shall notify Port Staff and the building applicant. The building applicant may then propose changes or supplements to the design of the proposed building(s) to eliminate wind hazards. These changes or supplements may include, but are not limited to, changes in design, building orientation, sculpting building(s) to include podiums and roof terraces, adding architectural canopies or screens, or street furniture. All feasible means (changes in design, relocating or reorienting certain building(s), sculpting to include podiums and roof terraces, the addition of architectural canopies or screens, or street furniture) to eliminate wind hazards, if predicted, shall be implemented to the extent necessary to mitigate the impact. After such design changes and features have been considered, the additional effectiveness of landscaping at the size it is proposed to be installed may also be considered. The wind consultant shall then reevaluate the building design(s) with specified changes or supplements. If the wind consultant demonstrates to the satisfaction of Port Staff that the modified design would not create a new wind hazard or contribute to a wind hazard identified in prior wind tunnel testing conducted for this EIR and in subsequent wind analysis required by this mitigation measure, no further review would be required. If the proposed building(s) would result in a wind hazard exceedance, and the only way to eliminate the hazard is to redesign a proposed building, then the building shall be redesigned.					

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Mitigation Measure M-WS-2: Wind Reduction for Rooftop Winds If the rooftop of building(s) is proposed as public open space and/or a passive or active public recreational area prior to issuance of a building permit for the subject building(s), a qualified wind consultant shall prepare a wind impact and mitigation analysis in the context of the Current Project Baseline regarding the proposed architectural design. All feasible means (such as changing the proposed building mass or design; raising the height of the parapets to at least 8 feet, using a porous material where such material would be effective in reducing wind speeds; using localized wind screens, canopies, trellises, and/or landscaping around seating areas) to eliminate wind hazards shall be implemented as necessary. A significant wind impact would be an increase in the number of hours that the wind hazard criterion is exceeded or an increase in the area subjected to winds exceeding the hazard criterion as compared to existing conditions at the height of the proposed rooftop. The wind consultant shall demonstrate to the satisfaction of Port Staff that the building design would not create a new wind hazard or contribute to a wind hazard identified in prior wind testing conducted for this EIR.	Project Sponsors and qualified wind consultant.	Prior to issuance of a building permit for a building with a rooftop proposed as public open space and/or passive/active recreational area, the qualified wind consultant shall demonstrate that no new wind hazards or a contribution to a wind hazard identified in the EIR would occur in a wind hazard and mitigation analysis.	Port Staff to review wind hazard and mitigation analysis.	Considered complete upon approval or issuance of building permit	Port
Biological Resources Mitigation Measures					
Mitigation Measure M-BI-1a: Worker Environmental Awareness Program Training Project-specific Worker Environmental Awareness Program (WEAP) training shall be developed and implemented by a qualified biologist* and attended by all project personnel performing demolition or ground-disturbing work prior to beginning demolition or ground-disturbing work on site for	Project sponsors and qualified project biologist.	Prior to demolition or ground-disturbing activities.	Port staff to review and approve WEAP training. Project sponsors and qualified biological consultant to document WEAP	Considered complete after Port staff reviews and approves WEAP training, and confirm	Port or Planning Department

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each construction phase. The WEAP training shall include, but not be limited to, education about the following: a. Applicable State and Federal laws, environmental regulations, project permit conditions, and penalties for non-compliance. b. Special-status plant and animal species with the potential to be encountered on or in the vicinity of the project site during construction. c. Avoidance measures and a protocol for encountering special-status species including a communication chain. d. Preconstruction surveys and biological monitoring requirements associated with each phase of work and at specific locations within the project site (e.g., shoreline work) as biological resources and protection measures will vary depending on where work is occurring within the site, time of year, and construction activity. e. Known sensitive resource areas in the project vicinity that are to be avoided and/or protected as well as approved project work areas, access roads, and staging areas. Best management practices (BMPs) (e.g., straw wattles or spill kits) and their location around the project site for erosion control and species exclusion, in addition to general housekeeping requirements. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.			training and provide documentation during annual mitigation report to the Port.	compliance in annual mitigation report.	
Mitigation Measure M-BI-1b: Nesting Bird Protection Measures The project site's proximity to San Francisco Bay and its current lack of	Project sponsors, qualified biological consultant.	Prior to issuance of demolition or building	If construction will occur during nesting season, qualified biological consultant to	Considered complete upon issuance of demolition or	Port or Planning Department

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activity result in a more attractive environment for birds to nest than other San Francisco locations (e.g., the Financial District) that have higher levels of site activity and human presence. Nesting birds and their nests shall be protected during construction by implementation of the following measures for each construction phase: a. To the extent feasible, conduct initial activities including, but not limited to, vegetation removal, tree trimming or removal, ground disturbance, building demolition, site grading, and other construction activities which may compromise breeding birds or the success of their nests (e.g., CRF, rock drilling, rock crushing, or pile driving), outside of the nesting season (January 15–August 15). b. If construction during the bird nesting season cannot be fully avoided, a qualified wildlife biologist* shall conduct pre-construction nesting surveys within 14 days prior to the start of construction or demolition at areas that have not been previously disturbed by project activities or after any construction breaks of 14 days or more. Surveys shall be performed for suitable habitat within 250 feet of the project site in order to locate any active passerine (perching bird) nests and within 500 feet of the project site to locate any active raptor (birds of prey) nests, waterbird nesting pairs, or colonies. c. If active nests are located during the preconstruction bird nesting surveys, a qualified biologist shall evaluate if the schedule of construction activities could affect the active nests and if so, the following measures would apply: i. If construction is not likely to affect the active nest, construction may proceed without restriction; however, a qualified biologist shall regularly monitor the nest at a frequency determined appropriate for the surrounding construction activity to confirm there is no adverse effect. Spot-check monitoring frequency		permits for construction during the nesting season (January 15 to August 15) ~~(August 16–January 14)~~	conduct bat surveys and present results to Port Staff	building permits for construction	

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would be determined on a nest-by-nest basis considering the particular construction activity, duration, proximity to the nest, and physical barriers which may screen activity from the nest. The qualified biologist may revise his/her determination at any time during the nesting season in coordination with the Port of San Francisco or Planning Department. ii. If it is determined that construction may affect the active nest, the qualified biologist shall establish a no-disturbance buffer around the nest(s) and all project work shall halt within the buffer until a qualified biologist determines the nest is no longer in use. Typically, these buffer distances are 250 feet for passerines and 500 feet for raptors; however, the buffers may be adjusted if an obstruction, such as a building, is within line-of-sight between the nest and construction. iii. Modifying nest buffer distances, allowing certain construction activities within the buffer, and/or modifying construction methods in proximity to active nests shall be done at the discretion of the qualified biologist and in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Necessary actions to remove or relocate an active nest(s) shall be coordinated with the Port of San Francisco or Planning Department and approved by CDFW. iv. Any work that must occur within established no-disturbance buffers around active nests shall be monitored by a qualified biologist. If adverse effects in response to project work within the buffer are					

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
observed and could compromise the nest, work within the no-disturbance buffer(s) shall halt until the nest occupants have fledged. v. Any birds that begin nesting within the project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels, so exclusion zones around nests may be reduced or eliminated in these cases as determined by the qualified biologist in coordination with the Port of San Francisco or Planning Department, who would notify CDFW. Work may proceed around these active nests as long as the nests and their occupants are not directly impacted. * Typical experience requirements for a "qualified biologist" include a minimum of four years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-2: Avoidance and Minimization Measures for Bats A qualified biologist (as defined by CDFW*) who is experienced with bat surveying techniques (including auditory sampling methods), behavior, roosting habitat, and identification of local bat species shall be consulted prior to demolition or building relocation activities to conduct a pre-construction habitat assessment of the project site (focusing on buildings to be demolished or relocated) to characterize potential bat habitat and identify potentially active roost sites. No further action is required should the pre-construction habitat assessment not identify bat habitat or signs of potentially active bat roosts within the project site (e.g., guano, urine staining, dead bats, etc.).	Project sponsors, qualified biological consultant, and CDFW.	Prior to issuance of demolition or building permits when trees or shrubs would be removed or buildings demolished as part of an individual project.	Qualified biological consultant to conduct bat surveys and present results to Port Staff.	Considered complete upon issuance of demolition or building permits.	Port or Planning Department

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The following measures shall be implemented should potential roosting habitat or potentially active bat roosts be identified during the habitat assessment in buildings to be demolished or relocated under the Proposed Project or in trees adjacent to construction activities that could be trimmed or removed under the Proposed Project: a) In areas identified as potential roosting habitat during the habitat assessment, initial building demolition, relocation, and any tree work (trimming or removal) shall occur when bats are active, approximately between the periods of March 1 to April 15 and August 15 to October 15, to the extent feasible. These dates avoid the bat maternity roosting season and period of winter torpor. [Torpor refers to a state of decreased physiological activity with reduced body temperature and metabolic rate.] b) Depending on temporal guidance as defined below, the qualified biologist shall conduct pre-construction surveys of potential bat roost sites identified during the initial habitat assessment no more than 14 days prior to building demolition or relocation, or any tree trimming or removal. c) If active bat roosts or evidence of roosting is identified during pre-construction surveys, the qualified biologist shall determine, if possible, the type of roost and species. A no-disturbance buffer shall be established around roost sites until the qualified biologist determines they are no longer active. The size of the no-disturbance buffer would be determined by the qualified biologist and would depend on the species present, roost type, existing screening around the roost site (such as dense vegetation or a building), as well as the type of construction activity that would occur around the roost site. d) If special-status bat species or maternity or hibernation roosts are detected during these surveys, appropriate species- and roost-specific avoidance and protection measures shall be					

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developed by the qualified biologist in coordination with CDFW. Such measures may include postponing the removal of buildings or structures, establishing exclusionary work buffers while the roost is active (e.g., 100-foot no-disturbance buffer), or other compensatory mitigation.					
c) The qualified biologist shall be present during building demolition, relocation, or tree work if potential bat roosting habitat or active bat roosts are present. Buildings and trees with active roosts shall be disturbed only under clear weather conditions when precipitation is not forecast for three days and when daytime temperatures are at least 50 degrees Fahrenheit.					
f) The demolition or relocation of buildings containing or suspected to contain bat roosting habitat or active bat roosts shall be done under the supervision of the qualified biologist. When appropriate, buildings shall be partially dismantled to significantly change the roost conditions, causing bats to abandon and not return to the roost, likely in the evening and after bats have emerged from the roost to forage. Under no circumstances shall active maternity roosts be disturbed until the roost disbands at the completion of the maternity roosting season or otherwise becomes inactive, as determined by the qualified biologist.					
g) Trimming or removal of existing trees with potential bat roosting habitat or active (non-maternity or hibernation) bat roost sites shall follow a two-step removal process (which shall occur during the time of year when bats are active, according to a) above, and depending on the type of roost and species present, according to c) above).					
i. On the first day and under supervision of the qualified biologist, tree branches and limbs not containing cavities or fissures in which bats could roost shall be cut using chainsaws.					

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ii. On the following day and under the supervision of the qualified biologist, the remainder of the tree may be trimmed or removed, either using chainsaws or other equipment (e.g., excavator or backhoe). All felled trees shall remain on the ground for at least 24 hours prior to chipping, off-site removal, or other processing to allow any bats to escape, or be inspected once felled by the qualified biologist to ensure no bats remain within the tree and/or branches. iv. * CDFW defines credentials of a "qualified biologist" within permits or authorizations issued for a project. Typical qualifications include a minimum of five years of academic training and professional experience in biological sciences and related resource management activities, and a minimum of two years of experience conducting surveys for each species that may be present within the project area.					
Mitigation Measure M-BI-3: Pile Driving Noise Reduction for Protection of Fish and Marine Mammals Prior to the start of reconstruction of the bulkhead in Reach II, the project sponsors shall prepare a detailed Construction Plan that outlines the details of the piling installation approach. This Plan shall be reviewed and approved by Port Staff. The information provided in this plan shall include, but not be limited to, the following: • The type of piling to be used (whether sheet pile or H-pile); • The piling size to be used; • The method of pile installation to be used; • Noise levels for the type of piling to be used and the method of pile driving; • Recalculation of potential underwater noise levels that could be generated during pile driving using methodologies outlined in	Project sponsors.	Prior to construction of the bulkhead in Reach II, project sponsors to prepare a Construction Plan.	Project sponsors to prepare a Construction Plan and submit it to the Port for review and approval. If determined necessary, sound attenuation and monitoring plan would then be developed. Results of the vibration monitoring would be provided to NOAA if required. An alternative to the sound	Considered complete upon review and approval of the Construction Plan. If determined necessary, approval of the sound attenuation and monitoring plan would be required by Port Staff, and monitoring results would be provided to	Port

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[1]
CalTrans 2009 [Caltrans. Technical Guidance for Assessment and Mitigation]; and • When pile driving is to occur. If the results of the recalculations provided in the detailed Construction Plan for pile driving discussed above indicate that underwater noise levels are less than 183 dB (SEL) for fish at a distance of 33 feet (less than or equal to 10 meters) and 160 dB (RMS) sound pressure level or 120 dB (RMS) re 1 µPa impulse noise level for marine mammals for a distance 1,640 feet (500 meters), then no further measures are required to mitigate underwater noise. If recalculated noise levels are greater than those identified above, then the project sponsors shall develop a sound attenuation reduction and monitoring plan. This plan shall be reviewed and approved by Port Staff. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile-driving activities, and all BMPs to be taken to reduce impact hammer pile-driving sound in the marine environment to an intensity level of less than 183 and 160/120 dB (as identified above) at distances of 33 feet (less than or equal to 10 meters) for fish and 1,640 feet (500 meters) for marine mammals. The sound-monitoring results shall be made available to NOAA Fisheries. If, in the case of marine mammals, recalculated noise levels are greater than 160 dB (peak) at less than or equal to 1,640 feet (500 meters), then the project sponsors shall consult with NOAA to determine the need to obtain an Incidental Harassment Authorization (IHA) under the MMPA. If an IHA is required by NOAA, an application for an IHA shall be prepared by the project sponsors. The plan shall incorporate as appropriate, but not be limited to, the following BMPs: • Any impact-hammer-installed soldier wall H-pilings or sheet piling shall be conducted in strict accordance with the Long-Term Management Strategy (LTMS) work windows for Pacific herring,* during which the presence of Pacific herring in the project site is			attenuation and monitoring plan is to consult with NOAA and provide evidence to the satisfaction of Port Staff.	NOAA.	

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expected to be minimal unless, where applicable, NOAA Fisheries in their Section 7 consultation with the Corps determines that the potential effect to special-status fish species is less than significant. • If pile installation using impact hammers must occur at times other than the approved LTMS work window for Pacific herring or result in underwater sound levels greater than those identified above, the project sponsors shall consult with both NOAA Fisheries and CDFW on the need to obtain incidental take authorizations to address potential impacts to longfin smelt and green sturgeon associated with reconstruction of the steel sheet pile bulkhead in Reach II, and to implement all requested actions to avoid impacts. • A 1,640-foot (500-meter) safety zone shall be established and maintained around the sound source to the extent such a safety zone is located within in-water areas, for the protection of marine mammals in the event that sound levels are unknown or cannot be adequately predicted. • In-water work activities associated with reconstruction of the steel sheet pile bulkhead in Reach II shall be halted when a marine mammal enters the 1,640-foot (500-meter) safety zone and shall cease until the mammal has been gone from the area for a minimum of 15 minutes. • A "soft start" technique shall be used in all pile driving, giving marine mammals an opportunity to vacate the area. • A NOAA Fisheries-approved biological monitor shall conduct daily surveys before and during impact hammer pile driving to inspect the safety zone and adjacent San Francisco Bay waters for marine mammals. The monitor shall be present as specified by NOAA Fisheries during the impact pile-driving phases of construction.					

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• Other BMPs shall be implemented as necessary, such as using bubble curtains or an air barrier, to reduce underwater noise levels to acceptable levels. Alternatively, the project sponsors may consult with NOAA directly and submit evidence to their satisfaction of Port Staff of NOAA consultation. In such case, the project sponsors shall comply with NOAA recommendations and/or requirements. * U.S. Army Corps of Engineers, Programmatic Essential Fish Habitat (EFH) Assessment for the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region. July 2009.					
Mitigation Measure M-BI-4: Compensation for Fill of Jurisdictional Waters To offset temporary and/or permanent impacts to jurisdictional waters of San Francisco Bay adjacent to the 28-Acre Site, construction associated with repair or replacement of the Reach II bulkhead shall be conducted as required by regulatory permits (i.e., those issued by the Corps, RWQCB, and BCDC) and in coordination with NMFS as appropriate. If required by regulatory permits, compensatory mitigation shall be provided as necessary, at a minimum ratio of 1:1 for fill beyond that required for normal repair and maintenance of existing structures. Compensation may include on-site or off-site shoreline improvements or intertidal/subtidal habitat enhancements along San Francisco's eastern waterfront through removal of chemically treated wood material (e.g., pilings, decking, etc.) by pulling, cutting, or breaking off piles at least 1 foot below mudline or removal of other unengineered debris (e.g., concrete-filled drums or large pieces of concrete). Improvements would be implemented in accordance with NMFS as appropriate. On-site or off-site restoration/enhancement plans, if required, must be prepared by a qualified biologist prior to construction and approved by the permitting agencies prior to beginning construction, repair, or	Project sponsors. In accordance with regulatory permits and coordination with NMFS, compensatory mitigation, if required, shall be provided at a minimum ratio of 1:1.	Prior to any construction at the Reach II bulkhead or in accordance with regulatory permits.	Project sponsors to comply with regulatory permits	Considered complete after issuance of regulatory permits for the fill of jurisdictional waters.	Port

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
replacement of the Reach II bulkhead. Implementation of restoration/enhancement activities by the permittee shall occur prior to project impacts, whenever possible.					
Geology and Soils Mitigation Measures					
Mitigation Measure M-GE-3a: Reduction of Rock Fall Hazards The project sponsors shall prepare a site-specific geotechnical report(s), subject to review and approval by the Port, that evaluates the design and construction methods proposed for Parcels PKS, C-1, and C-2, the Irish Hill playground, and 21st Street. The investigations shall determine the potential for rock fall hazards. If the potential for rock fall hazards is identified, the site-specific geotechnical investigations shall identify measures to minimize such hazards to be implemented by the project sponsors. Possible measures to reduce the impacts of potential rock fall hazards include, but are not limited to, the following: • Limited regrading to adjust slopes to stable gradient; • Rock fall containment measures such as installation of drape nets, rock fall catchment fences, or diversion dams; and • Site design measures such as implementing setbacks to ensure that buildings and public uses are outside areas that could be subject to damage as a result of rock fall.	Project sponsors.	Prior to the start of construction activities at Parcels PKS, C-1, C-2, the Irish Hill playground, and 21st Street.	Project sponsors to submit geotechnical report(s) to the Port for review and approval.	Considered complete upon approval of geotechnical report(s) and any associated measures to minimize rock fall hazards.	Port
Mitigation Measure M-GE-3b: Signage and Restricted Access to Pier 70 Prior to issuance of the first certificate of occupancy under the Proposed Project, the project sponsors shall install a gate or an equivalent measure to prevent access to the existing dilapidated pier at the project site. A sign shall be posted at the potential access point informing the public of potential risks associated with use of the structure and prohibiting public access.	Project sponsors to install signage and gate or equivalent measure to prevent access to the existing dilapidated pier.	Prior to issuance of the first Certificate of Occupancy.	Project sponsors to document installation of signage and gate or equivalent measure	Considered complete upon installation of the signage and gate or equivalent measure. The measure will be documented in the annual	Port

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[1]
				mitigation and monitoring report.	
Mitigation Measure M-GE-6: Paleontological Resources Monitoring and Mitigation Program Prior to issuance of a building permit for construction activities that would disturb sedimentary rocks of the Franciscan Complex (based on the site-specific geotechnical investigation or other available information), the project sponsors shall retain the services of a qualified paleontological consultant having expertise in California paleontology to design and implement a Paleontological Resources Monitoring and Mitigation Program (PRMMP). The PRMMP shall specify the timing and specific locations where construction monitoring would be required; emergency discovery procedures; sampling and data recovery procedures; procedures for the preparation, identification, analysis, and curation of fossil specimens and data recovered; preconstruction coordination procedures; and procedures for reporting the results of the monitoring program. The PRMMP shall be consistent with the Society for Vertebrate Paleontology (SVP) Standard Guidelines for the mitigation of construction-related adverse impacts to paleontological resources and the requirements of the designated repository for any fossils collected. During construction, earth-moving activities that have the potential to disturb previously undisturbed native sediment or sedimentary rocks shall be monitored by a qualified paleontological consultant having expertise in California paleontology. Monitoring need not be conducted for construction activities in areas where the ground has been previously disturbed or when construction activities would encounter artificial fill, Young Bay Mud, marsh deposits, or non-sedimentary rocks of the Franciscan Complex. If a paleontological resource is discovered, construction activities in an appropriate buffer around the discovery site shall be suspended for a maximum of 4 weeks. At the direction of the Environmental Review Officer	Project sponsors and qualified paleontological consultant.	Prior to issuance of a building permit where construction activities would disturb sedimentary rocks of the Franciscan complex. If earth-moving activities have the potential to disturb previously undisturbed native sediment, a qualified paleontological consultant would monitor the activities.	Qualified paleontological consultant to prepare a PRMMP for review and approval by the ERO A single PRMMP or multiple PRMMPs may be produced to address project phasing. In compliance with the requirements of the PRMMP, a qualified paleontological consultant would monitor construction and provide a monitoring report for inclusion in the annual mitigation and monitoring report.	Considered complete upon documentation to the satisfaction of that building permit construction activities would not disturb sedimentary rocks of the Franciscan Complex, or review and approval of the PRMMP, if required, by the Planning Department. Monitoring activities and compliance would be documented in the annual mitigation and monitoring report.	Port and Planning Department

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
(ERO), the suspension of construction can be extended beyond 4 weeks if needed to implement appropriate measures in accordance with the PRMMP, but only if such a suspension is the only feasible means to prevent an adverse impact on the paleontological resource. The paleontological consultant's work shall be conducted at the direction of the City's ERO. Plans and reports prepared by the consultant shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO.					
Hydrology and Water Resources Mitigation Measures					
Mitigation Measure M-HY-2a: Design and Construction of Proposed Pump Station for Options 1 and 3 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline, the Proposed Project at full build-out, and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to	Project sponsors.	Prior to construction of the proposed pump station for Options 1 and 3.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC

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
approval by the SFPUC.					
Mitigation Measure M-HY-2h: Design and Construction of Proposed Pump Station for Option 2 The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria. • The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20th Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; • During wet weather, wastewater flows from the project site shall bypass the wet-weather facilities and be conveyed to the combined sewer system in such a manner that they do not contribute to combined sewer discharges within the 20th Street sub-basin; and • The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20th Street sub-basin and associated downstream basins do not exceed the long-term average of ten discharges per year specified in the SFPUC Bayside NPDES permit or applicable corresponding permit condition at time of final design. The capacity shall be based on the existing baseline and cumulative project contributions. The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to approval by the SFPUC.	Project sponsors.	Prior to construction of the proposed pump station for Option 2.	Project sponsors to coordinate with the SFPUC and Port regarding the proposed pump station design and performance criteria.	Considered complete upon approval of the final design by the SFPUC.	SFPUC
Hazards and Hazardous Materials Mitigation Measures					
Mitigation Measure M-HZ-2a: Conduct Transformer Survey and Remove PCB Transformers	Project sponsors and qualified contractor.	Prior to the demolition, renovation, or	Qualified contractor to survey and determine the	Considered complete if no PCBs found or	Port

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**
The project sponsors shall retain a qualified contractor to survey any building and/or structure planned for demolition, renovation, or relocation to identify all electrical transformers in use and in storage. The contractor shall determine the PCB content using name plate information, or through sampling if name-plate data do not provide adequate information regarding the PCB content of the dielectric equipment. The project sponsors shall retain a qualified contractor to remove and dispose of all transformers in accordance with the requirements of Title 40 of the Code of Federal Regulations, Section 761.60 (described under the Regulatory Framework) and the Title 22 of the California Code of Regulations, Section 66261.24. The removal shall be completed in advance of any building or structural demolition, renovation, or relocation.		relocation of any building and/or structure.	PCB content of transformers in use and storage. If necessary, the contractor shall remove and dispose of transformers in accordance with applicable regulations.	upon appropriate disposal and removal of transformers. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	
Mitigation Measure M-HZ-2b: Conduct Sampling and Cleanup if Stained Building Materials Are Observed In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB (determined in accordance with Mitigation Measure H-HZ-2a), or the leakage has resulted in visible staining of the building materials or surrounding surface areas, the project sponsors shall retain a qualified professional to obtain samples of the building materials for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration of 1 part per million, then the project sponsors shall retain a contractor to clean the surface to a concentration of 1 part per million or less in accordance with Title 40 of the Code of Federal Regulations, Section 761.61(a). The sampling and cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer containing greater than 50 parts per million PCB, or the leakage has resulted in visible staining of the building materials or surrounding surface areas. If determined necessary, sampling and	If leakage or spillage occurs, qualified contractor to obtain samples and clean the surface (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented in hazardous materials manifestos and in the annual mitigation and monitoring report.	Port

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**
		cleaning shall be completed in advance of any building or structural demolition, renovation, or relocation.			
Mitigation Measure M-HZ-2c: Conduct Soil Sampling if Stained Soil is Observed In the event that leakage is observed in the vicinity of a PCB-containing transformer that has resulted in visible staining of the surrounding soil (determined in accordance with Mitigation Measure M-HZ-2a), the project sponsors shall retain a qualified professional to obtain soil samples for the analysis of PCBs in accordance with Part 761 of the Code of Federal Regulations. If PCBs are identified at a concentration less than the residential Environmental Screening Level of 0.22 milligrams per kilogram, then no further action shall be required. If PCBs are identified at a concentration greater than or equal to the residential Environmental Screening Level of 0.22 milligrams per kilogram, then the project sponsors shall require the contractor to implement the requirements of the Pier 70 RMP, as required by Mitigation Measure M-HZ-6. The sampling and implementation of the Pier 70 RMP requirements shall be completed in advance of any building or structural demolition, renovation, relocation, or subsequent development.	Project sponsors and qualified contractor.	In the event that leakage is observed in the vicinity of a transformer, or the leakage has resulted in visible staining of soils. If determined necessary, sampling and removal shall be completed in advance of any building or structural demolition, renovation, or relocation.	If leakage or spillage occurs, qualified contractor to obtain samples and remove any PCBs (if necessary) in accordance with applicable regulations.	Considered complete if no PCBs found or upon sampling and removal of PCBs in accordance applicable regulations. Mitigation activities would be documented hazardous materials manifestos and in the annual mitigation and monitoring report.	Port
Mitigation Measure M-HZ-3a: Implement Construction and Maintenance-Related Measures of the Pier 70 Risk Management Plan The project sponsors shall provide notice to the RWQCB, DPH, and Port in accordance with the Pier 70 RMP, in advance of ground-disturbing activities	Project sponsors and construction contractor(s).	Notice shall be provided to the RWQCB, DPH, and Port in accordance	All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB,	Considered complete upon notice to the RWQCB, DPH, and Port.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency[1]

that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover (Pier 70 RMP Sections 4.1, 4.2, and 6.3).
 	
The project sponsors shall also (through their contractor) implement the following measures of the Pier 70 RMP during construction to provide for the protection of worker and public health, including nearby schools and other sensitive receptors, and to ensure appropriate disposition of soil and groundwater removed from the site:
 	
• A project-specific health and safety plan (Pier 70 RMP Section 6.4);
 	
• Access controls (Pier 70 RMP Section 6.1);
 	
• Soil management protocols, including those for:
  ○ soil movement (Pier 70 RMP Section 6.5.1),
  ○ soil stockpile management (Pier 70 RMP Section 6.5.2), and
  ○ import of clean soil (including preparation of a project-specific Soil Import Plan) (Pier 70 RMP Section 6.5.3);
 	
• A dust control plan in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code and other applicable regulations as well as site-specific measures (Pier 70 RMP Section 6.6);
 	
• A project-specific stormwater pollution prevention control plan (Pier 70 RMP Section 6.7);
 	
• Off-site soil disposal (Pier 70 RMP Section 6.8);
		with the Pier 70 RMP prior to any ground-disturbing activities that would disturb an area of 1,250 square feet or more of native soil, 50 cubic yards or more of native soil, more than 0.5 acre of soil, or 10,000 square feet or more of durable cover.	DPH, and Port for review and approval in accordance with the notification requirements of the RMP.		

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	**Implementation Responsibility**	**Mitigation Schedule**	**Monitoring/ Reporting Responsibility**	**Monitoring Schedule**	**Monitoring Agency**
• A project-specific groundwater management plan for temporary dewatering (Pier 70 RMP Section 6.10.1); • Risk management measures to minimize the potential for new utilities to become conduits for the spread of groundwater contamination (Pier 70 RMP Section 6.10.2); • Appropriate design of underground pipelines to prevent the intrusion of groundwater or degradation of pipeline construction materials by chemicals in the soil or groundwater (Pier 70 RMP Section 6.10.3); and • Protocols for unforeseen conditions (Pier 70 RMP Section 6.9). Following completion of construction activities that disturb any durable cover, the integrity of the previously existing durable cover shall be re-established in accordance with Section 6.2 of the Pier 70 RMP and the protocols described in the Operations and Maintenance Plan of the Pier 70 RMP. All plans prepared in accordance with the Pier 70 RMP shall be submitted to the RWQCB, DPH, and/or Port for review and approval in accordance with the notification requirements of the RMP (Pier 70 RMP Section 4.0).					
Mitigation Measure M-HZ-3b: Implement Well Protection Requirements of the Pier 70 Risk Management Plan In accordance with Section 6.11 of the Pier 70 RMP, the project sponsors shall review available information prior to any ground-disturbing activities to identify any monitoring wells within the construction area, including any wells installed by PG&E in support of investigation and remediation of the PG&E Responsibility Area within the 28-Acre Site. The wells shall be appropriately protected during construction. If construction necessitates destruction of an existing well, the destruction shall be conducted in accordance with California and DPH well abandonment regulations, and	Project sponsors	Prior to ground-disturbing activities.	Project sponsors to identify any monitoring wells in the area, and appropriately protect them. If destruction of a well is required, it would be conducted in accordance with	Monitoring complete if no wells or activities would be demonstrated in RWQCB and DPH regulatory applications and documented in the annual mitigation and	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
must be approved by the RWQCB. The Port shall also be notified of the destruction. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.			applicable regulations and the Port would be notified. If required by the RWQCB, DPH, or the Port, the project sponsors shall reinstall any groundwater monitoring wells that are part of the ongoing groundwater monitoring network.	monitoring report.	
Mitigation Measure M-HZ-4: Implement Construction-Related Measures of the Hoedown Yard Site Management Plan In accordance with the notification requirements of the Hoedown Yard SMP (Section 4.2), the project sponsors (through their contractor) shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard. During construction, the contractor shall implement the following measures of the Hoedown Yard SMP to provide for the protection of worker and public health, and to ensure appropriate disposition of soil and groundwater. • A project-specific Health and Safety Plan (Hoedown Yard SMP Section 5): o Dust management measures in accordance with the measures specified by the California Air Resources Board for control of naturally occurring asbestos (Title 17 of California Code of Regulations, Section 93105) and Article 22B of the San Francisco Health Code. The specific measures must address	Project sponsors	Prior to ground-disturbing activities at the Hoedown Yard.	The project sponsors shall notify the RWQCB, DPH, and/or Port prior to conducting any intrusive work at the Hoedown Yard.	Considered complete after notification to the RWQCB, DPH, and/or Port.	DPH

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
dust control (SMP Section 6.1) and dust monitoring (SMP Section 6.2). • Soil and water management measures, including: o soil handling (Hoedown Yard SMP Section 7.1.1), o stockpile management (Hoedown Yard SMP Section 7.1.2), o on-site reuse of soil (Hoedown Yard SMP Section 7.1.3), o off-site soil disposal (Hoedown Yard SMP Section 7.1.4), o excavation dewatering (Hoedown Yard SMP Section 7.1.5), o stormwater management (Hoedown Yard SMP Section 7.1.6), o site access and security (Hoedown Yard SMP Section 7.1.7), and o unanticipated subsurface conditions (Hoedown Yard SMP Section 7.2).					
Mitigation Measure M-HZ-5: Delay Development on Proposed Parcels H1, H2, and E3 Until Remediation of the PG&E Responsibility Area is Complete The project sponsors shall not start construction of the proposed development or associated infrastructure on proposed Parcel H1, H2, and E3 until PG&E's remedial activities in the PG&E Responsibility Area within and adjacent to these parcels have been completed to the satisfaction of the RWQCB, consistent with the terms of the remedial action plan prepared by PG&E and approved by RWQCB. During subsequent development, the project sponsors shall implement the requirements of the Pier 70 RMP within the PG&E Responsibility Area, as enforced through the recorded deed restriction on the Pier 70 Master Plan Area.	Project sponsors and PG&E.	Prior to the start of construction on proposed Parcels H1, H2, and E3. During subsequent development, for implementation of Pier 70 RMP Requirements.	PG&E to complete remedial activities in the PG&E Responsibility Area within and adjacent to Parcels H1, H2, and E3 to satisfaction of RWQCB. Project sponsor to implement Pier 70 RMP requirements, enforced by recorded deed	Considered complete upon RWQCB confirmation of satisfaction with PG&E remedial action.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
			restriction.		
Mitigation Measure M-HZ-6: Additional Risk Evaluations and Vapor Control Measures for Residential Land Uses The notification submittals required under Mitigation Measure M-HZ-3a shall describe site conditions at the time of development. If residential land uses are proposed at or near locations where soil vapor or groundwater concentrations exceed residential cleanup standards for vapor intrusion (based on information provided in the Pier 70 RMP), this information shall be included in the notification submittal and the RWQCB and DPH determine whether a risk evaluation is required. If required, the project sponsors or future developer(s) shall conduct a risk evaluation in accordance with the Pier 70 RMP. The risk evaluation shall be based on the soil vapor and groundwater quality presented in the Pier 70 RMP and the proposed building design. The project sponsors shall conduct additional soil vapor or groundwater sampling as needed to support the risk evaluation, subject to the approval of the RWQCB and DPH. If the risk evaluation demonstrates that there would be unacceptable health risks to residential users (i.e., greater than 1×10^{-6} incremental cancer risk or a non-cancer hazard index greater than 1), the project sponsors shall incorporate measures into the building design to minimize or eliminate exposure to soil vapor through the vapor intrusion pathway, subject to review and approval by the RWQCB and DPH. Appropriate vapor intrusion measures include, but are not limited to design of a safe building configuration that would preclude vapor intrusion; installation of a vapor barrier; and/or design and installation of an active vapor monitoring and extraction system. If the risk evaluation demonstrates that vapor intrusion risks would be within acceptable levels (less than 1×10^{-6} incremental cancer risk or a non-cancer hazard index less than 1) under a project-specific development scenario, no additional action shall be required. (For instance, the project sponsors could locate all residential uses above the first floor which, in some cases, could eliminate the potential for residential exposure to organic compounds in soil	Project sponsors	Prior to ground-disturbing activities of residential land uses if near locations where soil vapor or groundwater concentrations exceed residential cleanup standard for vapor intrusion.	Site conditions shall be recorded by the project sponsors and included in the notification submittal to the RWQCB and DPH. If required, the project sponsors shall conduct a risk evaluation in accordance with the Pier 70 RMP and incorporate measures to minimize or eliminate exposure to soil vapor.	Considered complete upon a notification submittal to the RWQCB and DPH. If a risk evaluation and further measures are required, they would be reviewed and approved by the RWQCB and DPH.	Port

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
vapors.)					
Mitigation Measure M-HZ-7: Modify Hoedown Yard Site Mitigation Plan The project sponsors shall conduct a risk evaluation to evaluate health risks to future site occupants, visitors, and maintenance workers under the proposed land use within the Hoedown Yard. The risk evaluation shall be based on the soil, soil vapor, and groundwater quality data provided in the existing SMP and supporting documents and the project sponsors shall conduct additional sampling as needed to support the risk evaluation. Based on the results of the risk evaluation, the project sponsors shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals (i.e., an excess cancer risk of 1×10^{-6} and a Hazard Index of 1) applicable to each land use proposed for development within the Hoedown Yard. At a minimum, the modified SMP shall include the following components: • Regulatory-approved cleanup levels for the proposed land uses; • A description of existing conditions, including a comparison of site data to regulatory-approved cleanup levels; • Regulatory oversight responsibilities and notification requirements; • Post-development risk management measures, including management measures for the maintenance of engineering controls (e.g., durable covers, vapor mitigation systems) and site maintenance activities that could encounter contaminated soil; • Monitoring and reporting requirements; and • An operations and maintenance plan, including annual inspection requirements.	Project sponsors shall conduct a risk evaluation, and shall modify the Hoedown Yard SMP to include measures to minimize or eliminate exposure pathways to chemicals in the soil and groundwater, and achieve health-based goals applicable to each land use proposed for development within the Hoedown Yard.	Prior to ground-disturbing activities at the Hoedown Yard.	Project sponsors shall submit the risk evaluation and proposed risk management plan to the RWQCB, DPH, and Port for review and approval.	Considered complete upon review and approval of the risk evaluation and proposed risk management plan by the RWQCB, DPH, and Port.	Port, DPH

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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
The risk evaluation and proposed risk management plan shall be submitted to the RWQCB, DPH, and Port for review and approval prior to the start of ground disturbance.					
Mitigation Measure M-HZ-8a: Prevent Contact with Serpentinite Bedrock and Fill Materials in Irish Hill Playground The project sponsors shall ensure that a minimum 2-foot thick durable cover of asbestos-free clean imported fill with a vegetated cover is emplaced above serpentinite bedrock and fill materials in the level portions of Irish Hill Playground. The fill shall meet the soil criteria for clean fill specified in Table 4 of the Pier 70 RMP and included in Appendix F, Hazards and Hazardous Materials, of this EIR. Barriers shall be constructed to preclude direct climbing on the bedrock of the Irish Hill remnant. The design of the durable cover and barriers shall be submitted to the DPH and Port for review and approval prior to construction of the Irish Hill Playground.	Project sponsors to design and install a 2-foot-thick durable cover over serpentinite bedrock and fill in the level portions of the Irish Hill Playground and barriers to preclude direct climbing on the bedrock of the Irish Hill remnant.	Submittal of design of durable cover and barriers to DPH and Port prior to construction of the Irish Hill Playground.	Project sponsors shall submit design of durable covers and barriers to DPH, Port	Considered complete upon review and approval of the design and installation of the 2-foot-thick durable cover and barriers by the DPH and Port.	Port, DPH
Mitigation Measure M-HZ-8b: Restrictions on the Use of Irish Hill Playground To the extent feasible, the project sponsors shall ensure that the Irish Hill Playground is not operational until ground disturbing activities for construction of the new 21st Street and on the adjacent parcels (PKN, PKS, HDY-1, HDY2, C1, and C2) is completed. If this is not feasible, and Irish Hill Playground is operational prior to construction of the new 21st Street and construction on all adjacent parcels, the playground shall be closed for use when ground-disturbing activities are occurring for the construction of the new 21st Street and on any of the adjacent parcels.	Project sponsors.	Prior to and during construction of the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2.	Project sponsors shall ensure the playground is not operational until ground-disturbing activities at the new 21st Street and on Parcels PKN, PKS, HDY-1, HDY-2, C1, and C2 are complete; or playground shall be closed for use when ground-disturbing activities are occurring	Considered complete when the aforementioned parcels' ground-disturbing activities are finished. Documentation would occur in the annual mitigation and monitoring report.	Port

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
IMPROVEMENT MEASURES FOR THE PIER 70 MIXED-USED DISTRICT PROJECT					
Improvement Measure I-CR-4a: Documentation Before any demolition, rehabilitation, or relocation activities within the UIW Historic District, the project sponsors should retain a professional who meets the Secretary of the Interior's Professional Qualifications Standards for Architectural History to prepare written and photographic documentation of all contributing buildings proposed for demolition within the UIW Historic District. The documentation for the property should be prepared based on the National Park Service's Historic American Building Survey (HABS)/Historic American Engineering Record (HAER) Historical Report Guidelines. This type of documentation is based on a combination of both HABS/HAER standards and National Park Service's policy for photographic documentation, as outlined in the NRHP and National Historic Landmarks Survey Photo Policy Expansion. The written historical data for this documentation should follow HABS/HAER standards. The written data should be accompanied by a sketch plan of the property. Efforts should also be made to locate original construction drawings or plans of the property during the period of significance. If located, these drawings should be photographed, reproduced, and included in the dataset. If construction drawings or plans cannot be located, as-built drawings should be produced. Either HABS/HAER-standard large format or digital photography should be used. If digital photography is used, the ink and paper combinations for printing photographs must be in compliance with NR-NHL Photo Policy Expansion and have a permanency rating of approximately 115 years. Digital photographs should be taken as uncompressed, TIFF file format. The size of each image should be 1,600 by 1,200 pixels at 330 pixels per inch or larger, color format, and printed in black and white. The file name for each electronic image should correspond with the index of photographs and photograph label. Photograph views for the dataset should include (a)	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.	Project Sponsor Documentation: Before any demolition, rehabilitation, or relocation activities within the UIW Historic District.	Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual to complete historic resources documentation, and transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Considered complete when documentation is reviewed and approved by Port Preservation Staff, and the documentation is provided to the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System.	Port

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
contextual views; (b) views of each side of each building and interior views, where possible; (c) oblique views of buildings; and (d) detail views of character-defining features, including features on the interiors of some buildings. All views should be referenced on a photographic key. This photographic key should be on a map of the property and should show the photograph number with an arrow to indicate the direction of the view. Historic photographs should also be collected, reproduced, and included in the dataset. The project sponsors should transmit such documentation to the History Room of the San Francisco Public Library, and to the Northwest Information Center of the California Historical Information Resource System. The project sponsors should scope the documentation measures with Port Preservation staff..					
Improvement Measure I-CR-4b: Public Interpretation Following any demolition, rehabilitation, or relocation activities within the project site, the project sponsors should provide within publicly accessible areas of the project site a permanent display(s) of interpretive materials concerning the history and architectural features of the District's three historical eras (Nineteenth Century, Early Twentieth Century, and World War II), including World War II-era Slipways 5 through 8 and associated craneways. The display(s) should also document the history of the Irish Hill Remnant, including, for example, the original 70- to 100-foot tall Irish Hill landform and neighborhood of lodging, houses, restaurants, and saloons that occupied the once much larger hill until the earlier twentieth century. The content of the interpretive display(s) should be coordinated and consistent with the sitewide interpretive plan prepared for the 28-Acre Site in coordination with the Port. The specific location, media, and other characteristics of such interpretive display(s) should be presented to Port preservation staff for approval prior to any demolition or removal activities.	Project sponsors should provide a permanent display(s) of interpretive materials concerning the history and architectural features of the District within publicly accessible areas of the project site.	Project sponsors provide permanent display: Following any demolition, rehabilitation, or relocation activities within the project site.	Project sponsors submit documentation of permanent display(s) of interpretive materials	Considered complete when interpretive materials are presented to Port preservation staff for approval. The materials would then be presented in the publically accessible area of the project site.	Port
Improvement Measure I-TR-A: Construction Management Plan Traffic Control Plan for Construction – To reduce potential conflicts between	Project sponsors. TMA. and	Prior to issuance of a	Construction contractor(s) to	Considered complete upon	Port. 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
construction activities and pedestrians, bicyclists, transit, and autos during construction activities, the project sponsors should require construction contractor(s) to prepare a traffic control plan for major phases of construction (e.g., demolition and grading, construction, or renovation of individual buildings). The project sponsors and their construction contractor(s) will meet with relevant City agencies to coordinate feasible measures to reduce traffic congestion, including temporary transit stop relocations and other measures to reduce potential traffic and transit disruption and pedestrian circulation effects during major phases of construction. For any work within the public right-of-way, the contractor would be required to comply with San Francisco's Regulations for Working in San Francisco Streets (i.e., the Book"), which establish rules and permit requirements so that activities can be done safely and with the least possible interference pedestrians, bicyclists, transit, and vehicular traffic. Additionally, non-construction-related truck movements and deliveries should be restricted as feasible during peak hours (generally 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., or other times, as determined by SFMTA and the Transportation Advisory Staff Committee [TASC]). In the event that the construction timeframes of the major phases and other development projects adjacent to the project site overlap, the project sponsors should coordinate with City Agencies through the TASC and the adjacent developers to minimize the severity of any disruption to adjacent land uses and transportation facilities from overlapping construction transportation impacts. The project sponsors, in conjunction with the adjacent developer(s), should propose a construction traffic control plan that includes measures to reduce potential construction traffic conflicts, such as coordinated material drop offs, collective worker parking, and transit to job site and other measures. Reduce Single Occupant Vehicle Mode Share for Construction Workers – To minimize parking demand and vehicle trips associated with construction workers, the project sponsors should require the construction contractor to include in the Traffic Control Plan for Construction methods to encourage	construction contractor(s).	building permit. Project construction updates for adjacent residents and businesses within 150 feet would occur throughout the construction phase.	prepare a Traffic Control Plan and meet with relevant City agencies (i.e., SFMTA, Port Staff, and Planning Department) to coordinate feasible measures to reduce traffic congestion. A single traffic control plan or multiple traffic control plans may be produced to address project phasing.	submittal of the Traffic Control Plan to the SFMTA and the Port. Project construction update materials would be provided in the annual mitigation and monitoring plan.	SFMTA as appropriate

