



**[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**

TABLE OF CONTENTS

	<u>Page</u>
1. PREMISES; TERM .....	5
1.1. Premises .....	5
(a) Lease of Premises; Description.....	5
(b) Permitted Title Exceptions.....	5
(c) Accessibility Inspection Disclosure.....	5
(d) San Francisco Disability Access Disclosures .....	5
(e) No Right to Encroach.....	5
(f) Subsurface Mineral Rights.....	6
(g) AS IS WITH ALL FAULTS\ .....	6
(h) Title Defect .....	8
(i) No Light, Air or View Easement .....	8
(j) Unique Nature of Premises .....	8
(k) Memorandum of Technical Corrections .....	8
(l) Port's Reservation of Rights .....	8
1.2. Term.....	8
2. RENT .....	8
3. USES.....	8
3.1.. Permitted Use.....	8
3.2. Prohibited Use.....	9
3.3. Liquidated Damages for Repeat Prohibited Uses .....	9
3.4. Advertising and Signs .....	10
3.5. Restrictions on Encumbering Port's Reversionary Interest .....	10
3.6. Required Public Access Areas .....	10
3.7. Required Public Benefits .....	10
3.8. Priority Retail Along Shipways Commons.....	11
4. DEVELOPMENT PROJECTS .....	11
4.1. Generally.....	11
4.2. Pier 70 .....	11
5. TAXES AND ASSESSMENTS .....	13

5.1.	Payment of Possessory Interest Taxes and Other Impositions .....	13
5.2.	CFD Matters and Shortfall Provisions.....	15
5.3.	Port's Right to Pay.....	16
6.	CONTESTS .....	16
6.1.	Right of Tenant to Contest Impositions and Liens .....	16
6.2.	Port's Right to Contest Impositions.....	16
7.	COMPLIANCE WITH LAWS.....	17
7.1.	Obligation to Comply .....	17
7.2.	Unforeseen Requirements.....	17
7.3.	Right to Terminate Lease.....	17
8.	REGULATORY APPROVALS .....	18
9.	TENANT'S MANAGEMENT AND OPERATING COVENANTS.....	20
9.1.	Operating Standards.....	20
9.2.	Leasing of Premises .....	20
9.3.	Reporting of Subleases .....	20
9.4.	Restaurant/Retail Businesses Open to the General Public.....	21
9.5.	Flags.....	21
9.6.	Graffiti Removal .....	22
9.7.	Mitigation Monitoring and Reporting Program.....	22
9.8.	Transportation Program .....	22
9.9.	Pier 70 Risk Management Plan.....	22
10.	REPAIR AND MAINTENANCE; FACILITIES CONDITION REPORT; CAPITAL RESERVES.....	22
10.1.	Covenants to Repair and Maintain the Premises .....	22
10.2.	Facilities Condition Report.....	23
10.3.	Capital Reserves.....	24
10.4.	No Obligation of Port; Waiver of Rights.....	24
10.5.	Port's Right to Repair .....	24
11.	IMPROVEMENTS .....	25
11.1.	Tenant's Obligation to Construct the Initial Improvements [and Deferred Infrastructure] .....	25
11.2.	Title to Improvements.....	25
12.	CONSTRUCTION.....	25

12.1.	Port Approval.....	25
12.2.	Permits/Design Review/Tenant Improvements .....	26
12.3.	Construction Schedule .....	26
12.4.	Construction.....	26
12.5.	Safety Matters .....	27
12.6.	Record Drawings .....	27
12.7.	Certification of Entitlement Costs and Total Development Costs.....	28
13.	UTILITY AND TELECOMMUNICATIONS SERVICES .....	28
13.1.	Utility Services.....	28
13.2.	Energy Consumption .....	29
13.3.	Rooftop and Other District-Wide Equipment .....	29
13.4.	Electricity.....	30
13.5.	Waiver.....	30
14.	DAMAGE OR DESTRUCTION.....	30
14.1.	Damage or Destruction .....	30
14.2.	Restoration Obligation.....	31
14.3.	Termination Due to Major or Uninsured Casualty .....	31
14.4.	Distribution Upon Lease Termination Due to Tenant Failure to Restore.....	32
15.	CONDEMNATION.....	33
15.1.	General; Notice; Waiver .....	33
15.2.	Total Condemnation.....	33
15.3.	Substantial Condemnation, Partial Condemnation .....	33
15.4.	Awards.....	34
15.5.	Temporary Condemnation .....	35
15.6.	Relocation Benefits, Personal Property .....	35
16.	LIENS .....	35
16.1.	Liens.....	35
16.2.	Mechanics' Liens.....	35
17.	DEPOSITS.....	35
17.1.	Base Rent Deposit.....	35
17.2.	Environmental Financial Performance Deposit.....	35
17.3.	Environmental Oversight Deposit.....	36
17.4.	Generally.....	37

