

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Port of San Francisco  
Pier 1  
San Francisco, CA 94111  
Attn: Eileen Malley, Esq.

The undersigned hereby declares this instrument to be  
exempt from Recording Fees (Govt. Code § 27383) and  
from Documentary Transfer Tax (CA Rev. & Tax.  
Code § 11922 and SF Bus. and Tax Reg. Code § 1105)

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APN Block 4297, Lot 001; Block 4298, Lot 001;  
Block 4299, Lot 001; Portion of Block 4300, Lot 001;  
Portion of Block 4310, Lot 004; Block 4313, Lot 1

**DECLARATION OF MARITIME AND INDUSTRIAL USES**

THIS DECLARATION OF MARITIME AND INDUSTRIAL USES (this  
“**Declaration**”) is made as of this \_\_\_ day of \_\_\_\_\_, 2016 (the “**Effective Date**”), by and  
between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**”),  
operating by and through the SAN FRANCISCO PORT COMMISSION (“**Port**”), and the City,  
operating by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION  
AGENCY (“**SFMTA**” or “**Declarant**”). Port and Declarant are collectively referred to herein as  
the “**Parties**”, or each individually, a “**Party**”.

**RECITALS**

A. Port and SFMTA entered into a Memorandum of Understanding dated as of  
January 25, 2001 (“**MOU**”), which granted the SFMTA the right to use a portion of the Western  
Pacific Railroad Yard, comprised of approximately 17 acres and bounded by 25th, Illinois, Cesar  
Chavez, and Maryland Streets, as further described in *Exhibit A* (“**Property**”), primarily for  
light rail vehicle storage, operations and maintenance facilities serving the 3rd Street Light Rail  
and for other incidental SFMTA operational needs, including, but not limited to, a revenue  
collection center, training facility, and warehouse for the storage of equipment and vehicle parts  
(collectively, “**Permitted Uses**”) during the term of the MOU.

B. Port manages, in trust for the people of the State of California, approximately 7½  
miles of San Francisco Bay shoreline stretching from Hyde Street Pier in the north to India Basin  
in the south (the “**Trust Lands**”). Port’s responsibilities for the Trust Lands 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.

C. On February 27, 2001, the Port Commission approved the MOU by Resolution No. 01-15 and on March 6, 2001, the SFMTA Board approved the MOU by Resolution No. 01-018.

D. As required under the MOU, SFMTA paid Port \$29,700,000 for the perpetual use and future jurisdictional transfer of the Property, with \$25,700,000 of such amount representing the fair market value of the Property and \$4,000,000 of such amount was used by Port to construct the Illinois Street Bridge over Islais Creek.

E. The MOU requires Port to seek approval of a jurisdictional transfer of the Property to the SFMTA on the satisfaction of certain conditions, and the MOU will terminate on the completion of such jurisdictional transfer.

F. In accordance with Section 23.16 of the Admin. Code, on [\_\_\_\_\_, 201XX], pursuant to Resolution No. XX-XXX, the Board of Supervisors determined that the Property could be used more advantageously by SFMTA and authorized the transfer of the jurisdiction of the Property to SFMTA on the terms of the MOU.

G. The last condition to the effectiveness of the jurisdictional transfer is the recordation of this Declaration.

NOW THEREFORE, Declarant hereby imposes on the Property certain rights, reservations, restrictions, covenants, conditions, and equitable servitudes on the following terms and conditions:

1. **Definitions.** As used herein, the following terms have the following meanings:

2. **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 Declaration. The rights, reservations, restrictions, covenants, conditions and equitable servitudes set forth in this Declaration will (1) run with and burden the Property in perpetuity and will be binding upon all persons having or acquiring any interest in the Property 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, and their respective successors-in-interest; and (4) may be enforced by Declarant, Port, and their respective successors-in-interest.

3. **Adjacent and Nearby Maritime and Industrial Uses; Waiver.**

3.1 Certain essential maritime and industrial uses currently exist on Port lands in the vicinity of the Property (collectively, the “**Maritime and Industrial Uses**”). The Maritime and Industrial Uses generate certain impacts such as noise, parking congestion, truck traffic, rail traffic, auto traffic, odors, dust, dirt and visual obstructions. It is the intent of Port that it retain the flexibility to maintain the Maritime and Industrial Uses and to expand or change the same in the future (collectively, the “**Maritime, Industrial and Other Uses**”) without being subject to suits by adjacent or nearby property owners against Port for nuisance, inverse condemnation or similar causes of action. Consequently, SFMTA must require that each of its transferees,

successors, lessees or permittees that is granted the right to exclusive occupancy of a portion of the Property for a cumulative period of more than twenty-nine (29) consecutive days (each, a “**Transferee**”) acknowledge the contents of this Declaration in writing.