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
walking, bicycling, carpooling, and transit access to the project construction sites and to minimize parking in public rights-of-way by construction workers in the coordinated plan. Project Construction Updates for Adjacent Residents and Businesses – To minimize construction impacts on access for nearby residences, institutions, and businesses, the project sponsors should provide nearby residences and adjacent businesses with regularly-updated information regarding construction, including construction activities, peak construction vehicle activities (e.g., concrete pours), travel lane closures, and lane closures via a newsletter and/or website.					
Improvement Measure I-TR-B: Queue Abatement It should be the responsibility of the owner/operator of any off-street parking facility with more than 20 parking spaces (excluding loading and car-share spaces) to ensure that vehicle queues do not occur regularly on the public right-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of any public street, alley, or sidewalk for a consecutive period of 3 minutes or longer on a daily or weekly basis. If a recurring queue occurs, the owner/operator of the parking facility should employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the parking facility, the street(s) to which the facility connects, and the associated land uses (if applicable). Suggested abatement methods include but are not limited to the following: redesign of facility to improve vehicle circulation and/or on-site queue capacity; employment of parking attendants; installation of LOT FULL signs with active management by parking attendants; use of valet parking or other space-efficient parking techniques; use of off-site parking facilities or shared parking with nearby uses; use of parking occupancy sensors and signage	Project sponsors, owner/operator of any off-street parking facility, and transportation consultant.	On-going during operations of any off-street parking facilities.	The owner/operator of the parking facility should monitor vehicle queues in the public right-of-way, and would employ abatement measures as needed. If the Port Director, or his or her designee, suspects that a recurring queue is present, the Port should notify the property owner in writing. The owner/operator should hire a transportation consultant to	Monitoring of the public right-of-way would be on-going by the owner/operator of off-street parking operations.	Port, 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**
directing drivers to available spaces; TDM strategies such as additional bicycle parking, customer shuttles, delivery services; and/or parking demand management strategies such as parking time limits, paid parking, time-of-day parking surcharge, or validated parking. If the Port Director, or his or her designee, suspects that a recurring queue is present, Port Staff should notify the property owner in writing. Upon request, the owner/operator should hire a qualified transportation consultant to evaluate the conditions at the site for no less than 7 days. The consultant should prepare a monitoring report to be submitted to the Port for review. If the Port determines that a recurring queue does exist, the facility owner/operator should have 90 days from the date of the written determination to abate the queue.			prepare a monitoring report and if a recurring queue does exist, the owner/operator would abate the queue.		
Improvement Measure I-TR-C: Strategies to Enhance Transportation Conditions During Events. The project's Transportation Coordinator should participate as a member of the Mission Bay Ballpark Transportation Coordination Committee (MBBTCC) and provide at least 1-month notification to the MBBTCC where feasible prior to the start of any then known event that would overlap with an event at AT&T Park. The City and the project sponsors should meet to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Project sponsors, TMA, parks maintenance entity, parks programming entity, and/or Transportation Coordinator.	Prior to the start of any known event that would overlap with an event at AT&T Park.	Project sponsors and Transportation Coordinator to meet with MBBTCC and City to discuss transportation and scheduling logistics for occasions with multiple events in the area.	Include in MMRP Annual Report: On-going during project lifespan.	Port, Planning Department, SFMTA
Improvement Measure I-WS-3a: Wind Reduction for Public Open Spaces and Pedestrian and Bicycle Areas For each development phase, a qualified wind consultant should prepare a wind impact and mitigation analysis regarding the proposed design of public open spaces and the surrounding proposed buildings. Feasible means should be considered to improve wind comfort conditions for each public open space, particularly for any public seating areas. These feasible means include horizontal and vertical, partially-porous wind screens (including canopies,	Project sponsors and qualified wind consultant.	During the design of public open spaces and pedestrian and bicycle areas for each development phase.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by the Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for public open spaces and pedestrian and	Port or 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**
trellises, umbrellas, and walls), street furniture, landscaping, and trees. Specifics for particular public open spaces are set forth in Improvement Measures I-WS-3b to I-WS-3f. Any proposed wind-related improvement measure should be consistent with the design standards and guidelines outlined in the *Pier 70 SUD Design for Development*.				bicycle areas by the Port Staff.	
Improvement Measure I-WS-3b: Wind Reduction for Waterfront Promenade and Waterfront Terrace The Waterfront Promenade and Waterfront Terrace would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing vertical elements, such as wind screens and landscaping. Where necessary and appropriate, wind screens should be strategically placed directly around seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Waterfront Promenade and Waterfront Terrace.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Waterfront Promenade and Waterfront Terrace by Port Staff	Port
Improvement Measure I-WS-3c: Wind Reduction for Slipways Commons The central and western portions of Slipways Commons would be subject to winds exceeding the pedestrian wind comfort criteria. Street trees should be considered along Maryland Street, particularly on the east side of Maryland Street between Buildings E1 and E2. Vertical elements such as wind screens would help for areas where street trees are not feasible. Where necessary and appropriate, wind screens should be strategically placed to the west of any seating areas. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of	Project sponsors and qualified wind consultant.	During the design of the Slipway Commons.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Slipway Commons by Port Staff.	Port

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
any wind screen or landscaping shall be compatible with the Historic District.					
Improvement Measure I-WS-3d: Wind Reduction for Building 12 Market Plaza and Market Square Building 12 Market Plaza and Market Square would be subject to winds exceeding the pedestrian wind comfort criteria. For reducing wind speeds in the public courtyard between Buildings 2 and 12, the inner south and west façades of Building D-1 could be stepped by at least 12 feet to direct downwashing winds above pedestrian level. Alternatively, overhead protection should be used, such as a 12-foot-deep canopy along the inside south and west façades of Building D-1, or localized trellises or umbrellas over seating areas. For reducing wind speeds on the eastern and southern sides of Building 12, street trees should be considered, along Maryland and 22nd streets. Smaller underplantings should be combined with street trees to reduce winds at pedestrian level. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Building 12 Market Plaza and Market Square.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Building 12 Market Plaza and Market Square by Port Staff.	Port

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
Improvement Measure I-WS-3e: Wind Reduction for Irish Hill Playground The Irish Hill Playground would be subject to winds exceeding the pedestrian wind comfort criteria. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the Irish Hill Playground.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the Irish Hill Playground by Port Staff.	Port
Improvement Measure I-WS-3f: Wind Reduction for 20th Street Plaza The 20th Street Plaza would be subject to winds exceeding the pedestrian wind comfort criteria. A qualified wind consultant should prepare written recommendations of feasible means to improve wind comfort conditions in this open space, emphasizing hardscape elements, such as wind screens, canopies, and umbrellas. Where necessary and appropriate, wind screens should be strategically placed to the northwest of any seating area. For maximum benefit, wind screens should be at least 6 feet high and made of approximately 20 to 30 percent porous material. If there would be seating areas directly adjacent to the north façade of the PKN Building, localized canopies or umbrellas should be used. Design of any wind screen or landscaping shall be compatible with the Historic District.	Project sponsors and qualified wind consultant.	During the design of the 20th Street Plaza.	Qualified wind consultant would prepare a wind impact and mitigation analysis to be reviewed by Port Staff.	Considered complete upon review of the wind impact and mitigation analysis for the 20th Street Plaza by Port Staff.	Port

PARCEL LEASE EXHIBIT K

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 though 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 this Exhibit, 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.

AECOM

Pier 70 Special Use District
TDM Program

July 24, 2017

AECOM

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 TMASF 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 menus 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 establish and implement transportation management plans for specific events. management plans will consider best practices and lessons learned from other San Francisco events event venues. Event scheduling will attempt to minimize overlapping of events with AT&T Park and 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 exceed.

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

	Residential			Commercial			Phase Trip Estimates	
Phase	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**
Air Quality Mitigation Measures					
Mitigation Measure M-AQ-1f: Transportation Demand Management. 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: • 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 Planning Staff prior to approval of the project	Project sponsors to submit the TDM Plan to Planning Staff for review. Transportation Demand Management Association to submit monitoring report annually to Planning Staff and implement TDM Plan Adjustments (if required).	The TDM Plan is considered complete upon approval by the Planning Staff. 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.	Planning Department

MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
memberships for project occupants; • 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. 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. 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.					

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**
TDM Plan Monitoring and Reporting: 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. • 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: o 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**
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. o 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. o 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. o 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.) o 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**
identity of individual survey responders is protected. *TDM Plan Adjustments.* 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.					

Parcel Lease Exhibit L
Form of Facilities Condition Report

FACILITIES CONDITION REPORT
Parcel [ ]
Date: [ ]

This Facilities Condition Report is being delivered to Port pursuant to Section 10.2 of that certain Lease dated _____ by and between _____ ("Tenant") and the Port with respect to the property commonly known as _____ (the "Property"). The purpose of this Facilities Condition Report is to document the condition of the Property and to assist Tenant in developing cost estimates needed for capital planning, deferred maintenance and life-cycle replacement costs.

This Facilities Condition Report was prepared by _____ following a visual inspection of the Property and review of written notices of Building Code violations, if any, received by the Property owner (a "Code Violation Notice").

Building System or Component	**Narrative Summary of Condition**	**Immediate Repair Recommended to Address any Code Violation Notice** (If none, write "None")	**Short Term Repair and Renewal Recommendations**[1] (If none, write "None")	**Long Term Repair and Renewal Recommendations**[2] (If none, write "None")	**Estimated Cost of Recommended Repair**	**Estimated Remaining Useful Life**
1. Building Site (Topography, drainage, retaining walls, paving, curbing, lighting)						

[1] Short term repairs will include any repair recommended to occur prior to the next regularly scheduled Facilities Condition Report.
[2] Long term repairs will include any repair recommended to occur following the next regularly scheduled Facilities Condition Report.

Building System or Component	Narrative Summary of Condition	Immediate Repair Recommended to Address any Code Violation Notice (If none, write "None")	Short Term Repair and Renewal Recommendations[1] (If none, write "None")	Long Term Repair and Renewal Recommendations[2] (If none, write "None")	Estimated Cost of Recommended Repair	Estimated Remaining Useful Life
2. Building Envelope (Windows and Walls)						
3. Structural (Foundation and Framing)						
4. Interior Elements (Stairways, hallways, common areas)						
5. Roofing Systems						
6. Major Mechanical Systems (Heating, Ventilation, and Air Conditioning)						
7. Major Plumbing Systems						
8. Major Electrical Systems						
9. Vertical						

Building System or Component	**Narrative Summary of Condition**	**Immediate Repair Recommended to Address any Code Violation Notice** (If none, write "None")	**Short Term Repair and Renewal Recommendations[1]** (If none, write "None")	**Long Term Repair and Renewal Recommendations[2]** (If none, write "None")	**Estimated Cost of Recommended Repair**	**Estimated Remaining Useful Life**
Transportation (Elevators and escalators)						
10. [If Tenant elects to include in the Facilities Condition Report: Site-specific testing, such as infrared thermography for energy loss, air leakage, roofing and building envelope moisture intrusion]						

PARCEL LEASE EXHIBIT M

WORKFORCE DEVELOPMENT PLAN

(Pier 70 28-Acre Site)

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PIER 70 28-ACRE SITE WORKFORCE DEVELOPMENT PLAN

I. Project Background. The development plan for the 28-Acre Site under the Transaction Documents provides for the development of a new mixed-use neighborhood composed of office, retail, market rate and affordable residential uses, as well as entirely new infrastructure, utilities, parks and open space. This Workforce Development Plan sets forth the activities Developer and Vertical Developer shall undertake, and require their Construction Contractors, Consultants, Subcontractors, Subconsultants, and Commercial Tenants, as applicable, to undertake, to support workforce development in both the construction and end use phases of the 28-Acre Site Project, as set forth in this Workforce Development Plan.

The Port and Developer have entered into the DDA that provides for the development of the 28-Acre Site Project in a series of Phases. In connection with the DDA, the Port and the Developer will enter into a Master Lease providing Developer the right to construct Horizontal Improvements within the 28-Acre Site Project after Port approval of Phase Submittals and issuance of necessary Regulatory Approvals. Developer will enter into contracts with Contractors and Consultants to construct all Horizontal Improvements allowed under the Master Lease.

The DDA also sets forth a process for the conveyance of Option Parcels by Parcel Leases to Vertical Developers. When a Vertical Developer is selected, the Port and the Vertical Developer will enter into a Vertical DDA that provides the procedures for the Port's delivery of a Parcel Lease to the Vertical Developer and sets forth the rights and obligations for the Vertical Developer's construction of Vertical Improvements and Deferred Infrastructure. Vertical Developers will enter into contracts with Construction Contractors and Consultants to construct the Vertical Improvements allowed in the Vertical DDAs. Upon completion of the Vertical Improvements, the applicable Parcel Lease, between the Port and the Vertical Developer, shall govern the operation and use of the Vertical Improvements.

II. Purpose of the Workforce Development Plan. This Workforce Development Plan sets forth the employment and contracting requirements for the construction and operation of the 28-Acre Site Project. This Workforce Development Plan has been jointly prepared by the Port and Developer (on behalf of itself and each Vertical Developer), in consultation with others including OEWD and other relevant City Agencies.

The purpose of this Workforce Development Plan is to ensure training, employment and economic development opportunities are part of the development and operation of the 28-Acre Site Project. This Workforce Development Plan creates a mechanism to provide employment and economic development opportunities for economically disadvantaged persons and San Francisco residents. The Port and Developer agree that job creation and equal opportunity contracting opportunities in all areas of employment are an essential part of the redevelopment of Pier 70. The Port and Developer agree that it is in the best interests of the 28-Acre Site Project and the City for a portion of the jobs and contracting opportunities to be directed, to the extent possible based on the type of work required, and subject to collective bargaining agreements, to local, small and economically disadvantaged companies and individuals whenever there is a qualified candidate.

This Workforce Development Plan identifies goals for achieving this objective and outlines certain measures that will be undertaken in order to help ensure that these goals and objectives are successfully met. In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project.

This Workforce Development Plan requires:

- Developer or Vertical Developers to fund certain OEWD job readiness and training programs run by CityBuild and TechSF.

- Developer or Vertical Developer shall include in all leases, subleases or other occupancy contracts provisions that require all Permanent Employers that occupy more than 25,000 gsf to enter into a First Source Hiring Agreement (in the forms attached hereto as Attachment A-1 and Attachment A-2) that will require participation in the City's Workforce System towards the hiring goals of Chapter 83 hiring goals applicable to Covered Operations for First Source referrals and, where applicable, partnership with TechSF. Developer shall also include in such leases, subleases or other occupancy contracts provisions that require Lessees and service providers to identify a single point of contact and contact OEWD's Business Services team to discuss its obligations under the First Source Hiring Agreement.

- On an annual basis, Developer shall provide First Source program and contact information to Permanent Employers that occupy less than 25,000 gsf, so they may avail themselves of referral services offered by OEWD.

- Developer and Vertical Developers of projects that are not otherwise covered by local hire requirements to enter into a First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

- Developer and Vertical Developers to meet the hiring and apprenticeship goals applicable to certain construction work for Local Residents and Disadvantaged Workers for Covered Projects as set forth in Attachment B (Local Hiring Requirements).

- Developer and Vertical Developers to meet the utilization and outreach goals applicable to certain construction work for Local Business Enterprises in accordance with the requirements set forth in Attachment C (LBE Utilization Plan).

- Developer to meet the outreach goals applicable to the initial leasing of retail space suitable for use by local diverse small businesses.

The foregoing summary is provided for convenience and for informational purposes only. In case of any conflict between this Workforce Development Plan and the ***DDA***, the provisions of this Workforce Development Plan shall control.

III. Workforce Development Plan.

A. DEFINITIONS

The following terms specific to this Workforce Development Plan have the meanings given to them below or are defined where indicated. Other initially capitalized terms are defined in the **Appendix Part B** or in other Transaction Documents. This Workforce Development Plan and all Workforce-Development Plan-specific definitions will prevail over any other Transaction Document in relation to the rights and obligations of Developer's and Vertical Developers with respect to workforce development. All references to the DDA or Vertical DDA, as applicable, include this Workforce Development Plan unless explicitly stated otherwise.[1]

"**Chapter 83**" is defined in Section III.D.2 hereof.

"**Commercial Activity**" means retail sales and services, restaurant, hotel, education and office uses, technology and biotechnology business, and any other non-profit or for-profit commercial uses permitted under the SUD that are conducted within a Vertical Improvement.

"**Commercial Lease**" is defined in Section III.D.2 hereof.

"**Commercial Tenant**" means a tenant, subtenant or other occupant that enters into a lease, sublease or other occupancy contract for a Covered Operation.

"**Construction Contractor**" means a construction contractor hired by or on behalf of Developer or a Vertical Developer who performs Construction Work on the 28-Acre Site or other construction work otherwise covered under the LBE Utilization Plan or First Source Hiring Agreement for Construction (in the form of Attachment A-3 attached hereto).

"**Construction Work**" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement.

"**Construction Workforce Requirements**" is defined in Section III.C.1 hereof.

"**Consultant**" is defined in Attachment C attached hereto.

"**Covered Operations**" means (i) Commercial Activity which results in the expansion of entry and apprentice level positions that are located within a newly constructed Vertical Improvement or an addition, or alteration thereto, where the Vertical Improvement (or addition or alteration thereto) contains more than 25,000 gross square feet in floor area, and (ii) the operation of a Residential Project containing more than 25,000 square feet or more than 10 Residential Units. Covered Operations do not include (a) any operations or activities conducted by tenants, subtenants or owners of Residential Units, (b) Residential Projects containing less than 25,000 square feet or fewer than 10 dwelling units, (c) Vertical Improvements containing less than 25,000 square feet and (d) activities or operations conducted by tenants, subtenants and other occupants of less than 25,000 gross square feet of sublease space within a Vertical Improvement.

"**Disadvantaged Worker(s)**" is defined in Attachment B attached hereto.

"**Final, Binding and Non-Appealable**" means 90-days after the subject approval, or if a third party files an action challenging the approval during such 90-day period, thirty days after the final judgment or other resolution of the action or issue.

"**FSHA**" means the City's First Source Hiring Administration.

"**FSHA Operations Agreement**" means a First Source Hiring Agreement for Business, Commercial, Operation and Lease Occupancy of the Building, for Permanent Employers or for Permanent Tech Employers, as more particularly described in Section III.D.2. hereof.

"**Internship**" shall mean a learning and career preparation method that occurs within the context of a course or program. Internships include career exploration and direct experience and include guidance by staff, mentors, employers, and peers. An intern obtains a good understanding of the requirements of the occupation and an overview of all aspects of their chosen industry, and develops college and career readiness and success skills, such as critical thinking, problem-solving, collaboration and communication.

"**Job Readiness and Training Funds**" is defined in Section III.B.1 hereof.

"**Lessee**" shall mean a Tenant, business operator and any other occupant of a commercial office building. Lessee shall include every person, tenant, subtenant, or any other entity occupying the building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

"**Local Business Enterprise(s)**" or "**LBE**" means a firm that has been certified as an LBE as set forth in Administrative Code Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance).

"**Local Resident(s)**" is defined on Attachment C attached hereto.

"**NEDO**" is a neighborhood economic development organization.

"**OEWD**" means the City's Office of Economic & Workforce Development.

"**Operations Workforce Requirements**" is defined in Section D.1 hereof.

"**Permanent Employer**" shall mean each employer in a Covered Operation.

"**Permanent Tech Employer**" shall mean a Permanent Employer that both (i) employs primarily Technology Occupations and Technology-Enabled Occupations, and (ii) occupies more than 25,000 gsf within the 28-Acre Site Project.

"**Prevailing Rate of Wages**". The Prevailing Rate of Wages as defined in Section 6.1, and established under subsections 6.22(e)(3) and 6.22(f), of the Administrative Code.

"**Prevailing Wage Covered Project**" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

"**Referral**" shall mean a member of the Workforce System who has participated in an OEWD workforce training program.

"**Registered Apprenticeship**" shall mean a work experience that combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at the outset of a training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Registered apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, registered apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

"**Subconsultant**" is defined in Attachment C attached hereto.

"**Subcontractor**" is defined in Attachment A3 attached hereto.

"**TechSF**" shall mean a program which has been established by the City and County of San Francisco and managed by the OEWD, to provide training, education and job placement assistance services to jobseekers, and connects local employers to a qualified workforce in order to help all involved benefit from the growth of the local technology industry, Technology-Enabled Occupations and Technology Occupations across all sectors. For the purposes of this document, this term will refer to any successor programs, which provide similar services.

"**Technology-Enabled Occupations**" shall mean occupations that require skills related to Information, Media and ICT Literacy as highlighted in California's Digital Literacy definition, "[one's capacity] for using digital technology, communications tools, and/or networks in creating, accessing, analyzing, managing, integrating, evaluating, and communicating information in order to function in a knowledge based economy and society." Technology-Enabled Occupations require the ability to analyze, access and work with common computing and communications devices, operating systems, networking systems and applications. These occupations require the ability to understand and use ICT computing, communications and information technologies; use technologies for advance research, analysis and administrative operations. These occupations also require the ability to create, interpret and work with an increasing variety of digital media.

"Technology Occupations" shall mean positions that require core competencies in information and communication technology (ICT) systems and solutions. These occupations develop and deploy technologies and infrastructures to both support their enterprise and product users. Additionally, technology occupations require skills in research, design, development and analysis of custom technological products: including but not limited to software, web, application, and cloud-based products. Technology occupations also include positions that are related to the sales, marketing and engineering of these technology-based products. Technology occupations typically occur in the major industry clusters as defined by the North American Industry Classification System (NAICS): Software Publishers; Wired Telecommunications; Wireless Telecommunications; Satellite Communications; Data Processing, Hosting and Related Services; Internet Publishing and Broadcasting and Web Search Portals; and Computer Systems Design. Major technology occupation clusters as identified by the Bureau of Labor Statistics include but are not limited to: information support and services; network systems; program and software development; and web and digital communications.

"Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

"Work Experience" shall mean any experience which combine an on-the-job learning component with related classroom instruction designed to maximize the value of on-the-job experiences. Work Experience Education is classified in the California Education Code as General, Exploratory, or Vocational. General work experience exposes students to the world of work; exploratory work experience also allows students to experience a variety of careers: vocational work experience allows students to explore a career interest in greater

"Workforce System" is defined in Attachment A1 attached hereto.

B. WORKFORCE JOB READINESS AND TRAINING FUNDS.

1. **Application**. Developer will provide OEWD with $1 Million in funding to support the job training and readiness programs run by CityBuild and TechSF as more particularly set forth in this **Section III.B.1** (all funds required under this Section III.B.1, the "**Job Readiness and Training Funds**"). The funding requirements under Sections III.B.2 and III.B.3 will be binding on Developer and its successors and assigns under the DDA. The funding requirements under Section III.B.4 will be binding on Developer or may be assigned to the applicable Vertical Developer under the terms of their Vertical DDA and/or Parcel Lease.

2. **CityBuild Program**. The 28-Acre Site Project will pay a total of **$250,000** across the three Phases of development in accordance with this Section III.B.2 that the City will use to fund CityBuild programs.

    a. Purpose and Amount. The 28-Acre Site Project will pay the City a total of $250,000 that the City will use to fund CityBuild programs run by OEWD's Workforce Development Division. Funds will be allocated by amount and program in OEWD's discretion, but such programs may include the CityBuild Academy, an 18-week pre-apprenticeship training

program that prepares citywide residents for entry into the trades; the Construction Administration & Professional Service Academy, an 18-week program offered at City College of San Francisco that prepares San Francisco residents for entry-level careers as professional construction office administrators; or the CityBuild Women's Mentorship Program, a volunteer program that connects women construction leaders with experienced professional and mentors.

b. Manner and Timing of Payment. Developer will pay the CityBuild program funds in accordance with the following schedule:

i. Phase 1: Developer will pay the City $83,333 within fifteen days after the Phase 1 Approval becomes Final, Binding and Non-Appealable.

ii. Phase 2: Developer will pay the City $83,333 within fifteen days after the Phase 2 Approval becomes Final, Binding and Non-Appealable.

iii. Phase 3: Developer will pay the City $83,334 within fifteen days after the Phase 3 Approval becomes Final, Binding and Non-Appealable.

3. **CityBuild Services**. The 28-Acre Site Project will pay a total of **$100,000** that will be used to remove barriers to permanent employment.

a. Purpose and Amount. The 28-Acre Site Project will pay $100,000 to fund the delivery of services to assist individuals, interested in entering CityBuild or the trades, with addressing barriers to employment. The services will offer case management and supportive services (driver license, housing, union dues, tools, uniform/boots). The resources will be primarily for Bayview Hunter's Point neighborhood residents and surrounding areas. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction. These funds will be distributed directly to Young Community Developers. The participants will be assessed for their appropriateness to work in construction and will be provided services to assist them with entering a career in construction.

b. Manner and Timing of Payment. Developer will make the payment directly to Young Community Developers within fifteen days after the Phase 1 Approval become Final, Binding and Non-Appealable.

4. **TechSF Bridge Training for BVHP/Dogpatch Communities & Targeted End Use Jobs**. The 28-Acre Site Project will pay $650,000 associated with commercial-office development in Phase 1 and in future Phases, in accordance with this Section.

a. Purpose and Amount. The Vertical Developers of the first commercial-office project in Phase 1 and the Vertical Developer of the first commercial-office project to be developed in any subsequent Phase will be required to pay funds to the City that will be used by OEWD to support moderate-skilled job training and education programs that prepare individuals in the Bayview Hunter's Point neighborhood residents and surrounding areas in zip codes 94124, 94107, 94103, 94102, 94110, 94134, 94115, and 94112 and other disadvantaged citywide residents for technology (e.g., IT administrator, data scientist, etc.) and technology-enabled (e.g., office administration) office skills positions for Lessee's new employee hiring and incumbent employee advancement offered through the TechSF initiative or OEWD-identified partners. Tech SF will customize technology training based on the types of Lessee leasing space within the Phase, which may include office skills, advanced manufacturing or biotech technology training.

b. Manner and Timing of Payment.

i. Phase 1: The Vertical DDA for the first office-commercial project in Phase 1 will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

ii. Phase 2 or 3: The Vertical DDA for the first office-commercial project to be proposed in Phase 2 (or the first office-commercial project to be proposed in Phase 3 if no office commercial project is proposed for Phase 2) will require the Vertical Developer to pay to the City $325,000 as a condition to issuance of the first Construction Document for the Vertical Improvements.

c. Accounting. Developer and Vertical Developers will have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in accordance with the provisions of this **Section III.B.4**. The Job Readiness and Training Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall maintain records as part of the City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available upon Developer's request.

d. Board Authorization. By approving the DDA and form of Vertical DDA, including this Workforce Development Plan, the Board of Supervisors authorizes the City (including OEWD) to accept and expend the Job Readiness and Training Funds paid by the Developer as set forth herein. The Board of Supervisors also agrees that any interest earned on any the Job Readiness and Training Funds shall remain in designated accounts for use by OEWD for workforce readiness and training consistent with this Exhibit O and shall not be transferred to the City's general fund.

C. CONSTRUCTION WORK

1. **Application**. Developers, Vertical Developers and Construction Contractors shall comply with the applicable provisions of this **Section III.C.1** (the "**Construction Workforce Requirements**") that are requirements of the DDA with respect to Developer, and of the Vertical DDA with respect to Vertical Developers.

2. **Local Hiring Requirements**. Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must comply with the Local Hiring Requirements set forth on Attachment B attached hereto with respect to Covered Projects (as defined therein).

3. **First Source Hiring Program for Construction Work**. Developer, with respect to any Horizontal Improvements that are not subject to the Local Hiring Requirements, and each Vertical Developer with respect to each Vertical Improvement that is not subject to the Local Hiring Requirements, will enter into a Memorandum of Understanding with the City's First Source Hiring Administration in the form attached hereto as Attachment A-3 under which each Developer and Vertical Developer must include in their contracts with Construction Contractors for Construction Work that is not subject to the Local Hiring Requirements, a requirement that the applicable Construction Contractor enter into a First Source Hiring Agreement in the form attached thereto as Exhibit A, and to provide a signed copy of the relevant Form exhibits to the FSHA.

4. **Local Business Enterprise Requirements**. Developer, all Vertical Developers and their respective Contractors and Consultants (as defined in Attachment C) must comply with the Local Business Enterprise Utilization Program set forth in Attachment C hereto.

5. **Obligations; Limitations on Liability**. Developer and each Vertical Developer shall use good faith efforts, working with the OEWD or its designee, to enforce the applicable Construction Workforce Requirements with respect to its Construction Contractors (as defined above), Contractors and Consultants (as defined in Attachment C), and each Construction Contractor, Contractor and Consultant, as applicable, shall use good faith efforts, working with OEWD or its designee, to enforce the Construction Workforce Requirements with respect to its Subcontractors and Subconsultants (regardless of tier). However, Developer and Vertical Developers shall not be liable for the failure of their respective Construction Contractors, Contractors and Consultants, and Construction Contractors, Contractors and Consultants shall not be liable for the failure of their respective Subcontractors and Subconsultants.

6. **Prevailing Wages**.

   a. Prevailing Wages. Subject to any collective bargaining agreements in the building trades, Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) must (A) pay, and

shall require its respective Construction Contractors (and subcontractors regardless of tier) to pay, all persons performing work on a Prevailing Wage Covered Project no less than the applicable Prevailing Rate of Wages, and (B) comply with, and require its Contractors and Subcontractors to comply with, the provisions of Administrative Code 23.61, which requires Contractors and Subcontractors to comply with Administrative Code subsections 6.22(e)(5), (6), (7) and subsection 6.22(f) for any Prevailing Wage Covered Project .

b. Enforcement. City's Office of Labor Standards Enforcement ("*OLSE*") enforces labor laws adopted by San Francisco voters and the San Francisco Board of Supervisors. The Port designates OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the Work.

D. PROJECT OPERATIONS

1. **Application**. Covered Operations within the 28-Acre Site Project will be subject to the applicable First Source Hiring Requirements (including TechSF) and Retail Marketing Requirements set forth in this **Section III.D.1** (collectively, the "**Operations Workforce Requirements**"). The Operations Workforce Requirements will be binding on Vertical Developers entering into Parcel Leases.

2. **First Source Hiring Program for Operations.**

a. First Source Hiring Agreements. Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to comply with the operational requirements of the then-current Administrative Code Chapter 83 ("**Chapter 83**") in accordance with this Workforce Development Plan (subject to limitations on Changes to Existing City Laws as provided in Section 5.3 of the Development Agreement). Compliance with Chapter 83 will be achieved by the following:

i. Vertical Developer will include in all leases, subleases or other occupancy contracts for Covered Operations (each, a "**Commercial Lease**"), a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment A-1.

ii. Vertical Developer will require the applicable party to provide a signed copy of each FSHA Operations Agreement within 10 business days of execution of the Commercial Lease.

iii. With the execution of each applicable Commercial Lease, Vertical Developer will provide information and require Lessee to notify OEWD Business Services.

b. First Source Hiring Agreements for Permanent Tech Employers. The purpose of the FSHA Tech Operations Agreement is to facilitate job training and education opportunities for participants in the TechSF Program. In addition to the First Source Hiring Agreements above, Port and Developer will ensure that the Parcel Lease for each Option Parcel will require the Vertical Developer as tenant thereunder to :

i. If Vertical Developer is a Permanent Tech Employer, provide hiring executive(s) contact information to OEWD Business Services for itself, and enter into a FSHA Tech Operations Agreement in the form of Attachment A-2;

ii. Vertical Developer will include in all lease, subleases or other occupancy contracts for Covered Operations (each, a **"Commercial Lease"**), a requirement that the Commercial Tenant to enter into the FSHA Tech Operations Agreement in the form in Attachment A-2; and

iii. Provide contact information for any Commercial Tenant that is a Permanent Tech Employer. Vertical Developer will provide the executive(s) contact information within 10 days of execution of, or, if available, prior to execution of the applicable Commercial Lease, and will provide updated contact information annually thereafter.

iv. With the execution of each applicable Commercial Lease with a Permanent Tech Employer, Vertical Developer will provide information related to TechSF and require Lessee to notify OEWD Business Services staff. Vertical Developer will only be required to provide information as supplied to it by OEWD Business Services staff. If no information is supplied by OEWD Business Services staff, then this subsection will be deemed complete.

3. Local Diverse Small Business Retail Marketing Program.

a. Application. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 in accordance with this Section III.D.3.

b. Program Goals. Developer, working with its Vertical Developer Affiliates, the Port of San Francisco and OEWD will implement a program that provides opportunities for diverse and local small businesses to become part of the future revitalization of Pier 70 designed to (i) attract and support diverse small businesses in retail, PDR, arts and commercial spaces within the 28-Acre Site, with a specific focus on District 10

entrepreneurs and businesses, and to (ii) leverage resources available through existing local, state and federal programs delivered through local partner organizations (e.g., OEWD, NEDOs, *etc.*). Developer, working with its Vertical Developer Affiliates, will seek to incorporate 5% local small diverse businesses within traditional retail and PDR spaces in the 28-Acre Site Project, excluding Parcel E4.

c. Marketing Program.

i. Using its best available information, Developer will provide in each Phase Submittal, the projected commercial space available in the Phase and a general overview of retail, PDR, arts and commercial spaces that could be available for sublease within the applicable Phase to local diverse small businesses. To the extent feasible, the information will include the items described below, at a conceptual level, with the understanding that the description will be based on Developer's best projections at the time, but will be subject to change as the Phase is developed:

(1) Potential type of use: retail, services, PDR, restaurant, etc.;

(2) Type of space: new construction, rehabilitated space, floor to ceiling heights, likely mechanical systems, loading access, parking availability;

(3) Approximate size of spaces;

(4) Location: building parcels and street/park frontage locations;

(5) Projected timing: timing for delivery of core and shell space availability and anticipated lease sign target date prior to the delivery of core and shell; and

(6) Contact: name of broker or Developer contact for any follow up questions.

ii. Developer will provide Port and OEWD with an update to the information described above within six to eight months after the initial Phase Submittal if the information provided with the Phase Submittal has changed materially.

iii. During each Phase, Developer will coordinate with OEWD and real estate brokers with the goal of identifying small businesses that might lease space within Vertical Improvements in the Phase by complying with the following process:

(1) From and after the applicable Phase Approval, Developer provide information on the potential leasing opportunities to OEWD. OEWD to coordinate businesses, entrepreneurs, and NEDOs about potential opportunities.

(2) OEWD/Small Business Services will provide support through during lease negotiations with local diverse small businesses identified through this marketing program and engage 1-2 NEDOs that serve small businesses with specific focus on those based in District 10. It is anticipated that OEWD will require each NEDO to provide the following services:

(a) Initial consultation to determine potential businesses and entrepreneurs to conduct outreach about potential opportunities at the 28-Acre Site.

(b) Consultation with entrepreneurs and businesses necessary to successfully locate their business at the 28-Acre Site. This could include services typically provided by NEDOs such as business plan support, small business financing, loan applications, understanding bank underwriting criteria, and training in basic financial management concepts, including, building equity, maintaining adequate working capital, managing growth and other issues critical to the growth and financial stability of the businesses.

(c) NEDOs will identify businesses/entrepreneurs that are eligible and interested in leasing space at Pier 70.

(d) NEDOs will share information on outreach events and conversations with OEWD and Developer.

(e) Provide support during lease negotiations with local diverse small businesses identified through this marketing program.

iv. Subject to restrictions on visitor-serving Priority Retail Frontages on Parcels E1, E2 and E3 set forth in Section 7.20 of the DDA, Developer, working through its Vertical Developer Affiliates, will specifically consider neighborhood-serving retail and services that could potentially sublease space subject to Parcel Leases between Port and Vertical Developer Affiliates, including grocery stores, dry cleaners, hardware, after-school programs, recreation and activity spaces, and similar neighborhood-serving businesses.

v. Developer, through its Vertical Developer Affiliates, will engage brokers to manage the overall marketing and outreach strategy for leasing of commercial, retail, and neighborhood spaces within

Option Parcels taken down by Vertical Developer Affiliates, including the Building 12 market hall. When entering into such contracts with brokers, Developer will emphasize the goals of the small business program and the marketing information prepared by Developer at the beginning of each Phase and will require the applicable broker(s) to engage with the businesses that OEWD/NEDOs have identified in clause (iii) above for the potential spaces available.

d. Sublease Commitments. Developer, working through its Vertical Developer Affiliates, will use good faith efforts to market new sublease space coming on the market with the initial opening of each Vertical Improvement to diverse local small businesses that it identifies through the marketing program described in **Subsection III.D.3.c** above, at fair market rents and subject to then-existing market conditions. In order to provide time for the small business to develop, Developer will provide a mutual option to extend after the initial lease term. The initial term and option to extend would be a minimum of 8 years. In its evaluation of potential subtenants hereunder, Developer, acting through its Vertical Developer Affiliates, will consider the history and past success of the proposed retail subtenant and its business, as well as the type of business, its ability to enhance the overall 28-Acre Site Project, and its long term viability. Each such potential subtenant must meet standard experience and financial qualifications associated with investment reporting, including (i) the proposed programmatic layout; (ii) its long term proforma and business model; and (iii) financial qualifications, which may include reasonable guarantees of performance.

E. GENERAL PROVISIONS

1. **Enforcement**. OEWD shall have the authority to enforce the Construction Workforce Requirements and the Operations Workforce Requirements. The Port and OEWD staff agree to work cooperatively to create efficiencies and avoid redundancies and to implement this Workforce Development Plan in good faith, and to work with all of the 28-Acre Site Project's stakeholders, including Developer and Vertical Developers, Construction Contractors (and Subcontractors) and Permanent Employers, in a fair, nondiscriminatory and consistent manner.

2. **Third Party Beneficiaries**. Each contract for Construction Work and Covered Operations shall provide that OEWD shall have third party beneficiary rights thereunder for the limited purpose of enforcing the requirements of this Workforce Development Plan applicable to such party directly against such party.

3. **Flexibility**. Some jobs will be better suited to meeting or exceeding the hiring goals than others, hence all workforce hiring goals under a Construction Contract will be cumulative, not individual, goals for that Construction Contract or

Permanent Employer. In addition, Developer and Vertical Developers shall have the right to reasonably spread the workforce goals, in different percentages, among separate Construction Contracts or Permanent Employers so long as the cumulative goals among all of the Construction Contracts or Permanent Employers at any given time meet the requirements of this Workforce Development Plan. The parties shall make such modifications to the applicable First Source Hiring Agreements consistent with Developer and Vertical Developers' allocation. This acknowledgement does not alter in any way the requirement that Developer, Vertical Developers, Construction Contractors and Permanent Employers comply with good faith effort obligations to meet their respective participation goals for the Construction Work and Covered Operations.

4. **Exclusivity.** In recognition of the unique circumstances and requirements surrounding the 28-Acre Site Project, the Port, OEWD and Developer have agreed that this Workforce Development Plan will constitute the exclusive workforce requirements for the 28-Acre Site Project. Without limiting the generality of the foregoing, if the City implements or modifies any workforce development policy or requirements after the date of this Workforce Development Plan, whether relating to construction or operations, that would otherwise apply to the 28-Acre Site Project and Developer asserts that such change as applied to the 28-Acre Site Project would be prohibited by the Development Agreement (including an increase in the obligations of Developer, any Vertical Developer, or their contractors under any provisions of the DDA or any Vertical DDA), then the parties shall resolve the issue through the Dispute Resolution procedures of Section III.F below.

F. DISPUTE RESOLUTION.

1. **Meet and Confer.** In the event of any dispute under this Workforce Development Plan (including, without limitation, as to compliance with this Workforce Development Plan), the parties to such dispute shall meet and confer in an attempt to resolve the dispute. The parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute: provided that the complaining party may proceed immediately to the Arbitration Provisions of Attachment D (Dispute Resolution) attached hereto, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction.

2. **Arbitration.** Disputes arising under this Workforce Development Plan may be submitted to the provisions of Attachment D (Dispute Resolution) hereof if the meet and confer provision of Section III.F.1 above does not result in resolution of the dispute.

Attachment A-1

Form of First Source Hiring Agreement for Operations

City and County of San Francisco First Source Hiring Program

Office of Economic and Workforce
Development Workforce
Development Division

Attachment A-1: First Source Hiring Agreement

For Business, Commercial, Operation and Lease Occupancy of a Vertical Improvement

This First Source Hiring Agreement (this "FSHA Operations Agreement"), is made as of , by and between (the "Lessee"), and the First Source Hiring Administration, (the "FSHA"), collectively the "Parties":

RECITALS

WHEREAS, Lessee has plans to occupy a portion of the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between [Developer/Vertical Developer] and the City acting through the San Francisco Port Commission;

WHEREAS, the **[Developer/Vertical Developer]** was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract");and

WHEREAS, as a material part of the consideration given by Lessee under the Contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");

[Use the following WHEREAS for Vertical Developer operations of Vertical Improvements]

WHEREAS, Lessee has plans to operate the building at [Address] (the "Premises") which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between Lessee and the City acting through the San Francisco Port Commission; and

[Use the following WHEREAS for subtenants of Vertical Improvements]

WHEREAS, as a material part of the consideration given by Lessee under the property contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code ("Chapter 83");]

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Operations Agreement, initially capitalized terms shall be defined as follows:

a. "Entry Level Position" shall mean any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.

b. "Developer" shall mean FC Pier 70, LLC, a Delaware limited liability company, including any successor during the term of this FSHA Operations Agreement.

c. "Lessee" shall mean every commercial tenant, subtenant, or any other entity occupying a Workforce Improvement for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer required to enter into a First Source Hiring Agreement as defined in Chapter 83.

d. "Project Site" shall mean the area consisting of an approximately 28-acre site located in the Pier 70 area bounded by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east.

e. "Referral" shall mean a member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

f. "Vertical Developer" shall mean [*insert name of applicable Vertical Developer*], including any successor during the term of a FSHA Operations Agreement.

g. "Vertical Improvement" shall mean a new building that is built at the Project Site.

h. "Workforce Improvement" shall mean Vertical Improvements that are subject to Chapter 83.

i. Workforce System: The First Source Hiring Administration established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire.

Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. Notwithstanding anything to the contrary herein, nothing in this FSHA Operations Agreement precludes Lessee from immediately advertising and filling an Entry Level Position that performs essential functions of its operation prior to notifying OEWD provided, however, the obligations of this FSHA Operation Agreement to make good faith efforts to fill such vacancies permanently with Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business. If Lessee has an immediate need to fill an Entry Level Position that performs essential functions, Lessee shall provide OEWD notice of such position, and the fact that there is an immediate need to fill such position, on or before the date such position is advertised to the general public.

c. This FSHA Operations Agreement shall be in full force and effect as to each Workforce Improvement until ten (10) years following the date Lessee opens for business at the Premises, and all subsequent leases within 10 years of that date. After that date, this FSHA Operations Agreement shall terminate and be of no further force and effect on the parties hereto, but the requirements of Chapter 83 shall continue to apply.

d. Unless otherwise agreed to by the Parties, compliance with this FSHA Operations Agreement shall be determined on an individual Workforce Improvement basis and will be measured by dividing the number of new Entry Level Positions occupied by Referrals by the total number of new Entry Level Positions within the Workforce Improvement. Notwithstanding anything to the contrary, new Entry Level Positions occupied by Referrals within the Project Site, but not within the Vertical Improvement, may, at the election of Developer, be counted towards compliance of the Workforce Improvement for this Agreement.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this FSHA Operations Agreement. Determination of good faith efforts shall be based on all of the following:

a. Lessee will execute this FSHA Operations Agreement and Exhibit B-1 attached hereto upon entering into leases for the commercial space of the Workforce Improvement. Lessee will also accurately complete and submit Exhibit B-1 annually to reflect employment conditions.

b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this FSHA Operations Agreement.

c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public, subject to the provisions of Section 2 above. The Lessee must identify a single point of contact responsible for communicating Entry Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.

d. Lessee attempts to fill at least 50% of open Entry Level Positions with Referrals. Specific hiring decisions shall be the sole discretion of the Lessee.

e. Nothing in this FSHA Operations Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this FSHA Operations Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Operations Agreement.