18.	ASSIGNMENT AND SUBLETTING .....	37
18.1.	Transfer .....	37
18.2.	Assignment of Rents .....	41
18.3.	Subletting by Tenant .....	42
18.4.	Non-Disturbance of Subtenants and Attornment .....	43
18.5.	No Further Amendment or Consent Implied .....	46
18.6.	No Release of Tenant .....	46
18.7.	Acknowledgement .....	47
19.	INDEMNIFICATION OF PORT .....	47
19.1.	General Indemnification of the Indemnified Parties .....	47
19.2.	Hazardous Materials Indemnification .....	47
19.3.	Scope of Indemnities; Obligation to Defend .....	48
19.4.	Exclusions from Indemnifications, Waivers and Releases .....	49
19.5.	Survival .....	49
19.6.	Defense .....	49
19.7.	Waiver .....	50
20.	INSURANCE .....	51
21.	HAZARDOUS MATERIALS .....	51
21.1.	Compliance with Environmental Laws .....	51
21.2.	Tenant Responsibility .....	51
21.3.	Tenant's Environmental Condition Notification Requirements .....	52
21.4.	Remediation Requirement .....	53
21.5.	Pesticide Prohibition .....	54
21.6.	Additional Definitions .....	54
22.	DELAY DUE TO FORCE MAJEURE .....	56
23.	PORT'S RIGHT TO PAY SUMS OWED BY TENANT .....	56
23.1.	Port May Pay Sums Owed by Tenant Following Tenant's Failure to Pay .....	56
23.2.	Tenant's Obligation to Reimburse Port .....	56
24.	EVENTS OF DEFAULT .....	56
24.1.	Events of Default .....	56
24.2.	Special Provisions Concerning Lenders and Events of Default .....	58
25.	REMEDIES .....	58
25.1.	Port's Remedies Generally .....	58

25.2.	Right to Keep Lease in Effect.....	58
25.3.	Port's Right to Cure Tenant's Default .....	59
25.4.	Termination of Tenant's Right to Possession .....	59
25.5.	Continuation of Subleases and Other Agreements .....	60
25.6.	Appointment of Receiver .....	61
25.7.	Waiver of Redemption.....	61
25.8.	Liquidated Damages for Repeat Prohibited Uses .....	61
25.9.	Horizontal Developer Right to Perform Deferred Infrastructure.....	61
25.10.	Remedies Not Exclusive.....	61
26.	EQUITABLE RELIEF.....	61
27.	NO WAIVER.....	61
27.1.	No Waiver by Port or Tenant.....	61
27.2.	No Accord or Satisfaction.....	61
28.	DEFAULT BY PORT; TENANT'S REMEDIES .....	62
28.1.	Default by Port.....	62
28.2.	Tenant's Exclusive Remedies .....	62
29.	TENANT'S RECOURSE AGAINST PORT .....	62
29.1.	No Recourse Beyond Value of Property Except as Specified .....	62
29.2.	No Recourse Against Specified Persons.....	62
29.3.	Nonliability of Tenant's Members, Partners, Shareholders, Directors, Officers and Employees.....	63
30.	LIMITATIONS ON LIABILITY .....	63
30.1.	Waiver of Indirect or Consequential, Incidental, Punitive or Special Damages.....	63
30.2.	Limitation on Parties' Liability Upon Transfer .....	63
31.	ESTOPPEL CERTIFICATES BY TENANT AND SUBTENANT .....	63
32.	ESTOPPEL CERTIFICATES BY PORT.....	64
33.	APPROVALS BY PORT; STANDARD OF REVIEW; FEES FOR REVIEW .....	64
33.1.	Approvals by Port; Standard of Review; Fees for Review .....	64
33.2.	Standard of Review.....	64
33.3.	Fees for Review .....	65
34.	NO MERGER OF TITLE.....	65
35.	QUIET ENJOYMENT.....	65
36.	SURRENDER OF PREMISES .....	65

36.1.	Condition of Premises.....	65
36.2.	Demolition of Improvements.....	65
36.3.	Personal Property.....	66
36.4.	Quitclaim.....	66
37.	HOLD OVER.....	66
38.	NOTICES.....	67
38.1.	Notices .....	67
38.2.	Form and Effect of Notice .....	67
39.	ACCESS TO THE PREMISES BY PORT .....	68
39.1.	Entry by Port.....	68
39.2.	General Entry.....	68
39.3.	Emergency Entry .....	68
39.4.	No Liability.....	68
39.5.	Non-Disturbance.....	68
39.6.	Subtenant Agreement.....	69
40.	MORTGAGES.....	69
40.1.	Mortgages .....	69
40.2.	Copy of Notice of Default to Lender .....	70
40.3.	Lender's Option to Cure Defaults.....	70
40.4.	Lender's Obligations with Respect to the Property .....	71
40.5.	Required Provisions of Any Mortgage .....	72
40.6.	No Impairment of Mortgage.....	72
40.7.	Multiple Mortgages.....	72
40.8.	Cured Defaults .....	73
40.9.	Limitation on Liability of Lender .....	73
40.10.	New Lease.....	73
40.11.	Nominee.....	74
40.12.	Subleases and Other Property Agreements.....	74
40.13.	Consent of Lender .....	74
40.14.	Cooperation.....	74
40.15.	Reliance.....	74
40.16.	Priority of Lender Protections.....	74
41.	NO JOINT VENTURE.....	75