**3.2** In addition, any Transferee that owns or leases a portion of the Property for a term longer than five (5) years in the aggregate (“**Significant Transferee**”) must agree in writing to waive its 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 with respect to the Property or similar claims with respect to the Property arising out of the existence of the Maritime, Industrial and Other Uses and commercial/recreation uses on Port property within its Southern Waterfront Area (which extends generally from Mariposa Street to India Basin), and any expansion, modification or addition to such uses. In addition, all Significant Transferees must obtain a similar written agreement from any subsequent Significant Transferee. All agreements referred to in this Section 3.2 shall contain a provision conferring third party beneficiary status on Port. The requirements of this Section 3.2 shall expire on \_\_\_\_\_, 20XX. [insert date that is thirty (30) years from the date of the inter-departmental transfer.]

4. **SFMTA Waiver.** SFMTA, by executing this Declaration further covenants by and for itself, its transferees, successors, and assigns to any portion of the Property, and all persons claiming by and through them, to the maximum extent authorized by law, to waive and relinquish any and all rights to commence or maintain a lawsuit for common law or statutory nuisance, inverse condemnation or other legal action, based upon interference with the comfortable enjoyment of life or property or similar claims with respect to the Property, arising out of the existence of the Maritime, Industrial and Other Uses or other activities or development occurring on Port lands in the vicinity of the Property, and any expansion, modification or addition thereof.

5. **Enforcement.** Port will be entitled to any and all rights and remedies available at law or equity in order to enforce its rights under this Declaration, including but not limited to, specific performance.

6. **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:

To Port:  
San Francisco Port Commission  
Pier 1  
San Francisco, California 94111  
Attention: Director of Planning & Development  
Telephone: (415) 274-0400

With a Copy To:  
San Francisco City Attorney's Office  
San Francisco Port Commission  
Pier 1  
San Francisco, California 94111  
Attention: General Counsel  
Telephone: (415) 274-0400

To Declarant:  
SFMTA  
Municipal Transportation Agency  
1 South Van Ness Avenue, 8th Floor  
San Francisco, CA 94103  
Attn: Senior Manager, Real Estate Section

With a Copy To:  
San Francisco City Attorney's Office  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attention: SFMTA General Counsel  
Telephone: (415) 554-4700

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.

7. **Third Party Beneficiary.** The Parties agree that the City and Port are intended named third party beneficiaries of Declarant's covenants, acknowledgments, agreements, waivers and releases contained in this Declaration.

8. **Covenants Run With the Land.** The Parties intend and agree that the covenants, acknowledgments, agreements, waivers and releases contained in this Declaration are covenants, not conditions, running with the land and they will, in any event, and without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, be binding for the benefit of the City and Port and will be enforceable by either the City, Port, or both, against SFMTA and its successors and assigns and subsequent owners, lessees, and other users of the Property. Notwithstanding anything to the contrary in the foregoing, Port shall have the right to terminate or waive the requirements set forth in this Declaration in writing if such termination or waiver is approved by the Port's Commission in its sole discretion.

9. **Miscellaneous.**

9.1 **Governing Law.** The provisions hereof shall be construed and enforced in accordance with the laws of the State of California.

9.2 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. For purposes of this Declaration, reasonable attorneys' fees of the City's Office of the City Attorney shall 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 Office of the City Attorney.

9.3 Time. Time is of the essence of each and every provision hereof.

9.4 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.

9.5 Construction. Whenever the context of this Declaration 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.

9.6 Waiver. Any waiver with respect to any provision of this Declaration shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this Declaration 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 Declaration. No waiver will be interpreted as a continuing waiver.

9.7 Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

9.8 Severability. Invalidation of any portion or provision of this Declaration 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.

9.9 No Dedication. This Declaration 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 Declaration as of the day and year first above written.

Port:

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation, acting by the  
**SAN FRANCISCO PORT COMMISSION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SFMTA:

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation, acting by the  
**SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY**

By: \_\_\_\_\_

ED REISKIN, Director of Transportation

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**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)

**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            )

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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)