Lessee's failure to meet the criteria set forth in this Section 3 does not impute "bad faith", but shall trigger a review of the referral process and compliance with this FSHA Operations Agreement. Failure and noncompliance with this FSHA Operations Agreement will result in penalties as defined in SF Administrative Code Chapter 83. Lessee agrees to review SF Administrative Code Chapter 83, and execution of the FSHA Operations Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this FSHA Operations Agreement shall be in writing and sent via mail or email as follows:

If to OEWD:

ATTN:

If to Lessee:

ATTN:

5. ENTIRE AGREEMENT

This FSHA Operations Agreement and the Transaction Documents contain the entire agreement between the parties and shall not be modified in any manner except by an

instrument in writing executed by the parties or their respective successors. If any term or provision of this FSHA Operations Agreement shall be held invalid or unenforceable, the remainder of this FSHA Operations Agreement shall not be affected. If this FSHA Operations Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This FSHA Operations Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Lessee, their obligations shall be joint and several.

Section titles and captions contained in this FSHA Operations Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This FSHA Operations Agreement shall be governed and construed by laws of the State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the following have executed this FSHA Operations Agreement as of the date set forth aboye.

Date:_____ Signature:_____

Name of Authorized Signer: _____

Company: _____

Address:_____

Phone:_____

Email: _____

Business Name: _____ **Phone:** _____

Main Contact: _____ **Email:** _____

_____ _____

Signature of authorized representative* **Date**

**By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of Exhibit B First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed Exhibit B and Exhibit B-1. Lessee will also complete and submit an Exhibit B-1 annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) If an **Entry Level Position** becomes available.

Section 1: Select your Industry

☐ Auto Repair	☐ Entertainment	☐ Personal Services
☐ Business Services	☐ Elder Care	☐ Professionals
☐ Consulting	☐ Financial Services	☐ Real Estate
☐ Construction	☐ Healthcare	☐ Retail
☐ Government Contract	☐ Insurance	☐ Security
☐ Education	☐ Manufacturing	☐ Wholesale
☐ Food and Drink	☐ I don't see my industry *(Please Describe)* _____	

Section 2: Describe Primary Business Activity

_____

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
mailto:Business.Services@sfgov.orgWebsite: www.workforcedevelopmentsf.org

Attachment A-2

Form of First Source Hiring Agreement for Tech Operations

[see attached]

Attachment A-2: Form of First Source Hiring Agreement
For Commercial Office Lease Occupancy by Permanent Tech Employers

This First Source Hiring Agreement (this "**Agreement**") for Permanent Tech Employers, is made as of , 20XX by and between (the "**Lessee**"), and the First Source Hiring Administration, (the "**FSHA**"), collectively the "Parties":

RECITALS

WHEREAS, the San Francisco Port Commission and **[insert name of master tenant under a Parcel Lease]** (the "**Port Tenant**") are parties to that certain Parcel Lease dated as of _____, 20XX (the "**Parcel Lease**") for the building at [Address] (the "**Premises**"); and

WHEREAS, the Workforce Development Plan attached as Exhibit [XX] to the Parcel Lease (the "**Workforce Development Plan**") requires all Covered Operations that are also Permanent Tech Employers (as those terms are defined in the Workforce Development Plan) to enter into a First Source Hiring Agreement for operations in the form of this Agreement, in satisfaction of the requirements of the City's First Source Hiring Program under Chapter 83 of the San Francisco Administrative Code ("**Chapter 83**"); and

WHEREAS, Lessee is a Permanent Tech Employer and is **[the Port Tenant under the Parcel Lease][a "Covered Subtenant" under that certain Sublease with the Port Tenant dated as of _____, 20XX (the "Covered Sublease")]**; and

WHEREAS, as a material part of the consideration given by Lessee under the **[Parcel Lease][Covered Sublease]**, Lessee, as a Permanent Tech Employer, has agreed to enter into this Agreement that sets forth participation and reporting requirements to participate in the Tech SF Initiative managed by the Office of Economic and Workforce Development (OEWD); and

WHEREAS, the form of this Agreement may be subject to change upon mutual agreement of the Port Tenant or Covered Subtenant, as applicable, and OEWD subject to provisions of the Workforce Development Plan.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "AMI" means unadjusted median income levels derived from the Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

b. "Disadvantaged Worker" as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).

c. Internship: A learning and career preparation method that occurs within the context of a course or program. Internships include careers exploration and direct experience and include guidance by staff, mentors, employers, and peers. An intern obtains a good understanding of the requirements of the occupation and an overview of all aspects of their chosen industry, and develops college and career readiness and success skills, such as critical thinking, problem-solving, collaboration and communication.

d. Local Resident: An individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

e. Permanent Tech Employer shall mean an employer that both (i) employs primarily Technology Occupations and Technology-Enabled Occupations, and (ii) occupies more than 25,000 gsf within the Project.

f. Referral: A member of the Workforce System who has participated in an OEWD workforce training program.

g. Registered Apprenticeship combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at outset of training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Registered Apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, Registered Apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

h. Technology-Enabled Occupations: occupations that require skills related to Information, Media and ICT Literacy as highlighted in California's Digital Literacy

definition, "[one's capacity] for using digital technology, communications tools, and/or networks in creating, accessing, analyzing, managing, integrating, evaluating, and communicating information in order to function in a knowledge based economy and society." Technology-Enabled Occupations require the ability to analyze, access and work with common computing and communications devices, operating systems, networking systems and applications. These occupations require the ability to understand and use ICT computing, communications and information technologies; use technologies for advance research, analysis and administrative operations. These occupations also require the ability to create, interpret and work with an increasing variety of digital media.

i. Technology Occupations: defined as positions that require core competencies in information and communication technology (ICT) systems and solutions. These occupations develop and deploy technologies and infrastructures to both support their enterprise and product users. Additionally, technology occupations require skills in research, design, development and analysis of custom technological products; including but not limited to software, web, application, and cloud-based products. Technology occupations also include positions that are related to the sales, marketing and engineering of these technology-based products. Technology occupations typically occur in the major industry clusters as defined by the North American Industry Classification System (NAICS): Software Publishers; Wired Telecommunications; Wireless Telecommunications; Satellite Communications; Data Processing, Hosting and Related Services; Internet Publishing and Broadcasting and Web Search Portals; and Computer Systems Design. Major technology occupation clusters as identified by the Bureau of Labor Statistics include but are not limited to: information support and services; network systems; program and software development; and web and digital communications.

j. TechSF: A program which has been established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development, to provide training, education and job placement assistance services to jobseekers, and connect local employers to a qualified workforce in order to help all involved benefit from the growth of the local technology industry, and technology-based and technology-enabled occupations across all sectors. For the purposes of this document, this term will refer to any successor programs which provide similar services.

k. TechSF Community Benefits Program: defined in Section 3 hereof.

l. Work Experience: Experience which combine an on-the-job learning component with related classroom instruction designed to maximize the value of on-the-job experiences. Work Experience Education is classified in the California Education Code as General, Exploratory, or Vocational. General work experience exposes students to the world of work; exploratory work experience also allows students to experience a variety of careers; and vocational work experience allows students to explore a career interest in greater depth.

m. Workforce System: The First Source Hiring Administrator established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee is required to hold one meeting with OEWD's Business Services Team regarding the hiring of individuals through TechSF for any available positions in Technology Occupations or Technology-Enabled Occupations. Provided Lessee utilizes nondiscriminatory screening criteria, Lessee shall have the sole discretion to interview and hire any Referrals.

b. Hiring decisions shall be entirely at the discretion of Lessee. Lessee will notify OEWD's Business Services Team of every hire who is a Referral from Tech SF..

c. Lessee will report to OEWD Business Services annually (beginning with the one-year anniversary date of its **[Parcel Lease][Covered Sublease]** on activities conducted by Lessee under this Agreement related to the compliance of good faith effort obligations enumerated in Section 3 hereof, which may include number of Referrals, hires, or other metrics covered by the TechSF Community Benefits Program.

d. This Agreement will be in full force and effect as to the **[Parcel Lease][Covered Sublease]** until the earlier of [for **Parcel Lease:** ***insert the date that is 10 years from the execution of the Parcel Lease***]**[for Covered Subleases and subsequent Subleases within 10-year period:** ***insert the date that is 10 years from the date of execution]***.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Within forty-five days after the commencement of the applicable **[Parcel Lease][Covered Sublease]**, Lessee will contact OEWD as required by the Workforce Development Agreement. Within six months after the commencement of the applicable **[Parcel Lease][Covered Sublease]**, or at a later date if agreed to by OEWD, Lessee will prepare and submit to OEWD its community benefits program designed to facilitate job training and education opportunities for participants in the TechSF program or (or successor program designated by OEWD) (the "**TechSF Community Benefits Program**") and will implement the TechSF Community Benefits Program for the term of this Agreement. The TechSF Community Benefits Program shall either consist of the measures in subsections (a) through (c) of this Section 3, or the Lessee will have discretion in designing its own unique TechSF Community Benefits Program to an equal or higher qualitative standard as the measures described below. If a Lessee elects to design its own unique TechSF Community Benefits Program, such program will require approval from OWED, not to be unreasonably withheld. The TechSF Community Benefits Program may be revised annually with the consent of OEWD. The following measures (which may be in addition to other measures reasonably implemented by Lessee) will qualify as compliance with this requirement:

a. Provide indoor space to host temporary jobseeker networking, career panel and other OEWD-identified job placement assistance events related to technology or technology-

enabled occupations through the Workforce System. OEWD/Tech SF would manage the planning, coordination and marketing for events. Programming may include one of the following:

i. hosting one event per year at site location for up to 150 individuals, if requested by OEWD/Tech SF. If no such request is made, then this subsection will be deemed to have been satisfied for the year.
ii. participating in two additional TechSF activities per year.

b. Host at least 5 Work Experience and/or Internship opportunities for every 100 permanent employees per year, targeting OEWD Referrals and Bayview Hunter's Point and surrounding area neighborhood residents, and other Disadvantaged Workers.

c. Volunteer employee time for on-site training opportunities, which could include workplace tours, job shadowing, classroom lectures, mock interviews, career panels, resume workshops, mentoring, student showcases or other supportive activities.
   i. Lessee shall provide 100 employee hours per year (e.g. 25 employees at 4 hours each or other combination to be determined by the Lessee), through company's Community Social Responsibility (CSR) agenda or other policies.

d. Target creating up to five (5) Registered Apprenticeship positions (as that term is defined in the Workforce Development Plan) for every 100 permanent employees, per year, to the extent a USDOL or DAS approved training program exists within the City of San Francisco for occupations which the Lessee is currently hiring for, and interview qualified Referrals through the TechSF Initiative.

Lessee's failure to prepare and implement the TechSF Community Benefits Program set forth in this Section 3 does not impute "bad faith" but shall trigger a review of the referral process and compliance with this Agreement. Violations of this Agreement will be subject to penalties outlined in Chapter 83.

4. COLLECTIVE BARGAINING AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts ("**Collective Bargaining Agreements**"). In the event of a conflict between this Agreement and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Agreement.

5. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

6. ENTIRE AGREEMENT; MISC.

This Agreement contains the entire agreement between the parties with respect to the subject matter thereunder and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If this Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Lessee, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: _____ Signature:: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

City and County of San Francisco First Source Hiring Program

Office of Economic and Workforce Development
Workforce Development Division

Attachment A3: First Source Hiring Agreement For Construction

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of , by and between the City and County of San Francisco (the "City") through its First Source Hiring Administration ("FSHA") and ("Project Sponsor").

WHEREAS, Project Sponsor, as developer, proposes to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"); and

WHEREAS, the Administrative Code of the City provides at Chapter 83 for a "First Source Hiring Program" which has as its purpose the creation of employment opportunities for qualified Economically Disadvantaged Individuals (as defined in Exhibit A); and

WHEREAS, the Project requires a building permit for a commercial activity of greater than 25,000 square feet and/or is a residential project greater than ten (10) units and therefore falls within the scope of the Chapter 83 of the Administrative Code; and

WHEREAS, Project Sponsor wishes to make a good faith effort to comply with the City's First Source Hiring Program.

Therefore, the parties to this Memorandum of Understanding agree as follows:

A. Project Sponsor, upon entering into a contract for the construction of the Project with Contractor after the date of this MOU, will include in that contract a provision requiring the Contractor to enter into a First Source Hiring Agreement in the form attached hereto as Exhibit A. It is the Project Sponsor's responsibility to provide a signed copy of Exhibit A to First Source Hiring program and CityBuild within 10 business days of execution.

B. CityBuild shall represent the First Source Hiring Administration and will provide referrals of Qualified (as defined in Exhibit A) Economically Disadvantaged Individuals for employment on the construction phase of the Project as required under

Chapter 83. The First Source Hiring Program will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent jobs located within the commercial space of the Project.

C. The owners or residents of the residential units within the Project shall have no obligations under this MOU, or the attached First Source Hiring Agreement.

D. FSHA shall advise Project Sponsor, in writing, of any alleged breach on the part of the Project's contractor and/or tenant(s) with regard to participation in the First Source Hiring Program at the Project prior to seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code.

E. As stated in Section 83.10(d) of the Administrative Code, if Project Sponsor fulfills its obligations as set forth in Chapter 83, it shall not be held responsible for the failure of a contractor or commercial tenant to comply with the requirements of Chapter 83.

F. This MOU is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code. The parties agree that this MOU shall be recorded and that it may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

G. Except as set forth in Section E, above: (1) this MOU shall be binding on and inure to the benefit of all successors and assigns of Project Sponsor having an interest in the Project and (2) Project Sponsor shall require that its obligations under this MOU shall be assumed in writing by its successors and assigns. Upon Project Sponsor's sale, assignment or transfer of title to the Project, it shall be relieved of all further obligations or liabilities under this MOU.

Signature: _____ Date:

Name of Authorized Signer: Email:

Company: Phone:

Address:

Project Sponsor:

Contact: Phone:

Address: Email:

_____ Date:

First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl. San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager, ken.nim@sfgov.org

Exhibit A:
First Source Hiring Agreement

This First Source Hiring Agreement (this "Agreement"), is made as of , by and between , the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"), and a copy of this Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.

b. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.

c. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on the Project.

d. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.

e. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.

f. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.

g. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.

h. "Entry Level Position". A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.

i. "First Opportunity". Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.

j. "Job Classification". Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

k. "Job Notification". Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.

l. "Publicize". Advertise or post available employment information, including participation in job fairs or other forums.

m. "Qualified". An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this Agreement.

n. "System". The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.

o. "System Referrals". Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.

p. "Subcontractor". A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)'s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor's employment needs under the Contract:

i. On Exhibit A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on the project for each trade.

ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.

iii. Contractor will collaborate with CityBuild staff to identify, by trade, the number of Core workers at project start and the number of workers at project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.

iv. Contractor and Subcontractors will provide documented verification that its "core" employees for this contract meet the definition listed in Section 1.a.

b.

i. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the project.

ii. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:

(A) If Contractor meets the criteria in Section 5(a) below that establishes "good faith efforts" of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and

(B) After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes "good faith efforts" of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.

c. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the first opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process, Contractor's only obligations with regards to any available Entry Level Positions subject to such collective bargaining agreement(s) during the term of the Contract shall be the following:

a. Contractor shall notify the appropriate union(s) of the Contractor's obligations under this Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).

b. Contractor shall use "name call" privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

5. CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction Exhibit A-1: CityBuild Workforce Projection Form 1; and

b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this Agreement. Such review shall be conducted by FSHA in accordance with Section 11(c) below.

c. Meet with the Project's owner, developer, general contractor, or CityBuild representative to review and discuss your plan to meet your local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.

d. Contact a CityBuild representative to review your hiring projections and goals for the Project. The Project developer and/or Contractor must take active steps to advise all of its Subcontractors of the local hiring obligations on the Project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the project

e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying your expected hiring needs during the Project's duration.

f. Notify your respective union(s) regarding your local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate your union's collective bargaining agreement(s).

g. Be sure to reserve your "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable collective bargaining agreement(s).

h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on the Project in a timely matter in order to facilitate CityBuild's notification to these unions of the Project's workforce requirements.

i. Submit a "Job Request" in the form attached hereto as Attachment A-1, Form 3, to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). You should simultaneously contact your union about the position as well, and let them know that you have contacted CityBuild as part of your local hiring obligations.

j. Developer has an ongoing, affirmative obligation and must advise each of its Subcontractors of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the project, including openings that arise from layoffs of original crew. Developer/contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the developer/contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.

k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Project developer and/or Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Project developer and/or Contractor will request a meeting with the Project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.

l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Project, source of hire, and any other pertinent information as pertain to compliance with this Agreement.

m. Maintain accurate records of your efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor and/or Project developer through a San Francisco community-based organization whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Project developer and/or Contractor on a project-by-project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and the City's online project reporting system (currently Elation), provided, however, that Contractor shall retain the primary responsibility for meeting the

requirements imposed under this Agreement. Contractor shall ensure that this Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

8. CONTRACTOR'S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this Agreement, CityBuild shall:

a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.

b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor's Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;

c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;

d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;

e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;

f. Provide Contractor with reporting forms for monitoring the requirements of this Agreement; and

g. Monitor the performance of the Agreement by examination of records of Contractor as submitted in accordance with the requirements of this Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:

(1) Applicants
(2) Job offers
(3) Hires
(4) Rejections of applicants

b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.

c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this Agreement.

12. DURATION OF THIS AGREEMENT

This Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this Agreement shall terminate and it shall be of no further force and effect on the parties hereto.

13. NOTICE

All notices to be given under this Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA: First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to CityBuild: CityBuild Compliance Manager
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to Developer:

Attn:

If to Contractor:

Attn:

a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, "Contractor Reports") shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

15. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

16. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. SUCCESSORS

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several.

18. HEADINGS

Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions

19. GOVERNING LAW

This Agreement shall be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

CONTRACTOR:

Date: _____ Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

FORM 1: CITYBUILD WORKFORCE PROJECTION

Instructions

- *The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.*
- *All subcontractors with contracts in excess of $100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.*
- *The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.*
- *It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.*
- *All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.*

Construction Project Name:		Construction Project Address:	
Projected Start Date:		Contract Duration:	*(calendar days)*
Company Name:		Company Address:	
Main Contact Name:		Main Phone Number:	
Main Contact Email :			
Name of Person with Hiring Authority:		Hiring Authority Phone Number:	
Hiring Authority Email:			

Name of Authorized Representative | Signature of Authorized Representative* | Date

By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Table 1: Briefly summarize your contracted or subcontracted scope of work

Table 2: Complete on the following page

- *List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees*
- *Total Number of Workers on the Project. The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.*

Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			
	J☐ A☐	Y☐ N☐			

Table 3: List your core or existing employees projected to work on the project

- *Please provide information on your projected core or existing employees that will perform work on the jobsite.*
- *"Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet*

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
		J☐ A☐		
FOR CITY USE ONLY: CityBuild Staff: _____ Approved: Yes ☐ No ☐ Date: _____ Reason: _____				
		J☐ A☐		
		J☐ A☐		

FORM 3: CITYBUILD JOB NOTICE FORM

INSTRUCTIONS: To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: workforce.development@sfgov.org
2. Contact Workforce Development at 415-701-4848 or by email: local.hire.ordinance@sfgov.org

   OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

ATTENTION: Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.

Section A. Job Notice Information

Trade _____ # of Journeymen _____ # of Apprentices _____

Start Date _____ Start Time _____ Job Duration _____

Brief description of your scope of work: _____

Section B. Union Information *(Union contractors complete Section B. Otherwise, leave Section B blank)*

Local # _____ Union Contact Name _____ Union Phone # _____

Section C. Contractor Information

Project Name: _____

Jobsite Location: _____

Contractor: _____ Prime ☐ Sub ☐

Contractor Address: _____

Contact Name: _____ Title: _____

Office Phone: _____ Cell Phone: _____ Email: _____

Alt. Contact: _____ Phone #: _____

Contractor Contact Signature _____ Date _____

OEWD USE ONLY *Able to Fill* Yes ☐ No ☐

WORKFORCE DEVELOPMENT PLAN – ATTACHMENT B

LOCAL HIRING PLAN FOR CONSTRUCTION

1.1 SUMMARY

A. This Attachment B to the Pier 70 28-Acre Site Workforce Development Plan ("**Local Hiring Plan**") governs the obligations of the Project to comply with the City's Local Hiring Policy for Construction pursuant to Chapter 82 of the San Francisco Administrative Code (the "**Policy**"). In the event of any conflict between Administrative Code Chapter 82 and this Attachment, this Attachment shall govern.

B. The provisions of this Local Hiring Plan are hereby incorporated as a material term of the DDA and each Vertical DDA. Under the DDA and each Vertical DDA, the Developer or Vertical Developer thereunder, as applicable, shall require any Contractor performing Construction Work to agree that (i) the Contractor shall comply with all applicable requirements of this Local Hiring Plan; (ii) the provisions of this Local Hiring Plan and the Policy are reasonable and achievable by Contractor and its Subcontractors; and (iii) they have had a full and fair opportunity to review and understand the terms of the Local Hiring Plan.

C. The Office of Economic and Workforce Development (OEWD) is responsible for administering the Local Hiring Plan and will be administering its applicable requirements. For more information on the Policy and its implementation, please visit the OEWD website at: www.workforcedevelopmentsf.org.

D. Capitalized terms not defined herein shall have the meanings ascribed to them in the DDA or the Policy, as applicable.

1.2 DEFINITIONS

A. "Apprentice" means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.

B. "Area Median Income (AMI)" means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

C. "Construction Work" means, as applicable, (a) the initial construction of all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA, (b) the initial construction of all Vertical Improvements to be carried out by a Vertical Developer under a Vertical DDA or Parcel Lease, and (c) initial tenant improvement work for all Vertical Improvements other than light industrial, arts activities or standalone affordable residential buildings. For the avoidance of doubt, Construction Work for Vertical Improvements shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the first certificate of occupancy for a Vertical Improvement. Work occurring prior to execution of the DDA is not subject to Local Hire.

D. "Covered Project" means Construction Work within the 28-Acre Site with an estimated cost in excess of the Threshold Amount.

E. "Contractor" means a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs Construction Work on the 28-Acre Site

F. "Disadvantaged Worker" as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).

G. "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of 3 business days' notice.

H. "Local Resident" means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.

I. "Non-Covered Project" means any construction projects not covered by the San Francisco Local Hiring Policy.

J. "Project Work". Construction Work performed as part of a Covered Project.

K. "Project Work Hours" means the total onsite work hours worked on a construction contract for a Covered Project by all Apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.

L. "Subcontractor" means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Contractor or another subcontractor to provide services to a Contractor or another subcontractor in fulfillment of the Contractor's or that other subcontractor's obligations arising from a contract for construction work on a Covered Project who performs Construction Work on the 28 Acre site.

M. "Targeted Worker" means any Local Resident or Disadvantaged Worker.

N. "Threshold Amount" as defined in Section 6.1 of the San Francisco Administrative Code.

1.3 LOCAL HIRING REQUIREMENTS

A. Total Project Work Hours By Trade. For all construction contracts for Covered Projects, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers. The mandatory participation levels required under this Local Hire Program will be determined by OEWD for each Phase under the DDA, and in no event shall be greater than 30%; however, the Parties acknowledge that Developer intends to require each construction contract for

Covered Projects to meet the mandatory participation levels on an individual contract level.

B. Apprentices: For all construction contracts for Covered Projects, at least 30% of the Project Work Hours performed by Apprentices within each trade is required to be performed by Local Residents, with an aspirational goal of achieving 50%. Hiring preferences shall be given to Apprentices who are referred by the CityBuild program This document also establishes a goal of no less than 25% of Project Work Hours performed by Apprentices within each trade to be performed by Disadvantaged Workers.

C. Out-of-State Workers. For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to OEWD the number of Project Work Hours performed by residents of states other than California.

D. Pre-construction or other Local Hire Meeting. Prior to commencement of Construction Work on Covered Projects, Contractor and its Subcontractors whom have been engaged by contract and identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by Developer or Vertical Developer or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority. Contractor and its Subcontractors who are engaged after the commencement of Construction Work on a Covered Project shall attend a future preconstruction meeting or meetings as mutually agreed by Contractor and OEWD staff.

E. This Local Hiring Plan does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Local Hiring Plan shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

F. Construction Work for Non-Covered Projects will be subject to the First Source Hiring Program for Construction Work in accordance with Section III.C.3 of the Workforce Development Plan.

1.4 CITYBUILD WORKFORCE DEVELOPMENT PROGRAM: EMPLOYMENT NETWORKING SERVICES

A. OEWD administers the CityBuild Program. Subject to any collective bargaining agreements in the building trades and applicable law, CityBuild shall be a primary resource available for Contractor and Subcontractors to meet Contractors' local hiring requirements under this Local Hiring Plan. CityBuild has two main goals:

1. Assist with local hiring requirements under this Local Hiring Plan by connecting Contractor and Subcontractors with qualified journey-level, Apprentice, and pre-Apprentice Local Residents.

2. Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force.

B. Where a Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of this Local Hiring Plan, the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers, including the following:

1. Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.

2. Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All workers networked through CityBuild will qualify as Disadvantaged Workers under this Local Hiring Plan. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is a "Disadvantaged Worker" as defined above.

C. CONDITIONAL WAIVER FROM LOCAL HIRING REQUIREMENTS

A. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the Local Hiring Requirements of Section 1.3 on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.

1. Specialized Trades: OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of this Local Hiring Plan will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the Project Work Hours utilized in each designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade.

2. Credit for Hiring on Non-Covered Projects: Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:

   a. the Targeted Workers are paid the prevailing wages or union scale for work on the Non-Covered Projects; and

   b. such credit hours shall be committed to by the Contractor on future projects to satisfy any short fall the Contractor may have on a Covered Project. Such commitment shall be in writing by the Contractor, shall extend for a period of time negotiated between the contractor and OEWD, and shall commit to satisfying any assessed penalties should Contractor fail to achieve the required credit hours.

3. Sponsoring Apprentices: Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new Apprentices in trades in which noncompliance is likely and retaining those Apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California

Department of Industrial Relations that the new Apprentices are registered and active Apprentices. Contractor will be required to write a sponsorship letter on behalf of the identified candidate to the appropriate Local Union and will make the necessary arrangements with the Union to hire the candidate as soon as s/he is indentured.

4. Direct Entry Agreements: OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with the California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with this Local Hiring Plan by Contractor or its Subcontractors hiring and retaining Apprentices who are enrolled through such direct entry agreements. Contractor may also utilize OEWD-approved organizations with direct entry agreements with Local Unions, including District 10 based organizations to hire and retain Targeted Workers. To the extent that Contractor or its Subcontractors have hired Apprentices or Targeted Workers under a direct entry agreement entered into by OEWD or reasonably approved by OEWD, OEWD will not assess penalties for non-compliance with this Local Hiring Plan.

5. Corrective Actions: Should local employment conditions be such that adequate Targeted Workers for a craft, or crafts, are not available to meet the requirements and Contractor can document their efforts to achieve the requirements through the mechanisms and processes in this document, a corrective action plan must be negotiated between Contractor and OEWD.

1.5 LOCAL HIRING FORMS

A. Utilizing the City's online Project Reporting System, Contractors for Covered Projects shall submit the following forms, as applicable, to the Contracting City Agency and OEWD:

1. Form 1: Local Hiring Workforce Projection. OEWD Form 1 (Local Hiring Workforce Projection), a copy of which is attached hereto, shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

2. Form 2: Local Hiring Plan. For Covered Projects estimated to cost more than $1,000,000, Contractor shall prepare and submit to Contracting City Agency and OEWD for approval a Local Hiring Plan for the project using OEWD Form 2, a copy of which is attached hereto. This Form 2 shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

3. Job Notifications. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.

4. Form 4: Conditional Waivers. If a Contractor or a Subcontractor believes the local hiring requirements cannot be met, it will submit OEWD Form 4 (Conditional Waiver), a copy of which is attached hereto, as more particularly described in Articles 1.4 and 1.5 above.

1.6 ENFORCEMENT, RECORD KEEPING, NONCOMPLIANCE AND PENALTIES

A. Subcontractor Compliance. Each Contractor and Subcontractor shall ensure that all Subcontractors agree to comply with applicable requirements of this document. All Subcontractors agree as a term of participation on the Project that the City shall have third party beneficiary rights under all contracts under which Subcontractors are performing Project Work. Such third party beneficiary rights shall be limited to the right to enforce the requirements of this Local Hiring Plan directly against the Subcontractors. All Subcontractors on the Project shall be responsible for complying with the recordkeeping and reporting requirements set forth in this Local Hiring Plan. Subcontractors with work in excess of the of $600,000 shall be responsible for ensuring compliance with the Local Hiring Requirements set forth in Section 1.3 of this Local Hiring Plan based on Project Work Hours performed under their Subcontracts, including Project Work Hours performed by lower tier Subcontractors with work less than the Threshold Amount.

B. Reporting. Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and will monitor compliance with this Local Hiring Plan electronically.

C. Recordkeeping. Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of Construction Work, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on a Covered Project.

1. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the Apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a Local Resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the Covered Project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method) as allowed by law.

2. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.

3. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the OEWD.

D. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Contractor and Subcontractors working on a Covered Project with requirements of this Local Hiring Plan. Contractor shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of Covered Projects. Contractor and all Subcontractors shall also allow representatives of OEWD to have access to employees of the Contractor and Subcontractors and the records required to be maintained under this document.

E. Noncompliance and Penalties. Failure of Contractor and/or its Subcontractors to comply with the requirements of this document and the obligations set forth in this Local Hiring Plan may subject Contractor to the consequences of noncompliance, including but not

limited to the assessment of penalties, but only if City determines that the failure to comply results from willful actions of Contractor and/or its Subcontractors, and not by reason of unavailability of sufficient qualified Local Residents and Disadvantaged Workers to meet the goals required hereunder. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled.

1. **Penalties Amount.** If any Contractor or Subcontractor fails to satisfy the Local Hiring Requirements of this Local Hiring Plan applicable to Project Work Hours performed by Local Residents, and the applicable Contractor or Subcontractor is unable to provide evidence reasonably satisfactory to the City that such failure arose solely due to unavailability of qualified Local Residents despite Contractors or Subcontractors good faith efforts in accordance with this Local Hiring Progam, then the Contractor, and in the case of any Subcontractor so failing, and Subcontractor shall jointly and severally forfeit to the City, an amount equal to the Journeyman or Apprentice prevailing wage rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under subsection 6.22(e)(3) of the Administrative Code, for the primary trade used by the Contractor or Subcontractor on the Covered Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. The assessment of penalties under this subsection shall not preclude the City from exercising any other rights or remedies to which it is entitled.

2. **Assessment of Penalties.** OEWD shall determine whether a Contractor and/or any Subcontractor has failed to comply with the Local Hire Requirement. If after conducting an investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of penalties to the Contractor and/or any Subcontractor that sets forth the basis of the assessment and orders payment of penalties in the amounts equal to the Journeyman or Apprentice prevailing wage rates, as applicable, for the primary trade used by the Contractor or Subcontractor on the Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. Assessment of penalties under this subsection shall be made only upon an investigation by OEWD and upon written notice to the Contractor or Subcontractor identifying the grounds for the penalty and providing the Contractor or Subcontractor with the opportunity to respond pursuant to the recourse procedures prescribed in this Local Hiring Plan.

3. **Recourse Procedure.** If the Contractor or Subcontractor disagrees with the assessment of penalties, then the following procedure applies:

   a. The Contractor or Subcontractor may request a hearing in writing within 15 days of the date of the final notification of assessment. The request shall be directed to the City Controller. Failure by the Contractor or Subcontractor to submit a timely, written request for a hearing shall constitute concession to the assessment and the forfeiture shall be deemed final upon expiration of the 15-day period. The Contractor or Subcontractor must exhaust this administrative remedy prior to commencing further legal action.

   b. Within 15 days of receiving a proper request, the Controller shall appoint a hearing officer with knowledge and not less than five years' experience in

labor law, and shall so advise the enforcing official and the Contractor or Subcontractor, and/or their respective counsel or authorized representative.

c. The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days of such notification unless all parties agree to an extended period.

d. Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the hearing officer shall consist of findings and a determination. The hearing officer's findings and determination shall be final.

e. The Contractor or Subcontractor may appeal a final determination under this by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure Section 1084 *et seq.*, as applicable and as may be amended from time to time.

1.8 COLLECTIVE BARGAINING AGREEMENT

Nothing in this Local Hiring Plan shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (Collective Bargaining Agreements"). In the event of a conflict between this Local Hiring Plan and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Local Hiring Plan.

END OF DOCUMENT

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 1
CONSTRUCTION CONTRACTS

FORM 1: LOCAL HIRING WORKFORCE PROJECTION

Contractor: _____ **Project Name:** _____ **Contract #:** _____

The Contractor must complete and submit this *Local Hiring Workforce Projection* (Form 1) prior to the start of construction and quarterly until all subcontracting is complete. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount.

Will you be able to meet the mandatory Local Hiring Requirements?

☐ **YES (*Please provide information for all contractors performing construction work in Table 1 below.*)**

☐ **NO (*Please complete Table 1 below and Form 4: Conditional Waivers.*)**

INSTRUCTIONS FOR COMPLETING TABLE 1:

1. Please organize the contractors' information based on their Trade Craft work.
2. For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (*i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.*)
3. If you anticipate utilizing Apprentices on this project, please note the requirement that 30% of Apprentice hours must be performed by San Francisco residents.
4. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

TABLE 1: WORKFORCE PROJECTION

Trade Craft	Contractor *List contractors by Trade Craft*		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
Example: *Laborer*	*Contractor X*	***Journey***	800	250	31%
		Apprentice	200	100	50%
Example: *Laborer*	*Contractor Y*	***Journey***	500	100	20%
		Apprentice	0	0	0
Example:	**TOTAL LABORER**	***Journey***	1300	350	**27%**
		Apprentice	200	100	**50%**
Example:		**TOTAL**	**1500**	**450**	**30%**
		Journey			
		Apprentice			
		Journey			
		Apprentice			
		Journey			
		Apprentice			

DISCLAIMER: *If the Total Work Hours for a Trade Craft are less than 5% of the Total Project Work Hours, the Trade Craft is exempt from the Mandatory Requirement. Subsequently, if the Trade Craft exceeds 5% of the Total Project Work Hours at any time during the project, the Trade Craft is subject to the Mandatory Requirement.*

Name of Authorized Representative	Signature	Date	Phone	Email

SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 2
CONSTRUCTION CONTRACTS

FORM 2: LOCAL HIRING PLAN

Contractor: _____ **Project Name:** _____ **Contract #:** _____

If the Estimate for this Project exceeds **$1 million**, then Contractor must submit a *Local Hiring Plan* using this Form 2 through the City's Project Reporting System. Form 2 shall be initially submitted prior to the start of construction and include all known subcontractors. Contractor shall update this Form 2 quarterly as subcontractors are identified and shall continue with updates until all subcontracting is complete. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved *Conditional Waivers* (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.

INSTRUCTIONS:

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 30% of apprentice hours must be performed by San Francisco residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
Example: *Laborer*	*1500*	*450*	*30%*	*200*	100	50%

List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Start Date	Number of Working Days	*Contractor Signature
Contractor X Joe Smith	250	100	350	3/25/13	60	*Joe Smith*
Contractor Y Michael Lee	100	0	100	5/25/13	30	*Michael Lee*

We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.

City Use Only	
OEWD Approval	☐ Yes ☐ No
Signature and Date:	

SAN FRANCISCO

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

LOCAL HIRING PROGRAM
OEWD FORM 4
CONSTRUCTION CONTRACTS

FORM 4: CONDITIONAL WAVIERS

Contractor: _____ **Project Name:** _____ **Contract #:** _____

Upon approval from OEWD, Contractors and Subcontractors may use one or more of the following pipeline and retention compliance mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by OEWD. If applicable, each subcontractor must submit their individual Waiver request to OEWD and copy their Prime Contractor. This form can be submitted at any time.

TRADE WAIVER INFORMATION: Please provide information on the Trades you are requesting Waivers for:

Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours	Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours
1.			3.		
2.			4.		

Please check any of the following Conditional Waivers and complete the appropriate boxes for approval:

☐ **1. SPECIALIZED TRADES** ☐ **2. SPONSORING APPRENTICES** ☐ **3. CREDIT FOR NON-COVERED PROJECTS**

1. SPECIALIZED TRADES: Will your firm be requesting Conditional Waivers for "Specialized Trades" designated by OEWD and listed on OEWD's website or project-specific Specialized Trades approved by OEWD during the bid period? ☐ Yes ☐ No

Please CHECK off the following Specialized Trades you are claiming for Condition Waiver:

☐ MARINE PILE DRIVER ☐HELICOPTER, CRANE, OR DERRICK BARGE OPERATOR ☐IRONWORKER CONNECTOR
☐ STAINLESS STEEL WELDER ☐TUNNEL OPERATING ENGINEER ☐ELECTRICAL UTILITY LINEMAN ☐MILLWRIGHT
☐ TRADE CRAFT IS LESS THAN 5% OF TOTAL WORK HOURS. ***LIST:***

a. List OEWD-approved project-specific Specialized Trades approved during the bid period:

OEWD APPROVAL: ☐ **Yes** ☐ **No** | **OEWD Signature:**

2. SPONSORING APPRENTICES: Will you be able to work with OEWD to sponsor an OEWD-specified number of new apprentices in the agreeable trades into California Department of Industrial Relations' Division of Apprenticeship Standards approved apprenticeship programs? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS: Construction Trade	Est. # of Sponsor Positions	Union (Yes / No)	If Yes, Local #	Est. Start Date	Est Duration of Working Days	Est Total Work Hours Performed
		Y☐ N☐				
		Y☐ N☐				

OEWD APPROVAL: ☐ **Yes** ☐ **No** | **OEWD Signature:**

3. CREDIT for HIRING on NON-COVERED PROJECTS: If your firm cannot meet the mandatory local hiring requirement, will you be requesting credit for hiring Targeted Workers on Non-covered Projects? ☐ Yes ☐ No

PLEASE PROVIDE DETAILS: Labor Trade, Position, or Title		Est. # of Off-site Hires	Est Total Work Hours Performed	Offsite Project Name	Project Address
	Journey				
	Apprentice				

OEWD APPROVAL: ☐ **Yes** ☐ **No** | **OEWD Signature:**

WORKFORCE DEVELOPMENT PLAN

ATTACHMENT C - LBE UTILIZATION PLAN

1. Purpose and Scope. This Attachment C ("**LBE Utilization Plan**") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Workforce Plan or Section 14B.20 as applicable. The Port and Developer will seek to, whenever practicable, conduct outreach to contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities such as the 94107, 94124, and 94134 zip codes. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.

2. Roles of Parties. In connection with the design and construction phases of all Construction Work (as defined in the Workforce Plan), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs"). Developer and each Vertical Developer shall participate in a local business enterprise program, and the City's Contract Monitoring Division will serve the roles as set forth below.

3. Definitions. For purposes of this Attachment, the definitions shall be as follows:

a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.

b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Contracting Party as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Contracting Party.

c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of an LBE Improvement.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of an LBE Improvement.

e. "Contracting Party" means a Project Sponsor, Contractor or Consultant retained to work on LBE Improvements, as the case may be.

f. "Contractor" shall mean a prime contractor, general contractor, or construction manager contracted by a Developer or Vertical Developer who performs construction work on an LBE Improvement.

g. "Follow-on Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to an approved building permit or site permit/addenda issued after the building permit or site permit/addenda for the Initial Tenant Improvements.

h. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.

i. "Initial Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to the first building permit or site permit/addenda issued for such spaces after completion of building core and shell.

j. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.

k. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

l. "LBE Improvements" means, as applicable, (a) all Horizontal Improvements required or permitted to be made to the 28-Acre Site to be carried out by Developer under the DDA and (b) Workforce Buildings.

m. "Project Sponsor" shall mean the Developer of Horizontal Improvements or the Vertical Developer under a Vertical DDA.

n. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for an LBE Improvement.

o. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for Construction Work.

p. "Workforce Buildings" means the following: (i) residential buildings, including associated residential units, common space, amenities, parking and back of house construction; (ii) commercial office, retail, parking buildings core & shell; (iii) tenant improvement for all commercial spaces in residential or commercial buildings (office, retail) which are 15,000 square feet (per square footage on building permit application) and above; and (iv) all construction related to standalone affordable housing buildings. Workforce Buildings shall expressly exclude: (i) residential owner-contracted improvements in for-sale residential units; (ii) tenant improvements for the Arts Building (E4), including core and shell and tenant improvements; and (iii) tenant improvements related to PDR spaces. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such

improvements. Such association will consider, in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.

4. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Plan and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of 17% of the total cost of all Contracts for an LBE Improvement awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A); Follow-on Tenant Improvements and services are not included in the numerical goal. Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation requirement, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. Where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, that there are not sufficient qualified Small and Micro-LBEs available, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro- LBEs, and for SBA-LBEs.

6. Project Sponsor Obligations. For each LBE Improvement, the Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns. The LBE Liaison shall be a LBE Consultant with the experience in and responsible for making recommendations on how to maximize engagement of local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. For the term of the DDA or VDDA as applicable, at least once per year, each Project Sponsor and the Port shall hold a public workshop for applicable contractor communities to publicize anticipated contracting opportunities for LBE Improvements for the succeeding year, which workshops may be held independently or in conjunction with each other; provided, that the Port's obligations hereunder shall be limited to contracting opportunities relating to operations and maintenance of publicly-owned improvements within the 28-Acre Site. Each Project Sponsor will use good faith efforts to hire Small, Micro or SBA-LBEs for ongoing service contracts including janitorial, security and parking management contracts and advertise these contracting opportunities with the CMD except to the extent impractical or infeasible (e.g., a parking management contract cannot be broken down to allow two parking operators). Each project sponsor agrees to utilize a "subguard" policy or other means (i.e., OCIP or CCIP) to provide bonding capacity or assistance for LBEs working on the Project at the developer or contractor's option, should the firm be required to bond.

If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.

b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant, in their sole discretion, may divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.

c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant may advertise for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (http://mission.sfgov.org/OCABidPublication) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As Contractor deems necessary, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals for LBEs to ask questions about the selection process and technical specifications/requirements.

d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.

e. Public Solicitation. The Project Sponsor or its prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.

f. Outreach and Other Assistance. The Project Sponsor or its prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract

information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

g. Contacts. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.

h. Good Faith/Nondiscrimination. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).

i. Incorporation into contract provisions. Project Sponsor shall include in Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including the overall LBE participation goal and any LBE percentage that may be required under such Contract (Note: Developer/applicable tenants shall follow this programs Good Faith Efforts for Follow-on Tenant Improvements and services, but such work is not subject to the numerical LBE goal).

j. Monitoring. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

k. Maintain Records and Cooperation. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;

l. Quarterly and Annual Reports. During construction, the LBE Liaison(s) shall prepare a quarterly and annual report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and

m. Meet and Confer. Attend the meet and confer process described in Section 10.

8. Good Faith Outreach: Good faith efforts shall be deemed satisfied solely by compliance with Section 7. Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 7.a, and following CMD's notice under Section 9.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

9. CMD Obligations. The following are obligations of CMD to implement this LBE Utilization Plan:

a. During the fifteen (15) business day notification period for upcoming Contracts required by Section 7.a, CMD will work with the Project Sponsor and its Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.

b. Provide assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.

c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.

d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.

e. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, CMD staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.

10. Meet and Confer Process. Commencing with the first Contract that is executed for an LBE Improvement, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation.

11. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 7 and 10 above.

12. Collective Bargaining Agreements. Nothing in this Attachment C shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Attachment C and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.

13. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding

good faith efforts as set forth in Section 7. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

a. Name/Type of Contract(s) let (e.g. civil engineering contract, environmental consulting, etc.)
b. Name of Contractors (including identifying which are LBEs and non-LBEs)
c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
d. Scope of work performed by LBEs (e.g. under an architect, an LBE could be procured to provide renderings)
e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
f. Total LBE participation is defined as a percentage of total Contract dollars.
g. Outcomes with respect to Developer's efforts to engage (hire) local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

14. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

15. Remedies. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this Attachment C. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Attachment C, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed $25,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

For all other violations of this Attachment C, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.3 of the Development Agreement.

16. Duration of this Agreement. This Attachment C shall terminate (i) as to each work of Horizontal Improvement where work has commenced under the DDA, upon issuance of a SOP Compliance Determination for the applicable Horizontal Improvement; and (ii) as to each Workforce Building where work has commenced under the applicable Vertical DDA, upon issuance of a SOP Compliance Determination for the applicable Vertical Improvements thereunder; (iii) as to all Initial Tenant Improvements and Follow-on Tenant Improvements, ten (10) years after issuance of the first Temporary Certificate of Occupancy for the Vertical Improvements in which the Initial Tenant Improvements or Follow-on Tenant Improvements are located; and (v) for any Horizontal Improvements or Workforce Building that has not commenced before the termination of the Development Agreement, upon the termination of the Development Agreement. Upon such termination, this Attachment C shall be of no further force and effect.

17. Notice. All notices to be given under this Attachment C shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD: _____
_____
_____
Attn: _____

If to Project Sponsor: _____
_____
_____
Attn: _____

If to Contractor: _____
_____
_____
Attn: _____

If to Consultant: _____
_____
_____
Attn: _____

Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

102332121.9

Attachment D

Dispute Resolution

1. Arbitration

Any dispute involving the alleged breach or enforcement of this Workforce Development Plan (excluding disputes relating to the First Source Hiring Agreement and the applicable City ordinances, which shall be resolved in accordance with their respective terms) shall be submitted to arbitration in accordance with this **Attachment** D.

The arbitration shall be submitted to the American Arbitration Association, San Francisco, California office ("***AAA***") which will use the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. If there is a conflict between the Commercial Rules of the AAA and the arbitration provisions in this Attachment D, the arbitration provisions of this Attachment D shall govern. The arbitration shall take place in the City and County of San Francisco.

2. Demand for Arbitration

The party seeking arbitration shall make a written demand for arbitration ("***Demand for Arbitration***") in accordance with the notice procedures of Appendix Pt. A, Section 5 (Notices). The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying the entities believed to be involved in the dispute; (2) a copy of the notice of default, if any, sent from one party to the other; (3) any written response to the notice of default; and (4) a brief statement of the nature of the alleged default.

3. Parties' Participation

All persons or entities affected by the dispute (including, as applicable, OEWD, the Port, Developer, Vertical Developers, Construction Contractor (and subcontractor) and Permanent Employer) and shall be made Arbitration Parties. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such affected person or entity as an Arbitration Party; provided that, upon request by any party, the arbiter may dismiss such party if it is not reasonably affected by the dispute.

4. OEWD Request to AAA

Within seven (7) business days after service or receipt of a Demand for Arbitration, OEWD shall transmit to AAA a copy of the Demand for Arbitration and any written response thereto from an Arbitration Party. Such material shall be made part of the arbitration record.

5. Selection of Arbitrator

One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the Arbitration Parties in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator

within seven (7) business days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be the arbitrator's agreement to: (i) submit to all Arbitration Parties the disclosure statement required under California Code of Civil Procedure Section 1281.9; and (ii) render a decision within thirty (30) days from the date of the conclusion of the arbitration hearing.

*6. **Setting of Arbitration Hearing***

A hearing shall be held within ninety (90) days of the date of the filing of the Demand for Arbitration with AAA, unless otherwise agreed by the Arbitration Parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

*7. **Discovery***

In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05 as it may be amended from time to time.

*8. **California Law Applies***

California law, including the California Arbitration Act, Code of Civil Procedure Part 3, Title 9, §§ 1280 through 1294.2, shall govern all arbitration proceedings in any Employment and Contracting Agreement.

*9. **Arbitration Remedies and Sanctions***

The arbitrator may impose only the remedies and sanctions set forth below:

a. Order specific, reasonable actions and procedures to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance with the Workforce Development Plan.

b. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the applicable sections of the Workforce Development Plan, or from granting extensions or modifications to existing contracts related to services covered by the applicable sections of the Workforce Development Plan, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract.

c. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any Arbitration Party to comply with any of the requirements in this Workforce Development Plan. Contracts may be continued upon the condition that a program for future compliance is approved by OEWD. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of the Workforce

Development Plan unless the breaching party has failed to cure after being provided written notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent uncured willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "***willful breach***" means a knowing and intentional breach.

d. Direct any Arbitration Party to produce and provide to OEWD any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

10. ***Arbitrator's Decision***

The arbitrator will normally make his or her award within twenty (20) days after the date that the hearing is completed but in no event past thirty (30) days from the conclusion of the arbitration hearing; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party and shall also copy all Arbitration Parties by email (if email addresses are provided).

11. ***Default Award; No Requirement to Seek an Order Compelling Arbitration***

The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) the person or entity received actual written notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

12. ***Arbitrator Lacks Power to Modify***

Except as expressly provided above in this Attachment D, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Workforce Development Plan or to negotiate new agreements or provisions between the parties.

13. ***Jurisdiction/Entry of Judgment***

The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The prevailing Arbitration Party(ies) shall be entitled to reimbursement for the arbitrator's fees and related costs of arbitration. If a subcontractor is the losing party and fails to pay the fees within 30 days, then the applicable Construction Contractor (for whom that subcontractor worked) shall pay the fees. Each Arbitration Party shall pay its own attorneys' fees, provided, however, those attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

14. Exculpation

Except as set forth in **Section 13** of this Attachment D, each Arbitration Party shall expressly waive any and all claims against OEWD, the Port and the City for costs or damages, direct or indirect, relating to this Workforce Development Plan or the arbitration process in this Attachment D, including but not limited to claims relating to the start, continuation and completion of construction.

PARCEL LEASE EXHIBIT N

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

[_____]
[_____]
[_____]
Attn: [_____]

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Lease No. L-[XXXX])

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), effective as of [_____], (the "Effective Date"), is entered into by and among [_____], a [_____] ("Tenant"), and [_____], a [_____] ("Transferee").

RECITALS:

A. The City and County of San Francisco (the "City"), operating by and through the San Francisco Port Commission (together with any successor public agency designated by or pursuant to law, the "Port"), and Tenant are parties to that certain Lease No. L-[_____], dated as of [_____], 20[__], a memorandum which was recorded in the Office of the Recorder of the City and County of San Francisco, State of California (the "Official Records") on [_____], 20[__], as Instrument No. 20[__]-[_____] [(the "Lease"), for certain property located in the City and County of San Francisco, California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), **[Note: add if applicable any intervening amendment and/or assignments]** (as [amended] [and] [assigned], the "Lease") Terms used herein but not defined here shall have the meanings ascribed to such terms in the Lease.

B. Tenant and Transferee have entered into an agreement (the "Purchase Agreement") pursuant to which Tenant has agreed to assign all of its right, title and interest in and to the Lease to Transferee, and Transferee has agreed to assume all of Tenant's right title and interest in and to the Lease from Tenant.

C. In order to consummate the transactions contemplated by the Purchase Agreement, Tenant desires to assign and Transferee desires to assume the Lease on the terms and conditions set forth in this Agreement. In addition, in connection with the foregoing assignment and assumption, Tenant desires to be released by the Port from Tenant's obligations under the Lease, and the Port is willing to release Tenant from such obligations, on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant and Transferee agree as follows:

1. Assignment By Tenant. Tenant hereby assigns to Transferee as of the Effective Date each and all of the right, title, interest and obligations of Tenant under the Lease (including, without limitation, all of Tenant's right, title and interest in and to the Improvements).

2. Assumption By Transferee. Transferee hereby assumes from Transferee as of the Effective Date each and all of the right, title, interest and obligations of Tenant under the Lease (including, without limitation, all of Tenant's right, title and interest in and to the Improvements). Transferee hereby acknowledges that Transferee has reviewed the Lease and agrees to be bound by the Lease and all conditions and restrictions applicable to the Property pursuant to the Lease.

3. Representations and Warranties of Tenant. Tenant hereby makes the following representations and warranties to Transferee and to the Port as of the Effective Date:

3.1 Status. Tenant is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____] and is authorized to do business in the State of California and is in good standing therein.

3.2 No Conflicts. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Tenant. The person signing this Agreement on behalf of Tenant has full power and authority to sign this Agreement on Tenant's behalf.

4. Representations and Warranties of Transferee. Transferee hereby makes the following representations and warranties to Tenant and to the Port as of the Effective Date:

4.1 Status. Transferee is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____] and is authorized to do business in the State of California and is in good standing therein.

4.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of Transferee. The person signing this Agreement on behalf of Transferee has full power and authority to sign this Agreement on Transferee's behalf.

4.3 Qualified Transferee. Transferee (i) has, or has engaged a property manager with, experience operating major commercial or residential projects, (ii) has a net worth (inclusive of its interests in the Property) equal to at least Twenty-Five Million Dollars ($25,000,000) and (iii) is subject to jurisdiction of the courts of the State of California.

4.4 Investigation and Due Diligence; No Port Representations. Transferee has conducted a thorough investigation and due diligence of the Property and the Improvements, including all Material Systems, the roof and the structural integrity of the Improvements [**if transfer occurs after 20th Anniversary of the Commencement Date only:** and has received and reviewed the Facilities Condition Report dated _____ prepared by or on behalf of Tenant]. Transferee has reviewed and is familiar with the terms and conditions of the Lease. Transferee recognizes and acknowledges that the Port makes no representation or warranty hereby, express

or implied, regarding the Property, the Improvements, [the Facilities Condition Report] or the amount, nature, or extent of any obligation, liability, or duty under the Lease.

5. Release of Indemnified Parties and the State Lands Indemnified Parties. Transferee, on behalf of itself and its successors and assigns, waives or will be deemed to waive, any right to recover from, and forever releases, acquits, and discharges Indemnified Parties and the State Lands Indemnified Parties under the Lease of all Losses against the Indemnified Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the Indemnified Parties arising prior to the Effective Date.

Transferee understands and expressly accepts and assumes the risk that any facts concerning the Losses released, waived, and discharged in this Agreement includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges, and might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Accordingly, with respect to the claims released, waived, and discharged in this Agreement, Transferee expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, TRANSFEREE SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES, WAIVERS, AND DISCHARGES MADE ABOVE AND THE FACT THAT VERTICAL DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES, WAIVERS AND DISCHARGES.

TRANSFEREE INITIALS: _____

6. General Provisions.

6.1 Attorneys' Fees. The provisions of Section 46.11 of the Lease are hereby incorporated by reference with the same effect as if set forth herein.

6.2 Notices. The provisions of Section 38 of the Lease are incorporated by reference with the same effect as if set forth herein; provided, however, the address for Transferee is as follows:

[_____]
[_____]
[_____]
Attn: [_____]

With a copy to:

[_____]
[_____]
[_____]
Attn: [_____]

6.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

6.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument. It shall not be necessary in making proof of this Agreement to account for more than one counterpart.

6.5 Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

6.6 Amendment To Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

6.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

6.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

6.9 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

6.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

6.11 Partial Invalidity. If any portion of this Agreement as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

6.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Agreement; (b) it has executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared by Tenant's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Tenant because Tenant's counsel prepared this Agreement in its final form.

6.13 Defined Terms. All capitalized terms not defined herein are set forth in the Lease.

[the remainder of this page has been intentionally left blank]

PARCEL LEASE EXHIBIT N

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 _____)

On _____ before me, _____, a Notary Public, personally appeared _____ 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 _____ (Seal)
Signature of Notary Public

PARCEL LEASE EXHIBIT O

FORM OF SIGNIFICANT CHANGE CERTIFICATE

To:

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: Executive Director
Re: Pier 70 -- Lease No. L-[_____]

Re: Significant Change Certificate for Parcel [XX]

This Significant Change Certificate (the "**Certificate**") is delivered to Port, pursuant to [**Use before Certificate of Completion is issued:** Section 18.1(b)(ii)] [**Use after Certificate of Completion is issued:** Section 18.1(g)] of that certain Lease No. L-[_____], between the **CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**") and _____ ("**Tenant**"), and dated _____, ____ (as may be amended, the "**Parcel Lease**").

[**Use before Certificate of Completion issued**: Tenant has requested Port's consent to a Significant Change (as that term is defined in the Parcel Lease), which consent is governed by Section 18.1 of the Parcel Lease. In satisfaction of Section 18.1(b)(ii) of the Parcel Lease, the chief financial officer of Tenant hereby certifies to Port the following information regarding the proposed Significant Change

List (each) Purchaser:_____
_____

List Ownership Interest of (each) Purchaser:_____% _____%

Purchase price for (each)
Purchaser:_____

Net Sale Proceeds
(as defined in the Parcel Lease)
owed to Port (if applicable): _____

In connection with the Significant Change described in this Certificate, Port [is/is not] owed a share of Sale Proceeds in accordance with Section 3.6 of Exhibit D of the Parcel

Lease. [**Add if Port is owed a share of Sale Proceeds:** A calculation to get to Port's share of Sale Proceeds is attached as Exhibit A to this Certificate.]

[Use after Certificate of Completion issued: Pursuant to Section 18.1(g) of the Parcel Lease, the chief financial officer of Tenant hereby certifies to Port the following information regarding the Significant Change:

List (each) Purchaser:_____
_____

List Ownership Interest of (each) Purchaser:_____% _____%

Net Sale Proceeds
(as defined in the Parcel Lease)
owed to Port (if applicable): _____

In connection with the Significant Change described in this Certificate, Port [is/is owed a share of Sale Proceeds in accordance with Section 3.6 of Exhibit D of the Lease. [**Add if Port is owed a share of Sale Proceeds:** A calculation to get to Port's of Sale Proceeds is attached as Exhibit A to this

Furthermore, Tenant hereby reaffirms that it will continue to be obligated under all terms and conditions of the Parcel Lease and Tenant will be, if not already, a Transferee immediately following the Significant Change. As the chief financial officer Tenant, the undersigned certifies that this Certificate is true, accurate and

This Certificate is made as of _____, 20 [ ] and is for the benefit protection of Port, with the understanding that the Port shall have the right to rely upon

[NAME OF TENANT]

By:_____
Name:_____
Title: Chief Financial Officer

PARCEL LEASE EXHIBIT P

FORM OF TENANT ESTOPPEL CERTIFICATE

The undersigned, [_____], a [_____] ("**Tenant**"), is the tenant of the real property having an address at [_____] [_____] within the 28-Acre Site at Pier 70 located in San Francisco, California (the "**Property**"), and hereby certifies to the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission ("**Port**") [and to _____] the following as of the date set forth below:

1. That there is presently in full force and effect Lease No. L-[_____] dated as of [_____], 201[_], (as may be modified, assigned, supplemented and/or amended as set forth in ***paragraph 2*** below, the "**Lease**"), between Tenant, as tenant, and Port, as landlord, covering the Property and other improvements, as further described in the Lease (the "**Premises**").

2. That the Lease has not been modified, assigned, supplemented or amended except as follows: _____.

3. That the Lease represents the entire agreement between Port and Tenant with respect to the Premises.

4. That the commencement date under the Lease was [____], 201[_], and the expiration date of the Lease is [____], 20[__].

5. That the present minimum monthly base rent which Tenant is paying under the Lease is $_____.

6. [**add if applicable:**] That the Percentage Rent (as defined in the Lease) paid by Tenant for the most recent full calendar month prior to the date set forth below was $_____.]

7. That the security deposits held by Port under the terms of the Lease are as follows: $_____.

8. That Tenant has accepted possession of the Premises and that, to the best of Tenant's knowledge, all conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of Tenant.

9. That, to the best of Tenant's knowledge, Tenant, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease other than _____.

10. That, to Tenant's actual knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.

11. That, to the best of Tenant's knowledge, Tenant is not in default or in breach of the Lease, nor has Tenant committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by Tenant.

12. Tenant is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

13. The Initial Improvements have [been Completed and a Certificate of Completion under the Vertical DDA has been issued by the Port and recorded in the Official Records] [not been completed but approximately XX% has been completed to date] [has not yet commenced].

14. **[Note: Use only where Initial Improvements have been completed]** Attached as ***Schedule 1*** is the most recent Leasing Activities Report delivered by Tenant to Port pursuant to ***Section 9.3***.

This Certificate shall be binding upon Tenant and inure to the benefit of Port, [_____] and [its/their respective] successors and assigns.

Dated: _____, 20___.

[ ], a [_____]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

PARCEL LEASE EXHIBIT Q

FORM OF SUBTENANT ESTOPPEL CERTIFICATE

The undersigned, _____ ("**Subtenant**"), is the subtenant of a portion of the real property located at [_____], commonly known as _____, within the 28-Acre Site at Pier 70 in San Francisco, California, pursuant to that certain Sublease (as defined below) between Subtenant and [_____] ("**Sublandlord**"), and hereby certifies to the City and County of San Francisco, a municipal corporation, operating through the San Francisco Port Commission ("**Port**"), Sublandlord, [and to _____] the following to the best of Subtenant's knowledge after diligent inquiry: [**Note: Standard is same as set forth in the parcel lease**]

1. That there is presently in full force and effect a sublease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "**Sublease**") dated as of _____, 20___, between Subtenant and Sublandlord, covering property located at [_____], as further described in the Sublease (the "**Subleased Premises**"). A true, correct and complete copy of the Sublease is attached hereto as ***Schedule 1***.

2. That the Sublease has not been modified, assigned, supplemented or amended except as follows:

_____

_____

3. That the Sublease is subject to the terms and conditions of that certain Lease No. L-[XXXXX] between Port and [_____] ("**Master Tenant**"), as may have been amended from time to time (as amended, the "**Master Lease**") [**Insert if applicable**] and to the terms and conditions of that certain Master Sublease between Master Tenant and [entity in which tax credit investor has an interest], as may have been amended from time to time (as amended, the "**Master Sublease**"].

4. That the Sublease represents the entire agreement between Sublandlord and Subtenant with respect to the Subleased Premises.

5. That the commencement date under the Sublease was _____, 20____, and the expiration date of the Sublease is _____, 20_____. Subtenant has no options to lease additional space, no rights of refusal with respect to leasing additional space, and no renewal options [except as follows: _____.]

6. That the present minimum monthly rent which Subtenant is paying under the Sublease is $_____. All rent, charges and other payments due Sublandlord under the Sublease have been paid to and including _____, 20__.

7. That, if applicable, the present percentage rent payable by Subtenant on a [monthly/quarterly/annual] basis is _____ percent of _____.

8. That the security deposit held by Sublandlord under the terms of the Sublease is $_____, and Sublandlord (or any other party) holds no other deposit from Subtenant for security or otherwise.

9. That Subtenant has accepted possession of the Subleased Premises and that all conditions of the Sublease to be satisfied by Sublandlord have been completed or satisfied to the satisfaction of Subtenant (including completion of any landlord work and payment in full of any tenant allowance) [except as follows:_____].

10. That Subtenant, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Sublandlord under the Sublease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Sublease [other than _____].

11. That, to Subtenant's actual knowledge, Sublandlord is not in default or breach of the Sublease or the Master Lease, [or Master Sublease], nor, to Subtenant's actual knowledge, has Sublandlord committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Sublease or the Master Lease [or Master Sublease] by Sublandlord [other than _____].

12. That Subtenant is not in default or in breach of the Sublease, nor has Subtenant committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Sublease by Subtenant [other than _____].

13. That Subtenant is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

14. The undersigned hereby certifies that he or she is duly authorized to sign and deliver this Certificate on behalf of Subtenant.

15. "**Subtenant's actual knowledge**" means the actual knowledge of [_____], Subtenant's [_____], after investigation of Subtenant's appropriate records of, and operations at, the Subleased Premises. **[Note: insert name of person who would be best able to make the applicable statements.]**

This Certificate shall be binding upon Subtenant and inure to the benefit of Port, Sublandlord, [_____] and their respective successors and assigns.

Dated: _____, 20____.
[Insert name of Subtenant]

By: _____
Name: _____
Title: _____

PARCEL LEASE EXHIBIT R

FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "**Agreement**") is made as of [_____, 20XXX] (the "**Effective Date**"), by and among the **CITY AND COUNTY OF SAN FRANCISCO** ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), [_____], a [_____] ("**Sublandlord**"), and [_____], a [_____] ("**Subtenant**"). The exhibits and the recitals and this Agreement are construed as a single instrument and are referred herein as this "**Agreement.**"

RECITALS

A. Port and Sublandlord entered into that certain Lease No. L-XXXX as may be amended from time to time dated [_____, 20XXX], ("**Master Lease**") pursuant to which Port leased to Sublandlord that certain premises having an address at [_____] (the "**Master Premises**"), located in the City and County of San Francisco, California.

B. Subtenant desires to sublease from Sublandlord [insert description of premises; i.e. suite or floor numbers] within the Master Premises (the "**Subleased Premises**") pursuant to the terms of the Sublease Agreement between Sublandlord and Subtenant, dated as of [_____] (the "**Sublease**"). A summary in all material respects of the material terms of the Sublease certified by Sublandlord's officer as true, correct, and complete, is attached hereto as ***Exhibit A*** ("**Sublease Summary**"). A true, correct, and complete copy of the Sublease is attached hereto as ***Exhibit B***.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Port, Sublandlord and Subtenant agree as follows:

1. SUBLEASE SUBJECT TO MASTER LEASE.

The Sublease is subject and subordinate at all times to the Master Lease and all of its provisions, covenants and conditions.

2. PRE-CONDITIONS TO RECOGNITION.

Port has no obligation to comply with ***Section 4*** if the Master Lease is terminated as a result of Sublandlord exercising its termination option due to change in Laws in accordance with [***Section 7.3*** of the Master Lease], or due to casualty or condemnation in accordance with [***Articles 14 and 15*** of the Master Lease], or unless all of the following conditions are satisfied as of the effective date the Master Lease terminates ("**Master Lease Termination Date**"):

(a) Subtenant is not then in default under the Sublease (after expiration of any applicable notice and cure periods);

(b) Subtenant delivers to Port, promptly following Port's notice to Subtenant that the Master Lease has terminated, an executed estoppel certificate, substantially in the form attached hereto as ***Exhibit C*** certifying as of the Master Lease Termination Date, among other things: (i) that the attached Sublease and Sublease Summary are true, correct, and complete copies, and that the Sublease is in full force and effect, or if such Sublease is not in full force and effect, so stating, (ii) which amendments, if any, to the Sublease have been previously approved by Port in writing, including the dates of approval; (iii) the dates, if any, to which any rent and other sums payable thereunder have been paid, (iv) that Sublandlord is not in default, nor is it aware of any events which, with the passage of time or notice or both, would result in a default, except as to those specified in said certificate, and (v) that Subtenant is not in default, nor is it aware of any events which, with the passage of time or notice or both, would result in a default, except as to those specified in said certificate.

(c) Without limiting ***Section 1***, from and after the Master Lease Termination Date, Subtenant hereby agrees that the provisions of [***Article 45*** (Port and City Special Provisions)] of the Master Lease (collectively, the "**Special Provisions**") are deemed to be incorporated by reference and made a part of the Sublease as if set forth in full in the Sublease, except that the term "**Tenant**" in such sections will mean the Subtenant; and

(d) [**Note: Insert if Master Lease includes section related to Port's reservation of rights.**] As described in Section 1.1(l) of the Master Lease, Subtenant hereby agrees that Port will have the continuing rights described in such section (without being in default under the Sublease) and in the event of any conflict with the Sublease, the terms of such section of the Master Lease will control.

3. NO OBLIGATION TO RECOGNIZE CERTAIN SUBLEASE PROVISIONS.

Notwithstanding ***Section 4***, Subtenant agrees and acknowledges that Port's recognition of the Sublease from and after the Master Lease Termination Date, does not include, and in no event will Port be subject to, liable for, or bound by, any term or condition in the Sublease for any of the following:

(a) Any security deposit, prepaid rent or other charges previously paid by Subtenant to Sublandlord, unless such deposits, prepaid rents, or other charges are transferred to Port;

(b) Any sublandlord indemnity obligation or sublandlord waiver or release of claims under the Sublease for the benefit of Subtenant or any other party;

(c) Any requirement or obligation of the Sublandlord to pay (i) any unpaid or unreimbursed tenant improvement allowance (provided, however, if Subtenant incurs costs after the Master Lease Termination Date that are reimbursable from any remaining and unpaid tenant allowance ("**Reimbursable Subtenant Costs**"), then so long as Subtenant is not in default under the Sublease and Subtenant provides Port with all the information required in the Sublease for Sublandlord to confirm or validate the amount of the tenant improvement allowance payable to Subtenant, and Port has validated such costs, then Subtenant may receive a rent credit of up to fifty percent (50%) of the monthly base rent then payable until the Reimbursable Subtenant Costs are fully reimbursed, or (ii) any liquidated damages;

(d) Any requirement or obligation of the Sublandlord to perform tenant improvement work; provided, however, if any such tenant improvement work has not been completed by the Master Lease Termination Date (the "**Incomplete TI Work**"), then so long as Subtenant is not in default under the Sublease, Subtenant will have the right to perform the Incomplete TI Work and will receive a rent credit of up to fifty percent (50%) of the monthly base rent then payable until Subtenant has received a rent credit equal to the Remaining TI Cost. "**Remaining TI Cost**" means (i) the estimated cost set forth in Sublandlord's last monthly progress report for the month immediately prior to the Master Lease Termination Date, or (ii) if Port did not receive the monthly progress report for the month immediately prior to the Master Lease Termination Date, then Port's determination of the estimated cost to complete the Sublandlord Work will be based on the progress reports received (including the estimated cost to complete the remaining Sublandlord Work) and the work completed to date. In no event will the Remaining TI Cost exceed the Sublandlord's estimated cost to complete the Sublandlord Work set forth in the most recent progress report.

(e) Any Subtenant right of first offer to purchase, first negotiation to purchase or first refusal to purchase Sublandlord's interest in the Subleased Premises;

(f) Any Sublease term, including options to renew, that extend beyond the scheduled expiration date of the Master Lease;

(g) Any sublandlord obligation to pay or be liable for any indirect, consequential, incidental, punitive or special damages;

(h) Any limitation on Subtenant's obligation to indemnify any sublandlord parties based on Subtenant's insurance coverage;

(i) Any limitation on sublandlord's ability to transfer its interest in the Sublease (including any requirement to deliver prior notice to Subtenant or obtain Subtenant's prior approval); and

(j) Any confidentiality obligations set forth in the Sublease, whether as the landlord under the Master Lease or the Sublease, to the extent that such obligations conflict with Port's obligations under the Public Records Act or the City's Sunshine Ordinance;

(k) Any modification or amendment of the Sublease made without Port's written consent that increase Sublandlord's obligations under the Sublease or decrease the Subtenant's obligations under the Sublease unless such amendment or modification has previously been approved by Port in writing.

(l) Any sublease provision that conflicts with ***Section 18.3(a)*** (Qualifying Subleases) of the Master Lease.

4. RECOGNITION OF SUBTENANT RIGHTS.

Provided all the conditions set forth in ***Section 2*** are fully satisfied, and further subject to the limitations set forth in ***Sections 3 and 5***, if the Master Lease terminates for any reason other than Sublandlord terminating the Master Lease due to change in laws, casualty or condemnation as described in ***Section 2***, Port agrees that from and after the Master Lease Termination Date: Port will (i) not disturb Subtenant's tenancy under the Sublease; (ii) perform the obligations of sublandlord under the Sublease arising after the Master Lease Termination Date until such obligations are assumed by another sublandlord or other transferee of Port's interest in the Sublease, and (iii) recognize Subtenant's rights under the Sublease with respect to the Subleased Premises.

5. ATTORNMENT.

Following the Master Lease Termination Date, Subtenant will attorn to Port and continue to perform all of Subtenant's obligations under the Sublease for the benefit of Port or any future sublandlord or other assignee of Port's rights under the Sublease. For such purposes, as between Port and Subtenant, notwithstanding the termination of the Master Lease as between Port and Sublandlord, the provisions of the Master Lease will be deemed to continue to apply to, and will continue to be incorporated by reference into, the Sublease, and Subtenant will continue to comply with such provisions, to the same extent that such provisions were incorporated into and Subtenant was required to comply with such provisions pursuant to the terms of the Sublease prior to the Master Lease Termination Date; provided, however, if there is any conflict between Subtenant's obligation to comply with such provisions in the Sublease and the Special Provisions, the Special Provisions will control.

6. SELF-OPERATIVE PROVISIONS.

The provisions contained in ***Sections 2(c), /Note: insert as applicable: 2(d)/, 3, 4, 5*** are to be effective and self-operative without the necessity of the execution or delivery of any other documents on the part of either Port or Subtenant.

7. NOTICE AND OPPORTUNITY TO CURE UNDER SUBLEASE.

Port will be entitled to notice and the opportunity to cure any default by Sublandlord under the Sublease as follows:

(a) Subtenant will give Port a copy of any and all notices of an event of default (*i.e.*, following the expiration of any notice and cure period) from time to time given to Sublandlord as sublandlord under the Sublease, by Subtenant at the same time as and whenever

any such notice will thereafter be given by Subtenant to Sublandlord. Such notice will be addressed to Port in the manner for delivery of notices provided in the Master Lease.

(b) In the case of any notice of default given by Subtenant to Sublandlord and Port in accordance with ***Section 7(a)***, Port will have the same right (and time period) to cure Sublandord's default as given to any mortgagee under the Sublease, and Subtenant will accept such performance by or at the instance of Port as if the same had been made by Sublandlord.

8. BROKERAGE FEES.

Sublandlord and Subtenant each acknowledge that Port's execution hereof does not operate to impose on Port any liability or obligation whatsoever in connection with the payment of any brokerage or finder's fees or commissions in connection with or relating to the Sublease. In the event any broker, agent or finder makes a claim against Port for payment of any such fees or commission, Sublandlord will indemnify, defend, and hold harmless Port from any losses arising out of such claim.

9. NO ASSUMPTION OF SUBLEASE.

Except to the extent specifically provided under ***Section 4***, Port will have no liability or obligation to Subtenant relating to Subtenant's occupation of the Subleased Premises under the Sublease, and Port does not assume any of the obligations of Sublandlord set forth therein.

10. REPRESENTATIONS AND WARRANTIES.

10.1. ***Summary of Material Terms***. Sublandlord and Subtenant represent and warrant to Port that the Sublease Summary is true and correct, and includes all of the Sublease material terms.

10.2. ***Copy of Sublease***. Sublandlord and Subtenant represent and warrant to Port that attached as ***Exhibit B*** is a true, correct, and complete copy of the Sublease and that the Sublease complies with ***Sections 18.3*** (Subletting by Tenant) and ***18.4(b)*** (Conditions for Issuance of Non-Disturbance Agreements) of the Master Lease.

10.3. ***Sublandlord Representations and Warranties***. Sublandlord represents and warrants to Port that as of the Effective Date:

(a) to the best of Sublandlord's knowledge, Sublandlord is not in default or in breach of the Master Lease, nor has Sublandlord committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Master Lease;

(b) to the best of Sublandlord's knowledge, Sublandlord has no right or claim of deduction, charge, lien or offset against Port under the Master Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease;

(c) to Sublandlord's actual knowledge, Port is not in default or breach of the Master Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Master Lease by Port; and

(d) Sublandlord is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

11. EXCULPATION.

Sublandlord and Subtenant each covenant and agree that Port and City will not be responsible for or liable for, and, to the fullest extent allowed by law, each waives all rights against City, Port and their agents and release City, Port and their agents from any and all losses

or liabilities relating to any disputes that may exist between Sublandlord and Subtenant relating to the Sublease or the Subleased Premises.

12. GENERAL.

12.1. ***Successors and Assigns***. This Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

12.2. ***Counterparts***. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

12.3. ***Amendment***. Neither this Agreement nor any of its terms may be terminated, amended, or modified except by a written instrument executed by the parties.

12.4. ***Governing Law; Selection of Forum***. This Agreement will be governed by, and interpreted in accordance with, the laws of the State of California and the City Charter. As part of the consideration for Port's entering into this Agreement, Sublandlord and Subtenant agree that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of Port, be litigated in courts within the State of California, and Sublandlord and Subtenant consents to the jurisdiction of any such state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Sublandlord or Subtenant wherever Sublandlord or Subtenant, as applicable, may then be located, or by certified or registered mail directed to Sublandlord at the address set forth in the Master Lease for the delivery of notices and Subtenant at the address set forth below (or at such other address as may from time to time be specified by written notice to all parties to this Agreement):

To Subtenant:	
With a copy to:	

12.5. ***Attorneys' Fees***. If any party brings an action or proceeding (including any cross-complaint or counterclaim) against any other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding will be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which will be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" will include a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this ***Section 12.5*** will include reasonable attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this Agreement, reasonable fees of attorneys of Office of the City Attorney will be based on the fees regularly charged by private attorneys an equivalent number of years of professional experience (calculated by reference to 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

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

Port:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____

Name: _____

Title: _____

Sublandlord:

[INSERT SUBLANDLORD SIGNATURE BLOCK]

By: _____

Name: _____

Title: _____

Subtenant:

[INSERT SUBTENANT SIGNATURE BLOCK]

By: _____

Name: _____

Title: _____

EXHIBIT S

INSURANCE REQUIREMENTS

[Note: Insurance requirements for Form of Parcel Lease to be reviewed by City's Risk Manager for adequacy every 5 years from approval of DDA.]

20.1 Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Except as more specifically provided in this Exhibit S, Tenant will, at no cost to Port, obtain and maintain, and cause to be in effect at all times the types and amounts of insurance detailed below. Such insurance shall remain in place from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Exhibit S).

(i) Builders Risk Insurance. At all times during construction prior to Completion of the Initial Improvements [and Deferred Infrastructure], and during any period of Subsequent Construction, Tenant will maintain, or require to be maintained, on a form reasonably approved by Port, builders risk insurance (or its equivalent for any Subsequent Construction, which may include coverage under a property insurance program as referenced under Section 20.1(a)(ii)) in the amount equal to the 100% replacement cost value of any existing structures being rehabilitated or restored, and 100% of all new construction, including all materials and equipment to be used/incorporated on or about the Premises, and in transit or storage off-site, against all risk or "special form" hazards, and earthquake and flood insurance (subject to Section 20.1(a)(ii)) including risks from any and all testing of any equipment, including Tenant as named insureds, with any deductible not to exceed One Hundred Thousand Dollars ($100,000) (except as to earthquake and flood insurance for which the deductible will be in accordance with the requirements of Section 20.1 (a)(ii)), provided however that Tenant may request approval from the Port, which shall not be unreasonably withheld, of a higher deductible. If available at commercially reasonable rates, such builders risk insurance will also extend to cover the peril of terrorism.

(ii) Property Insurance; Earthquake and Flood Insurance.

(1) Property Insurance. Upon Completion of the Initial Improvements, and upon completion of Subsequent Construction of any additional Improvements, Tenant will maintain, or require to be maintained, property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss Special Form" (or its replacement)), in an amount not less than 100% of the then-current full replacement cost of the Improvements including any foundations, pilings, excavations and footings, including increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of Laws, (with any deductible not to exceed not to exceed One Hundred Thousand Dollars ($100,000) (except as to earthquake and flood insurance). If available at commercially reasonable rates, such insurance will extend to cover the peril of terrorism. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Port will have no interest in the proceeds of such Personal Property insurance.

(2) Earthquake Insurance.

(A) During Construction of the Initial Improvements, earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Initial Improvements or, (ii) the maximum amount that is available at commercially reasonable rates from recognized insurance carriers (with a deductible of up to but not to exceed ten percent (10%)) of the then-current, full replacement cost of the Initial Improvements without sublimits for excavations and footings; provided that earthquake

coverage is available at commercially reasonable rates), except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates). "Probable Maximum Loss" means the scenario upper loss (SUL) estimate of damage that may occur to the structures with a ninety percent (90%) confidence of non-exceedance as a result of an earthquake with a return period of 224 years as determined prior to Completion of the Initial Improvements and thereafter not less frequently than every ten (10) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Port; and

(B) From and after Completion of the Initial Improvements, earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Improvements, or (ii) the amount that is available at commercially reasonable rates from recognized insurance carriers, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate.

(3) Flood Insurance.

(A) If the Premises is in a designated flood zone as depicted on current Flood Insurance Rate Maps ("FIRMs:) issued by the U.S. Department of Homeland Security's Federal Emergency Management Agency ("FEMA") or its successor, then Tenant will, during construction of the Initial Improvements or any Subsequent Construction, obtain flood insurance from recognized insurance carriers (or through the National Flood Insurance Program ("NFIP")) equal to the maximum amount of the then current, full replacement cost of the Initial Improvements or Subsequent Construction, as applicable, (including building code upgrade coverage and without any deduction being made for depreciation), with a deductible of up to but not to exceed ten percent (10%). Such insurance will remain in full force and effect from and after the Completion of the Initial Improvements in amount equal to the maximum amount of the then-current, full replacement cost of the Improvements (including the value of any and all Subsequent Construction).

(B) If the subject parcel is not in a designated flood zone as depicted on current FIRMs issued by the FEMA or its successor, Tenant will, during construction of the Initial Improvements, obtain flood insurance, to the extent available at commercially reasonable rates from recognized insurance carriers (or through the NFIP), in an amount equal to the maximum amount of the then-current, full replacement cost of the Initial Improvements (including building code upgrade coverage and without any deduction being made for depreciation), with a deductible of up to but not to exceed ten percent (10%), except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized insurance carriers (or through the NFIP) at commercially reasonable rates; and

From and after Completion of the Initial Improvements, flood insurance will be in an amount equal to at least the amount available at commercially reasonable rates from recognized insurance carriers or through the NFIP, with a deductible of up to but not to exceed an amount that is necessary to make flood insurance available at commercially reasonable rates.

(4) Exceptions for Earthquake and Flood Insurance. If Tenant determines that earthquake or flood insurance should not be carried on the Improvements because it is not (or no longer) available at commercially reasonable rates (or through the NFIP for flood insurance) or, in Tenant's reasonable business judgment, is imprudent, then Tenant will request in writing Port's consent to the absence or deletion thereof. However, with respect to earthquake or flood insurance during the construction of the Initial Improvements, a request for Port's consent to such determination by Tenant need not be submitted and Tenant may make such determination in its sole discretion. Any request for Port's consent required hereunder will include with such request evidence supporting Tenant's determination of

commercial unreasonableness or imprudence as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco. Port will approve or disapprove the absence or deletion of earthquake or flood insurance within forty-five (45) days after Tenant's request. If Tenant elects not to carry or to discontinue such coverage with Port's approval, and Port later determines that due to changes in the industry or other changed circumstances, earthquake insurance or flood insurance, as applicable, has become commercially available at reasonable rates, then Port may notify Tenant thereof, and Tenant will add such coverage to its policy as soon as reasonably practicable thereafter.

(iii) Commercial General Liability Insurance. Tenant will maintain, or require to be maintained "Commercial General Liability" insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) which includes coverage extending to the Indemnity in Section 19, broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than Fifteen Million Dollars ($15,000,000) per occurrence and annual aggregate, and Fifteen Million Dollars ($15,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. Such policy will have a self-insured retention not to exceed $500,000 per occurrence with Tenant solely responsible for such self-insured retention. Within thirty (30) days after the Substantial Completion of the Initial Improvements, or completion of any Subsequent Construction requiring Port's approval under Article __ and annually for ten years thereafter, Tenant, or its successors and assigns, will provide Port with evidence that Tenant's Commercial General Liability insurance includes completed operations coverage for the Initial Improvements or Subsequent Construction, as applicable.

In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant will maintain or require to be maintained liquor liability coverage with limits not less than Three Million Dollars ($3,000,000) and Tenant will require any Subtenant or operator who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage. All liability insurance may be provided under a combination of primary and umbrella excess policies (including blanket policies) and may be provided under policies with a "claims made" trigger as provided in Section 20.1 (b)(viii).

(iv) Workers' Compensation Insurance. During any period in which Tenant has employees, as defined in the California Labor Code, Tenant will maintain, or require to be maintained, policies of workers' compensation insurance providing statutory limits, including employer's liability coverage with limits not less than One Million Dollars ($1,000,000) each accident and policy limit by disease (except that such insurance in excess of One Hundred Thousand ($100,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy) covering liability for all persons directly employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

(v) Boiler and Machinery Insurance. If any of the following exposures are not covered by the insurance required by Section 20.1(a)(ii)(1), Tenant will maintain, or require to be maintained, boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located in, on, under, around, or about the Premises that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an

amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(vi) Business Automobile Insurance. Tenant will maintain, or require to be maintained, policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles (including electric carts) to be used by Tenant or their Agents, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than Five Million Dollars ($5,000,000) per accident and annual aggregate.

(vii) Business Income Insurance. From and after Completion of the Initial Improvements, Tenant will maintain business income insurance, including loss of rents and extra expense caused by any of the perils or hazards set forth in and required to be insured pursuant to Section 20.1(a)(ii) covering an interruption period of not less than two (2) years, with a limit of not less than twenty-four (24) months' of Gross Income

(viii) Contractor's Pollution Legal Liability Insurance. Tenant will cause to be maintained during the period of construction of the Initial Improvements [and Deferred Infrastructure] and during any periods of Subsequent Construction that could reasonably be anticipated to involve a Release of Hazardous Materials on or about the Premises, Contractor's Pollution Legal Liability Insurance for any and all Losses caused by pollution conditions, that are sudden, accidental or gradual, resulting from the Contractor's operations, or for which Contractor is legally liable, in connection with the construction of the Initial Improvements [or Deferred Infrastructure] or Subsequent Construction, whether such operations be by the Contractor or subcontractors, consultants or suppliers of the Contractor. The foregoing policy will contain minimum liability limits of 5 Million Dollars ($5,000,000) per occurrence and 5 Million Dollars ($5,000,000) in the aggregate with a deductible not to exceed One Hundred Thousand Dollars ($100,000). The foregoing policy will at a minimum contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from construction of the Initial Improvements [and Deferred Infrastructure];or any Subsequent Construction; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with construction of the Initial Improvements [and Deferred Infrastructure],or any Subsequent Construction, including transportation of any Hazardous Materials to or from the project site, including any interim or temporary storage or transfer sites (such transportation coverage will also include loading/unloading of materials); (iii) claims by third parties (other than a disposal site owner) for bodily injury or property damage arising from any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the construction of the Improvements under the Vertical DDA (if in effect) or any Subsequent Construction under this Lease or in connection with any remediation obligation of Tenant pursuant to Section 21 is delivered; all such disposal locations/facilities, both final and temporary, will be scheduled to the foregoing policy as Non-Owned Disposal Sites for coverage under such policy. The foregoing policy will be written on an occurrence form and be in effect during the construction periods described above, or, if not available on an occurrence form, then on a claims-made form. If the foregoing policy is written on a claims made form, then the foregoing policy will be maintained for, or contain an extended reporting period of, at least five (5) years. The foregoing policy definition of "Covered Operations" or any other such designation of services or operations performed by the Contractor must include all work or services performed by such Contractor and its subcontractors, consultants, or suppliers.

(ix) Professional Liability. Tenant will maintain or require to be maintained, project-specific professional liability (errors and omissions) insurance, with limits not less than 2 Million Dollars ($2,000,000) [5 Million Dollars ($5,000,000 for Historic Building Parcels and Parcel E4] each claim and annual aggregate, with respect to all professional services, including

architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to the construction of the Initial Improvements, [and Deferred Infrastructure] and any Subsequent Construction with any deductible not to exceed One Hundred Thousand Dollars ($100,000) each claim (the "lead policy"). Notwithstanding the foregoing, however, Tenant may elect, instead of obtaining the foregoing coverages in this Section 20.1(a)(ix), to require that any architects, contractors and sub-contractors performing professional services in connection with the Initial Improvements or any Subsequent Construction carry professional liability insurance (errors and omissions) in an amount not less than 2 Million Dollars ($2,000,000) [5 Million Dollars ($5,000,000 for Historic Building Parcels and Parcel E4] each claim and annual aggregate with any deductible not to exceed Fifty Thousand Dollars ($50,000), and any operators carry professional liability insurance as required by contract; provided, however, such coverage may be provided with a lower limit for subcontractors that are local business enterprises (LBEs) or are performing work under subcontracts of $100,000 or less. Such insurance will provide coverage during the period when such professional services are performed and for a period of (a) three (3) years after Completion of the Initial Improvements [and Deferred Infrastructure],and (b) three (3) years for any Subsequent Construction. With respect to Subsequent Construction, Tenant will require that any architect, contractor or subcontractor performing professional services in connection with such Subsequent Construction, carry professional liability insurance (errors and omissions) in an amount not less than One Million Dollars ($1,000,000) each claim and annual aggregate with any deductible not to exceed Twenty Five Thousand Dollars ($25,000). Tenant will have the right to request a waiver of the requirements of this clause (ix) by delivering written request to Port and Port shall respond within a reasonable period of time to any such request; provided, with respect to waiver requests for LBEs and subcontracts only, so long as the waiver request was sent by electronic mail, addressed to one or more line staff responsible for administration of this Lease stating in the subject line **"Immediate Action Required to Avoid Deemed Consent"** or words to the same effect. Port will be deemed to have approved such waiver if Port does not respond to the waiver request within five (5) business days.