42.	ECONOMIC ACCESS .....	75
43.	REPRESENTATIONS AND WARRANTIES.....	75
44.	MITIGATION AND IMPROVEMENT MEASURES .....	76
45.	PORT AND CITY SPECIAL PROVISIONS .....	76
46.	GENERAL.....	76
	46.1. Time of Performance .....	76
	46.2. Interpretation of Agreement.....	76
	46.3. Successors and Assigns.....	77
	46.4. No Third-Party Beneficiaries.....	77
	46.5. Real Estate Commissions.....	77
	46.6. Counterparts.....	77
	46.7. Entire Agreement.....	77
	46.8. Amendment.....	77
	46.9. Governing Law; Selection of Forum .....	77
	46.10. Recordation.....	78
	46.11. Attorneys' Fees .....	78
	46.12. Effective Date .....	78
	46.13. Severability .....	78
47.	DEFINITION OF CERTAIN TERMS .....	78

**Exhibits:**

Exhibit A	Legal Description of Property
Exhibit B	Site Plan
[Exhibit B-2]	[If applicable: Depiction of Public Access Areas]
Exhibit C-1	Scope of Development
[Exhibit C-2]	[If applicable: Affordable Housing Requirements]
[Exhibit C-3]	[If applicable: Minimum Public Benefit Area]
Exhibit D	Rent
Exhibit E	Project Approvals
Exhibit F	Permitted Title Exceptions
[Exhibit G-1]	[If applicable: Public Access Areas]
[Exhibit G-2]	[If applicable: Rules and Regulations for Public Access Areas]
Exhibit H-1	Assessor Information
Exhibit H-2	Executed Notice of Special Tax
Exhibit H-3	CFD Matters
Exhibit I	Leasing Activity Report
Exhibit J	Mitigation and Improvement Measures Program
Exhibit K	Transportation Program
Exhibit L	Form of Facilities Condition Report
Exhibit M	Workforce Development Plan



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** Located in Zone 3, California grid System, at a point Reservation Entry where X equals \_\_\_\_ and Y equals \_\_\_\_

[Note: Not applicable if land has been transferred out of the Trust.]

**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<sup>1</sup>:**

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]

<sup>1</sup> 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 (10<sup>th</sup>) 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 (10<sup>th</sup>) 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]**<sup>2</sup>

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

---

<sup>2</sup> 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 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, 22<sup>nd</sup> and 23<sup>rd</sup> 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 19<sup>th</sup> Street. Proposed extension of 19<sup>th</sup> 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 19<sup>th</sup> 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 20<sup>th</sup> Street to the 19<sup>th</sup> Street extension; creation of a new primary entrance access to the Ship Repair site entrance from 20<sup>th</sup> Street to the terminus of the 19<sup>th</sup> Street extension and rerouting primary Ship Repair truck traffic from 20<sup>th</sup> Street to the 19<sup>th</sup> Street extension; and street improvements along the eastern side of Illinois Street.

(iv) 19<sup>th</sup> Street Parking Lot and Future Development Site. Located between the Historic Core on the north side of 20<sup>th</sup> Street and the new 19<sup>th</sup> and Georgia Streets, the Port will construct an interim, approximately 180 car parking lot, including associated access points from 19<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> 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 22<sup>nd</sup> 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 (25<sup>th</sup>) 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 (26<sup>th</sup>)

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 (20<sup>th</sup>) anniversary of the Commencement Date and every ten (10) years thereafter until and including the sixtieth (60<sup>th</sup>) 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<sup>th</sup>) 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<sup>th</sup>) 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 (10<sup>th</sup>) 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 (10<sup>th</sup>) 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 Mortgage 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 untenable, 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 (10<sup>th</sup>) 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<sup>th</sup>))

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 applicable 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 or 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 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:

<b>To Port:</b>	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
<b>With a copy to:</b>	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
<b>To Tenant:</b>	
<b>With a copy to:</b>	

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 *Section 1.1(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 (5<sup>th</sup>) 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 (61<sup>st</sup>) 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:

$$\text{Current Index/Prior Index} \quad \times \quad \text{Base Rent} = \text{Adjusted Base Rent}$$

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 (30<sup>th</sup>) anniversary of the Commencement Date ("**Percentage Rent Commencement Date**") and continuing thereafter throughout the Term until the sixtieth (60<sup>th</sup>) 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 (60<sup>th</sup>) 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.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works

## **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 E**

**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 1<sup>st</sup> 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 1<sup>st</sup>, 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 31<sup>st</sup> 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:

- As of Lien Date \_\_\_\_\_
- As of Date of Completion \_\_\_\_\_

A.P.N. \_\_\_\_\_  
(Block) (Lot)

Address \_\_\_\_\_

## COST REPORT

DESCRIPTION	Contract Amount	% Complete	Total Cost Completed To Date	Reported Previously	This Report
<b>DIRECT COST: (Includes)</b>					
Building Permits/Fees					
Contractor's Profit and Overhead					
Equipment Used in Construction					
Labor Used in Construction					
Material, Products and Equipment					
Performance Bonds					
<b>SUBTOTAL DIRECT COST</b>					
<b>TENANT IMPROVEMENT:</b>					
Owners Cost					
Tenants Cost					
<b>SUBTOTAL TENANT IMPROVEMENT</b>					
<b>INDIRECT COST: (Includes)</b>					
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					
<b>SUBTOTAL INDIRECT COST</b>					
<b>LAND COST</b>					
<b>ENTREPRENEURIAL PROFIT</b>					
<b>TOTAL PROJECT COST</b>					

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

CONFIDENTIAL



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.

	<b>As of the Above-Listed Date</b>
<b>Total square footage available for Sublease at the Premises</b>	
<b>Total square footage of Subleased Space</b>	
<b>Number of Subtenants</b>	
<b>Average rental rate for Subleased Space (expressed as monthly rate of dollars per square foot of Subleased Space)</b>	
<b>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]</b>	

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: \_\_\_\_\_

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<b>MITIGATION MEASURES FOR THE PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<i>Cultural Resources (Archaeological Resources) Mitigation Measures</i>					
<p><b>M-CR-1a: Archeological Testing, Monitoring, Data Recovery and Reporting</b></p> <p>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</p>	<p>Project sponsors<sup>2</sup> to retain qualified professional archaeologist from the pool of archaeological consultants maintained by the Planning Department.</p> <p>The archaeological consultant shall undertake an archaeological testing program as specified herein.</p> <p>Project sponsors,</p>	<p>Prior to the issuance of site permits, submittal of all plans and reports for approval by the ERO.</p>	<p>Archaeological consultant's work shall be conducted in accordance with this measure at the direction of the ERO.</p>	<p>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</p>	<p>Planning Department</p>

<sup>1</sup> 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 20<sup>th</sup> 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).

<sup>2</sup> 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.

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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).</p> <p><u>Consultation with Descendant Communities</u></p> <p>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.</p>	<p>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.</p>	<p>For the duration of soil-disturbing activities.</p>	<p>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.</p>	<p>Considered complete upon submittal of Final Archaeological Resources Report.</p>	
<u>Archaeological Testing Program</u>	<u>Development of</u>	Prior to any	Archaeological	Considered	Planning

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL.	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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.</p> <p>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:</p> <p>A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or</p> <p>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.</p>	<p><u>ATP:</u> Project sponsors and archaeological consultant in consultation with the ERO.</p> <p><u>Archeological Testing Report:</u> Project sponsors and archaeological consultant in consultation with the ERO.</p>	<p>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.</p> <p>At the completion of each archaeological testing program.</p>	<p>consultant to undertake ATP in consultation with ERO.</p> <p>Archaeological consultant to submit results of testing, and in consultation with ERO, determine whether additional measures are warranted. If significant archaeological</p>	<p>complete with approval of the ATP by the ERO and on finding by the ERO that the ATP is implemented.</p> <p>Considered complete on submittal to ERO of report(s) on ATP findings.</p>	<p>Department</p>



PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
			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.		
<p><u>Archeological Monitoring Program</u></p> <p>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:</p> <ul style="list-style-type: none"> <li>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</li> </ul>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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;</p> <ul style="list-style-type: none"> <li>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;</li> <li>The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;</li> </ul> <p>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</p>		<p>activities. The ERO in consultation with the archeological consultant shall determine what archeological monitoring is necessary. A single AMP or multiple AMPs may be produced to address project phasing.</p>			

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>discretion of the project sponsors either:</p> <p>A) The Proposed Project shall be redesigned so as to avoid any adverse effect on the significant archeological resource; or</p> <p>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.</p> <p>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.</p>					
<p><u>Archeological Data Recovery Program</u></p> <p>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.</p>	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.	