(x) Other Insurance. If Tenant permits activities on Tenant's premises after construction is completed that are not covered by any of the policies listed in this agreement, or, alternatively not adequately covered given the insurance limits in place, the amount and type of insurance required for these activities will be evaluated the Port and the Tenant. Following consultation with Tenant, the Port may require that Tenant secure such other insurance or increase the insurance limits for any of Tenant's policies than in effect, if in the reasonable judgement of the City's Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the Premises, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Tenant determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Tenant will provide to Port evidence supporting Tenant's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(b) General Requirements.

(i) As to all insurance required hereunder, such insurance will be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance required hereunder, such insurance will name the Tenant as the first named insured, and will name the Port as an insured as its interest may appear. As to general liability, automobile liability, and umbrella or excess liability insurance (including blanket policies), such insurance will name as additional insureds by written endorsement: "THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS." In addition, as to pollution legal liability insurance, if any, such insurance will name as additional insureds by written endorsement: "THE STATE LANDS INDEMNIFIED PARTIES."

(iii) As to all insurance required hereunder, such insurance will be evaluated by Port and Tenant for adequacy not less frequently than every five (5) years from the date of Completion of Improvements. Following consultation with Tenant, Port may require, upon not less than ninety (90) days prior written notice, that Tenant increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice in San Francisco to carry insurance for facilities of comparable size and use to the Premises in amounts substantially greater than the amounts being carried by Tenant with respect to risks comparable to those associated with the uses of the Premises. If the City's Risk Manager determines that the insurance limits required under this Section 20.1 may be decreased in light of such commercial practice and the risks associated with the uses of the Premises, Port will notify Tenant of such determination, and Tenant will have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant will promptly deliver to Port a certificate evidencing such new insurance amounts and additional insured endorsements in form satisfactory to Port. If Tenant determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Tenant will provide to Port evidence supporting Tenant's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(iv) As to all insurance required hereunder, such insurance will provide that no cancellation, material modification or termination of such insurance will be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Port;

(v) As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. An ISO endorsement CG20 10 11 85 or its equivalent must be added naming the CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AS ADDITIONAL INSUREDS;

(vi) As to liability, automobile, worker's compensation and property insurance required hereunder, such insurance will provide for waivers of any right of subrogation that the insurer of such party may acquire against each Party hereto with respect to any losses of the type covered under the policies required by Section 20.1(a); and

(vii) All insurance will be subject to the approval of Port, which approval will be limited to whether or not such insurance meets the terms of this Lease.

(c) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant will furnish Port certificates and additional insured endorsements in form satisfactory to Port with respect to the policies required under this Section within thirty (30) days, (i) on or prior to the Commencement Date (to the extent such policy is required to be carried as of the

Commencement Date), (ii) for such policies required to be carried after the Commencement Date, on or prior to the date such policies are required, and (iii) with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy. Within thirty (30) days after Port's request, Tenant also will provide Port with copies of each such policy, or will otherwise make such policy available to Port for its review. If Tenant has determined that obtaining earthquake or flood insurance prior to commencement of construction of the Initial Improvements pursuant to Section 20.1(a)(ii)(4) is not commercially reasonable, then Tenant will provide Port with such documents evidencing such determination. If at any time Tenant fails to maintain the insurance required pursuant to this Section 20.1, or fails to deliver certificates and/or endorsements as required pursuant to this Section 20.1(c) then, upon thirty (30) business days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Tenant will reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities in, on, under, around, or about the Premises, Tenant will require that such policies be endorsed to include the CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS as additional insureds. Notwithstanding the foregoing, Tenant will require all contractors and sub-contractors performing work in, on, under, around, or about the Premises and all operators and Subtenants of any portion of the Premises to carry the following coverages: (i) commercial general liability with limits of no less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) annual general aggregate, (ii) workers' compensation in amounts required by law, (iii) employer's liability coverage in an amount not less than One Million Dollars ($1,000,000) per accident, per employee and policy limit for injury by disease, covering all employees employed at the Premises, (iv) automobile insurance in an amount not less than $1,000,000 combined single limit covering use of owned, non-owned or hired vehicles utilized in the performance of work in, on, under, around, or about the Premises.

(e) Excess Coverage. All requirements may be satisfied by any combination of umbrella and excess liability policies (including blanket policies).

20.2 Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses occasioned to the property of each such Party, which losses are of the type covered under the property policies required by Sections 20.1(a)(i), 20.1(a)(ii), or 20.1(a)(vi) to the extent that such loss is reimbursed by an insurer.

20.3 No Limitation.

The Indemnification requirements under this Lease will not be limited by the insurance requirements of this agreement.

PARCEL LEASE EXHIBIT T
City and Port Special Provisions

The Municipal Code (available at www.sfgov.org) and City and Port policies described in this Exhibit are incorporated by reference as though fully set forth in the Lease (collectively, the "**City and Port Special Provisions**"). Tenant is charged with full knowledge of and compliance with each applicable requirement, whether or not summarized below. All statutory references in this Exhibit are to the Municipal Code as in effect on the Reference Date of the DDA unless specified otherwise. Initially capitalized or highlighted terms used in this Exhibit and not defined in the DDA have the meanings ascribed to them in the cited ordinance.

The application to the 28-Acre Site Project of the specified provisions of the City and Port Special Provisions is subject to **DA § 5.3** (Changes to Existing City Laws and Standards) and waivers under Sections 6, 7, 8 and 9 of Ordinance No. 224-17, which is attached to and incorporated into the City and Port Special Provisions (collectively, the "**DA Waivers**").

The descriptions below are not comprehensive but are provided for notice purposes only. Tenant understands that its failure to comply with any applicable provision of the City and Port Special Provisions will give rise to the specific remedies under the applicable City and Port Special Provisions and in certain cases give rise to a default under the Lease, which could result in a default under the DA as well. References to "Developer" in the City and Port Special Provisions will apply to Tenant Parties and their successors under the Lease and DA Successors under the DA.

Municipal Codes and Policies Summarized

1. Nondiscrimination in Contracts and Property Contracts
2. Health Care Accountability Ordinance
3. Prevailing Wages and Working Conditions in Construction Contracts
4. Other Prevailing Wage Rate Requirements
5. First Source Hiring Program
6. Criminal History In Hiring And Employment Decisions
7. Employee Signature Authorization Ordinance
8. Tobacco Products and Alcoholic Beverages
9. Integrated Pest Management Program
10. Resource-Efficient Facilities and Green Building Requirements
11. Tropical Hardwood and Virgin Redwood Ban
12. Diesel Fuel Measures
13. Arsenic-Treated Wood
14. Food Service and Packaging Waste Reduction Ordinance
15. Bottled Drinking Water
16. Graffiti Removal and Abatement
17. Drug-Free Workplace
18. Nutritional Standards and Guidelines
19. All-Gender Toilet Facilities
20. Indoor Air Quality
21. Conflicts of Interest
22. Sunshine
23. Contribution Limits-Contractors Doing Business with the City
24. Implementing the MacBride Principles – Northern Ireland

Contracting, Hiring, and Construction

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

(a) Covered Contracts. All provisions in this Section regarding the Nondiscrimination in Contracts and Property Contracts ordinance apply to "subcontracts to contracts" and "property contracts" as defined in Administrative Code sections 12B.2 and 12C.2.

(b) Covenant Not to Discriminate. In its development of the FC Project Area, 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 (Cal. Gov. 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.

(c) Requirement to Include. Developer must: (i) include a nondiscrimination clause in substantially the form of **Subsection (a** (Covenant Not to Discriminate); and (ii) incorporate by reference Administrative Code sections 12B.2(a), 12B.2(c)-(k), and 12C.3(a) in all applicable contracts, subcontracts, and subleases and require all contractors, subcontractors, and subtenants to comply with those provisions.

(d) Nondiscrimination in Benefits. Developer agrees not to discriminate between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of employees, where the domestic partnership has been registered with any governmental entity under state or local law authorizing registration, subject to the conditions set forth in Administrative Code section 12B.2. Developer's agreement relates to bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits (collectively "**Core Benefits**"), as well as other employee benefits described in section 12B.1(b), during the term of each applicable contract, subcontract, and sublease.

(e) Form. On or before the Reference Date, Developer must complete, execute, deliver to, and obtain approval of its completed *Nondiscrimination in Contracts and Benefits* form CMD-12B-101 from CMD. The form is available on CMD's website.

(f) Penalties. Developer understands that under Administrative Code section 12B.2(h), the City may assess against Developer or deduct from any payments due Developer a penalty of $50 for each person for each calendar day during which Developer or its subcontractor, property contractor, or other contractor discriminated against a protected person in violation of this Section. Violation of this Section, if not cured after notice and opportunity to

cure, also will be an Event of Default under the DDA and the DA and a material breach of any applicable contract, subcontract, or sublease.

2. **Health Care Accountability Ordinance.**
(Admin. Code ch. 12Q)

(a) Developer agrees to comply fully with and be bound by the Health Care Accountability Ordinance ("**HCAO**"), as set forth in Administrative Code chapter 12Q, unless exempt.

(b) Covered Employees. For each Covered Employee, Developer must provide the appropriate health benefit set forth in HCAO section 12Q.3, unless it is exempt as a small business under HCAO section 12Q.3(c).

(c) Notice and Opportunity to Cure. If Developer fails to cure a violation of the HCAO after receiving notice of a violation and an opportunity to cure the violation, the City will have the remedies set forth in HCAO section 12Q.5(f), subject to the DA Waivers, which the City may exercise individually or in combination with any of its other rights and remedies.

(d) Covered Contracts. Any Contract, Subcontract, or Sublease, as defined in Chapter 12Q, that Developer enters into for public works, public improvements, or for services must require the Contractor, Subtenant, or Subcontractor, as applicable, to comply with the applicable provisions of the HCAO and must contain contractual obligations substantially the same as those set forth in the HCAO. Developer agrees to notify the Contracting Department promptly of any Subcontractors performing services covered by Chapter 12Q and certify to the Contracting Department that Developer has notified the Subcontractors of their HCAO obligations under this Chapter.

(e) Noncompliance. Developer will be responsible for monitoring compliance with the HCAO by each Subcontractor, Subtenant, and Contractor performing services on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its Subcontractors, Subtenants, or Contractors. The City's remedies for Developer's noncompliance with the HCAO are subject to the DA Waivers.

(f) Retaliation Prohibited. Developer must not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City of any issue regarding noncompliance or anticipated noncompliance with the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Representation and Warranty. Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Reporting. Upon request, Developer must provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO.

(i) Records. After receiving a written request from the City to inspect pertinent payroll records and after at least 10 days to respond have elapsed, Developer agrees to provide the City with access to pertinent payroll records relating to the number of employees employed and terms of medical coverage. In addition, the City and its Agents, in consultation with the Department of Public Health, may conduct audits of Contracting Parties, although such audits

shall be conducted through an examination of records at a mutually agreed upon time and location within 10 days after written notice. Developer agrees to cooperate with the City in connection with these audits.

(j) Threshold. If a Subcontractor, Subtenant, or Contractor is exempt from the HCAO because the amount payable to the Subcontractor, Subtenant, or Contractor under all of its contracts with the City or relating to City-owned property is less than $25,000 (or $50,000 for nonprofits) in that City Fiscal Year, but the Subcontractor, Subtenant, or Contractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to the Subcontractor, Subtenant, or Contractor to equal or exceed $75,000 in that City Fiscal Year, then all of the Contractor's, Subtenant's, or Subcontractor's contracts with the City and relating to City-owned property will become subject to the HCAO from the date on which the later agreement is executed.

3. 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 FC Project Area 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 must comply with the prevailing wage requirements in *WDP § III.C.6 (Prevailing Wages)* that apply to construction work on all Prevailing Wage Covered Projects by Developer, all Vertical Developers and Construction Contractors (and their subcontractors regardless of tier) (as defined in the WDP).

(c) Penalties. The Port has designated OLSE as the agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in accordance with the WDP, subject to the DA Waivers.

4. Other Prevailing Wage Rate Requirements.
(Admin. Code ch. 21C)

(a) Under Administrative Code ch. 21C, individuals employed in certain activities at the FC Project Area are entitled to be paid not less than either the highest general prevailing rate of wages (including fringe benefits or their matching equivalents) paid in private employment for similar work in the area in which the contract is being performed, as determined by the Civil Service Commission or the "**Prevailing Rate of Wages**" (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the activities meet any of the specified exemptions. Covered activities are:

(i) motor bus services provided to the general public (§ 21C.1);

(ii) "**Janitorial Services**" (§ 21C.2);

(iii) operation of a "**Public Off-Street Parking Lot, Garage, or Automobile Storage Facility**" (§ 21C.3);

(iv) theatrical or technical services related to the presentation of a show, including workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services (§ 21C.4);

(v) operation of a "**Special Event**" (§ 21C.8);

(vi) "**Broadcast Services**" (§ 21C.9); and

(vii) driving a "**Commercial Vehicle**" or loading or unloading materials, goods, or products into or from a Commercial Vehicle in connection with the presentation of a "**Show**" or for a Special Event (§ 21C.10).

(b) Agreement. Developer agrees to comply with the obligations in Administrative Code chapter 21C and to require its tenants, contractors, and any subcontractors to comply with the obligations in chapter 21C. In addition, if Developer or its tenant, contractor, or any subcontractor fails to comply with these obligations, the City will have all available remedies against Developer to secure compliance and seek redress for workers who provided the services.

(c) OLSE. For current Prevailing Wage rates, see the OLSE website or call the OLSE at 415-554-6235.

5. First Source Hiring Program.
(Admin. Code ch. 83)

Developer's obligations to comply with the First Source Hiring Program are set forth in *WDP §§ II.C.3 (First Source Hiring Program for Construction Work)* and *II.D.2 (First Source Hiring Program for Operations)*.

6. Criminal History In Hiring And Employment Decisions.
(Admin. Code ch. 12T)

(a) Agreement to Comply. Administrative Code Chapter 12T ("**Chapter 12T**") will only apply to a Contractor's, Subcontractor's, or subtenant's operations to the extent those operations are in furtherance of performing a Contract or Property Contract with the City subject to Chapter 12T. If applicable, Developer will comply with and be bound by Chapter 12T, including the remedies and implementing regulations, with respect to applicants to and employees of Developer who would be or are performing work at the FC Project Area under the DDA.

(b) Breach. Developer must incorporate Chapter 12T by reference in all contracts related to be performed in furtherance of a Contract or Property Contract with the City, as defined in Administrative Code section 12T.1. Developer will be responsible for monitoring compliance by its Subcontractors, Contractors, and subtenants, but the City agrees that Developer will not be liable for their noncompliance.

(c) Prohibited Activities. Developer and its Subcontractors, Contractors, and subtenants must not inquire about, require disclosure of, or if the information is received, base an Adverse Action on an applicant's or potential applicant's or employee's: (i) Arrest not leading to a Conviction, except under circumstances identified in Chapter 12T as an Unresolved Arrest; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise

rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system; (v) a Conviction that is more than seven years old, based on the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction, except that a Contractor, Subcontractor, or subtenant may inquire about, require disclosure of, base an Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or employee's driving record if driving is more than a de minimis element of the employment in question.

(d) Employment Applications. Developer and its Subcontractors, Contractors, and subtenants must not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any Conviction History or unresolved arrest until either after the first live interview with the person, or after a conditional offer of employment in accordance with section 12T.4(c).

(e) Disclosure. Developer and its Subcontractors, Contractors, and subtenants must state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Developer or its Subcontractors, Contractors, and subtenants at the FC Project Area that the DDA and all Contracts and Property Contracts will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Posting. Developer and its Subcontractors, Contractors, and subtenants must post the notice prepared by the OLSE, available on OLSE's website, in a conspicuous place at the FC Project Area and at other workplaces, job sites, or other locations under the Subcontractor's, Contractor's, or subtenant's control at which work is being done or will be done in furtherance of performing a Contract or Property Contract under the DDA with the City. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the FC Project Area or other workplace at which it is posted.

(g) Penalties. Developer and its Subcontractors, Contractors, and subtenants understand and agree that upon any failure to comply with Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T, subject to **Subsection (b)** (Breach) and the DA Waivers, including a penalty of $50 for each employee, applicant or other person as to whom the violation occurred or continued, and thereafter, for subsequent violations, the penalty may increase to no more than $100, for each employee or applicant whose rights were, or continue to be, violated.

(h) Inquiries. If Developer has any questions about the applicability of Chapter 12T, it may contact the Port for additional information. The Port will consult with the Director of the City's Office of Contract Administration, who has authority to grant a waiver under the circumstances set forth in section 12T.8 of Chapter 12T.

7. Employee Signature Authorization Ordinance.
(S.F. Admin Code §§ 23.50-23.56)

The City has adopted an Employee Signature Authorization Ordinance, which requires employers of employees in hotel or restaurant projects on public property with 50 or more full-time or part-time employees to enter into a "card check" agreement with a labor union regarding

the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Developer agrees to comply with the requirements of the ordinance, if applicable, including any requirements applicable to its successors, as specified in Administrative Code section 23.54.

Use Of City Property

8. Tobacco Products and Alcoholic Beverages.
(Admin. Code § 4.20; Health Code art. 19K)

(a) Definitions. For purposes of this Section: (i) "**alcoholic beverage**" is defined in California Business and Professions Code section 23004 and excludes cleaning solutions, medical supplies, and other products and substances not intended for drinking; and (ii) "**tobacco product**" is defined in Health Code section 1010(b).

(b) Advertising Ban. New general advertising signs that are visible to the public are prohibited on the exterior of any City-owned building under Administrative Code section 4.20-1.

(c) Tobacco Sales Ban. No person may sell tobacco products on property owned by or under the control of the City under Health Code article 19K.

(d) Alcoholic Beverage Advertising. Port property used for operation of a restaurant, concert or sports venue, or other facility or event where the sale, production, or consumption of alcoholic beverages is permitted, will be exempt from the alcoholic beverage advertising prohibition in Administrative Code section 4.20(a)-(c).

9. Integrated Pest Management Program.
(Env. Code ch. 3)

(a) IPM Plan. Chapter 3 of the Environment Code (the "**IPM Ordinance**") describes an integrated pest management policy ("**IPM Policy**") to be implemented by all City departments. Except for the permitted uses of pesticides provided in IPM Ordinance section 303, Developer must not use or apply during the DDA term, and must not contract with any party to provide pest abatement or control services to the FC Project Area, except in compliance with the Port's integrated pest management plan ("**IPM Plan**").

(b) Application. Although not a City Department, Developer agrees to comply, and must require all of Developer's contractors to comply, with the Port's approved IPM Plan and IPM Ordinance sections 300(d), 302, 304, 305(f), 305(g), and 306, as if Developer were a City department. Among other matters, the IPM Ordinance: (i) provides for the use of pesticides only as a last resort; (ii) prohibits the use or application of pesticides on City-owned property except for pesticides granted exemptions under IPM Ordinance section 303 (including pesticides included on the most current Reduced Risk Pesticide List compiled by the Department of the Environment); (iii) imposes certain notice requirements; and (iv) requires Developer to keep certain records and to report to the City all pesticide use by Developer's staff or contractors.

(c) Prior Review. Before Developer or Developer's contractor applies pesticides to outdoor areas, Developer must obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application must be made only by or under the supervision of

a person holding a valid Qualified Applicator certificate or Qualified Applicator license under California law. The City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the Department of the Environment website, http://sfenvironment.org/ipm.

10. Resource-Efficient Facilities and Green Building Requirements.
(Env. Code ch. 7)

Developer agrees to comply with all applicable provisions of the Environment Code relating to resource-efficiency and green building design requirements.

11. 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 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.

12. Diesel Fuel Measures.
(Env. Code ch. 9)

Consistent with the City's Greenhouse Gas Emissions Reduction Plan (Env. Code § 903) to reduce greenhouse gas emissions in the City, Developer must minimize exhaust emissions from operating equipment and trucks during construction. Developer's compliance with MMRP Mitigation Measure M-AQ-1a will satisfy this requirement.

13. Arsenic-Treated Wood.
(Env. Code ch. 13)

Developer must not purchase preservative-treated wood products containing arsenic on behalf of the City in the performance of the DDA without obtaining an exemption under Environment Code section 1304 from the Department of Environment. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. In this Section: (a) "**preservative-treated wood containing arsenic**" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative; and (b) "**saltwater immersion**" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

14. Food Service and Packaging Waste Reduction Ordinance.
(Env. Code ch. 16)

Developer agrees to comply fully with and be bound by section 1604(d) of the Food Service and Packaging Waste Reduction Ordinance (Env. Code ch. 16), including the remedies provided in section 1607 and implementing guidelines and rules. By entering into the DDA and the Development Agreement, Developer agrees that if it breaches this provision, and fails to cure within the cure periods provided herein, the City will suffer actual damages that will be impractical or extremely difficult to determine and that the following amounts of liquidated damage are reasonable estimates of the damage that the City will incur based on any violation, established in light of the circumstances existing on the Reference Date: (a) $100 for the first breach; (b) $200 for the second breach in the same year; and (c) $500 for subsequent breaches in the same year. These liquidated damages will not be considered penalties, but agreed monetary damages sustained by the City because of Developer's noncompliance.

15. Bottled Drinking Water.
(Env. Code ch. 24; Port Reso. No. 12-11)

Developer is subject to all applicable provisions of Environment Code chapter 24 prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of 21 fluid ounces or less at Events held on City Property with attendance of more than 100 people during the DDA Term. Also, Developer must comply with the Port's *Zero Waste Policy for Events and Activities* (Port Reso. No. 12-11) for applicable Events at the FC Project Area during the DDA Term.

16. Graffiti Removal and Abatement.
(Pub. Works Code Sec. 23)

(a) Requirement. Developer agrees to remove all graffiti from the FC Project Area, including from the exterior of any structures within the FC Project Area, consistent with the notice and cure provisions of Public Works Code section 23. If the Director of Public Works determines that any property contains graffiti in violation of section 2303, the Director may issue a notice of violation to Developer and any Offending Party. At the time the notice of violation is issued, the Director will take one or more photographs of the alleged graffiti and make copies of the photographs available to Developer and any Offending Party upon request. The photographs will be dated and retained as a part of the file for the violation. The notice will give Developer and any Offending Party 30 days after the date of the notice to either remove the graffiti or request a hearing on the notice of violation and set forth the procedure for requesting the hearing. This Section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property.

(b) Application. In this Section, "**graffiti**" means any inscription, word, figure, marking, or design that is affixed, marked, etched, scratched, drawn, or painted on any building, structure, fixture, or other improvement, whether permanent or temporary, including signs, banners, billboards, and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (i) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the DDA or the Port

Building Code; (ii) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*); (iii) any painting or marking that a City department makes in the course of its official duties or as part of a public education campaign; or (iv) any painting or marking required for compliance with any local, state, or federal law.

17. Drug-Free Workplace.
(41 U.S.C. ch. 81; Police Code art. 40)

To the extent applied by a federal grant or contract for the Project, the Drug-Free Workplace Act of 1988 (41 U.S.C. ch. 81) will apply to Developer. Developer agrees to adopt a Drug-Free Workplace Policy and comply with all other applicable requirements of the drug-free workplace laws under Police Code article 40.

18. Nutritional Standards and Guidelines.
(Admin. Code § 4.9-1)

(a) Definitions. For the purpose of this Section: (i) "**meal**" means "**prepared food**" as defined in Environment Code section 1602(l), which means food or beverages prepared within San Francisco for individual customers or consumers in a form commonly understood to be a breakfast, lunch, or dinner; (ii) "**Nutritional Standards Requirements**" means the food and beverage nutritional standards and calorie labeling requirements set forth in Administrative Code section 4.9-1(c); (iii) "**restaurant**" is defined in Health Code section 451(s) and includes any coffee shop, cocktail lounge, sandwich stand, public school cafeteria, in-plant or employee eating establishment, and any other eating establishment that gives or offers for sale food that requires no further preparation to the public, guests, patrons, or employees for consumption on or off the premises; (iv) "**vending machine**" is defined in Administrative Code section 4.2(a) and means an automated machine dispensing products or services, including food, beverages, tobacco products, newspapers, and periodicals.

(b) Vending Machines. Any permitted vending machine must comply with the Nutritional Standards Requirements in section 4.9-1(c). Developer must incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the FC Project Area or for the supply of food and beverages to that vending machine.

(c) Restaurants. Any restaurant on City property is encouraged to ensure that at least 25% of meals offered on the menu meet the Nutritional Standards Requirements set forth in Administrative Code section 4.9-1(e).

(d) Penalties. Developer's failure to comply with the Nutritional Standards Requirements in section 4.9-1(c) will be considered an Event of Default under the DDA and in addition to its other remedies, which will be subject to the DA Waivers, the City may require the removal of any vending machine on the FC Project Area that is not permitted or that violates the Nutritional Standards Requirements. Developer will be responsible for monitoring compliance with the Nutritional Standards Requirements by each subcontractor, subtenant, and contractor performing services or occupying premises on the FC Project Area. But the City agrees that Developer will not be liable for the noncompliance of its subcontractors, subtenants, or contractors.

19. All-Gender Toilet Facilities.
(Admin. Code § 4.1-3)

Developer must include at least one all-gender toilet facility on each floor of any new building on City-owned land or that is constructed by or for the City where toilet facilities are required or provided. Unless not allowed by an existing lease, whenever extensive renovations are made on one or more floors in any building on land that the City owns or in a building that is leased to or by the City, Developer will provide at least one all-gender toilet facility on each floor where the renovations take place and toilet facilities are required or provided. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures. "Extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the required toilet facilities.

20. Indoor Air Quality.
(Env. Code § 711(g))

Developer agrees to comply with section 711(g) of the Environment Code and regulations adopted under Environment Code section 703(b) relating to construction and maintenance protocols to address indoor air quality.

Use Of Port Property

21. Southern Waterfront Community Benefits and Beautification Policy.
(Port Reso. No. 07-77)

(a) Policy Goals. The Port's *Policy for Southern Waterfront Community Benefits and Beautification* identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Developer must provide community benefits and beautification measures in consideration for the use of the Project Site. Examples of desired benefits include: (i) beautification, greening, and maintenance of any outer edges of and entrances to the FC Project Area; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Developer's interaction with the Port, neighbors, visitors, and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the FC Project Area that are low-emission diesel equipment and use biodiesel or other reduced particulate emission fuels; (v) commitment to use low-impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the FC Project Area of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified as LBEs under Administrative Code chapter 14B; and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Developer's performance of the Project Requirements under the DDA will satisfy the requirements under this policy. Developer agrees to provide the Port with documents and records regarding these activities at the Port's request.

(b) Agreement to Use Local Truckers. Except to the extent inconsistent with any pertinent collective bargaining agreement, Developer agrees that, for all directly contracted or

service agreement trucking opportunities associated with Developer's operations at the FC Project Area, including hauling materials on, off, and within the Project Site, Developer will make good faith efforts to use Local Truckers first. For purposes of this Section, "**truckers**" means a business that provides trucking services for a profit, and "**Local Truckers**" means truckers that CMD has certified as LBEs.

To the extent that Developer in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Developer must use Local Truckers for a minimum of 60% of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the 60% requirement; equipment rental and disposal fees will not be counted. Developer will not be in default of this provision for not meeting the 60% minimum if Developer offered trucking opportunities to Local Truckers, but the Local Truckers were unavailable or unwilling to perform the work.

During all periods of construction activities at the Project Site, Developer must submit a monthly report to the Port and CMD stating the total cost to Developer of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers. The monthly report must document all truckers who conducted contract or service agreement work for Developer, and identify truckers that are Local Truckers. If Developer fails to meet the 60% minimum in any month, the report must document Developer's good faith outreach efforts to contact Local Truckers and the reasons that the work could not be conducted by Local Truckers. At the Port's or CMD's request, Developer must provide additional documentation required to ensure Developer's compliance with this provision. Developer's failure to comply with this Section will be a Material Breach under the DDA.

Other Public Policies

22. Conflicts of Interest.
(Calif. Gov. Code §§ 87100 *et seq.* & §§ 1090 *et seq.*; Charter § 15.103; Campaign and Govt'l Conduct Code art. III, ch. 2)

Through its execution of the DDA, 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 Port if Developer becomes aware of any such fact during the DDA Term.

23. Sunshine.
(Calif. Gov. Code §§ 6250 *et seq.*; Admin. Code ch. 67)

Developer understands and agrees that under the California Public Records Act (Calif. Gov. 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.

24. 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 the DDA, 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 board of directors; (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.

25. Implementing the MacBride Principles – Northern Ireland.
(Admin. Code ch. 12F)

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

AMENDED IN COMMITTEE
10/26/17

FILE NO. 170863 ORDINANCE NO. 224-17

[Development Agreement - FC Pier 70, LLC - Pier 70 Development Project]

Ordinance approving a Development Agreement between the City and County of San Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east; waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b).

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font.*
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background and Findings.

(a) California Government Code Sections 65864 et seq. ("Development Agreement Law") authorize any city, county, or city and county to enter into an agreement for the development of real property within its jurisdiction.

(b) Chapter 56 of the Administrative Code sets forth certain procedures for processing and approving development agreements in the City and County of San Francisco (the "City").

(c) In April 2011, the Port Commission (the "Port") selected Forest City Development California, Inc., a California corporation, through a competitive process to

negotiate exclusively for the mixed-use development (the "Project") of approximately 28 acres (the "28-Acre Site") of Seawall Lot 349, a land parcel under Port jurisdiction that is bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east commonly known as Pier 70. Forest City Development California, Inc. is now wholly owned by Forest City Realty Trust, Inc., a New York Stock Exchange-listed real estate company. FC Pier 70, LLC ("Developer"), a wholly-owned ~~an~~ affiliate of Forest City Realty Trust, Inc., ~~Development California, Inc.,~~ will act as the master developer for the Project. ~~("Developer").~~

(d) In conjunction with this ordinance, the Board of Supervisors has taken or intends to take a number of other actions in furtherance of the Project, including approval of: (1) a trust exchange agreement between the Port and the California State Lands Commission; (2) a disposition and development agreement ("DDA") between Developer and the Port; (3) amendments to the General Plan; (4) amendments to the Planning Code that create the Pier 70 Special Use District (the "SUD amendments") over the 28-Acre Site and two adjacent parcels known as the "Illinois Street Parcels" and incorporate more detailed land use controls of the Pier 70 SUD Design for Development; (5) amendments to the Zoning Maps; (6) approval of a development plan for the 28-Acre Site in accordance with Charter Section B7.310 (adopted as part of Proposition D, November 2008) and Section 4 of the Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative (Proposition F, November 2014); (7) a memorandum of understanding for interagency cooperation among the Port, the City, and other City agencies (the "ICA") with respect to the subdivision of the 28-Acre Site and construction of infrastructure and other public facilities; (8) formation proceedings for financing districts and a memorandum of understanding between the Port and the Assessor, the Treasurer-Tax Collector, and the Controller regarding the assessment, collection, and allocation of ad valorem and special taxes to the financing

districts; and (9) a number of related transaction documents and entitlements to govern the Project.

(e) At full build-out, the Project will include: (1) 1,100 to 2,150 new residential units, at least 30% of which, in the Affordable Housing Area that includes the 28-Acre Site and a portion of the 20th/Illinois Parcel, will be on-site housing affordable to a range of low- to moderate-income households as described in the Affordable Housing Plan in the DDA; (2) between 1 million and 2 million gross square feet of new commercial and office space; (3) rehabilitation of three significant contributing resources to the historic district; (4) space for small-scale manufacturing, retail, and neighborhood services; (5) transportation demand management on-site, a shuttle service, and payment of impact fees to the Municipal Transportation Agency that it will use to improve transportation connections through the neighborhood; (6) 9 acres of new open space, potentially including active recreation on rooftops, a playground, a market square, a central commons, and waterfront parks along the shoreline; (7) on-site strategies to protect against sea level rise; and (8) replacement studio space for artists leasing space in Building 11 in Pier 70 and a new arts space.

(f) While the DDA binds the Port and Developer, other City agencies retain a role in reviewing and issuing certain later approvals for the Project. Later approvals include approval of subdivision maps and plans for horizontal improvements and public facilities, design review and approval of new buildings under the SUD amendments, and acceptance of Developer's dedications of horizontal improvements and public facilities for maintenance and liability under the Subdivision Code. Accordingly, the City and Developer negotiated a development agreement for the Project (the "Development Agreement"), a copy of which is in Board File No. 170863 and incorporated in this ordinance by reference. The DDA, the Development Agreement, the ICA, the Tax MOU, and all leases and vertical disposition development

agreements that the Port enters into in accordance with the DDA are referred to collectively as the "Transaction Documents."

(g) Development of the 28-Acre Site in accordance with the DDA and the Development Agreement will help realize and further the City's goals to restore and revitalize the Union Iron Works Historic District, increase public access to the waterfront, increase public open space and community facilities within the neighborhood, increase affordable and market-rate housing, and create a significant number of construction and permanent jobs along the southeastern waterfront. In addition, the Project will provide additional benefits to the public that could not be obtained through application of existing City ordinances, regulations, and policies.

Section 2. Environmental Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (Cal. Public Resources Code §§ 21000 et seq.) ("CEQA"). A copy of this determination is in Board File No. 170863 and incorporated in this ordinance by reference.

(b) The Board of Supervisors previously adopted Resolution No. 402-17, a copy of which is in Board File No. 170987, making CEQA findings for the Project. The Board of Supervisors adopts and incorporates in this ordinance by reference the Planning Commission's findings under CEQA.

Section 3. Consistency Findings.

The Planning Commission recommended that the Board of Supervisors approve the Development Agreement and amendments to the General Plan, the Planning Code, and the Zoning Maps at a public hearing on August 24, 2017, by Resolution Nos. 19978 and 19979, a ~~copy~~copies of which ~~is~~are in Board File No. 170863. The Board of Supervisors adopts and incorporates by reference in this ordinance the Planning Commission's findings of consistency

with the General Plan, as amended, and the eight priority policies of Planning Code Section 101.1.

Section 4. Public Trust Findings.

At a public hearing on September ~~12~~26, 2017, the Port Commission consented to the Development Agreement and approved the trust exchange agreement and the DDA, subject to Board of Supervisors' approval, finding that the Project would be consistent with and further the purposes of the common law public trust and statutory trust under the Burton Act (Stats. 1968, ch. 1333) by Resolution Nos. 17-44 and 17-47, ~~a copy~~ copies of which ~~is~~are in Board File No. 170863. The Board of Supervisors adopts and incorporates in this ordinance by reference the Port Commission's public trust findings.

Section 5. Approval of Development Agreement.

The Board of Supervisors:

(a) approves all of the terms and conditions of the Development Agreement in substantially the form in Board File No. 170863;

(b) finds that the Development Agreement substantially complies with the requirements of Administrative Code Chapter 56;

(c) finds that the Project is a large multi-phase and mixed-use development that satisfies Administrative Code Section 56.3(g); and

(d) approves the Workforce Development Plan attached to the DDA in lieu of requirements under Administrative Code Chapter 14B, Article VII of Chapter 23, ~~and~~Section 56.7(c), and Chapter 83 to the extent that Chapter 83 applies to construction work that is subject to the Local Hiring Requirements of the Workforce Development Plan.

Section 6. Administrative Code Chapter 56 Waivers.

The Board of Supervisors waives the application to the Project of the following provisions of Administrative Code Chapter 56 to the extent inconsistent with the Development Agreement, the DDA, or the ICA, specifically:

(a) Section 56.4 (Application, Forms, Initial Notice, Hearing); Section 56.7(c) (Nondiscrimination/Affirmative Action Requirements); Section 56.8 (Notice); Section 56.10 (Negotiation Report and Documents); Section 56.15 (Amendment and Termination); Section 56.17(a) (Annual Review); Section 56.18 (Modification or Termination); and Section 56.20 (Fee); and

(b) any other procedural or other requirements if and to the extent that they are not strictly followed.

Section 7. Other Administrative Code Waivers.

The Board of Supervisors waives the application to the Project of these provisions of the Administrative Code: (a) Chapter 6 (Public Works Contracting Policies and Procedures) other than the payment of prevailing wages as required in Chapter 6; (b) Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting); (c) Competitive Bidding Procedures ~~appraisal effective date~~, and ~~Additional~~ Appraisal Review as defined in Section 23.3 (Chapter Definitions) and required by Section 23.3 (Conveyance and Acquisition of Real Property); (d) Section ~~23.26~~23.31 (Year-to-Year and Shorter Leases); (e) Section 23.30~~-23.42~~ (Lease of Real Property~~s When City is Landlord~~); (f) Sections 23.33 (Competitive Bidding Procedures); (~~f~~g) Section 23A.7 (Transfer of Jurisdiction Over Surplus Properties to the Mayor's Office of Housing~~and Community Development~~); ~~and~~ (gh) Subsection (c)(2) of Section 61.5~~(c)(2)~~ (Listing of Unacceptable Non-Maritime Land Uses); and (i) remedies and penalties for noncompliance with Section 4.9-1(c) (Nutritional Standards and Guidelines), Section 12Q.5(f) (Health Care Accountability), or

Section 12T (Criminal History in Hiring and Employment) that would result in termination of any Transaction Document, impairment of Developer's or any vertical developer's development rights at the 28-Acre Site, or debarment of Developer or any vertical developer from future contract opportunities with the City.

Section 8. Planning Code Waivers.

The Board of Supervisors:

(a) finds that the impact fees and exactions payable under the Development Agreement will provide greater benefits to the City than the impact fees and exactions under Planning Code Article 4 and waives the application of, and to the extent applicable exempts the Project from, impact fees and exactions under Planning Code Article 4 on the condition that Developer and all building developers comply with impact fees and exactions established in the Development Agreement; and

(b) finds that the Transportation Plan attached to the Development Agreement includes a Transportation Demand Management Plan ("TDM Plan") and other provisions that meet the goals of the City's Transportation Demand Management Program in Planning Code Section 169 and waives the application of Section 169 to the Project on the condition that Developer implements and complies with the TDM Plan for the required compliance period.

Section 9. Subdivision Code Waivers.

(a) The Board of Supervisors waives the application to the Project of time limits under Subdivision Code ~~Section 1333.3(b) (Rights Conveyed),~~ Section 1346(e) (Improvement Plans) and Section 1355 (Time Limit for Submittal) to the extent that they conflict with the ICA or the Development Agreement.

(b) The Board of Supervisors also waives the application to the Project of Subdivision Code Section 1348 (Failure To Complete Improvements Within Agreed Time),

and the following terms shall apply in lieu thereof: The Public Improvement Agreement, as defined in the ICA, shall include provisions consistent with the Transaction Documents and the applicable requirements of the Municipal Code and the Subdivision Regulations regarding extensions of time and remedies that apply when improvements are not completed within the agreed time.

Section 10. Authorization.

(a) The Board of Supervisors affirms that the waivers in this ordinance do not waive requirements under the Development Agreement Law and authorizes the City to execute, deliver, and perform the Development Agreement as follows:

(1) the Director of Planning, the City Administrator, and the Director of Public Works are authorized to execute and deliver the Development Agreement with signed consents of the Port Commission, the Municipal Transportation Agency, and the San Francisco Public Utilities Commission; and

(2) the Director of Planning and other appropriate City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with its terms.

(b) The Director of Planning is authorized to exercise discretion, in consultation with the City Attorney, to enter into any additions, amendments, or other modifications to the Development Agreement that the Director of Planning determines are in the best interests of the City and that do not materially increase the obligations or liabilities of the City or materially decrease the benefits to the City as provided in the Development Agreement. Final versions of any additions, amendments, or other modifications to the Development Agreement shall be provided to the Clerk of the Board of Supervisors for inclusion in Board File No. 170863 within 30 days after execution by all parties.

Section 11. Ratification of Past Actions; Authorization of Future Actions.

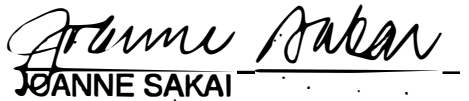
All actions taken by City officials in preparing and submitting the Development Agreement to the Board of Supervisors for review and consideration are hereby ratified and confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken by City officials consistent with this ordinance.

Section 12. Effective and Operative Dates.

(a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned, or the Mayor does not sign the ordinance within ten days after receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

(b) This ordinance shall become operative only on the effective date of the DDA. No rights or duties are created under the Development Agreement until the operative date of this ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
JOANNE SAKAI
Deputy City Attorney

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City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 170863 **Date Passed:** November 14, 2017

Ordinance approving a Development Agreement between the City and County of San Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east; waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b).

October 19, 2017 Budget and Finance Committee - CONTINUED

October 26, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 26, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

October 31, 2017 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

November 14, 2017 Board of Supervisors - FINALLY PASSED

Ayes: 9 - Breed, Cohen, Farrell, Fewer, Peskin, Ronen, Safai, Sheehy and Yee

Absent: 2 - Kim and Tang

File No. 170863

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 11/14/2017 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

11/15/17
Date Approved

PARCEL LEASE EXHIBIT U

FORM OF PORT ESTOPPEL CERTIFICATE

The undersigned, the City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission ("**Port**"), is the owner of the fee simple estate in the real property having an address at [_____], within Pier 70 in San Francisco, California (the "**Property**"), and hereby certifies to [_____], a [_____] ("**Tenant**") [and to _____] the following as of the date set forth below:

1. That there is presently in full force and effect Lease No. L-[_____] dated as of [_____], 20[__] (as modified, assigned, supplemented and/or amended as set forth in ***paragraph 2*** below, the "**Lease**"), between Port, as landlord, and Tenant, as tenant, for the Property located within a portion of that certain real property known as **[Pier 70/Insert building address]**, as further described in the Lease (the "**Premises**").

2. That the Lease has not been modified, assigned, supplemented or amended except as follows [_____].

3. That the Lease represents the entire agreement between Port and Tenant with respect to the Premises except as follows:

4. That the commencement date under the Lease was [_____], 20[__], and the expiration date of the Lease is [_____], 20[__]. Tenant does not have any right to renew the lease term. **[modify for Lease for Parcel E4: except for one 15-year term to extend]**

5. That the present monthly minimum rent under the Lease is $[_____].

6. That the Percentage Rent (as defined in the Lease) paid by Tenant for the most recent full calendar month prior to the date set forth below was $[_____](mark N/A if not applicable).

7. That the security deposits held by Port under the terms of the Lease are as follows: $[_____].

8. **[That Port has not yet issued a certificate of completion]** or **[That Port has issued a certificate of completion on _____, 20__]**, evidencing completion of all obligations under that certain Vertical Disposition and Development Agreement between Port and **[insert name of Vertical Developer party]**, dated [_____], 20[__].

9. That, to the actual knowledge of Port, Port is not in default or in breach of the Lease, nor has Port committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port except as follows:

For purposes of this Estoppel Certificate, the term "actual knowledge" shall mean the actual knowledge of [_____], Port's property manager for the Premises after inquiry.

10. That, to the actual knowledge of Port, Tenant is not in default or in breach of the Lease, nor has Tenant committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by Tenant except as follows: [_____].

11. That, to the actual knowledge of Port, Tenant, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease other than [_____].

12. That Port has not assigned, conveyed, transferred, or mortgaged its interest in the Lease or the Premises except as follows: [_____].

13. That Port has not received written notice of any threatened eminent domain proceedings from a governmental entity having eminent domain powers against Port's interest in the Premises.

14. The undersigned hereby certifies that he or she is duly authorized to sign and deliver this Certificate on behalf of Port.

This Certificate shall be binding upon and inure to the benefit of Tenant, Port, [_____] and their respective successors and assigns.

Dated: [_____], 20[__].

CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

PARCEL LEASE EXHIBIT V

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383 RECORDING REQUESTED BY, AND WHEN RECORDED, MAIL TO:	FOR RECORDER'S USE ONLY
Lot ____, Block _____	The Undersigned Declare(s): DOCUMENTARY TRANSFER TAX: _____; [ ] computed on the consideration or full value of property conveyed, OR [ ] computed on the consideration or full value value and/or encumbrances remaining at time of [ ] unincorporated area; [ ] City of San Francisco

[Include any required recording cover sheet]

MEMORANDUM OF LEASE

This Memorandum of Lease ("**Memorandum**"), dated for reference purposes as of ____, ____, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Landlord**" or "**Port**") and **[TENANT]**, a [_____] ("**Tenant**").

RECITALS

A. Concurrently herewith, Landlord and Tenant have entered into that certain Lease No. L-[_____] (the "**Lease**"), dated as of _____, _____, pursuant to which Landlord leased to Tenant and Tenant leased from Landlord certain real property (the "**Premises**") more particularly described in the attached **EXHIBIT A**, which is incorporated by this reference.

B. Port and Tenant have also entered into that certain Vertical Disposition and Development Agreement, dated _____, _____ (the "**VDDA**"), with respect to the development of the Premises.

C. Landlord and Tenant desire to execute this Memorandum to provide constructive notice of Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Landlord leases (i) the Premises to Tenant for a term commencing on _____, _____ (the "**Commencement Date**"). The Term of the Lease shall expire on the date that is [ninety-nine (99) years] after the Commencement Date, unless earlier terminated in accordance with the terms of the Lease. **[revise as applicable for Parcel E4 (an initial 50-years with an option to extend by an additional 16 years][Building 12 and 21: 66-year term]**

2. Lease Terms. The lease of the Premises to Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference. In the event of any conflict or inconsistency between this Memorandum and the Lease, the terms and conditions of the Lease shall be controlling in all respects. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

4. Counterparts. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

TENANT:

[_____],
a [_____]

By: _____
Name: _____
Title: _____

LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Name: [_____],
Deputy City Attorney

Port Resolution No. 17 – 43 (September 26, 2017)
Board of Supervisors Resolution No. 401-17

CERTIFICATE OF ACKNOWLEDGMENT

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 _____

On _____ before me, _____ personally
(insert name and title of the officer),

appeared _____
_____
_____,

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.

_____ (Seal)
Signature

CERTIFICATE OF ACKNOWLEDGMENT

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 _____

On _____ before me, _____ personally
(insert name and title of the officer)

appeared _____

_____

_____,

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.

_____ (Seal)
Signature

SCHEDULE 13.2
ENERGY DISCLOSURE SUMMARY SHEET
[if applicable]

[To be prepared and inserted prior to execution]

Appendix of 28-Acre Site Parcel Lease Provisions for Historic Buildings 2, 12 and 21

This 28-Acre Site Parcel Lease Appendix for Historic Buildings 2, 12 and 21 (this "**Appendix**") sets forth special terms and obligations that apply specifically and exclusively to the lease of Historic Building 2, 12 or 21, as applicable, each located within the 28-Acre Site (Historic Buildings 2, 12 and 21 each a "**Historic Building**" and collectively "**Historic Buildings**"). At the time of execution, the approved form of Parcel Lease for Historic Buildings 2, 12 and 21 will be revised to reflect the specific terms set forth in this Appendix, but except as expressly modified herein, the terms set forth in the approved form of Parcel Lease will apply. For the purposes of this Appendix, any capitalized term not defined herein shall have the meaning ascribed to them in the Lease.

A. The Basic Lease Information for Buildings 12 and 21 will be modified such that the listed Expiration Date shall be "_____, ___ (66 years after the Commencement Date)."

B. The Basic Lease Information for Historic Building 12 and 21 will be modified as follows:

Prepaid Rent: **[Fully Prepaid]: $66 ($1/per year, fully prepaid).**

C. Section 1.2 will be deleted in its entirety and replaced with the following provision for Historic Buildings 12 and 21 only [*i.e.*, the Term for Historic Building 2 will be 99-years, consistent with the Parcel Lease]:

1.2. Term.

(a) Term. The effectiveness of this Lease will commence on the Commencement Date as shown in the Basic Lease Information. The Lease will expire at 11:59 p.m. on the date that is sixty-six (66) years thereafter, unless earlier terminated or extended in accordance with the terms of this Lease. The period from the Commencement Date until the final expiration of the Lease is referred to as the "**Term**".

D. ***Tenant's Obligation to Comply (Section 7.1).*** The list in the first sentence of Section 7.1 will include the following additional item:

"(v) all applicable requirements for qualification of the Project for Historic Preservation Tax Credits, including compliance with the Secretary's Standards,"

E. ***Tenant's Obligation to Construct the Initial Improvements (Section 11.1).*** Romanette (iv) and (v) will be revised as follows:

"and (iv) the Transportation Demand Management Plan, and (v) if the National Park Service approves the Part 2 application for Historic Preservation Tax Credits, then all applicable requirements for qualification of the Project for Historic Preservation Tax Credits, and in any event, compliance with the Secretary's Standards."

F. ***Covenants to Repair and Maintain the Premises (Section 10.1)*** in the Parcel Lease for Historic Buildings 2, 12 and 21 will be replaced in its entirety with the following provision:

10.1 ***Covenants to Repair and Maintain the Premises.*** Throughout the Term, Tenant will maintain and repair, at no cost to Port, the Premises and all Improvements thereon substantially in the condition the Improvements were Completed (as defined in the Vertical DDA) pursuant to the terms and conditions of the Vertical DDA, less reasonable wear and tear (including the aging of Improvements over the course of the Lease, such as a Class A building over time may become a Class B building), and in compliance with all applicable Laws and the requirements of this Lease. Tenant will with reasonable promptness make (or cause others to make) all necessary or appropriate repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, except as set forth in ***Articles 14 or 15***. Tenant will make such repairs with materials, and quality of workmanship, comparable to that as originally installed under the Vertical DDA or this Lease, or, if not commercially available, with materials at least equal in quality, appearance and durability to the materials repaired, replaced or maintained. All such repairs and replacements made by Tenant will be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Improvements installed at the time of issuance of the Certificate of Completion. For purposes of this Lease, the term "reasonable wear and tear" will not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease.

G. ***Capital Reserves (Section 10.3)*** and ***Port Right to Repair (Section 10.5)*** in the Parcel Lease for Historic Buildings 2, 12 and 21 will be replaced in its entirety with the following provisions:

10.3 ***Capital Reserve Account.***

(a) Additional Definitions.

"Capital Deposit Commencement Date" means the date that is the earlier of the second (2nd) anniversary of the Permanent Financing Date or the sixth (6th) Anniversary Date.

"Capital Reserve Account" means a bank account where funds in such account will be used solely to replace, repair, and improve Capital Items within the Premises.

"Permanent Financing Date" means the date that Tenant's permanent financing to replace the construction financing for the Initial Improvements closes.

"Take-Out Lender" is the Bona Fide Institutional Lender that provides the permanent financing to replace the construction financing for the Initial Improvements and any subsequent permanent lender that refinances such permanent financing.

(b) Take-Out Lender Reserve Requirements. Tenant will establish and maintain Capital Reserves and make Capital Reserve Deposits to the extent and on the terms and conditions required by Tenant's Take-Out Lender to pay for replacements, repairs, and improvements of Capital Items within the Premises. Notwithstanding the foregoing, if Tenant's Take-Out Lender does not require the establishment of such capital reserves, then Tenant will establish and maintain a Capital Reserve Account and make Capital Reserve Deposits pursuant to ***Section 10.3(c)***.

(c) No Take-Out Lender Reserve Requirements. If Tenant's Take-Out Lender does not require Capital Reserve Deposits into a Capital Reserve Account for Capital Items. Tenant will establish and maintain a Capital Reserve Account with a depository for institution reasonably acceptable to Port from and after the Capital Deposit Commencement Date until the

expiration of this Lease. Within sixty (60) days following the Capital Deposit Commencement Date and each Anniversary Date thereafter, Tenant will make a Capital Reserve Deposit. The amount of each Capital Reserve Deposit will be determined as follows: (i) from and after the second (2nd) Anniversary Date and on each Anniversary Date thereafter until and including the sixth (6th) Anniversary Date. Tenant will make a deposit equaling no less than [***insert: for Building 2: $9,500 per year; Building 12: $14,500 per year; Building 21: $1,000 per year***] into the Capital Reserve Account such that as of the first FCR Date, the balance in the Capital Reserve Account will equal no less than ***[insert: for Building 2: $47,500; Building 12: $72,500; Building 21: $5,000];*** and (ii) from and after ninety (90) days after each FCR Date, the amount of each annual Capital Reserve Deposit will be adjusted to reflect the agreed upon schedule, budget, and anticipated financing, if any, for the maintenance repair, or replacement of Capital Items called for in the applicable Facilities Condition Report and shall take into account the existing balance, if any, in the Capital Reserve Account; provided, however, if the Parties have not reached agreement on the adjustment amount of Capital Reserve Deposit or if the required Facilities Condition Report has not been prepared and approved in accordance with ***Section 10.2(b)***, then the Capital Reserve Deposit will be adjusted to equal the greater of (i) the Capital Reserve Deposit in effect immediately prior to such Reserve Re-Set Date, or (ii) one hundred percent (100%) of the amount determined by multiplying the Capital Reserve Deposit in effect immediately prior to such Reserve Re-Set Date by a fraction, the numerator of which is the Current Index and the denominator of which is the Prior Index as shown below:

Current Index
Prior Index _____x_____ Capital Reserve Deposit = Adjusted Capital Reserve Deposit

until the adjustment amount of Capital Reserve Deposit is agreed to between the Parties following approval of the required Facilities Condition Report. Any interest accruing on funds in the Capital Reserves will be added to the Capital Reserves. Tenant will use its Capital Reserves only for the necessary repair and/or replacement of the Capital Items identified in the Facilities Condition Report. If a Take-Out Lender subsequently requires Tenant to establish and maintain new Capital Reserves, the then-existing Capital Reserves established pursuant to this ***Section 10.3(c)*** will be terminated, the balance in such existing Capital Reserves will be transferred to the new Capital Reserve Account. ***[add for Building 2 only]***, and any amounts in excess of that required by the Take-Out Lender that are claimed by Tenant from and after Year 30 of the Lease will be considered Gross Income and distributed in accordance with ***Section 3.5.***

(d) Capital Reserve Account Statements. On the first anniversary after the first Capital Reserve Deposit has been made, Tenant shall submit to the Port an annual statement from the depository institution where the Capital Deposit Account is held, showing the then current balance in the Capital Reserve Account and any activity on the Capital Reserve Account that occurred during the immediately prior twelve-month period. If Tenant has withdrawn funds from the Capital Reserve Account during the prior twelve-month period, Tenant will include with the delivery of such statement, an explanation for such withdrawal(s), along with detailed statements (marked paid) relating to the expenditure of such funds. In connection with any such expenditure, Tenant will provide Port with any other documentation related thereto reasonably.

10.4 ***Port Right to Repair.*** In the event Tenant fails to maintain and repair the Premises, the foundation, the structural integrity of the Improvements, the roofs, and building systems (including plumbing, sewer, mechanical, electrical and other utility systems) (collectively, "Material Systems") in accordance with Section 10.1 and such failure is likely to result in deterioration to or damage of a Material System, Port may repair the same at Tenant's cost and expense and Tenant will reimburse Port therefor as provided in this Section 10.4. Except in the event of an emergency, Port will first provide no less than fifteen (15) days prior

notice to Tenant before commencing any maintenance to or repair of a Material System ("Port's Repair Notice"). If Tenant does not commence maintenance or repair of the affected Material System or provide assurances reasonably satisfactory to Port that Tenant will commence maintenance or repair of the same within such fifteen (15) day period, then Port may proceed to take the required action. If Port elects to proceed with such repair or maintenance, then promptly following completion of any work taken by Port pursuant to this Section 10.4, Port will deliver a detailed invoice of the work completed, the materials used and the costs relating thereto. Tenant also will pay to Port an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. "Hard" costs include the cost of materials and installation, but exclude any costs associated with design, such as architectural fees. Tenant will pay to Port the amount set forth in the invoice within thirty (30) days after delivery of Port's invoice.

In the event Port notifies Tenant of a failure to maintain and repair the Premises ("**Maintenance Notice**"), Tenant will pay to Port, as Additional Rent, an amount equaling [**Note: amount to increase by $50 every 5 years after DDA execution: Three Hundred Dollars ($300)**], which amount will be increased by one hundred dollars on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter, upon delivery of the Maintenance Notice. In the event Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance with this ***Article 10*** (Repair and Maintenance; Facilities Condition Report; Capital Reserves) then Tenant will pay to Port, as Additional Rent, an amount equaling [**Note: amount to increase by $50 every 5 years after DDA execution: Four Hundred Dollars ($400)**], which amount will be increased by one hundred dollars on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter, for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges is in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. The amounts set forth in this ***Section 10.5*** are due within five (5) days following delivery of the applicable Maintenance Notice.

Tenant Initials: _____

H. ***Subsequent Construction (Section 12)*** in the Parcel Lease for Historic Buildings 2, 12 and 21 will be replaced in its entirety with the following provision:

12. SUBSEQUENT CONSTRUCTION

12.1 ***Port's Right to Approve Subsequent Construction.***

(a) Generally. Tenant will have the right, from time to time during the Term, to construct the Initial Improvements, [Deferred Infrastructure] and perform Subsequent Construction (collectively, "Construction") in accordance with the provisions of this Article 12.

(b) Construction Requiring Port's Prior Approval. Tenant has the right during the Term to perform Subsequent Construction in accordance with the provisions of this [***Article 12***], provided that Tenant cannot do any of the following without Port's prior approval, which approval may be withheld by Port in its sole discretion:

(i) Any Subsequent Construction that may materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(ii) Materially alter the Historic Fabric unless pursuant to the requirements of an approved Regulatory Approval;

(iii) Perform Subsequent Construction that would, cause a decertification of all or a portion of the Premises for Historic Preservation Tax Credits, or that does not comply with the Secretary's Standards;

(iv) Perform Subsequent Construction to the Public Access Areas that would adversely affect (other than temporarily during the period of such Subsequent Construction) the public access to, or the use or appearance of such Public Access Areas;

(v) Construct additional buildings or other additional structures; and

(vi) Change the colors or materials of the exterior façades of the buildings and the Exterior Improvements approved by Port, unless materials originally installed are not reasonably available or do not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed, as determined by Port;

(c) Construction Requiring Port's Reasonable Approval. For any Subsequent Construction (other than a Minor Alteration) that is not described in ***[Section 12.1(b)]***, Port's prior approval is required, which approval will not be unreasonably withheld.

(d) No Port Approval Required for Minor Alterations. Unless otherwise required under ***Section 12.1 (b) or 12.1 (c)***, Port's approval will not be required for (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative improvements within the interior of any of the Buildings which do not materially affect the structural integrity or the Historic Fabric of the Improvements and otherwise complies with the Secretary's Standards, and (b) recarpeting, repainting, altering the wall coverings or window treatments, or similar alterations within the interior of the Improvements which do not materially affect the structural integrity or the Historic Fabric of the Improvements and otherwise complies with the Secretary's Standards; or (d) any other Subsequent Construction which does not affect the structural integrity or the Historic Fabric of the Improvements and otherwise complies with the Secretary's Standards not materially costing Two Hundred Fifty Thousand Dollars ($250,000) or less, which amount will be increased by One Hundred Thousand Dollars ($100,000.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter (collectively, "**Minor Alterations**").

12.2 ***Permits/Design Review/Tenant Improvements.***

Tenant must obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the Port itself, and to obtain any signed asbestos notification acknowledgement form from Tenant's employees, contractors or Subtenants. Without limiting anything else in this ***Article 12***, Port's approval, in its proprietary capacity, will not be required for the installation or alteration of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing does not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from Port, in its regulatory capacity.

12.3 ***Notice by Tenant and Schematic Drawings.***

Before commencing any Subsequent Construction that requires Port's approval under ***Section 12.1(b) and 12.1(c)***, Tenant will notify Port of such planned Subsequent Construction. Schematic Drawings must accompany such notice. Port may waive the submittal requirement of Schematic Drawings if it determines in its sole discretion that the scope of the Subsequent Construction does not warrant such initial review. With respect to any Subsequent Construction not requiring a building permit or a Minor Alteration, Tenant has no obligation to prepare or provide Port with any Construction Documents related to such work. Within ten (10) business days after receipt of such notice from Tenant related to interior space and within thirty (30) days after receipt of such notice from Tenant related to all other work requiring Port's approval, Port will approve or disapprove any such Subsequent Construction. If Port fails to approve or disapprove the Schematic Drawings which have been revised or supplemented and resubmitted within the times specified in this ***Section 12.3***, Tenant will provide Port with notice requesting Port's approval or disapproval of the submitted Schematic Drawings within the following five (5) business days (the "**Second Schematics Approval Notice**"). The Second Schematics Approval Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: **"APPROVAL REQUEST FOR PIER 70 HISTORIC BUILDINGS REGULATORY MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve or disapprove within five (5) business days following receipt of the Second Schematics Approval Notice, Port's failure to respond shall be deemed approval.

12.4 ***Construction Documents in Connection with Subsequent Construction.***

(a). Preparation of Construction Documents. Following Port's approval of the Schematic Drawings (unless such requirement has been waived by Port), Tenant will prepare and submit for Port's approval, Preliminary Construction Documents that are consistent with the approved Schematic Drawings and Final Construction Documents that are consistent with the approved Preliminary Construction Documents (collectively, Preliminary Construction Documents and Final Construction Documents are referred to as "**Construction Documents**"). Construction Documents will be prepared by a qualified architect duly licensed in the State or Qualified Engineer, as applicable.

(b) Progress Meetings: Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Port and Tenant will hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Port and Tenant will communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration.

12.5 ***Port Approval of Construction Documents***. Port will approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval will state in writing the reasons for disapproval. If Port notifies Tenant that the Construction Documents are incomplete, such notification will constitute a disapproval of such Construction Documents. If Port disapproves the Construction Documents and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents for Port's approval, Port will review the revised or supplemented Construction Documents to determine

whether the revisions or supplements satisfy the objections or deficiencies cited in Port's previous notice of rejection, and Port will approve or disapprove the revisions or supplements to the Construction Documents within thirty (30) days after resubmission. If Port fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 13.4, Tenant will provide Port with a second notice requesting Port's approval or disapproval of the submitted Construction Documents within the following five (5) business days ("Second Construction Documents Approval Notice"). The Second Construction Documents Approval Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: "**APPROVAL REQUEST FOR PIER 70 HISTORIC BUILDINGS REGULATORY MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.**" If Port fails to approve or disapprove within three (3) business days following receipt of the Second Construction Documents Approval Notice, Port's failure to respond shall be deemed approval. If Tenant desires to make any change to the Final Construction Documents after Port's approval, then Tenant will submit the proposed change to Port for its reasonable approval. Port will notify Tenant of its approval or disapproval of the requested change within twenty-one (21) days after submission to Port. Any disapproval will state, in writing, the reasons therefor, and will be made within such twenty-one (21) day period. Notwithstanding any of the foregoing to the contrary, if Port determines that the proposed Subsequent Construction must be approved by the City's Environmental Review Officer, the California State Historic Preservation Officer ("SHPO"), or the National Park Service ("NPS"), any approval provided by Port will be subject to obtaining approval from the City's Environmental Review Officer, SHPO, or NPS, as applicable, and the time periods set forth above for Port to reject, approve or conditionally approve the submissions will be extended as reasonably necessary to obtain said approval or disapproval.

12.6 ***Construction.***

(a) Commencement of Construction. Tenant will not commence any Subsequent Construction until the following conditions have been satisfied or waived by Port:

(i) Port has approved the Final Construction Documents (other than for Minor Alterations);

(ii) Tenant has obtained and paid for all Regulatory Approvals necessary to commence such construction in accordance with ***[Article 7]***; and

(iii) Tenant will provide to Port, at Tenant's sole cost and expense, security ("**Construction Security**") for the estimated costs of any Subsequent Construction (as identified by Tenant in its building permit application, the "**Subsequent Construction Costs**") that in the aggregate, exceeds one million dollars ($1,000,000.00) as subsequently adjusted in accordance with this subsection (iii) (the $1,000,000.00 amount, as adjusted, the "**Base Construction Cost**"), unless the Port, through its Executive Director, has waived or partially waived such requirement. The Base Construction Cost will be adjusted on the fifth (5th) anniversary of the Commencement Date of this Lease and every five (5) years thereafter (each, a "**Construction Cost Adjustment Date**") by multiplying the Base Construction Cost in effect immediately prior to each Construction Cost Adjustment Date by a fraction, the numerator of which is the Index for the

calendar month immediately preceding the Construction Cost Adjustment Date and the denominator of which is the Index published closest (but prior) to the date that is the immediately prior Construction Cost Adjustment Date.

(iv) Tenant, at its election, may provide the Construction Security in the form of any of the following: (A) a completion guaranty in such form as is reasonably satisfactory to the Port from a Net Worth Guarantor meeting the Minimum Net Worth Amount guaranteeing completion of the Subsequent Construction, (B) a payment and performance bond in form reasonably acceptable to Port from Tenant's contractor naming Port as co-obligee, in a principal amount equal to no less than fifty percent (50%) and no more than one hundred percent (100%), such percentage to be reasonably determined by Port, or (C) a letter of credit in a principal amount equal to no less than fifty percent (50%) and no more than one hundred percent (100%), such percentage to be reasonably determined by Port.

(b) Construction Standards. All Subsequent Construction will be performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently to completion and in accordance with good construction and engineering practices and applicable Laws and will be consistent with the Secretary's Standards and the National Register of Historic Places contributing resource status of the Premises.

(c) Compliance with Secretary's Standards. Tenant expressly acknowledges that the Buildings within the Premises are each individually a contributing resource to the Port of San Francisco Union Iron Works Historic District at Pier 70 which is listed on the National Register of Historic Places. Accordingly, all Construction affecting the interior or exterior of the Premises (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of any of the Buildings) is subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Plan, Secretary's Standards, and the Mitigation Monitoring and Reporting Program. Tenant expressly agrees to comply with the Secretary's Standards to Port's satisfaction for all Construction affecting the interior and exterior of the Premises.

(d) Safety Matters. Tenant, while performing any Construction or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant will erect appropriate construction barricades to enclose the areas of such construction and maintain them until the Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(e) Reports and Information. During periods of construction, Tenant will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

(f) Costs of Construction. Port will have no responsibility for costs of any Subsequent Construction and Tenant shall pay (or cause to be paid) all such costs.

(g) Construction Rights of Access. During any period of Subsequent Construction, Port and its Agents will have the right to enter areas in which Subsequent Construction is being performed, upon reasonable prior written notice during customary construction hours, subject to the rights of Subtenants, to inspect the progress of Subsequent Construction; provided, however, that Port and its Agents will conduct their activities in such a way as to minimize interference with Tenant and its operations to the extent feasible. Nothing in this Lease, however, will be interpreted to impose an obligation upon Port to conduct such inspections or impose any liability in connection therewith.

(h) Prevailing Wages. Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Premises comprise a public work if paid for in whole or part out of public funds. The terms "**public work**" and "**paid for in whole or part out of public funds**" as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Tenant agrees that any person performing labor for Tenant on any public work at the Premises shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant shall include in any contract for such labor a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

(i) Compliance with Workforce Development Plan. Tenant agrees that it will comply with the applicable provisions of the Workforce Development Plan regarding prevailing wages, which provisions are attached hereto as Exhibit XX.

12.7 ***Record Drawings.***

(a) Record Drawings. With respect to any Subsequent Construction requiring a building permit, Tenant shall furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to such Subsequent Construction within ninety (90) days following completion of the applicable Subsequent Construction. Such cost shall be deemed an Operating Expense. Record Drawings must in the form of full-size, hard paper copies and converted into electronic format (1) as full-size scanned TIF files, and (2) AutoCad files of the completed and updated Construction Documents, as further described below and in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "Record Drawings" means drawings, plans and surveys showing the Subsequent Construction as built on the Premises and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Tenant fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Subsequent Construction, and the cost of preparing such Record Drawings must reimbursed by Tenant to Port as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with

Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity. Tenant will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Tenant's request, Port will provide Tenant with a release from liability for future use of the applicable materials, in a form acceptable to Tenant and Port.

(b) Record Drawing Requirements. Record Drawings must be no less than (24" x 36"), with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing will have a Port-assigned number placed onto the title block prior to scanning. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings will be scanned as a test, prior to execution of this requirement in full.

(c) AutoCad Requirements. The AutoCad files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s) or DVD(s), as requested by Port. All X-REF, block and other referenced files must be coherently addressed within the environment of the compact disc or DVD, at Port's election. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting. A minimum of ten (10) complete drawing files, including all referenced files, is required to be transmitted to Port as a test, prior to execution of this requirement in full.

(d) Changes in Technology. Port reserves the right to revise the format of the required submittals set forth in this ***Section 13.6*** as technology changes and new engineering/architectural software is developed.

I. For Buildings 12 and 21 Only, the *Conditions to Transfer Before Certificate of Completion (Section 18.1(b))* and *Transfer After Certificate of Completion (Section 18.1(c))* will be revised to read as follows:

(a) Conditions to Transfer Before Certificate of Completion. Subject to ***Section 18.1(e)*** (Mortgaging of Leasehold), ***18.1(h)*** (Assignment to Accommodate Sale of Historic Tax Credits of Low-Income Housing Tax Credits) and ***18.1(i)*** (Transfers Not Requiring Port Consent Before Certificate of Completion), before Port's issuance of a Certificate of Completion, Tenant will not (A) suffer or permit any Significant Change to occur, or (B) consummate an Assignment, in each case without the prior written consent of Port in its sole discretion.

(b) Transfer After Certificate of Completion. From and after Port's issuance of a Certificate of Completion, Tenant may Transfer with the prior consent of Port, which consent may not be unreasonably withheld, if each of the following conditions is satisfied:

(i) In the case of an Assignment only, the proposed transferee executes and delivers an Assignment and Assumption Agreement in substantially the form attached hereto as ***Exhibit N***) an "**Assignment and Assumption Agreement**"), which Assignment and Assumption Agreement must contain:

(1) an express assumption by the proposed transferee, for itself and its successors and assigns, and expressly for the benefit of Port, of all of the obligations of Tenant arising from or after the effective date of the Transfer under this Lease, the Vertical DDA if in

effect, and any other agreements or documents entered into by and between Port and Tenant pursuant to this Lease directly relating to the Project, and an express agreement by the proposed transferee to be subject to all of the conditions and restrictions to which Tenant is subject;

(2) a representation by the proposed transferee that it has conducted a thorough investigation and due diligence of the Improvements, including the condition of the real property, of all Material Systems, the roof and structural integrity of the Improvements, and if the Transfer occurs after the twentieth (20th) anniversary of the Commencement Date, has reviewed the most recent Facilities Condition Report prepared by Tenant; and

(3) a release by the proposed transferee of the Indemnified Parties and the State Lands Indemnified Parties and waiver of any and all Losses against the Indemnified Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the Indemnified Parties arising prior to the effective date of the Transfer.

(ii) In the case of a Significant Change only, Tenant is a Qualified Transferee and delivers to Port, a certificate setting forth the purchaser or purchasers of the ownership interest resulting in the Significant Change, purchase price of such interest, any Sale Proceeds owed to Port, Tenant is a Qualified Transferee and a reaffirmation from Tenant that it will continue to be obligated under all the terms and conditions of this Lease, all certified by Tenant's chief financial officer as true, accurate, and complete, the form of which is attached hereto as ***Exhibit O*** **("Significant Change Certificate")**.

(iii) All instruments and other legal documents involved in effectuating the Transfer reasonably requested by Port, including all documentation necessary for Port to confirm the amount of Port's share of Sale Proceeds, has been submitted to Port for its review and reasonable approval, or at the request of Tenant, such documents are made available for Port's review at Tenant's office in San Francisco.

(iv) There is no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease or any of the other documents or obligations to be assigned to the proposed transferee where Tenant or proposed transferee have not made provisions to cure the applicable default, which provisions are satisfactory to Port in its sole discretion.

(v) If the effective date of the Transfer is prior to Port's issuance of a Certificate of Completion, there is no Developer Event of Default or an Unmatured Developer Event of Default (as such terms are defined in the Vertical DDA) on the part of Developer under the Vertical DDA, where Tenant or the proposed transferee has not made provisions to cure the default, which provisions are satisfactory to Port.

(vi) Subject to ***Section 18.1(b)(vii)***, (1) in the case of a Significant Change, Tenant is a Qualified Transferee immediately following the consummation of such Significant Change and (2) in the case of an Assignment, the proposed transferee is a Qualified Transferee.

(vii) If Tenant (in the case of a Significant Change) or proposed transferee (in the case of an Assignment) does not satisfy the Net Worth Requirement, Tenant or the proposed transferee, as applicable, will have the right to deliver a Net Worth Guaranty in lieu of satisfying the Net Worth Requirement. Under the Net Worth Guaranty, the Net Worth Guarantor, among other things, will:

(1) guaranty performance of all of Tenant's obligations under this Lease in an amount not to exceed the Net Worth Requirement;

(2) covenant that it will throughout the term of the Net Worth Guaranty, maintain the Net Worth Requirement; and

(3) provide Port as of the first day of each calendar year, a statement certified by its chief financial officer, or if the Net Worth Guarantor is an individual, a certified public accountant, that the Net Worth Guarantor continues to meet the Net Worth Requirement and that to his/her actual knowledge, he/she is not aware of any facts that would cause the Net Worth Guarantor to not meet the Net Worth Requirement.

The Net Worth Guaranty will otherwise be in form and substance reasonably satisfactory to Port. The Net Worth Guaranty will terminate when the Tenant benefiting from the Net Worth Guaranty meets the Net Worth Requirement. Tenant and the Net Worth Guarantor will provide Port with its financial statements and other information necessary to substantiate its position that it meets the Net Worth Requirement and that the Net Worth Guaranty should terminate.

(viii) Tenant provides to Port an estoppel certificate substantially in the form attached hereto as ***Exhibit P*** (Form of Tenant Estoppel Certificate), which estoppel certificate will be effective as of the effective date of Transfer.

(ix) Port receives on or prior to the effective date of Transfer (A) Port's share of Sale Proceeds, as described in ***Section 3.6*** of ***Exhibit D*** (Port Participation in Sale Proceeds) and (B) a settlement statement relating to the Transfer or other evidence, reasonably satisfactory to Port, of Port's share of Sale Proceeds.

(x) Port receives on or prior to the effective date of Transfer sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Transfer provided, however, if Port has not delivered to Tenant an invoice for Attorney's Fees and Costs prior to the effective date of Transfer, Tenant will reimburse Port for same within ten (10) business days of receipt of such invoice.

J. ***Condition of Premises (Section 36.1)***. Romanette *(i)* will be revised to read as follows by removing "**[Add if applicable:**":

> Except as set forth in Section 36.2, upon the expiration or earlier termination of this Lease, Tenant will quit and surrender to Port the Premises (i) in good order and condition consistent with the requirements of ***Section 10.1***, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder, including the obligation to comply with the Secretary's Standards;

K. ***Article 47 (Definitions of Certain Terms)*** will be revised to include the following new definitions or revised definition, as applicable.]

> "**FCR Date**" means the fifth (5th) anniversary of the Commencement Date and every five (5) years thereafter until the expiration of the Term.
>
> "**Historic Fabric**" means the architectural design of any materials, features, or finishes considered important in defining a building's historical character.
>
> "**Initial Improvements**" means all Improvements to be built on the Premises or portion(s) thereof in accordance with the Vertical DDA, Scope of Development, and

SUD, including, without limitation, all renovation and Rehabilitation work on the existing building(s).

"**Law**" or "**Laws**" means any one or more present and future laws, (including Environmental Laws) ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon. "**Law**" includes the Secretary's Standards.

"**Rehabilitation**" means the repair or alteration of an historic building that does not damage or destroy materials, features, or finishes considered important in defining the building's historic character.

I. **Exhibit D (Rent)** will be revised as follows for Historic Buildings 12 and 21 Only:

3.1 Prepaid Rent.

The Parties acknowledge that this Lease is a Fully Pre-paid Lease, as that term is defined in the Financing Plan attached as Exhibit C1 to the DDA. On or before the Commencement Date, Tenant will pay to Port the Pre-Paid Rent, as set forth in the Basic Lease Information.

3.2 Tenant's Covenant to Pay Rent.

During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in this Article 3.

3.3 Participation of Gross Rent from and after the 31st Anniversary of the issuance of TCO.

(a) Definitions

(i) **"Adjustments"** means the following items (without duplication):

(1) all Impositions paid by Tenant and allocated on a straight line basis during the Lease Year in which the applicable Imposition was paid;

(2) all taxes, assessments, charges, and bills for utilities, including, without limitation, charges for water, gas, oil, sanitary and storm sewer, and electricity paid by Tenant;

(3) insurance premiums for insuring the Improvements in compliance with ***Article 20*** and allocated on a straight line basis during the Lease Year in which the applicable insurance premium was paid;

(4) Capital Reserves; and

(5) all costs (not including cost of capital, debt service or other financing costs) paid by Tenant for Capital Items and allocated on a straight line basis during the Lease Years over which the applicable Capital Item is amortized in accordance with this ***clause (4)*** except to the extent paid from Capital Reserves previously deducted in item (4) above. In any Lease Year, the amount of cost for Capital Items will be limited to the portion of the amortized costs of the Capital Items attributable to such Lease Year. For purposes hereof, the amortized costs of the Capital Items will be determined by dividing the original direct costs of such Capital Items by the number of years of useful life of the applicable Capital Items, based on generally accepted accounting principles consistently applied, irrespective of Tenant's actual method of accounting. The minimum amortization period will be five (5) years. Capital Items must have been unanticipated on the Commencement Date of this Lease (i.e., specifically excluding any costs related to the development and construction of the Initial Improvements.

(ii) **"Capital Items"** means replacements, repairs, and/or improvements to the Premises, the foundation and structural integrity of the Buildings, and all

Material Systems serving the Improvements within the Premises that would be deemed capital assets under generally accepted accounting principles consistently applied.

(iii) **"Capital Reserves"** means funds reserved by Tenant in a reserve account to be used solely to replace, repair, and improve Capital Items within the Premises. Amounts in the Capital Reserve must be commercially reasonable, consistent with the requirements of ***Section 10.3***, or consistent with the prudent business practice of landlords of comparable historic buildings in San Francisco and may not be used to subvert or reduce the Percentage Rent owed to Port.

(iv) **"Gross Income"** means for any reporting period or portion thereof during the Term, the following: all payments, revenues, fees or amounts received by Tenant or by any other party for the account of Tenant from any Person for any Person's use or occupancy of any portion of the Premises (excluding security or other deposits to be returned to such Person upon the termination of such use or occupancy), or from any other sales, advertising, concessions, licensing or programming generated from the Premises, including, without limitation, all base rent, percentage rent, payments made to Tenant from any Subtenant to reimburse Tenant for operating expenses, common area maintenance expenses, insurance expenses, Impositions, or, in the case of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by such Subtenant, license fees, parking charges, advertising revenues, event or promotional fees, charges and permit fees. Without limiting the foregoing, "Gross Income" does not include payments of insurance proceeds to or for the benefit of Tenant, that are used to Restore the Premises, except any and all payments made to Tenant from the Business Interruption or delayed opening insurance proceeds which shall be included as "Gross Income".

(v) **"Modified Gross Income"** means Gross Income less Adjustments.

(b) General. Tenant will pay to Port percentage rent (**"Percentage Rent"**) in accordance with Sections 3.3 and 3.4. From and after the thirty-first (31st) Anniversary Date of the issuance of a TCO (**"Percentage Rent Commencement Date"**) and continuing thereafter throughout the Term, Tenant will pay to Port Percentage Rent on a monthly basis equal to three and one-half percent (3.5%) of Modified Gross Income generated at or from the Premises for the applicable month.

3.4 **Manner of Payment and Reporting of Percentage Rent**

(a) Generally. From and after the Percentage Rent Commencement Date, Tenant will determine the Percentage Rent payable for each calendar quarter during the Term by the twentieth (20th) day of the immediately following calendar quarter. In the event this Lease expires or terminates on a day other than the last day of a calendar quarter, Percentage Rent for such fractional part of the calendar quarter preceding such expiration or termination date will be prorated to account for the partial calendar quarter and paid within twenty (20) days after such expiration or termination date, but if this Lease terminates as a result of a Tenant Event of Default, any amounts due hereunder will be payable immediately upon termination.

(b) **Reporting and Reconciliation of Percentage Rent**. Tenant will deliver to Port a complete statement setting forth in reasonable detail its Modified Gross Income for each calendar month in each calendar quarter, including an itemized list of all Adjustments from Gross Income that Tenant claims and which are expressly permitted under this Lease, and a computation of the Percentage Rent for each calendar month in a calendar quarter (the "**Quarterly Percentage Rent Statement**") by the twentieth (20th) day of the immediately following calendar quarter. A financial officer or other accountant employed by Tenant who is authorized and competent to prepare such Quarterly Percentage Rent Statement must certify each Quarterly Percentage Rent Statement as accurate, complete and current. Tenant will provide Port within ninety (90) days after the end of each calendar year, a complete statement, showing the actual Percentage Rent for the immediately preceding calendar year ("**Annual Percentage Rent Statement;**" together with the Quarterly Percentage Rent Statement, "**Percentage Rent Statement**") substantially in the form of ***Exhibit XX***. Each Annual Percentage Rent Statement will be certified as accurate, complete and current by Deloitte & Touche, Ernst & Young, KPMG, PwC, or an independent certified public accounting firm reasonably acceptable to Port. Tenant must submit payment of the balance owing together with any Annual Percentage Rent Statement showing that Tenant has underpaid Percentage Rent. At Port's option, overpayments may be refunded to Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant's delivery of any Annual Percentage Rent Statement showing an overpayment. The Annual Percentage Rent Statement is for verification and certification of Quarterly Percentage Rent Statements only and will not result in any averaging of monthly Percentage Rent. Each Quarterly Statement and Annual Percentage Rent Statement will set forth in reasonable detail Gross Income for such immediately preceding calendar quarter or year, as applicable, including an itemized list of any and all Adjustments that Tenant may claim at that time and which are expressly permitted under this Lease.

If Port receives the Percentage Rent payment but does not receive the applicable Quarterly Percentage Rent Statement by the twentieth (20th) day of the immediately following calendar quarter or expiration or earlier termination of this Lease, or the Annual Percentage Rent Statement by the ninetieth (90th) day following the end of each calendar year or the expiration or earlier termination date, such failure, until cured, will be treated as a late payment of Percentage Rent, subject to a Late Charge.

If Tenant fails to deliver any Percentage Rent Statement within the time period set forth in this Section 3.4(b) (irrespective of whether any Percentage Rent is actually paid or payable by Tenant to Port) and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port will have the right, among its other remedies under this Lease, to have a Port Representative examine Tenant's Books and Records (and, to the extent permitted by the applicable Sublease, the Books and Records of any other occupant of the Premises) as may be necessary to determine the amount of Percentage Rent due to Port for the period in question. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant will promptly pay to Port the total cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge and interest at the Default Rate.

If the Percentage Rent Statement reflects that the estimated monthly Percentage Rent paid by Tenant during the applicable calendar quarter is greater or less than the Percentage Rent actually due for such period, the same shall be reconciled through an adjustment to the Percentage Rent amount that is due for the month following delivery of the Percentage Rent Statement.

3.5 Distribution of Sale Proceeds.

(a) Distribution of Sale Proceeds from the first Sale after Completion of the Initial Improvements. Sale Proceeds from the first Sale after Completion of the Initial Improvements will be distributed in the following order:

(i) First to pay the Costs of Sale;

(ii) Second to Tenant, in an amount equal to the greater of: (1) Tenant Development Cost; or (2) the indebtedness secured by a Mortgage on the Premises in accordance with Article 40 (Mortgages);

(iii) Third to Tenant for the cost of Capital Items incurred, except to the extent previously deducted from Modified Gross Income pursuant to ***Section 3.5*** (Participation of Gross Rent from and after Year 30);

(iv) Fourth to Port, an amount up to the Port Contribution, but in no event will the amount paid to Port exceed the result of the following calculation: Sale Proceeds less distribution made pursuant to Sections 3.5(a)(i)-(iii) multiplied by thirty percent (30%), if any;

(v) Fifth to Port, an amount equal to Sale Proceeds less distributions made pursuant to Sections 3.5(a)(i)-(iv) multiplied by one and one-half percent (1.5%), if any;

(vi) Sixth, any remaining amount to Tenant.

(b) Distribution of Sale Proceeds from the second Sale after Completion of the Rehabilitation and each Sale thereafter. Sale Proceeds from the second Sale after Completion of the Rehabilitation and each Sale thereafter, will be distributed in the following order:

(i) First to pay the Costs of Sale;

(ii) Second to Tenant, in an amount equal to the greater of:

(a) Tenant's Purchase Price; or

(b) the indebtedness secured by a Mortgage on the Premises in accordance with Article 40 (Mortgages);

(iii) Third to Tenant for the cost of Capital Items incurred, except to the extent previously deducted from Modified Gross Income pursuant to ***Section 3.5*** (Participation of Gross Rent from and after Year 30);

(iv) Fourth, if the aggregate of the Reimbursed Port Contribution from each of the prior Transfers was insufficient to pay off in full the Port Contribution, then Sale Proceeds less distributions made pursuant to Sections 3.5(b)(i)-(iii) multiplied by thirty percent (30%), if any, will be distributed to Port up to the amount of any Outstanding Port Contribution;

(v) Fifth to Port, an amount equal to Sale Proceeds less distributions made pursuant to Sections 3.5(b)(i)-(iv) multiplied by one and one-half percent (1.5%), if any; and

(vi) Sixth to Tenant, any remaining proceeds, if any.

(c) Special Rules for Calculating Sale Proceeds for a Reappraisal Event. For purposes of calculating Sale Proceeds on a Reappraisal Event, Tenant's Sale Proceeds from such

Reappraisal Event will be deemed to be an amount equal to (1) the total ownership interests in Tenant after the Reappraisal Event held by the Person causing the Reappraisal Event (expressed as a percentage of total ownership interests in Tenant), multiplied by (2) the value assigned to the Leasehold Estate, as evidenced by (A) the estimated fair market value of the Leasehold Estate provided to the Assessor's Office in connection with the Reappraisal Event, or (B) if no such estimate is provided to the Assessor's Office, the appraised value of the Leasehold Estate established in an Appraisal Report reasonably approved by Port and Tenant.

(d) Manner of Payment. The estimated closing statement will be updated as of the date of closing of the Sale (a "**Triggering Event**") to show the actual (i) proceeds from such event, and (ii) line item description of the deductions and exclusions from such proceeds to arrive at Port's share of such proceeds. If escrow is opened for a Triggering Event, then Port's share of the proceeds from such Triggering Event must be distributed through escrow. If no escrow is opened for a Triggering Event, Port's share of proceeds from such Triggering Event must be paid upon the closing of any such Triggering Event.

This provision constitutes notice to Tenant that Port is to be paid in full its share of proceeds through the close of escrow or the closing of the applicable Triggering Event. If Port is not paid full by such closing date, the amount due Port will be subject to a Late Charge and will accrue interest at the Default Rate from and after the closing until paid in full to Port. Port may reference in any estoppel certificate or other representation requested from Port that payment to Port of Port's share of proceeds from a Triggering Event is a material obligation under the Lease, due and owing upon the closing of any Triggering Event, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's share of such proceeds.

Within forty-five (45) days after any Triggering Event, transferor Tenant will submit to Port a statement prepared in accordance with sound accounting principles consistently applied, and certified by transferor Tenant's chief executive officer or chief financial officer (or equivalent position), as current, complete and correct, confirming the actual amount of proceeds received and line item description of the deductions and exclusions from proceeds to arrive at Port's share of such proceeds. At Port's option, any overpayments may be either refunded to transferor Tenant or applied to any other amount due and unpaid under the Lease as of the closing date. Tenant will accompany the statement of Triggering Event proceeds with the amount of any underpayments. The statements delivered to Port under this ***Section 3.7(c)*** are subject to the audit provisions of ***Section 3.9*** (Audit) for determination of the accuracy of Tenant's reporting of Port's share of proceeds from a Triggering Event.

(e) Survival. The provisions of this ***Section 3.6*** will survive the earlier termination or expiration of this Lease. Additionally, any release by Port of Tenant's obligations under this Lease in connection with any Sale is conditioned on Port's receipt of Port's share of Sale Proceeds.