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>The scope of the ADRP shall include the following elements:</p> <ul style="list-style-type: none"> <li>• <i>Field Methods and Procedures.</i> Descriptions of proposed field strategies, procedures, and operations.</li> <li>• <i>Cataloguing and Laboratory Analysis.</i> Description of selected cataloguing system and artifact analysis procedures.</li> <li>• <i>Discard and Deaccession Policy.</i> Description of and rationale for field and post-field discard and deaccession policies.</li> <li>• <i>Interpretive Program.</i> Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.</li> <li>• <i>Security Measures.</i> Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.</li> <li>• <i>Final Report.</i> Description of proposed report format and distribution of results.</li> <li>• <i>Curation.</i> 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.</li> </ul>					
<p><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</p>	<p>Project sponsors and archaeological consultant, in consultation with the San Francisco Coroner, NAHC, ERO, and MLD.</p>	<p>In the event human remains and/or funerary objects are encountered.</p>	<p>Archaeological consultant/ archaeological monitor/project sponsors or contractor to contact San Francisco County Coroner and ERO.</p>	<p>Ongoing during soils disturbing activity.                      Considered complete on notification of the San Francisco County Coroner</p>	<p>Planning Department</p>

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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.	
<p><u>Final Archeological Resources Report</u></p> <p>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.</p> <p>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</p>	<p>Project sponsors and archaeological consultant at the direction of the ERO.</p> <p>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.</p>	<p>For Horizontal Developer-prior to determination of substantial completion of infrastructure at each sub-phase</p> <p>For Vertical Developer-prior to issuance of Certificate of Temporary or Final Occupancy, whichever occurs first</p>	<p>If applicable, archaeological consultant to submit a Draft and final FARR to ERO based on reports and relevant data provided by the ERO</p> <p>Archaeological consultant to distribute FARR.</p>	<p>Considered complete on submittal of FARR and approval by ERO.</p> <p>Considered complete when archaeological consultant provides written certification to the ERO that the required FARR</p>	<p>Planning Department</p>

PARCEL LEASE EXHIBIT J

File No: 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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.	
<p><b>M-CR-1b: Interpretation</b></p> <p>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.</p> <p>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</p>	Project sponsors and archeological 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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency<sup>1</sup></b>
<p>component.</p> <p>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.</p>			interpretation program.		
<p><b>Mitigation Measure M-CR-5: Preparation of Historic Resource Evaluation Reports, Review, and Performance Criteria.</b></p> <p>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</p>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>retention of the following character-defining features of each historic building:</p> <ul style="list-style-type: none"> <li>• <b>Building 2:</b> (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.</li> <li>• <b>Building 12:</b> (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</li> <li>• <b>Building 21:</b> (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.</li> </ul> <p>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.</p>					
<p><b>Mitigation Measure M-CR-II: Performance Criteria and Review Process for New Construction</b></p> <p>In addition to the standards and guidelines established as part of the Pier 70</p>	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



PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>SUD and <i>Design for Development</i>, 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 <i>Design for Development</i>):</p> <ol style="list-style-type: none"> <li>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."</li> <li>2. New construction shall comply with the Infill Development Design Criteria in the Port of San Francisco's <i>Pier 70 Preferred Master Plan</i> (2010) as found in Chapter 8, pp 57-69 (a policy document endorsed by the Port Commission to guide staff planning at Pier 70).</li> <li>3. New construction shall be purpose-built structures of varying heights and massing located within close proximity to one another.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ol>		construction.	the San Francisco Port Preservation staff, shall use the Final Pier 70 SUD <i>Design for Development</i> 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 <i>Design for Development</i> Standards, including Secretary Standard No. 9, outlined in the written memorandum.	

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>7. Parcel development shall be limited to the new construction zones identified in <i>Design for Development</i> Figure 6.3.1: Allowable New Construction Zones.</p> <p>8. The maximum height of new construction shall be consistent with the parcel heights identified in <i>Design for Development</i> Figure 6.4.2: Building Height Maximum.</p> <p>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 <i>Design for Development</i> Figure 4.8.1: Street Trees and Plantings Plan.</p> <p>10. New construction shall be permitted adjacent to contributing buildings as identified in <i>Design for Development</i> Figure 6.3.2: New Construction Buffers.</p> <p>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.</p> <p><u>Building Specific Standards</u></p> <p>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 <i>Design for Development</i> 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 <i>Design</i></p>			<p>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.</p>		

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>																						
<p><i>for Development.</i></p> <p>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.</p> <p><b>Table M.CR.1: Building-Specific Responsiveness</b></p> <table border="1"> <thead> <tr> <th>Façade/Parcel Name-Number</th> <th>Contributing Building (Building No.)</th> </tr> </thead> <tbody> <tr> <td>North and West; A</td> <td>113</td> </tr> <tr> <td>North and Northeast; B</td> <td>113, 6</td> </tr> <tr> <td>North; C1</td> <td>116</td> </tr> <tr> <td>East and South; C2</td> <td>12</td> </tr> <tr> <td>South and West; D</td> <td>2, 12</td> </tr> <tr> <td>East and South; E1</td> <td>21</td> </tr> <tr> <td>West; E2</td> <td>12</td> </tr> <tr> <td>West; E4</td> <td>21</td> </tr> <tr> <td>North; F/G</td> <td>12</td> </tr> <tr> <td>East; PKN</td> <td>113-116</td> </tr> </tbody> </table> <p><i>Source:</i> ESA 2015.</p> <p><u>Palette of Materials</u></p> <p>In addition to the standards and guidelines pertaining to application of</p>						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
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																										