(f) Additional Definitions. The following definitions apply for purposes of this ***Section 3.6***:

"**Appraisal Report**" means a third-party appraisal report prepared by a Qualified Appraiser in compliance with the then current version of the Uniform Standards of Professional Appraisal Practice and based on joint appraisal instructions provided by Port and Tenant, and Port and Tenant will have reasonable review and approval rights over the final appraisal report.

"**Cash Consideration**" means (i) cash, or (ii) cash equivalents.

"**Certified Historic Building Cost**" means the Historic Building Cost, as certified in accordance with Attachment 1 to this ***Exhibit D***.

"**Costs of Sale**" means only the following costs incurred by Tenant in connection with a Transfer: (i) brokerage commissions paid to licensed real estate brokers (provided, however, that in the case of brokerage commissions paid to Affiliate brokers, such commissions must be commercially reasonable), (ii) finder's fees (provided that in the case of finder's fees to Affiliates, such finder's fees must be commercially reasonable), (iii) reasonable and customary closing fees and costs including recording fees and transfer taxes, title insurance premiums and survey fees, (iv) reasonable advertising and marketing costs, (v) reasonable Attorneys' Fees and Costs, and (vi) amounts needed to pay Port's Attorneys' Fees and Costs associated with Port's review of the Transfer. "**Costs of Sale**" excludes adjustments to reflect prorations of rents, taxes or other items of income or expense customarily prorated in connection with sales of real property.

"**Hard Costs**" means reasonable out-of-pocket costs of Rehabilitation (including costs of signage and tenant improvements constructed by Tenant and not otherwise included in Soft Costs or reimbursed by any Subtenant or user of the Premises) actually incurred by Tenant through the Historic Building Cost Trigger Date attributable solely to the cost of labor, materials and construction "**Hard Costs**" do not include any cost reimbursed by any Subtenant or user of the Premises, (ii) any Hard Costs that are included as Soft Costs or are included in other costs reimbursable to Tenant or Master Developer under the DDA or Financing Plan, as applicable, or (iii) any costs incurred from and after the Historic Building Cost Trigger Date..

"**Historic Building Cost**" means the (a) sum of the following amounts, calculated for Historic Building 12 and Historic Building 21, determined at the earlier of the Historic Building Cost Trigger Date, or if a Sale or Qualifying Refinancing will occur prior to such date, forty-five (45) days prior to the applicable Sale or Qualifying Refinancing: (i) all reasonable and customary Hard Costs and Soft Costs of Rehabilitation, plus (ii) Tenant Return, less (b)(i) Gross Income from the Premises until and including the Historic Building Cost Trigger Date, minus (ii) operating expenses for the applicable Historic Building to the extent not otherwise included in Hard Costs or Soft Costs.

"**Historic Building Cost Trigger Date**" means the earlier to occur of the date that is one year after receipt of a TCO or 90% occupancy of space in the applicable Historic Building.

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

"**Non-Cash Consideration**" means consideration received by Tenant in connection with a Sale that is not Cash Consideration.

"**Outstanding Port Contribution**" means an amount equal to the Port Contribution less the Reimbursed Port Contribution.

"**Permissible Financing Costs**" means debt service and other customary financing costs incurred in connection with obtaining, negotiating and closing any financing for the development and construction of the Initial Improvements, including financing from an Affiliate of Tenant or another lender that is not a Bona Fide Institutional Lender (provided the terms of any such financing are market when compared with other debt financing provided by Bona Fide Institutional Lenders), a Bona Fide Institutional Lender (including, but not limited to any mezzanine financing), or from the sale of Historic Preservation Tax Credits, and all interest costs and other customary payments made by Tenant pursuant to the terms thereof, including all application fees, transaction costs, due diligence expenses, professional fees if the services of such professionals are customary in the type of financing obtained by Tenant, reasonable legal

fees, and title, appraisal and survey costs actually incurred in connection with such financing and paid or reimbursed by Tenant.

"**Port Costs**" means costs that the Port incurs to perform its obligations under this Lease, including staff costs on a time and materials basis, and third-party costs. "**Port Costs**" excludes Other City Costs, Advances of Land Proceeds, and Port Capital Advances.

"**Port Contribution**" means the amount of the Historic Building Feasibility Gap paid to Developer from all available sources in accordance with Financing Plan §11.1.

"**Qualified Appraiser**" means an appraiser that meets the following qualifications:

(i) is licensed in the State of California as a Certified General Appraiser;

(ii) is a member of the Appraisal Institute;

(iii) has at least 10 years' experience in the San Francisco Bay Area valuing commercial-office or multiple occupancy residential properties or both, depending on the Permitted Uses of the Leasehold Estate being appraised; and

(iv) is a principal in either a national or regional firm based in California that: (1) is not a Tenant Affiliate; (2) does not have an equity investment in Tenant, any Tenant Affiliate, or any Person Controlling Tenant; and (3) does not have a conflict of interest by virtue of a contractual relationship with Tenant either then existing or in the 24 months immediately preceding the engagement, unless the Port in its sole discretion waives the conflict.

"**Reappraisal Event**" means a change in ownership of real property as described in [Cal. Revenue and Taxation Code, [Chapter 2 (Change in Ownership and Purchase), ***Section 64***], as that law is in effect as of October 31, 2017 and attached hereto as ***Schedule 2*** to ***Exhibit D***. For the avoidance of doubt, neither an Assignment nor a Recapitalization will be deemed to be a Reappraisal Event.

"**Recapitalization**" means a transfer, in a single transaction or a related series of transactions that results in a change in the Person that had more than fifty percent (50%) of the ownership interest in Tenant (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof, and whether direct or indirect).

"**Reimbursed Port Contribution**" means the amount of Port Contribution reimbursed to Port from any Transfer or Refinancing .

"**Sale**" means either (i) an Assignment of the entirety of the Leasehold Estate, other than an Assignment of the Leasehold Estate to a Tenant Affiliate, or (ii) a Reappraisal Event, or (iii) a Recapitalization.

"**Sale Proceeds**" means all consideration received by or for the account of Tenant in connection with a Sale, including Cash Consideration, the principal amount of any loan made by Tenant to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price. "Sale Proceeds" do not include a commitment by an owner (whether direct or indirect) of Tenant to fund its share of future capital calls to construct the Initial Improvements or Capital Items, which, in and of itself, will not be considered or deemed to be Sale Proceeds.

"**Soft Costs**" means reasonable out-of-pocket costs actually incurred by the Tenant that actually constructs the Initial Improvements except to the extent excluded under this Lease or the Vertical DDA, that are directly attributable to the following only: designing the Initial Improvements (including mock-ups and signage design); negotiation of the Transaction Documents; pursuing Historic Tax Credits; architectural, engineering, consultant, attorney, and other professional fees and printing costs; regulatory fees; CEQA mitigation measures; community benefits; Impact Fees (as defined in the DDA); Permissible Financing Costs; Port

Costs and Other City Costs (as defined in the Vertical DDA); builder's risk insurance and other insurance expenses directly related to construction of the Initial Improvements, including environmental insurance; performance and payment bonds; a development fee, not to exceed 4% of Historic Building Costs (excluding the Tenant Return); costs for a construction office and construction-related signage, to the extent a construction office and construction related signage separate from Master Developer is required; Impositions to the extent attributable to the Leasehold Estate; premiums for the title insurance; safety and security measures; costs of purchasing and installing telecommunications and data infrastructure for the Premises; utilities during construction; leasing and marketing expenses (including standard brokerage commissions; provided, however, that in the case of brokerage commissions paid to Affiliate brokers, such commissions must be commercially reasonable); third party costs to prepare the Certified Historic Building Costs; tenant improvement allowances; and any other reasonable and customary costs necessary to the Rehabilitation and tenanting of the Initial Improvements through the Historic Building Cost Trigger Date, as reasonably approved by Port. "**Soft Costs**" do not include (i) distributions, dividends, preferred return or other capital return to the members or shareholders of Tenant, Tenant, or any of their respective Affiliates, (ii) any cost reimbursed by any Subtenant or user of the Premises, (iii) any Soft Costs that are included as Hard Costs or are included in other costs reimbursable to Tenant or Master Developer under the DDA or Financing Plan, as applicable, or (iv) any Soft Costs incurred from and after the Historic Building Cost Trigger Date.

"**TCO**" is an acronym for a Temporary Certificate of Occupancy.

"**Tenant Development Cost**" means Certified Historic Building Cost less Port Contribution.

"**Tenant's Purchase Price**" means for each tenant following the first Transfer, the Sale Proceeds paid by such Tenant to the immediately prior tenant for the Leasehold Estate.

"**Tenant Return**" means an amount equal to 10% of the Hard Costs and Soft Costs actually incurred by Tenant for the Rehabilitation.

3.6 Distribution of Refinancing Proceeds.

(a) Distribution of Refinancing Proceeds. In connection with any Qualifying Refinancing, Refinancing Proceeds will first be distributed as follows in the following order:

(i) (1) In the case of the first (1st) Refinancing following the First Permanent Loan,, the greater of (A) the outstanding indebtedness secured by a Mortgage to be paid off by the Refinancing and (B) 65% of the appraised, as-built value as of the date of the First Permanent Loan and (2) in the case of any subsequent Refinancing, the outstanding indebtedness secured by a Mortgage to be paid off by the Refinancing;

(ii) Second, any amounts needed to pay the Lenders' actual costs of such Refinancing paid by Tenant including application fees, closing costs, points and other customary lenders' fees such as lenders' Attorneys' Fees and Costs and title insurance costs paid at close of escrow for such Refinancing;

(iii) Third, amounts needed to pay Port's Attorneys' Fees and Costs associated with Port's review of the Refinancing;

(iv) Fourth, amounts needed to pay Tenant's Attorneys' Fees and Costs associated with the Refinancing; and

(v) Fifth, brokerage commissions paid to debt or mortgage brokers and/or finder's fees (provided, however, that in the case of brokerage commissions or finder's fees paid to Affiliate brokers, such commissions and fees must be commercially reasonable); and

(vi) Sixth, any portion, if any, of the Refinancing Proceeds that will be used for Capital Items in accordance with Section 10.2(d) (Maintenance and Repair of Identified Items) and Article 12 (Construction).

"**Net Refinancing Proceeds**" means Refinancing Proceeds less the amounts set forth in Sections 3.6(a)(i)—(vi).

(b) Port Participation in Net Refinancing Proceeds. In connection with any Qualifying Refinancing, Tenant will pay to Port the following amounts from Net Refinancing Proceeds in the following order:

(i) First, from the first Qualifying Refinancing, an amount up to the Port Contribution, not to exceed thirty percent (30%) of Net Refinancing Proceeds, and from any subsequent Qualifying Refinancing, an amount up to the Outstanding Port Contribution, if any, and not to exceed thirty percent (30%) of Net Refinancing Proceeds;

(ii) Second, Net Refinancing Proceeds after subtracting the amount set forth Section 3.6(b)(i), multiplied by one and one-half percent (1.5%), if any;

(iii) Third, any remaining amounts to Tenant, if any.

(c) Reporting of Refinancing Proceeds. No less than fifteen (15) days prior to the close of escrow for each Refinancing, Tenant will deliver to Port, an estimated closing statement that includes the best estimate of the following items:

(i) Refinancing Proceeds;

(ii) The estimated Net Refinancing Proceeds including a separate line item for each of the costs permitted to be deducted from the gross proceeds from the Refinancing, as applicable, to arrive at Net Refinancing Proceeds;

(iii) The amount of the Reimbursed Port Contribution and any Outstanding Port Contribution as of such date; and

(iv) The estimated Net Refinancing Proceeds allocated to Port and Tenant.

(d) Manner of Payment. The estimated closing statement will be updated as of the date for close of escrow under the Refinancing to show the actual (i) gross Refinancing Proceeds, (ii) Net Refinancing Proceeds and Port's share thereof, as applicable, and (iii) line item description of the deductions and exclusions from Refinancing Proceeds to arrive at Net Refinancing Proceeds. Tenant must pay Port from the close of escrow of any Refinancing, Port's share of the Net Refinancing Proceeds. Port may reference in any estoppel certificate or other representation requested from Port by a Lender, that payment to Port of Port's share of Net Refinancing Proceeds is a material obligation under the Lease, due and owing at close of escrow of any Refinancing hereunder, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's share of Net Refinancing Proceeds. This provision constitutes notice to Tenant that Port is to be paid in full its share of Refinancing Proceeds through the close of escrow. If Port is not paid full by such closing date, the amount due Port will be subject to a Late Charge and will accrue interest at the

Default Rate from and after the closing until paid in full to Port. Within forty-five days (45) after any Refinancing, Tenant will submit to Port a statement, prepared in accordance with sound accounting principles consistently applied, and certified by Tenant's chief executive officer or chief financial officer (or equivalent position) as current, complete and correct, confirming the actual amount of Refinancing Proceeds, disbursed, permitted deductions made from such proceeds, and the amount of Net Refinancing Proceeds due to Port and actually paid to Port. At Port's option, any overpayments will be either refunded to Tenant, applied to any other amount then due and unpaid, under the Lease, or credited against Rent due under the Lease. Tenant will accompany the statement of Net Refinancing Proceeds with the amount of any underpayments. The statements delivered to Port under this ***Section 3.7(c)*** will be subject to the audit provisions of ***Section 3.9*** (Audit) for determination of the accuracy of Tenant's reporting of Net Refinancing Proceeds.

(e) Survival. The provisions of this ***Section 3.7*** will survive the earlier termination or expiration of this Lease.

(f) Additional Definitions. The following additional definitions will apply for purposes of this Section.

"**First Permanent Loan**" means the first permanent financing following Completion of the Initial Improvements.

"**Qualifying Refinancing**" means a Refinancing occurring at any time there has been an increase in the as-built value of the Premises since the date on which the named Tenant acquired the Leasehold Estate. The as-built value of the Premises as of such date and as of the date of the Refinancing will be based upon an appraisal prepared by a third-party appraiser for the benefit of the Lender providing the Refinancing or if there is no Lender requirement for an appraisal or, if Tenant is not in possession of such appraisal, Port will have reasonably approved the appraisal instructions for such appraisal.

"**Refinancing**" means any secured debt financing or refinancing incurred by Tenant and secured by any Mortgage, which may include secured financing from an Affiliate of Tenant and any refinancing or replacement of existing debt secured by a Mortgage (including any permanent take-out financing for financing the construction of the Initial Improvements), other than (1) Mortgages placed upon the Premises prior to Completion of the Initial Improvements, (2) the First Permanent Loan, and (3) Mortgages placed upon the Premises concurrently with any Sale.

"**Refinancing Proceeds**" means all sums actually disbursed by a lender in connection with a Refinancing.

3.7 Books and Records. Tenant will keep books and records according to generally accepted accounting principles consistently applied or such other method as is reasonably acceptable to Port. "**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Property, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises or in connection with any Sale or Refinancing. Tenant will maintain a separate set of accounts, including bank accounts, to allow a determination of expenses incurred and revenues generated directly from the Premises, including proceeds and costs incurred from any Sales and Refinancings. If Tenant operates all or

any portion of the Premises through a Subtenant or Agent (other than Port), Tenant will cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

3.8 Audit. Tenant agrees to make its Books and Records (and, to the extent within Tenant's control, the Books and Records of any other person relating to the matters identified in ***Section 3.6(b)***) available in the City and County of San Francisco to Port, or to any accountant employed or retained by Port or the City who is competent to examine and audit the Books and Records (hereinafter collectively referred to as "**Port Representative**"), for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Gross Income, Modified Gross Income, Recapitalization Proceeds, Sale Proceeds, Refinancing Proceeds and Port's share of the foregoing, for a period of five (5) years after the applicable Percentage Rent Statement (or closing statement with respect to a Sale or Refinancing) was delivered to Port. Tenant will reasonably cooperate with Port Representative during the course of any audit; provided however, once commenced, such audit will be diligently pursued to completion by Port within a reasonable time after its commencement. If an audit has commenced and Port claims that errors or omissions have occurred, Tenant will retain the Books and Records and make them available until those matters are resolved.

If an audit reveals that Tenant has understated its Gross Income, Modified Gross Income, Recapitalization Proceeds, Sale Proceeds, Refinancing Proceeds, or Net Refinancing Proceeds for said audit period, Tenant will pay Port, within fifteen (15) days after receipt of such audit results, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Default Rate from and after the date of understatement. If Tenant understates its Gross Income, Recapitalization Proceeds, Sale Proceeds, Refinancing Proceeds, or Port's share of the foregoing proceeds for any audit period by five percent (5%) or more of Tenant's understated amount, Tenant will pay Port's cost of the audit. Any overpayments revealed by an audit will be credited towards Rent payments due subsequent to the audit until credited in full.

3.9 Manner of Payment. Tenant will pay all Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other Person or at such other place as Port may from time to time designate by notice to Tenant. Minimum Rent, Participation Rent, and Port's share of Sale Proceeds and Refinancing Proceeds are payable without prior notice or demand. Rent is due and payable at the times provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Additional Rent is due thirty (30) days following the giving by Port and the receipt by Tenant of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

3.10 Interest on Delinquent Rent. Rent not paid when due will bear interest from the date due until paid at an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date payment is due (the "**Default Rate**"). However, interest will not be payable on Late Charges incurred by Tenant or to the extent such payment would violate any applicable usury or similar law. Payment of interest will not excuse or cure any default by Tenant.

3.11 Late Charge. Tenant acknowledges and agrees that late payment by Tenant to Port of Rent, or Tenant's failure to provide the Percentage Rent Statement to Port, will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, without limiting any of Port's rights or remedies hereunder and regardless of whether such late

payment results in an Event of Default, Tenant will pay a late charge (the "**Late Charge**") equal to the higher of (a) five percent (5%) of all Rent or any portion thereof which remains unpaid more than five (5) days following the date it is due (or with respect to a failure by Tenant to deliver the Percentage Rent Statement to Port within five (5) days following the date it is due, five percent (5%) of Participation Rent due for the subject period of the Percentage Rent Statement), or (b) [**Note: Increase following amount by $500 every 5 years after execution of the DDA: One Thousand Dollars ($1,000)**], which amount will be increased by an additional One Thousand Dollars ($1,000) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter; provided, however, Tenant will not be subject to a Late Charge more than once every calendar year if Tenant pays the unpaid Rent or delivers the Monthly Statement to Port, as applicable, within five (5) days of written notice from Port of such failure. The Parties agree that the Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant

3.12 No Abatement or Setoff. Tenant will pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, credit, deduction, or counterclaim, except as expressly set forth in Section 28.2 (Tenant's Exclusive Remedies).

3.13 Net Lease. It is the purpose of this Lease and intent of Port and Tenant that all Rent is absolutely net to Port, so that this Lease yields to Port the full amount of Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties is Port expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises. Without limiting the foregoing, Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, use or occupancy of the Premises, or any portion thereof. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease, or except as set forth in this Lease, gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease.

3.14 Survival. Tenant's obligation to pay any unpaid Rent due and payable will survive the expiration or earlier termination of this Lease.

ATTACHMENT 1 TO EXHIBIT D

PROCEDURES TO CERTIFY ENTITLEMENT COSTS AND DEVELOPMENT COSTS

1. CERTIFIED HISTORIC BUILDING COST STATEMENT.

(a) Certified Historic Building Cost Statement. Within the earlier of one hundred twenty (120) days following the date that is one year after the Historic Building Cost Trigger Date, and (ii) forty-five (45) days prior to a Sale or Qualifying Refinancing, Tenant that constructed the Initial Improvements will furnish Port with an itemized statement setting forth in detail the Historic Building Cost incurred by such Tenant to the date the certificate of occupancy was issued, certified as true, accurate and complete by an independent certified public accountant (the "**Certified Historic Building Cost Statement**").

(b) Port Review. Port will notify the Tenant within sixty (60) days following Port's receipt of the Certified Historic Building Cost Statement (or in the case of a Sale or Qualifying Refinancing, within thirty (30) days)of Port's agreement or disagreement with such statement. If Port disagrees with any such statement, the Parties will meet to resolve the disagreement. If the Parties are unable to resolve their disagreement, either may Party exercise its rights under Section 3 (Audit Rights) of this Attachment 1 to Exhibit D. For the avoidance of doubt, no such disagreement or audit shall delay any Sale or the issuance of any building permit, certificate of completion or certificate of occupancy.

2. Port Representative.

If Tenant fails to deliver the Certified Historic Building Cost Statement within the time periods set forth herein, and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port has the right, among its other remedies under this Lease, to have a Port Representative examine Tenant's books and records as may be necessary to determine all the information required in the Certified Historic Building Cost Statement. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant must promptly pay to Port the total cost of the examination.

3. AUDIT RIGHTS.

If Port disagrees with the Certified Historic Building Cost Statement, Port may request that such records be audited by an independent certified public accounting firm mutually acceptable to Port and Tenant, or if the Parties are unable to agree, either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an auditor meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent auditor. Such audit will be binding on the Parties, except in the case of fraud, corruption or undue influence. Port will pay the entire cost of the audit unless the audit discovers that Tenant has overstated the Historic Building Cost by more than three percent (3%) of the lower amount, in which case Tenant will pay the entire cost of the audit.

4. BOOKS AND RECORDS RELATED TO HISTORIC BUILDING COSTS.

Tenant must keep accurate books and records of the Historic Building Cost incurred to date, funds expended by Tenant, outstanding Tenant capital, Tenant capital return accrued, and debt or other third-party proceeds received by or on behalf of Initial Tenant in connection with the development of the Initial Improvements, all in accordance with accounting principles generally accepted in the construction industry. Port, including its Agents, has the right to inspect Tenant's books and records regarding the development of the Initial Improvements, the costs incurred in connection therewith, and all other Historic Building Cost, including funds

expended by Tenant, return accrued on such funds, and debt or other third party proceeds received by or on behalf of Tenant in connection with the development of the Initial Improvements in a location within San Francisco during regular business hours and upon reasonable advance notice.

PARCEL LEASE
APPENDIX FOR ARTS BUIDLING PARCEL E4

[To be prepared and inserted prior to execution of Parcel Lease of Arts Building E4]

DDA EXHIBIT D4

Form of Joint Appraisal Instructions

I. Introduction

These Appraisal Instructions (these "**Instructions**") constitute a part of that certain Disposition and Development Agreement (the "**DDA**"), dated as of [_____], by and between the City and County of San Francisco, a municipal corporation and charter city (the "**City**") acting by and through the San Francisco Port Commission (the "**Port**" or the "**Port Commission**"), and FC Pier 70, LLC, a Delaware limited liability company ("**Developer**"). All capitalized terms used herein but not otherwise defined herein will have the meaning ascribed to such terms in the DDA.

These Instructions will govern preparation and delivery of each appraisal report (each, an "**Appraisal**") setting forth the Appraiser's opinion of the Fair Market Value of the Subject Property for purposes of determining the price of conveyance of the Subject Property (as defined below) as an Option Parcel, in accordance with Article 7 of the DDA.

These Instructions, along with Section 7.3 of the DDA, will constitute the scope of work and sole instructions to be utilized by the Appraiser in preparing an Appraisal.

II. Subject Property. The Option Parcel that is the subject of these Appraisal Instructions is identified as Parcel [__] as more particularly described in Attachment 1 attached hereto (the "**Subject Property**").

III. Appraisal Standards.

Each opinion of value will be stated in a self-contained appraisal report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions, as necessary and typical of a complete, self-contained[1] appraisal report in compliance with the current version of the Uniform Standards of Professional Appraisal Practice ("**USPAP**").

The Appraisal Report will include the Appraiser's final opinion of the Fair Market Value for the Subject Property stated as a specific dollar figure.

IV. Documents to be Reviewed and Considered by the Appraiser

A. Project Documents

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[1] As of 2014, USPAP replaced the terminology of "Restricted Use, Summary and Self Contained", and replaced the report content types with two types, "Appraisal Report" and "Restricted Appraisal Report." The reference to "Self Contained" in Section III (Appraisal Standards) refers to the meaning it had prior to 2014. Also, the reference to "Complete" appraisal has the meaning that it did prior to this term being removed officially from USPAP, i.e., essentially that no relevant and applicable valuation approaches or methodologies may be excluded (and the rationale for any approach excluded be provided).

The Subject Property shall be appraised assuming that the following documents are applicable to the property and property interests being appraised (collectively, the "**Project Documents**"):

1. The SUD and Design for Development, attached hereto as Attachment 2;

2. The Interagency Cooperation Agreement, attached hereto as Attachment 3;

3. The Vertical DDA for the Subject Property, substantially in the form attached hereto as Attachment 4 which includes (a) the Scope of Development which provides the permitted uses and certain standards for development of the Subject Property, (b) the inclusionary requirement applicable to the Subject Property ***[include clause*** (b) ***for residential uses only; inclusionary requirement will be an in-lieu fee for condo parcels or on-site inclusionary for rental parcels],*** (c) Jobs Program, and (d) measures under the MMRP applicable to the Subject Property as identified therein;

4. The [***Parcel Lease***][***Quitclaim Deed and Restrictive Covenants***] for the Subject Property, substantially in the form attached to the Vertical DDA;

5. The rights and obligations under the Development Agreement as established by a Development Agreement Assignment, Assumption and Release substantially in the form attached hereto as Attachment 5;

6. The Master CC&Rs, substantially in the form attached hereto as Attachment 6;

7. The Vertical Coordination Agreement, substantially in the form attached hereto as Attachment 7;

8. Lien of Special Taxes for Community Facilities District as summarized in Attachment 8;

9. Rate and Method of Apportionment as attached as Attachment 9;

10. Final Subdivision Map No. ***[_____]*** that establishes the Subject Property as a legal parcel subdivided in accordance with the Subdivision Map Act and all applicable laws shown in Attachment 10.

[Add reference to any additional entitlement or regulatory approvals and any other documents not listed above to which the Subject Property will be subject, including matters affecting title to the Subject Property.]

B. Other Information

[Describe here any other documents that the Port and Developer mutually agree to present to the Appraiser for its consideration during the appraisal process, which may include, without limitation: (i))information regarding the then-current condition of the Subject Property, (ii) additional information regarding the status of all required horizontal

improvements, (iii) cost estimates or other information relevant to the cost or value of the vertical development, and (iv) data from recent transactions at the site or nearby sites.]

V. Appraisal Purpose and Report Requirements.

A. Purpose.

[For fee transfers:] The appraisal assignment is to determine, subject to the Special Instructions and Extraordinary Assumptions set forth in Section V(C), the Fair Market Value as defined by California Code of Civil Procedure section 1263.320 of the fee interest in the Subject Property (the "**Fee Value**"), which will be the purchase price of the fee simple interest in the Subject Property pursuant to the Vertical DDA.

[For transfers pursuant to Fully Pre-paid Leases:] The appraisal assignment is to determine, subject to the Special Instructions and Extraordinary Assumptions set forth in Section V(C), (1) the Fair Market Value as defined by California Code of Civil Procedure section 1263.320 of the fee interest in the Subject Property (the "**Fee Value**"), (2) the Fair Market value of the **"Leased Fee Interest,"** meaning the ownership interest where the possessory interest has been granted to another party; and (3) the Fair Market Value of the Leasehold Interest, as a 99-year lease, prepaid (the "**Prepaid Lease Value**").

[For transfers pursuant to Hybrid Leases:] The appraisal assignment is to determine, subject to the Special Instructions and Extraordinary Assumptions set forth in Section V(C), (1) the Fair Market Value as defined by California Code of Civil Procedure section 1263.320 of the fee interest in the Subject Property (the "**Fee Value**"), (2) the Fair Market value of the **"Leased Fee Interest,"** meaning the ownership interest where the possessory interest has been granted to another party; and (3) the Fair Market Value of the Leasehold Interest, as a 99-year lease, prepaid (the "**Prepaid Lease Value**"). In addition, as further described in Section V(C)(2), consult with at least 2 firms from the Qualified Investment Advisor pool established by the Port and Developer and determine factors that, when multiplied by the Fee Value or the Prepaid Lease Value, would be equal to annual ground rent ("Annual Rent"), if no rent is prepaid.

The Port intends to use the Appraisal to support its findings that the proposed ***[Parcel Lease][sale]*** is consistent with the conditions in the State statute (AB 418) allowing for the Port's sale of a fee or leasehold interest in the 28-Acre Site free from public trust restrictions, subject to the Port receiving fair market value for the lease or sale of any trust termination lands or interest in the lands.

B. Appraisal and Report Requirements.

1. General Principles. Each Appraisal will be prepared in accordance with USPAP and the following requirements:

a. The Appraiser shall take into account the terms and conditions of the Project Documents applicable to the Subject Property, including, without limitation, the Lien

of Special Taxes, and the terms of the Vertical DDA, ***[the Parcel Lease][Quitclaim Deed and Restrictive Covenants]*** and Development Agreement Assignment, Assumption and Release. Without limiting the generality of the foregoing, it is specifically recognized that, in accordance with the provisions of the Parcel Lease, in addition to the ***[Prepaid Lease Value] [Annual Rent]***, the holder of the leasehold interest will be responsible to make certain Percentage Rent and participation payments thereunder.

b. The Appraiser shall take into account any other covenants, conditions, and restrictions or easements benefitting or burdening the Subject Property and any unusual characteristics of the Subject Property, including without limitation, zoning, land use and other regulatory restrictions applicable to the Subject Property as of the date of value of the Appraisal.

c. The Appraiser shall explain the reasoning applied to arrive at the final opinion of value and how the results of each approach to value were weighed in that opinion, and the reliability of each approach to value for solving the particular appraisal problem.

d. The Appraiser shall state as a single amount (*i.e.*, not a range of values) his or her final opinion of ***[each of]*** the Fee Value***[, the Prepaid Lease Value, and the Annual Rent]***.

e. Comparable market data ("**comparables**") shall be presented in individual write-up sheets and include the following data:

- Physical address and legal description (if possible)
- Parties to the transaction
- Date of Transaction
- Sales price
- Financing terms and conditions (if known)
- Property rights conveyed
- Transaction conditions (buyer motivation, arm's length, distressed, etc.) (if discoverable)
- Description of improvements, including utilities available
- Size and shape of property
- Unit counts (if applicable)
- Current Use
- Zoning and proposed zoning change (if applicable)
- Development of capitalization rate (if sale comparable is income producing)
- Verification of the transaction data (including names and contact information of with whom the transaction was verified/confirmed and date verified)

f. Comparable lease data shall additionally include:

- Date of lease or most recent transaction
- Lease rates and terms
- TI allowances, expense allocations, and rental concessions, if any and known
- Square feet of leased space (and basis of calculation, if known)
- Date and source of verification

g. The Appraiser shall physically inspect all comparables relied upon if located within a sixty (60) mile radius of the Subject Property. As to any comparables relied upon outside of this radius, the Appraiser shall take other reasonable steps to evaluate the location and condition of the comparable.

h. Discount and capitalization rates must be supported by market data and discussed in the narrative as to how they were derived.

i. The actual adjustments shall be set forth in an adjustment grid(s) and discussed in sufficient detail to lead the reader to the Appraiser's conclusions.

j. Photographs of all comparables utilized by the Appraiser shall be provided within the appraisal, including original photographs of all comparables physically inspected.

k. Maps displaying the location of all comparables as compared to the Subject Property shall be included.

l. Consistent with USPAP direction, the Appraiser shall avoid use of, or justify inclusion of comparable sales requiring extraordinary verification and weighting considerations, such as sales to governmental agencies, sales to non-profit organizations, sales to environmental organizations, sales to parties desiring to exchange the land to the government, distressed sales, and other atypical or non-arm's length sales.

m. The Appraiser must provide a line-item discussion reflecting the development of each income, expense, vacancy, infrastructure, cost-to-cure, or demolition item cited in the Appraisal.

n. Property operating expenses, development costs, delay costs may be supported by comparables, construction contracts, building contractors, cost-estimators, cost-estimating services to industry recognized income/expense manuals such as Marshall & Swift, BOMA, IREM, etc.

o. If the Appraiser chooses to use self-made or commercial appraisal software, such as Argus Enterprise, Microsoft Excel etc., he/she must provide all supporting printouts, spreadsheets, and electronic versions of the files, which support the Operating Income Statement or Discounted Cash Flow (DCF) analyses provided within the Appraisal.

C. Extraordinary Assumptions and Special Instructions

1. Extraordinary Assumptions

a. Upon conveyance, the Subject Property will be a valid legal parcel in accordance with the requirements of the Subdivision Map Act and will be fully entitled subject only to design review approval by the Planning Department in accordance with the requirements of the SUD and Design for Development and approval of building permits by the Port for Vertical Improvements and approvals necessary to commence Deferred Infrastructure.

b. ***[add if commercial parcel]:*** An Office Development Authorization from the Planning Commission (per Planning Code Sections 321 and 322), and approval from the Planning Department is not required for new office development under the jurisdiction of the Port.

c. The Subject Property has access to public streets and all required utilities necessary to serve the development as further described in the Project Documents. ***[If horizontal improvements are not yet complete, substitute the following: The Subject Property will be provided with access to public streets and required utilities necessary to serve the development as and when provided in the Vertical DDA and Vertical Coordination Agreement.]***

d. The Subject Property is graded and soil compacted in accordance with the certification of Developer's geotechnical engineer **[*NTD: This may not be the case for all parcels at Pier 70 (e.g., parcels with basement excavation), and special instructions will be provided].***

e. The Subject Property was remediated in accordance with the ***[insert standard of remediation to be provided]*** and no further remediation is required. **[*NTD: This may not be the case for Pier 70, and special instructions will be provided.*]**

f. The permitted uses are set forth in the Vertical DDA's Scope of Development of the Subject Property (residential (rental or for-sale) or commercial), including maximum density and maximum off-street parking.

g. ***[applies to residential uses only]*** The affordable housing requirements applicable to the Subject Property (in-lieu fee for condo parcels, on-site inclusionary for rental) are set forth in the Development Agreement.

2. Special Instructions

a. In evaluating the estimated revenue to be derived from the anticipated development of the Subject Property, the Appraiser shall (1) consider data provided by the Port and Developer, (2) consult with a real estate broker or brokerage firm with at least 5 years' experience in the San Francisco real estate market, and (3) review proprietary rent roll and sublease information from the following operating buildings at Pier 70 [_____], after signing a non-disclosure agreement (Attachment 11).

b. In evaluating the estimated construction period and development costs of the anticipated development of the Subject Property for the purposes of a residual land

value analysis, the Appraiser shall consult with a general contractor or construction cost estimator with at least 5 years' experience in estimating construction costs of similar developments in San Francisco and may consider construction cost estimates provided by the Port and Developer.

c. The Appraiser shall provide a detailed analysis of the method(s), data and information relied upon in determining each capitalization rate used in the Appraisal. In making this determination, the Appraiser shall conduct and document (name, title, company and opinion summary) market participant interviews regarding market capitalization rates for fee simple ***[and leasehold]*** transactions and for transactions involving completed buildings and development sites, and consult with at least 2 Qualified Investment Advisors. "**Qualified Investment Advisor**" means a firm providing real estate investment banking or real estate investment advisory services, including real estate investment brokerage services, with at least 10 years' experience in the San Francisco real estate market, selected from the list of firms set forth on Schedule 5, or another comparable firm approved by Port and Developer.

d. Based on the comparables set, market participant interviews and consultation with at least 2 Qualified Investment Advisors, the Appraiser shall quantify the capitalization rate differential between fee simple and the subject leasehold transactions. The Port and Developer understand that the capitalization rate differential between fee simple and leasehold transactions has historically been greater than 5 basis points. The Appraisal shall include a reasoned narrative to support the conclusion set forth in the Appraisal regarding the capitalization rate differential, including any deviation from the historic differential.

e. [***For lease transfers***:] The Appraiser shall select approaches to value that are applicable to the assignment, but shall include a residual land value analysis as one approach.

f. ***[For transfers by Hybrid Lease]*** In order to determine Annual Rent, the Appraiser shall quantify, based on consultation with at least 2 Qualified Investment Advisors, a factor which when multiplied by either the Fee Simple Value or the Prepaid Lease Value, yields the Annual Rent (the "Annual Rent Conversion Factor") i.e., Fee Value or Prepaid Lease Value ($X) x Annual Rent Conversion Factor (Y%) = Annual Rent. The Appraiser and Qualified Investment Advisors may determine the Annual Rent Conversion Factor as a factor to be applied against either the Prepaid Lease Value or the Fee Value, and the Appraisal shall state whether the Annual Rent Conversion Factor specified is to be applied against Fee Value or Prepaid Lease Value. The Port and Developer understand that an Annual Rent Conversion Factor applied to Prepaid Lease Value would be different and higher than an Annual Rent Conversion Factor applied to Fee Value, but in either case the Annual Rent Conversion Factor should be determined so as to yield the same result when multiplied by the appropriate value, i.e., the Fair Market Value Annual Rent. The Annual Rent Conversion Factor shall be within the range recommended by the Qualified Investment Advisors, and the Appraisal shall include a reasoned narrative to support the conclusion set forth in the Appraisal regarding the determination of the Annual Rent Conversion Factor within that range.

VI. Appraisal Procedures.

The following sets forth the procedures for the preparation of each Appraisal; these procedures may be modified or waived by mutual agreement of Port and Developer, each agreeing to such modification or waiver in its sole discretion.

A. Contracting Parties. The Appraiser will be engaged jointly by Developer and Port (collectively, the "**Contracting Parties**") and will be provided with points of contact for each to assist in completing the assignment. For questions regarding the appraisal and subject documents, please contact both of the following:

Port Contact:

Name, Address, Phone #, Email address

Developer Contact:

Name, Address, Phone #, Email address

B. Pre-Work Conference: At the request of the Contracting Parties, the Appraiser will attend a pre-work conference for discussion and understanding of these Instructions, including a timing update. The pre-work conference may be held in conjunction with an inspection of the Subject Property.

C. Inspection: Inspection of the Subject Property is to be coordinated with the property contacts who will both have the option of having representatives attend the inspection with the Appraiser.

D. Draft Report: The Appraiser will submit to the Contracting Parties an initial draft appraisal report (the "**Draft Report**"), consisting of an unprotected PDF copy of such report, within the period specified within the fully executed contract for appraisal services. The Appraiser shall maintain a well-documented workfile, available on request for review by the Contracting Parties, containing supporting documents, meeting and interview notes, and other materials relied upon but not included in the Appraisal.

E. Review and Comment Period: Following its receipt of the Draft Report, the Contracting Parties will review such Draft Report and, within 15 calendar days thereafter, provide any comments or feedback to the Appraiser.

F. Final Appraisal: Following receipt of any comments, the Appraiser will, within a reasonable time (not to exceed 15 calendar days without the Contracting Parties' written consent), revise the Draft Report as appropriate after considering any such comments or feedback and deliver to the Contracting Parties a final Appraisal, by emailing a PDF report and delivering by overnight delivery service two (2) signed hard copies of the final Appraisal.

VII. Confidentiality.

The Contracting Parties and the Appraiser acknowledge and agree that, in the course of preparing an Appraisal pursuant to these Instructions, the Contracting Parties may disclose

confidential information, which has been approved and authorized by Contracting Parties for release to the Appraiser.

The Appraiser agrees not to disclose such confidential information to any third party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Appraiser may disclose such confidential information on a "need to know" basis to the Appraiser's employees and subcontractors. As a condition precedent to any such disclosure, each and all of such employees and subcontractors will have executed a written confidentiality agreement with the Contracting Parties in the form of Attachment 11, which obligates such employees and subcontractors to maintain the confidentiality of such confidential information.

Each Appraisal, the Fair Market Value determination included therein, and the supporting documentation, also constitute confidential information, and the Appraiser will strictly abide by the confidentiality and ethics provisions of the Appraisal Institute and USPAP.

The Appraiser must obtain written authorization from the Contracting Parties before disclosure of any confidential information. The passage of time in and of itself will not extinguish either the Appraiser's responsibility for confidentiality or the appraiser/client relationship. The appraiser/client relationship is extinguished only upon written release from the Contracting Parties. Even though the appraiser/client relationship may terminate, the Appraiser will at all times remain subject to the confidentiality and ethics provisions of Appraisal Institute and USPAP.

VIII. ATTACHMENTS AND SCHEDULES

The following Attachments and Schedules attached to these Joint Appraisal Instructions are incorporated herein by this reference:

Attachment 1: Subject Property

Attachment 2: SUD and Design for Development

Attachment 3: Interagency Cooperation Agreement

Attachment 4: Form of Vertical DDA

Attachment 5: Form of Development Agreement Assignment, Assumption and Release

Attachment 6: Form of Master CC&Rs

Attachment 7: Form of Vertical Coordination Agreement

Attachment 8: Summary of Lien of Special Taxes

Attachment 9: Rate and Method of Apportionment

Attachment 10: Final Subdivision Map

Attachment 11: Form of Non-Disclosure Agreement

Attachment 12: Phase Submittal

Schedule 1: Subject Property Special Instructions

Schedule 2: Intentionally Omitted

Schedule 3: Background

Schedule 4: Appraisal Notice

Schedule 5: List of Qualified Investment Advisors

SCHEDULE 1: SUBJECT PROPERTY SPECIAL INSTRUCTIONS

[Special Instructions to include, without limitation:

Description of the grading, excavation and geotechnical condition of the site (as certified by Developer's geotechnical engineer), and the applicable standard of remediation.

If the Subject Property includes a basement level, description of the condition of the site, which may be left as-is, or partially pre-excavate.

Separate Special Instructions for Residential and Commercial-Office if the Subject Property is Flex and a dual appraisal is requested by Developer.]

SCHEDULE 3: BACKGROUND

A. Entitlement and Legal Framework. The applicable zoning for the 28-Acre Site is set forth in the Pier 70 Special Use District (the "**SUD**") and Design for Development that govern the development standards and guidelines for Vertical Development. The DDA is the principal agreement governing development of the 28-Acre Site, including both "horizontal" and "vertical" development of the Project, delivery of public benefits and the financial structure for the transaction. The City has entered into a Development Agreement with Developer that provides vested rights to both horizontal and vertical development to proceed in accordance with the Project Approvals and Transaction Documents.

B. Horizontal Development and Deferred Infrastructure.

1. Developer is responsible under the DDA for horizontal development of the Project, including entitlement, site preparation (including grading and environmental remediation), subdivision and construction work related to streets and sidewalks, public realm amenities (e.g., parks and open space), public utilities and shoreline improvements to create development parcels and support and protect buildings (including affordable housing). Standards for horizontal development are set forth in the Infrastructure Plan attached to the DDA and the Streetscape Master Plan subsequently approved by the Port. Under the Interagency Cooperation Agreement, the City and Port agree to process applications for Horizontal Improvements and subdivision maps consistent with the DDA (including the Infrastructure Plan and Streetscape Master Plan) and in accordance with the streamlined review and approval procedures set forth therein.

2. The DDA establishes the scope and timing of Project phasing through a Phasing Plan and Schedule of Performance that establishes deadlines by which Developer must submit development applications for each Phase, commence and complete the Phase Improvements within each Phase, and deliver Associated Public Benefits, subject to Excusable Delay. The DDA also allows Developer to identify Deferred Infrastructure Zones associated with Option Parcels within which items of Deferred Infrastructure may be assigned to Vertical Developers. Each Deferred Infrastructure Zone may consist of the following: (i) the area between back-of-curb and the adjacent Development Parcel boundary (or if none, the adjacent Public Spaces); (ii) up to 40 feet of Public Spaces and mid-block passages adjacent to Development Parcels; and the entire portion of Market Square (OS-2) that will be built in the air parcel above Parcel D; and (iii) the area adjacent to Development Parcels for the installation of service infrastructure, including laterals, traps, air vents, clean-outs, meter boxes, backflow preventers, irrigation facilities and associated pedestals, pull boxes, and secondary conduits. Developer or the applicable Vertical Developer as assigned will be obligated to construct the Deferred Infrastructure, subject to the Schedule of Performance attached as DDA Exhibit B2 and as outlined in the Vertical Coordination Agreement.

C. Phase Submittals. The Subject Property is included within the Phase Submittal for Phase ***[XX]*** of the Project, a copy of which is attached hereto as Attachment 12. The Phase Submittal sets forth all applicable obligations and timing for completion of Phase Improvements within the applicable Phase, the range of residential density and maximum off-street parking that can be allocated to each Option Parcel and the public benefits that will be provided with the

delivery of Vertical Improvements within the applicable Phase, including child-care facilities, community facilities and affordable housing.