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>materials in the <i>Design for Development</i>, the following material performance standards would apply to the building design on the development parcels (terminology used has definition as provided in the <i>Design for Development</i>):</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Coarse-sand finished stucco shall not be allowed as a primary material within the entirety of the UIW Historic District.</li> <li>• Bamboo wood siding shall not be allowed on façades listed above or as a primary façade material.</li> <li>• Laminated timber panels shall not be allowed on façades listed above.</li> <li>• When considering material selection immediately adjacent to contributing buildings (e.g., 20<sup>th</sup> 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.</li> <li>• 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</li> </ul>					

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<p>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.</p> <ul style="list-style-type: none"> <li>• Use of contemporary materials shall reflect the scale and proportions of historic materials used within the UIW Historic District.</li> <li>• 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.</li> </ul> <p><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 <i>Design for Development</i> 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.</p>					
<b><u>Transportation and Circulation Mitigation Measures</u></b>					
<p><b>Mitigation Measure M-TR-5: Monitor and increase capacity on the 48 Quintara/24<sup>th</sup> Street bus routes as needed.</b></p> <p>Prior to approval of the Proposed Project's phase applications, project sponsors shall demonstrate that the capacity of the 48 Quintara/24<sup>th</sup> 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</p>	<p>Developer, TMA, and SFMTA.</p> <p>Documentation of capacity of the 48 Quintara/24<sup>th</sup> Street</p>	<p><u>Demonstration of capacity:</u>                      Prior to approval of the project's phase applications.</p>	<p>Project sponsors to demonstrate to the SFMTA that each building for which temporary certificates of occupancy are</p>	<p>Considered complete upon approval of the project's phase application.</p>	<p>Planning Department, SFMTA</p>

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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.</p> <p>If trip generation calculations or monitoring surveys demonstrate that a specific phase of the Proposed Project will cause capacity on the 48 Quintara/24<sup>th</sup> 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:</p> <ul style="list-style-type: none"> <li>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.</li> </ul> <p>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:</p> <ul style="list-style-type: none"> <li>Convert to using higher-capacity vehicles on the 48 Quintara/24<sup>th</sup> 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</li> </ul>	<p>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.</p>	<p>If project sponsors demonstrate to the SFMTA that the phase would not generate a number of transit trips on the 48 Quintara/24<sup>th</sup> Street bus route that would exceed the significance thresholds outlined in the EIR, further monitoring is not required during that phase.</p> <p><u>Capital Costs:</u> Payment required after SFMTA affirms via letter to the project sponsors that mitigation funds will be</p>	<p>requested would not generate a number of transit trips on the 48 Quintara/24<sup>th</sup> 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</p>		

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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.</p> <ul style="list-style-type: none"> <li>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 16<sup>th</sup> Street for the 22 Fillmore between Church and Third streets. Adding signals on Pennsylvania Street and 22<sup>nd</sup> 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.</li> </ul> <p>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/24<sup>th</sup> 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.</p>		<p>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</p>	<p>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.</p>		

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
		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.			
<p><b>Mitigation Measure M-TR-10: Improve pedestrian facilities on Illinois Street adjacent to and leading to the project site.</b></p> <p>As part of construction of the Proposed Project roadway network, the project sponsors shall implement the following improvements:</p> <ul style="list-style-type: none"> <li>• Install ADA curb ramps on all corners at the intersection of 22<sup>nd</sup> Street and Illinois Street</li> <li>• Signalize the intersections of Illinois Street with 20<sup>th</sup> and 22<sup>nd</sup> Street.</li> <li>• Modify the sidewalk on the east side of Illinois Street between 22<sup>nd</sup> and 20<sup>th</sup> streets to a minimum of 10 feet. Relocate</li> </ul>	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



PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
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.					
<p><b>Mitigation Measure M-TR-12A: Coordinate Deliveries</b></p> <p>The Project's Transportation Coordinator shall coordinate with building tenants and delivery services to minimize deliveries during a.m. and p.m. peak periods.</p> <p>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.</p>	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
<p><b>Mitigation Measure M-TR-12B: Monitor loading activity and convert general purpose on-street parking spaces to commercial loading spaces, as needed.</b></p> <p>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.</p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p><b>Mitigation Measure M-C-TR-4A: Increase capacity on the 48 Quintera/24<sup>th</sup> bus route under the Maximum Residential Scenario.</b></p> <p>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.</p>	<p>Developer, TMA and SFMTA</p> <p>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.</p>	<p><u>Demonstration of Capacity:</u> If necessary, prior to approval of the project's phase applications.</p> <p><u>Capital Costs:</u> 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</p>	<p>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.</p>	<p>If necessary, considered complete when SFMTA receives funds from the project sponsors</p>	<p>SFMTA</p>

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
		use, identified in Table 2.3 of the EIR.			
<p><b>Mitigation Measure M-C-TR-4B: Increase capacity on the 22 Fillmore bus route under the Maximum Commercial Scenario.</b></p> <p>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.</p>	<p>Developer, TMA, and SFMTA.</p> <p>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.</p>	<p>If necessary, prior to approval of the project's final phase application.</p> <p><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.</p>	<p>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.</p>	<p>If necessary, considered complete when SFMTA receives funds from the project sponsors.</p>	SFMTA
<b>Noise and Vibration Mitigation Measures</b>					
<p><b>Mitigation Measure M-NO-1: Construction Noise Control Plan.</b></p> <p>Over the project's approximately 11-year construction duration, project</p>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>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:</p> <ul style="list-style-type: none"> <li>• 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).</li> <li>• 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.</li> <li>• 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.</li> </ul>		<p>implementation ongoing during construction.</p>	<p>Control Plan to the Port. A single Noise Control Plan or multiple Noise Control Plans may be produced to address project phasing.</p>	<p>Construction Noise Control Plan to the Port.</p>	

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	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.	
<b>Mitigation Measure M-NO-2: Noise Control Measures During Pile</b>	Project sponsors and construction	Prior to receiving a	Project sponsors to submit to the Port	Considered complete upon	Port or DBI

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p><b>Driving.</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>• Implement "quiet" pile-driving technology such as pre-drilling piles where feasible to reduce construction-related noise and vibration.</li> <li>• Use pile-driving equipment with state-of-the-art noise shielding and muffling devices.</li> <li>• Use pre-drilled or sonic or vibratory drivers, rather than impact drivers, wherever feasible (including slipways) and where vibration-induced liquefaction would not occur.</li> <li>• Schedule pile-driving activity for times of the day that minimize disturbance to residents as well as commercial uses located on-site and nearby.</li> <li>• Erect temporary plywood or similar solid noise barriers along the boundaries of each Proposed Project parcel as necessary to shield affected sensitive receptors.</li> <li>• Other equivalent technologies that emerge over time.</li> <li>• 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)</li> </ul>	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.	submission of documentation incorporating identified practices.	

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
from any given sensitive receptor.					
<p><b>Mitigation Measure M-NO-3: Vibration Control Measures During Construction.</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>• 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:                     <ul style="list-style-type: none"> <li>○ 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.</li> <li>○ 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</li> </ul> </li> </ul>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>second, peak particle velocity).</p> <ul style="list-style-type: none"> <li>○ 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.</li> <li>○ 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.</li> </ul>					
<p><b>Mitigation Measure M-NO-4a: Stationary Equipment Noise Controls.</b></p> <p>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</p>	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



PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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.</p> <p>* 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.</p>		<p>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.</p>			
<p><b>Mitigation Measure M-NO-4b: Design of Future Noise-Generating Uses near Residential Uses.</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>• <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</li> </ul>	<p>Project sponsors and construction contractor(s).</p>	<p>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</p>	<p>Port to review construction plans.</p>	<p>Considered complete after submittal and approval of plans by the Port.</p>	<p>Port or Planning Department/DBI</p>

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<p>this is not feasible, these types of facilities shall be enclosed or equipped with appropriate noise shielding.</p> <ul style="list-style-type: none"> <li>• <u>Design of Future Above-Ground Parking Structure.</u> 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.</li> </ul>		noise conflicts with sensitive receivers,			
<p><b>Mitigation Measure M-NO-6: Design of Future Noise-Sensitive Uses</b></p> <p>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.</p> <p>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</p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<p>extent such use(s) are in operation at the time the analysis is conducted.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• 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&amp;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);</li> <li>• Utilize enhanced exterior wall and roof-ceiling assemblies (with higher STC ratings), including increased insulation;</li> <li>• Utilize windows with higher STC / Outdoor/Indoor Transmission Class (OITC) ratings;</li> <li>• 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</li> </ul> <p>Locate interior hallways (accessing residential units) adjacent to noisy streets or existing/planned industrial or commercial development.</p>					
<b>Mitigation Measure M-NO-7: Noise Control Plan for Special Event</b>	Developer, Port, parks management	Prior to operation of a	Developer, Port, parks management	Considered complete upon	Port