D. Conveyance of Subject Property and Vertical Development. Pursuant to Section 7.3(a) of the DDA, Developer has triggered the appraisal process for the Subject Property by delivering to the Port the Appraisal Notice attached hereto as Schedule 4. In the Appraisal Notice, Developer has identified the Subject Property, provided a detailed program of uses planned for the parcel, including the area programmed for each type of use, the location, and amount of office development on the Subject Property that would be counted against the maximum annual limit under Planning Code Section 321 and identified the inclusionary housing, fee and program requirements that will be binding on the Subject Property consistent with the Affordable Housing Plan.

SCHEDULE 4: APPRAISAL NOTICE

EXHIBIT D5
BIDDER SELECTION CRITERIA

I. RESIDENTIAL PARCELS

Non-Affiliation Requirement
- Bidder is an Unrelated Vertical Developer, as that term is defined in the DDA
- Bidder does not have any financial arrangements with Developer.

Financial Requirements
-Bidder is able to demonstrate the financial ability to perform the obligations it is assuming in association with the development of the Option Parcel. For purposes of this section, this includes meeting the Minimum Net Worth Requirement as defined in the Vertical DDA, evidence of access to adequate equity and debt capital along with commitment letters from those financing sources, and the ability to post the required security associated with the development of the Option Parcel.

Experience Requirements
-One or more principals of the bidder has at least five (5) years of experience in developing the type of residential product to be developed on the Option Parcel the bidder is seeking to purchase or lease.

-The principals of the bidder have collectively completed at least three (3) development projects containing at least 75% of the number of units proposed for the Option Parcel.

Entity in Good Standing Requirements
-Documentation evidencing that the bidder and its constituent members, if any, have been duly formed, made all filings and are in good standing in the State of California and in the state of their respective incorporation. If the bidder is a joint venture, then the bidder shall provide evidence demonstrating the existence of a duly executed contractual relationship between the applicable parties.

-Bidder has not defaulted on its obligations on another lot or project within the Pier 70 SUD or any other agreement on Port- or City-owned property.

No Unfair Advantage Requirement
Bidder has not received an unfair advantage by receiving any bid information that is different from or in advance of such information being made available to other interested bidders.

Compliance with Transaction Documents and Port/City Requirements
Bidder has indicated its willingness to enter into the Vertical DDA [and form of Ground Lease] in the form included in the bid package, and its ability to comply with applicable Port and City requirements thereunder, including the Workforce Development Plan.

II. COMMERCIAL PARCELS

Non-Affiliation Requirement
- Bidder is an Unrelated Vertical Developer, as that term is defined in the DDA
- Bidder does not have any financial arrangements with Developer in submitting its bid

Financial Requirements
-Bidder is able to demonstrate the financial ability to perform the obligations it is assuming in association with the development of the Option Parcel. For purposes of this section, this includes meeting the Minimum Net Worth Requirement as defined in the Vertical DDA, evidence of access to adequate equity and debt capital along with commitment letters from those financing sources, and the ability to post the required security associated with the development of the Option Parcel.

Experience Requirements
-The managing principal of the bidder has at least five (5) years of experience in developing the type of commercial product to be developed on the Option Parcel the bidder is seeking to purchase or lease.

-The principals of the bidder have collectively completed at least three (3) development projects containing at least 75% of the commercial square footage proposed for the Option Parcel.

Entity in Good Standing Requirements
-Documentation evidencing that the bidder and its constituent members, if any, have been duly formed, made all filings and are in good standing in the State of California and in the state of their respective incorporation. If the bidder is a joint venture, then the bidder shall provide evidence demonstrating the existence of a duly executed contractual relationship between the applicable parties.

-Bidder has not defaulted on its obligations on another lot or project within the Pier 70 SUD or any other agreement on Port- or City-owned property.

Compliance with Transaction Documents and Port/City Requirements
Bidder has indicated its willingness to enter into the Vertical DDA and form of Ground Lease in the form included in the bid package, and its ability to comply with applicable Port and City requirements thereunder, including the Workforce Development Plan.

No Unfair Advantage Requirement

Bidder has not received an unfair advantage by receiving any bid information that is different from or in advance of such information being made available to other interested bidders

EXHIBIT D5

DDA EXHIBIT D6
LAND VALUE INDICATORS BY PARCEL

[to be appended to the DDA after the Reference Date in accordance with DDA § 4.5(b) (Land Value Indicator)]

DDA EXHIBIT D7
Outline of Master Association Conditions, Covenants, and Restrictions

Defined terms used but not defined in this Exhibit D7 shall have the meanings set forth in the DDA. Prior to delivery of the first Appraisal Notice for a Development Parcel under Section 7.3(a) of the DDA, Port and Developer shall agree upon the form of Master CC&Rs in accordance with Section 8.6 of the DDA. The Master CC&Rs shall contain at a minimum the provisions set forth in this Exhibit D7.

Legal Framework: City and Port will consent to recordation of the Master CC&Rs that are consistent with these minimum requirements. The Master CC&Rs will be recorded against each Development Parcel within the Covered Property (described below) prior to termination or release of the Master Lease and before conveyance of the applicable Development Parcel to a Vertical Developer. Upon recordation, the Master CC&Rs will constitute covenants running with the land and an encumbrance and restriction on Developer's leasehold interest under the Master Lease with respect to the applicable Covered Property, but will not constitute a lien, encumbrance or restriction on Port's fee interest in any property within the 28-Acre Site. Port will consent to the survival of the Master CC&Rs upon termination or release of the Master Lease as to any and all of the Covered Property, and the Master CC&Rs will thereupon run with the land upon conveyance by Port to each Vertical Developer of the Covered Property.

Declarant: FC Pier 70, LLC, or its successor and assigns as Developer under the DDA ("**Developer**").

Covered Property: The property within the 28-Acre Site that will be subject to the Master CC&Rs (the "**Covered Property**") will consist of all Development Parcels other than (i) the Affordable Housing Parcels; (ii) Parcel E4; and (iii) Historic Buildings 12 and 21.

Master Owners' Association and Condominium Owners' Associations: The Master CC&Rs will designate a master owners' association (the "**Master Owners' Association**") comprised of the ground lessees and fee owners of each covered Development Parcel. Each Development Parcel that is further subdivided for residential or commercial condominium purposes will also be subject to a Condominium Declaration of Covenants and Restrictions ("**Condominium CC&Rs**") that will designate a condominium association (each, a "**Condominium Owners' Association**") comprised of the owner of each individual condominium unit (but not including the City or Port) within the applicable Development Parcel covered by the Condominium CC&Rs. The Condominium Owners' Association will also be a member of the Master Owners' Association.

Governing Documents: Developer shall record one overall set of Master CC&Rs and such other annexations, declarations, public use easements and/or other instruments governing the common use, maintenance and obligations associated with the Covered Property (collectively, the "**Governing Documents**") and may record one or more separate sets of Governing Documents against the commercial portions of the Covered Property and the residential portions of the Covered Property. Port will cooperate and approve the recordation of the Governing Documents in such form as is reasonably approved by the Executive Director in consultation

with the City Attorney. The Master CC&Rs will specify that the Master CC&Rs will survive the termination of the Master Lease so as to constitute covenants, conditions and encumbrances on any Development Parcel conveyed to a Vertical Developer through a Parcel Lease.

Term. The Master CC&Rs will provide for a term of ninety-nine (99) years with ten (10) year automatic renewals, subject to customary termination provisions by the parcel owners after the sale or lease of all parcels within the Covered Property. Notwithstanding the foregoing, Port, at its option, may elect to release a Development Parcel that is the subject of a Parcel Lease from the Master CC&Rs upon termination of applicable Parcel Lease subject to taking reasonable measures to accommodate reciprocal or joint use easements provided in the Master CC&Rs for parcels remaining subject to the Master CC&Rs to the extent reasonably necessary for their continued operation.

Easements, Operating Covenants and Use Restrictions. The Governing Documents may include the following elements: descriptions of the separately-held interests in the Covered Property; descriptions of the reciprocal, joint use, non-exclusive, and exclusive easements between and among the holders of interests in the Covered Property; covenants for collective management, administration, operation, maintenance, repair, replacement and reconstruction of the common areas; the formation and operation of the Master Owners' Association; certain covenants and restrictions relative to the use of the easement areas, the Development Parcels and condominium projects and units located therein (including, without limitation, permitted and prohibited uses, signage and parking, consistent with the terms of the SUD and Design for Development); and provisions regarding insurance, damage and destruction and other matters pertaining to the Project.

Design Review: The Master CC&Rs will require the owner or lessee of each Development Parcel to obtain approval by the Master Association Design Review Committee for consistency with the SUD and Design for Development before the applicable owner or lessee may submit a design review application to Port/Planning to the extent required by the SUD, the DDA and/or the VDDA. Design review applications will reflect changes required by the Master Owner's Association as necessary to achieve consistency with the SUD and Design for Development.

Transportation Management Association: The Master CC&Rs and/or the applicable Condominium CC&Rs will include the obligation to establish and maintain at all times during the Term of the Master CC&Rs a Transportation Management Association ("**TMA**") that shall operate in accordance with the requirements of MMRP Mitigation Measure M-AQ-1f: Transportation Demand Management.

Transportation Demand Management: The Master CC&Rs will require each member of the Master Association to comply with and implement Transportation Demand Management ("TDM") measures imposed by the TMA that are selected from the TDM Program Standards set forth therein to achieve the TDM Commitment 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 CC&Rs may include requirements for individual monitoring of building trips and enforcement by the Master Association of buildings that fail to meet the TDM Commitments associated with their individual building.

Residential Parking Permits: Each property owner or ground lessee will be prohibited from applying for residential permit parking (RPP) at the Project site, and residents of Pier 70 will not be eligible for or seek to obtain permits under the neighboring Dogpatch RPP.

Project Development and Maintenance Responsibilities for Private Streets and Open Space. The Master CC&Rs will set forth the obligations of the Master Owners' Association for the funding and/or responsibility for ongoing maintenance, repair and replacement of any private streets and private open spaces that are established in accordance with the Transaction Documents. The Master CC&Rs will provide for the ownership of the privately maintained infrastructure, or "common area," if any, by the Master Owners' Association, the applicable Condominium Owners' Association or the owners of each individual lot or condominium unit as tenants in common, as appropriate in each case.

Funding and Other Responsibilities: The Governing Documents will describe the various relationships between the Port, Developer and its successors, including the Master Owners' Association, the Condominium Owners' Associations and individual property owners regarding payments for funding the Master Owners' Association obligations. If the Master Owners' Association selects a Business Improvement District (or similar financing structure) (a "**BID**") to fund any improvements to the public realm, each owner/lessee will be required to be a member of the BID.

Budget: The Governing Documents will require that Master Owners' Association and each Condominium Owners' Association distribute to its constituent property owners on an annual basis (i) an annual budget of the applicable Master Owners' Association or Condominium Owners' Association, and (ii) a reserve study performed by the applicable Master Owners' Association and/or Condominium Owners' Association. The Governing Documents will include procedures reasonably necessary to assure that the annual budget (including reserves) will be adequately funded. Such measures will include providing the Master Owners' Association with the right and obligation to assess its members for the reasonable cost of the Associations' maintenance, repair and public services obligations, the right to lien the property of any member who defaults in the payment of an assessment and the obligation to diligently pursue all reasonable actions permitted by law as necessary to collect delinquencies.

Participation in master marketing program. Each Covered Property owner/lessee will be required to participate in a master marketing program for the 28-Acre Site if established by the Master Owners' Association.

District-Wide Requirements. The Master CC&Rs will require each owner/lessee of a Covered Property to provide designated energy, utility and telecommunications facilities within each building and/or participate in various district-wide programs established by the Master Association to comply with its targets under the Sustainability Plan. Such requirements may include participation in district recycled water and district energy systems, installation of rooftop solar facilities, mobile telecom sites (macro or DAS), implementation of district-wide security systems (such as exterior mounted security cameras) and compliance with exclusive marketing agreements for telecommunications providers.

Sitewide Air Monitoring. To comply with regulatory requirements, each owner/lessee of a Covered Property must pay its fair share cost for compliance by the Master Association with the Asbestos Dust Mitigation Program for the 28-Acre Site.

Environmental Covenant. The Master CC&Rs shall provide that the use and maintenance of the Covered Property shall be in compliance with the restrictions and terms of the Environmental Covenants and any later amendments in accordance with applicable laws.

City and Port as Third-Party Beneficiaries. The City and Port shall be third party beneficiaries to all Governing Documents and shall have the right, but not the duty, to enforce the Governing Documents against the Developer and its successors, including the Master Owners' Association, the Condominium Owners' Associations and individual property owners, as applicable, and to receive copies of all material information and documentation that are sent to all of the owners of lots and units pursuant to the requirements of the Governing Documents or required by law related to the ongoing operation, maintenance and repair (including necessary replacements) of the "common area" as provided therein (such as budgets and reserve studies). The Port will have the right to reasonably approve amendments to the Master CC&Rs to the extent that the proposed amendment would affect the rights or obligations of the City or Port thereunder.

DDA EXHIBIT D8
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	
[APN:]	Recorder's Stamp

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Pier 70 Mixed-Use District Project)

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "**Agreement**") (the "**Effective Date**") between **FC PIER 70, LLC**, a Delaware limited liability company ("**Developer**"), and _____, a _____ ("**Transferee**"), is effective as of the date on which is it fully executed by Developer and Transferee.

1. Background.

a. DDA. Developer has entered into a Disposition and Development Agreement dated as of _____, 2018 (the "**DDA**"), with the City and County of San Francisco (the "**City**"), acting through the San Francisco Port Commission (the "**Port**"), which is recorded in the official records administered by the Recorder of the City and County of San Francisco (the "**Official Records**") as Document No. . The DDA governs Developer's and the Port's respective rights and obligations with respect to Developer's master development of approximately 28 acres of Port property commonly known as the "**28-Acre Site**" in Pier 70 (the "**28-Acre Site Project**") and is incorporated into this Agreement by reference. Unless otherwise defined in this Agreement, all initially capitalized defined terms used but not defined in this Agreement have the meanings ascribed to them in the Appendix attached to the DDA, and all standard provisions and rules of interpretation in Appendix Part A apply to this Agreement.

b. DA. Developer has entered into a Development Agreement dated as of _____, 2018 (the "**DA**"), with the City, acting by and through the Planning Commission, vesting certain entitlements for the 28-Acre Site in Developer and imposing specified Impact Fees and Exactions on development of the 28-Acre Site Project. The DA is recorded in the Official Records as Document No. and is incorporated into this Agreement by reference.

c. Transferred Phase. Developer has agreed to Transfer to Transferee as of the Effective Date certain rights and obligations of Developer under the DDA, DA

and Development Entitlements applicable to Phase(s) [***insert Phase #s being assigned]*** (the "**Transferred Phase**(s)") and Transferee is willing to accept the transferred rights and to assume the transferred obligations, on the terms and conditions set forth in this Agreement. The land covered in the Transferred Phase(s) comprises the portion of the 28-Acre Site Project described in the legal description and illustrative map attached as **Exhibit A**.

d. Permitted Transfer. The Transfer to which this Agreement pertains satisfies the requirements of *DDA § 6.4 (Assignment and Assumption Agreement)*. This Agreement is also a DA Assignment as to Transferee and the Transferred Area and satisfies the requirements of *DA § 10.1 (Successors' Rights)*. [***Insert information relevant to transfer, e.g., Transfer to an Unrelated Transferee; Affiliate, conditions to transfer required, applicability and satisfaction of Net Worth and Experience Requirement, and facts supporting the satisfaction of the conditions.***]

2. Assignment by Developer. Developer hereby assigns to Transferee as of the Effective Date each and all of the rights (collectively, the "**Transferred Rights**") and future obligations (collectively, the "**Transferred Obligations**") of Developer described in this **Section 2** to the extent applicable to the Transferred Phase, excluding the "Excluded Obligations" specified in **Section 2(b)** and the "**Excluded Rights**" specified in **Section 2(d)**, [*add if applicable to an approved Phase: subject to all applicable conditions of the Port's Phase Approval].*

a. Transferred Obligations. The Transferred Obligations include:

i. all future obligations to indemnify and release the City Parties;

ii. the obligation to comply with all pertinent Project Requirements and Regulatory Requirements;

iii. the Developer Construction Obligations for all Horizontal Improvements and associated Developer Mitigation Measures for the Transferred Phase;

iv. the Developer Reimbursement Obligation to the extent arising from the Transferred Obligations and the Transferred Phase;

v. the obligation to provide Loss Security for each Transferred Phase [insert or delete as appropriate, which will continue to be satisfied by the Guaranty previously provided by name of the parent that provided security];

vi. [Delete this paragraph if the Transferred Phase does not include any obligations requiring Phase Security (i.e., development of Parks Parcels, delivery of Affordable Housing Parcels or relocation of the Noonan Tenants)] the obligation to provide Phase Security for the Transferred Obligations;

vii. obligations under the Transportation Program to the extent arising from the Transferred Obligations and the Transferred Phase;

viii. obligations under the Workforce Development Plan to the extent arising from the Transferred Obligations and the Transferred Area; and

ix. obligations under the Affordable Housing Plan with respect to [list each Residential Parcel and Flex/residential Parcel in the Transferred Phases].

b. Excluded Obligations. The Excluded Obligations are:

i. the Developer Construction Obligation for the following Associated Public Benefits: [list];

ii. the following obligations under the Transportation Exhibit: [list];

iii. the following obligations under the Workforce Development Plan, expressly excluding: [list];

iv. the following obligations under the Affordable Housing Plan with respect to the Transferred Phase: [list];

v. obligations that expressly survive the DDA or the DA, specifically including indemnification obligations that arise from actions or omissions occurring before the Effective Date; and

vi. [list any other Developer obligations that will not be assigned to the Transferee or that are conditions to the Port's consent].

c. Transferred Rights. The Transferred Rights include:

i. all Vested Elements relating to the Transferred Obligations;

ii. the right to reimbursement of Horizontal Development Costs and Developer Return by the Port in accordance with the Financing Plan;

iii. the right to seek Phase Approvals and changes to the Phasing Plan, Schedule of Performance and previously-approved Phase Approvals for the Transferred Phase under *DDA art. 3 (Phase Approvals)*;

iv. the right to seek changes to the project after Phase 1 under *DDA § 3.4 (Changes to Project After Phase 1)*.

d. Excluded Rights. The Excluded Rights are:

i. [list]

e. Developer's Retained Rights and Obligations. Developer is retaining all Excluded Obligations listed in **Subsection 2(b)** and all Excluded Rights in listed

in **Subsection 2(d)**. Transferee agrees to grant Developer access to the land in the Transferred Phase that Developer reasonably requires to perform the Excluded Obligations or to exercise the Excluded Rights.

3. Assumption By Transferee. Transferee expressly assumes as of the Effective Date all of the Transferred Rights and the Transferred Obligations and agrees to be bound by and perform, as a direct obligation of Transferee to the Port and the City, as applicable, all of the Transferred Obligations.

4. Representations, Acknowledgments, and Waivers.

a. By Transferee as to Transferred Phase. Transferee acknowledges as follows with respect to the Transferred Rights and Transferred Obligations for the Transferred Phase.

i. Transferee had the opportunity to consult with counsel of its own choice before agreeing to assume the Transferred Rights and Transferred Obligations, including all conditions and restrictions in the Vested Elements.

ii. Transferee covenants not to challenge the enforceability of any provision of the Transaction Documents.

iii. Transferee expressly acknowledges that it is aware of and consents to the City's enforcement of its remedies if Transferee fails to comply with obligations that it has assumed under the Affordable Housing Plan. Transferee covenants not to challenge and expressly waives any right to challenge its Transferred Obligations under the Affordable Housing Plan as unenforceable under the Costa-Hawkins Act. Developer acknowledges that the City would not have entered into the DA, and the Port would not have entered into the DDA, without Developer's agreement and waiver regarding the Costa-Hawkins Act. Transferee agrees to include language in substantially the following form in any further Assignment and Assumption Agreement with respect to the Transferred Phases and consents to its inclusion in all Vertical DDAs and in recorded restrictions for any Development Parcel in the Transferred Phases on which residential use is permitted.

The DA and the DDA, which includes the Affordable Housing Plan, 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, Transferee, 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 Unit or Inclusionary Unit developed under the Affordable Housing Plan for the 28-Acre Site.

b. By Transferee as to Developer. Transferee acknowledges as follows.

i. Developer retains the Excluded Rights and the Excluded Obligations for property in the Transferred Phase and the obligation to complete Phase Improvements for all property in the 28-Acre Site outside of the Transferred Phase, including Phase Improvements that may adjoin the Transferred Phase.

ii. Due to Developer's retained obligations, including its obligation to complete Horizontal Improvements for portions of the 28-Acre Site adjacent to the Transferred Phase, Transferee assumes all risk of Developer's failure to perform its retained obligations and waives and releases the Port and the City from any Losses relating to or arising from Developer's failure to perform its obligations.

iii. Transferee agrees to provide information timely and in the manner reasonably required by Developer to permit Developer to meets its obligations under *FP art. 9 (Reporting)* to submit Developer Quarterly Report, Phase Audits, and the Final Audit.

c. By Developer as to Transferee. Developer expressly assumes the risk of Transferee's failure to perform any of the Transferred Obligations and waives and releases the Port and the City from any Losses relating to or arising from Transferee's failure to perform the Transferred Obligations.

d. Developer's Representations and Warranties. Developer represents and warrants to Transferee as follows, as of the Effective Date.

i. The Transaction Documents are in full force and effect and have not been modified except as follows: [Specify any amendments].

ii. To the actual knowledge of the person signing on behalf of Developer, no circumstance exists that with notice or passage of time, or both, would be an Event of Default or Material Breach by Developer, the City, or the Port under the Transaction Documents.

iii. To the actual knowledge of the person signing on behalf of Developer, there are no set-offs or defenses against the enforcement of any right or remedy, or any duty or obligation, of the Port, the City, or Developer under the Transaction Documents.

iv. Developer has obtained all consents to this Agreement that are required under any agreement to which it is a party or by which it is bound. Other than the consents so obtained, no consent to this Agreement is required under any agreement to which Developer is a party or by which it is bound.

v. Developer's execution, delivery, and performance of this Agreement will not contravene any legal requirements applicable to Developer or conflict with, breach, or contravene any agreement binding on Developer.

e. Transferee's Representations and Warranties. Transferee represents and warrants to Developer as of the Effective Date:

i. Transferee has obtained all consents to this Agreement that are required under any agreement to which it is a party or by which it is bound, and no other consent is required under any agreement to which Transferee is a party or by which it is bound.

ii. Transferee's execution, delivery, and performance of this Agreement will not contravene any legal requirements applicable to Transferee or conflict with, breach, or contravene any agreement binding on Transferee.

5. General Provisions.

a. Attorney's Fees.

i. Prevailing Party. Should Developer or Transferee institute any action or proceeding in court or other dispute resolution mechanism to enforce any provision of this Agreement or for damages by reason of an alleged breach of this Agreement, the prevailing party will be entitled to receive from the losing party costs and expenses incurred by the prevailing party, including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses, postage and communication expenses, and reasonable attorneys' fees and costs for the services rendered the prevailing party(ies) in such action or proceeding. Attorneys' fees under this clause include attorneys' fees on any appeal.

ii. Reasonable Fees. For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel for Developer or Transferee will be based on the average fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the party's in-house counsel's services were rendered who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the applicable party.

b. Notices. Any notice or other communication required or permitted to be given under this Agreement by any party to any other party will be in writing and will

be sufficiently given or delivered if dispatched by hand, by registered or certified mail, postage prepaid, or overnight delivery, addressed as follows:

Developer: _____

_____

With copies to: _____

_____

_____

Gibson Dunn & Crutcher
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Attention: Neil Sekhri, Esq.

Telephone: (415) 393-8334
Email: nsekhri@gibsondunn.com

Transferee: _____

_____

_____

With a copy to:

c. Effective Date of Notice. Any mailing address or facsimile number may be changed at any time by giving notice of in the manner provided above at least 10 days before the effective date of the change. All notices under this Agreement will be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. No party may give official or binding notice by facsimile, although courtesy copies of notices may be given by facsimile. The effective time of a notice will not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

d. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of each of the parties and their respective successors and assigns. Developer may assign its rights or obligations under this Agreement to any permitted transferee of any of its rights or obligations under the DDA and the DA, subject to and in accordance with their terms.

e. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original. Counterparts may be delivered by facsimile, electronic mail or other similar means of transmission.

f. Captions. Any captions to, or headings of, the articles, sections, or subsections of this Agreement are solely for the convenience of the parties, are not a part of this Agreement, and will not be used to interpret or determine the validity of this Agreement or any of its provisions.

g. Amendment to Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties.

h. Waiver. The waiver or failure to enforce any provision of this Agreement will not operate as a waiver of any future breach of the same or any other provision of this Agreement.

i. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of California.

j. Counsel. Each party acknowledges that: (i) it was represented by counsel in connection with this Agreement; (ii) it executed this Agreement with the advice of counsel; and (iii) this Agreement is the result of negotiations between the parties and the advice and assistance of their respective counsel.

k. Severability. The invalidation of any provision of this Agreement, or of its application to any person, by judgment or court order will not affect any other provision of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement will continue in full force and effect, except to the extent that enforcement of this Agreement is invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

l. Entire Agreement. This Agreement contains all of the representations and warranties and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or representations between the parties relating to this Agreement are incorporated into and superseded by this Agreement. Nothing in this Agreement changes or supersedes any provision of the DDA or the DA. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement may be introduced as evidence in any litigation or other dispute resolution proceeding, and no court or other body will consider those drafts in interpreting this Agreement.

m. Recordation. The parties will record this Agreement in the Official Records with respect to the Transferred Area.

[The remainder of this page has been intentionally left blank.]

DDA EXHIBIT D8
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

DEVELOPER:

_____
a _____

By:_____
Name:
Title:

Date:_____

TRANSFEREE:

_____,a
_____

By:_____
Name:
Title:

Date:_____

DDA EXHIBIT D-8
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

PORT [CONSENT] AND RELEASE

The Port [***add if applicable*** **consents to the assignment and assumption of the DDA to which this consent and release is attached and**], unconditionally and irrevocably fully releases and discharges Transferor from the Transferred Obligations. The Port acknowledges that this release is made with the advice of counsel regarding its consequences and effects. The Port agrees that this release covers unknown claims and waives the benefit of California Civil Code § 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the San Francisco Port Commission

By:_____

_____
Executive Director

Date:_____

DDA EXHIBIT D8
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

CITY [CONSENT] AND RELEASE

The City hereby [***add if applicable*** **consents to the assignment and assumption of the Development Agreement to which this consent and release is attached**], and unconditionally and irrevocably fully releases and discharges Transferor from the Transferred Obligations. The City acknowledges that this release is made with the advice of counsel regarding its consequences and effects. The City agrees that this release covers unknown claims and waives the benefit of California Civil Code § 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

By:_____

_____
Director of Planning

Date:_____

PIER 70 DDA
SCHEDULE 1
APPROVED ARBITERS POOL

Qualified arbiters with Real Estate expertise from the AAA's National Panel of Arbitrators and Mediators

1. **Matthew Geyer** http://www.geyerlawandadr.com/resume.htm

Qualified arbiters with Real Estate expertise from JAMS Global Engineering and Construction Group

2. **Bruce Edwards** https://www.jamsadr.com/edwards/
3. **Hon. William J. Cahill** https://www.jamsadr.com/cahill/
4. **Zela G. Claiborne** https://www.jamsadr.com/claiborne/

PIER 70 DDA SCHEDULE 2
QUALIFIED APPRAISER POOL

1. **Newmark Cornish & Carey (Brian Hegarty)**
   One Bush Street
   Suite 1500
   San Francisco, CA 94104
   T. 415.445.5181

2. **CBRE, Inc. (Bruce Jamgotchian)**
   101 California Street, 44th Floor
   San Francisco, CA 94111
   925.296.7745 (phone)
   Bruce.jamgotchian@cbre.com

3. **BBG (Jan Kleczewski)**
   101 Montgomery Street, Suite 1800
   San Francisco, CA 94104
   (415) 248-5000 Phone
   Jkleczewski@bbgres.com

4. **Cushman + Wakefield (Elizabeth Champagne)**
   Cushman & Wakefield Western, Inc.
   201 California Street, Suite 800
   San Francisco, CA 94111
   415.397-1700
   Elizabeth.champagne@cushwake.com

5. **R. Blum and Associates (Ronald Blum)**
   505 Sansome Street, Suite 850
   San Francisco CA 94111
   415.944.4441 (phone)
   Rblum@rba-appraisal.com

PIER 70 DDA
SCHEDULE 3
QUALIFIED BROKERS POOL

1. Moran & Co. (Mary Ann King)
2 Embarcadero, 8th Floor
San Francisco, CA 94111
415.634.7030 (phone)
maryannk@moranandco.com

2. Newmark Cornish & Carey (Mike Taquino)
One Bush Street
Suite 1500
San Francisco, CA 94104
United States
415.477.9200 (phone)
mtaquino@newmarkccarey.com

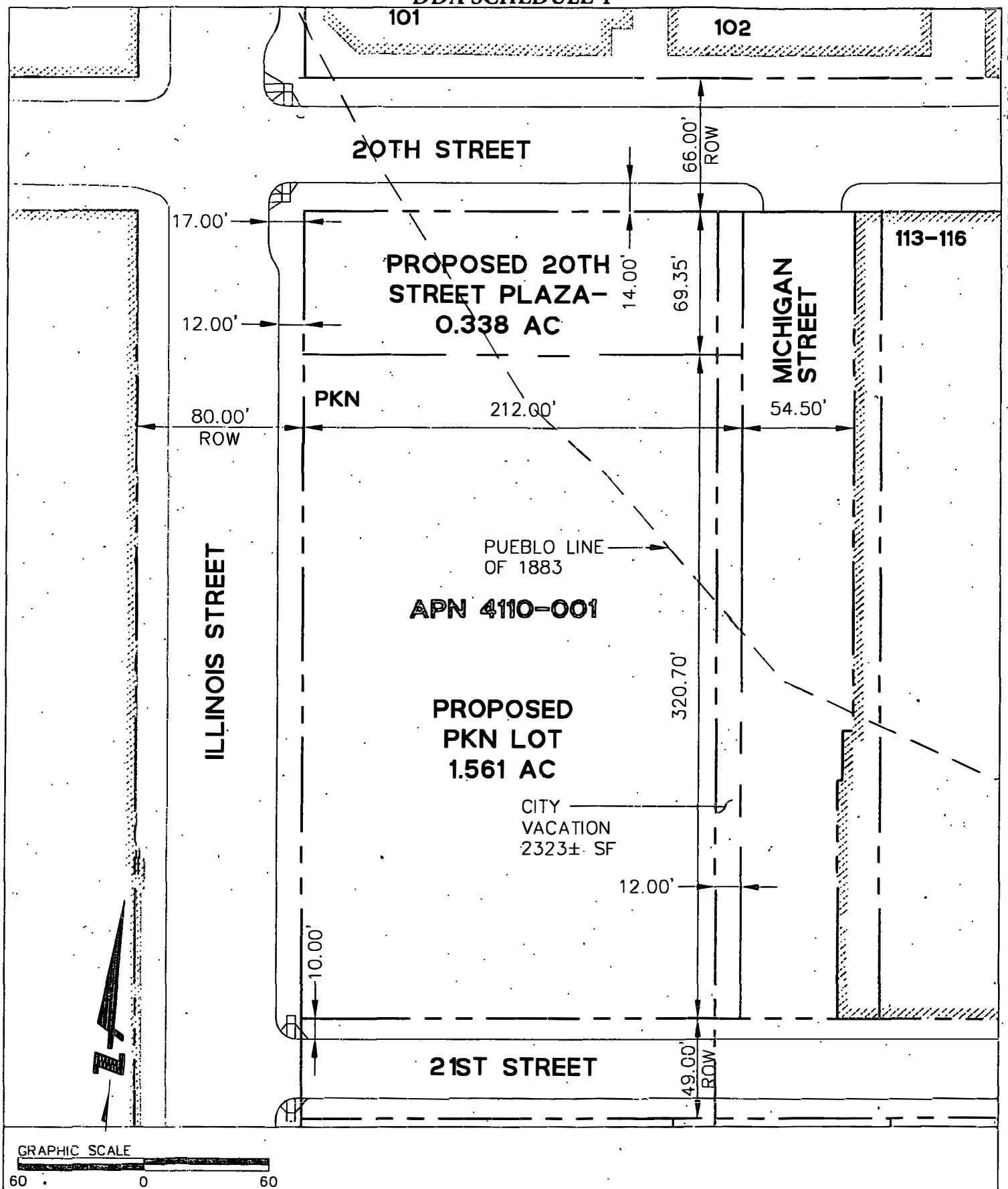
3. CBRE, Inc. (Russell Ingrum)
101 California Street
44th Floor
San Francisco, CA 94111
415.772.0459 (phone)
Russell.ingrum@cbre.com

4. Colliers International (Tony Crossley)
101 Second Street, 11th Floor
San Francisco, CA 94105
United States
415.288.7807 (phone)
Tony.Crossley@colliers.com

5. HFF (Bruce Ganong, Michael Leggett)
101 Second Street, Suite 800
San Francisco, CA 94105
415.276.6300

6. Eastdil Secured (Jeff Weber, Paul Nelson, Mark Penrod)
101 California Street, Suite 2950
San Francisco CA 94111
415.228.2900 (phone)

7. JLL (Chris Roeder, Elizabeth Hearle)
One Front Street
Suite 1100
San Francisco, CA 94111
415.395-4900



Date 08/12/2017	No.	Revisions
Scale 1"=60'		
Design RKB		
Drawn PJR		
Approved TRM		
Job No 20170209		

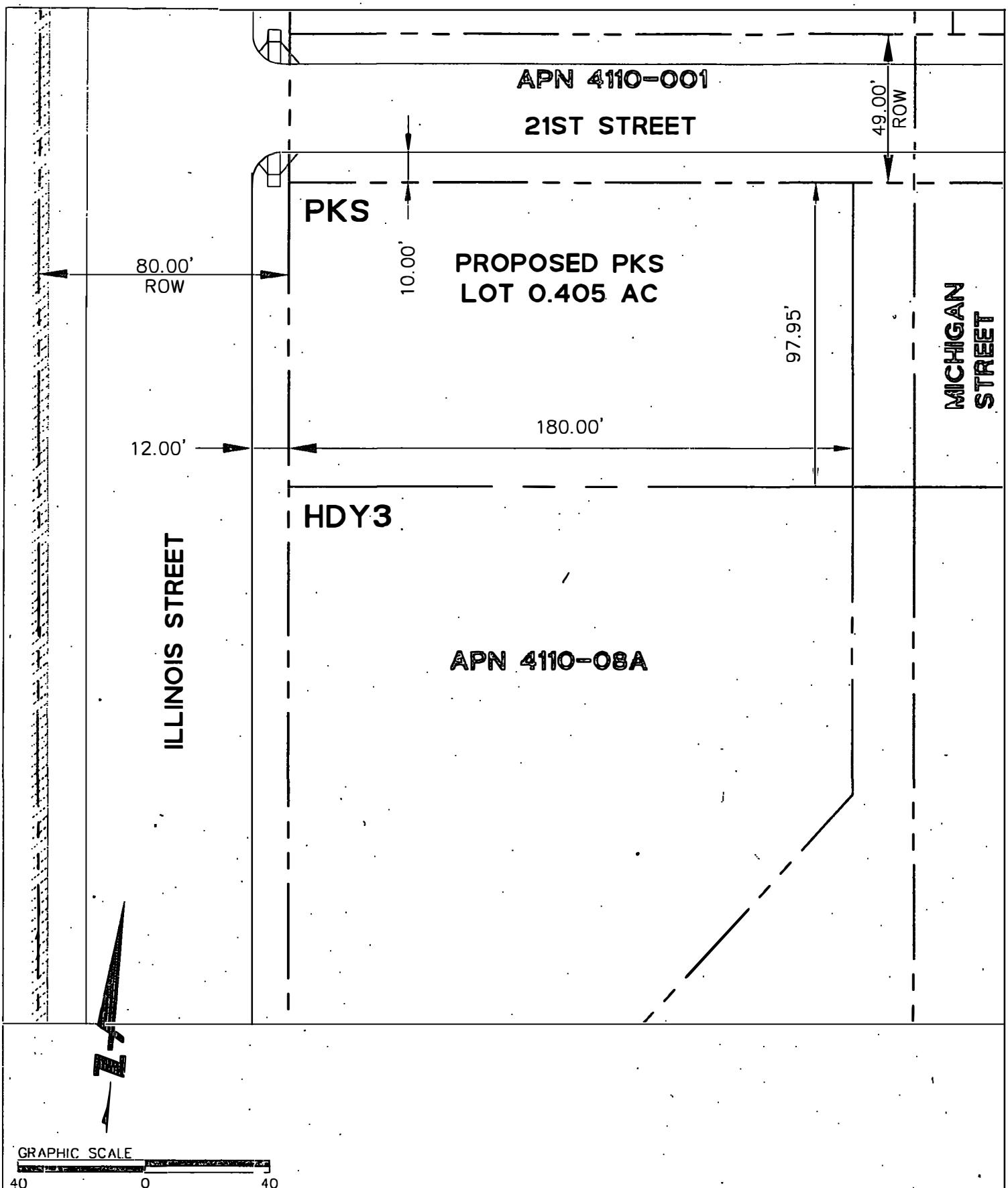
PIER 70 SUD
LOT PKN EXHIBIT

CITY & COUNTY OF SAN FRANCISCO CALIFORNIA

BKF
ENGINEERS | SURVEYORS | PLANNERS
255 SHORELINE DRIVE, STE 200
REDWOOD CITY, CA 94065
650/482-6300
650/482-6399 (FAX)

PLOT DATE: 09-12-17 PLOTTED BY: rais

BKF Engineers



Date 09/12/2017	No.	Revisions
Scale 1"=40'		
Design RKB		
Drawn PJR		
Approved TRM		
Job No 20170209		

PIER 70 SUD
LOT PKS EXHIBIT

CITY & COUNTY OF SAN FRANCISCO CALIFORNIA

BKF
ENGINEERS / SURVEYORS / PLANNERS
255 SHORELINE DRIVE, STE 200
REDWOOD CITY, CA 94065
650/482-6300
650/482-6399 (FAX)

PLOT DATE: 09-12-17 PLOTTED BY: rols

BKF Engineers

DDA SCHEDULE 5

Illinois Street Additional Measures for PKN/PKS and HDY Parcel Offerings

Measure 1: Conduct Long-Term Site Noise Measurements

Prior to designing buildings that front Illinois Street, the developers of the Illinois Parcels ("**Illinois Parcel building developers**") will conduct long-term noise measurements. These measurements will be conducted for at least 48 hours (as compared to the typical 24 hour period) and should include normal operation of the AIC loading docks. Future Illinois Parcel building developers will consult with AIC to determine appropriate monitoring locations and the most representative 48-hour window within a two week period, during a time of year of typical, representative operations. Provided, however, that if it is not feasible to conduct the long-term noise measurements during a time of year of typical, representative operation at AIC, the consultant conducting noise measurements may provide adjusted noise levels that have been modified as appropriate in the consultant's professional opinion to reflect typical, representative operation at AIC. In addition to measuring the site LDN, the measurements will also the capture maximum noise levels ("**LMAX**") associated with AIC operations during nighttime hours (10 p.m. to 7 a.m.). The Illinois Parcel building developers may capture LMAX noise levels by performing the noise measurements using sound level meters with the ability to record audio when a certain trigger level is exceeded. Therefore, loud events could be recorded and determined if they are AIC loading dock activity or not.

Measure 2: Residential Building Design at Illinois Parcels

Based on the long-term measurement data collected in Measure 1 and the predicted Project + Future site noise levels, the Illinois Parcel building developers will design the buildings' exterior facades (including windows) to reduce exterior noise levels to a maximum of 45 dBA LDN at the interiors of dwelling units, and to 50 dBA L_{eq} at the interiors of any other space where the principal use is non-residential. This measure would satisfy the State of California Title 24 requirement.

In addition, the Illinois Parcel building developers will design the exterior façade of the Illinois Parcels to reduce maximum interior noise levels (LMAX) from AIC activities during nighttime hours (10 p.m. to 7 a.m.) to the maximum extent feasible with the goal of ensuring maximum interior noise levels of 50 dBA LMAX, where feasible as determined by the noise consultant conducting noise measurements in accordance with Measure 1. Mitigation of LMAX levels is not required by Title 24 and would be an additive measure.

Measure 3: Development of Outdoor Use at Illinois Parcels

Based on the findings in the EIR that future traffic noise levels along Illinois Street would exceed 65 dBA LDN, as well as the potential for impact from AIC operations such as hoods, mechanical venting, etc., the DDA will require that the Port include in Illinois Parcel conveyance documents a requirement that unprotected outdoor use areas associated with residential development along Illinois Street shall be avoided where feasible – this would include playgrounds and patio areas but would exclude balconies and any pedestrian and/or service

passageways. The DDA will require the Port to include in conveyance documents for the Illinois Parcels a requirement that whenever feasible, the Illinois Parcel building developers will locate outdoor use areas associated with residential development along Illinois Street at the east side or interior of any residential buildings, which will shield the spaces from noise along and across Illinois Street. In addition, where outdoor use areas associated with residential development along Illinois Street are built, they must incorporate mitigation to reduce noise levels to up to 70 dBA LDN.

Measure 4: Land Use Restriction at Ground Floor at Illinois Parcels

The Pier 70 SUD Design for Development document will prohibit any residential uses on the ground floor of any building on the Illinois Parcels. Instead, the Design for Development document will authorize retail, institutional, office, arts, and PDR-1 uses on the ground floor of buildings at the Illinois Parcels, which are more compatible with the current activities at AIC and would present fewer potential land use conflicts with ground-floor AIC operations, such as the AIC loading docks located on the western side of Illinois Street. Additionally, buildings at the Illinois Parcels are required to have a minimum ground floor height of 14 feet, with the exception of parcel PKN, putting the first residential level generally above the level of AIC loading docks.

Measure 5: Required Disclosure to Future Owners/Lessees of Residential Units Located within the Illinois Parcels

Prior to conveyance of each Illinois Parcel, a notice of special restrictions must be recorded against the applicable Illinois Parcels containing the following disclosure to lessees/purchasers in all buildings fronting Illinois Street:

"DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S): You are purchasing or leasing property that is adjacent to or nearby to the existing American Industrial Center (AIC). As of [DATE], the AIC is located in a PDR-1-G (Production, Distribution and Repair – General) zoning district and contains light industrial, as well as office, retail, and other uses. Consistent with such zoning, the AIC operations generate noise associated with truck traffic and loading activities at the AIC and other impacts at all hours of the day, seven days per week, even if operating in conformance with existing laws and regulations and locally accepted customs and standards for operations of such uses. California law provides: "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance." (Cal. Civil Code Section 3482). You should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living near the AIC, and understand that the AIC is not required to alter its current or future activities undertaken in compliance with applicable laws and zoning regulations after construction of your building."

The notice will require the applicable property owners to provide the disclosure to lessees prior to signing a lease, and to purchasers at the time required by California Civil Code Section 1102.3.

Measure 6: Condominium Governing Documents/Property Management Agreement for Residential Development on Illinois Parcels to Include Meet and Confer Process, Designated Liaison

Conveyance documents for the Illinois Parcels will require the applicable developer to include the following provisions in the recorded covenants, conditions and restrictions ("**CC&Rs**") (or other applicable governing documents) for any future residential condominium development governing documents for any future residential condominium development and/or the property management agreement for any future rental residential development the following:

Establishment of a point of contact within the homeowners association and/or property manager to receive any resident complaints regarding noise or other issues related to AIC operations prior to any such complaints being submitted to the AIC. Such point of contact shall be responsible for providing to complainant a copy of the DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S).

- Establishment of a "meet and confer" process to (a) receive any resident complaints regarding noise or other issues related to AIC operations, and (b) consistent with the DISCLOSURE OF NEIGHBORING LIGHT INDUSTRIAL USE(S), resolve directly with AIC such complaints, with the goal of resolving informally between the residential project and AIC any resident complaints prior to the complainant's filing of a formal complaint with the City or other regulatory agency.
- Designation of a representative of the condominium association (in the case of a residential condominium development) and/or property owner/management company (in case of a residential rental development) to act as a liaison with the AIC. The liaison shall promote open and regular communication between the residential project and AIC. The liaison shall work with appropriate AIC representatives to ensure that both the occupants of the Illinois Street project and AIC (and their respective residents/tenants) receive advance notice of events that may affect residents or AIC tenants, and to minimize the disruption associated with such events.