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p><b>Outdoor Amplified Sound.</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>• The project sponsors shall comply with noise controls and restrictions in applicable entertainment permit requirements for outdoor concerts.</li> <li>• Speaker systems shall be directed away from the nearest sensitive receptors to the degree feasible.</li> <li>• 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.</li> </ul>	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.	
<b>Air Quality Mitigation Measures</b>					
<p><b>Mitigation Measure M-AQ-1a: Construction Emissions Minimization</b></p> <p>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:</p> <p>A. <i>Construction Emissions Minimization Plan.</i> 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:</p> <p>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</p>	Project sponsors and construction contractor(s).	<p>Prior to issuance of a site permit, the project sponsors must submit Construction Emissions Minimization Plan</p> <p>Prior to the commencement of construction activities</p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>									
<p>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.</p> <p>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.</p>		<p>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.</p> <p>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</p>	<p>information used during each phase. For off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.</p> <p>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.</p>											
<p><b>Table M-AQ-1-1: Off-Road Equipment Compliance Step-Down Schedule</b></p> <table border="1"> <thead> <tr> <th>Compliance Alternative</th> <th>Engine Emission Standard</th> <th>Emissions Control</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Tier 3</td> <td>CARB PM VDECS (85%)<sup>1</sup></td> </tr> <tr> <td>2</td> <td>Tier 2</td> <td>CARB PM VDECS (85%)</td> </tr> </tbody> </table> <p>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.</p> <p><sup>1</sup> CARB: Currently Verified Diesel Emission Control Strategies (VDECS).</p>						Compliance Alternative	Engine Emission Standard	Emissions Control	1	Tier 3	CARB PM VDECS (85%) <sup>1</sup>	2	Tier 2	CARB PM VDECS (85%)
Compliance Alternative	Engine Emission Standard	Emissions Control												
1	Tier 3	CARB PM VDECS (85%) <sup>1</sup>												
2	Tier 2	CARB PM VDECS (85%)												

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>Available online at <a href="http://www.arb.ca.gov/diesel/verdev/vt/evt.htm">http://www.arb.ca.gov/diesel/verdev/vt/evt.htm</a>. Accessed January 14, 2016.</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> </ol> <p>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</p>		<p>requirements of the Plan and where copies of the Plan are available to the public for review.</p>			

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV.  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>multiple languages (English, Spanish, and Chinese) in designated queuing areas and at the construction site to remind operators of the 2-minute idling limit.</p> <p>4. The project sponsors shall require that each construction contractor mandate that construction operators properly maintain and tune equipment in accordance with manufacturer specifications.</p> <p>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.</p> <p>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</p>					

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<p>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.</p> <p>B. <i>Reporting.</i> 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.</p> <p>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.</p> <p>C. <i>Certification Statement and On-site Requirements.</i> 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.</p>					
<p><b>Mitigation Measure M-AQ-1b: Diesel Backup Generator Specifications</b>                      To reduce NOx associated with operation of the Maximum Commercial or Maximum Residential Scenarios, the project sponsors shall implement the following measures.</p> <p>A. All new diesel backup generators shall:</p> <ol style="list-style-type: none"> <li>have engines that meet or exceed CARB Tier 4 off-road emission standards which have the lowest NOx emissions of commercially</li> </ol>	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



PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>available generators; and</p> <p>2. be fueled with renewable diesel, if commercially available, which has been demonstrated to reduce NOx emissions by approximately 10 percent.</p> <p>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.</p> <p>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.</p>			issuance of a generator permit.		
<p><b>Mitigation Measure M-AQ-1c: Use Low and Super-compliant VOC Architectural Coatings in Maintaining Buildings through Covenants Conditions and Restrictions (CC&amp;Rs) and Ground Lease</b></p> <p>The Project sponsors shall require all developed parcels to include within their CC&amp;R's and/or ground leases requirements for all future interior spaces to be repainted only with "Super-Compliant" Architectural Coatings (<a href="http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings">http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings</a>). "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.</p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
		permit.			
<p><b>Mitigation Measure M-AQ-1d: Promote use of Green Consumer Products</b></p> <p>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.</p>	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
<p><b>Mitigation Measure M-AQ-1e: Electrification of Loading Docks</b></p> <p>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.</p>	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
<p><b>Mitigation Measure M-AQ-1f: Transportation Demand Management.</b></p> <p>The project sponsors shall prepare and implement a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20 percent compared to the total number of daily one-way vehicle trips identified in the project's Transportation Impact Study at project build-out. To ensure that this reduction goal could be reasonably achieved, the TDM Plan will have a monitoring goal of reducing by 20 percent the daily one-way vehicle trips calculated for each building that has received a</p>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency<sup>1</sup></b>
<p>Certificate of Occupancy and is at least 75% occupied compared to the daily one-way vehicle trips anticipated for that building based on anticipated development on that parcel, using the trip generation rates contained within the project's Transportation Impact Study. There shall be a Transportation Management Association that would be responsible for the administration, monitoring, and adjustment of the TDM Plan. The project sponsor is responsible for identifying the components of the TDM Plan that could reasonably be expected to achieve the reduction goal for each new building associated with the project, and for making good faith efforts to implement them. The TDM Plan may include, but is not limited to, the types of measures summarized below for explanatory example purposes. Actual TDM measures selected should include those from the TDM Program Standards, which describe the scope and applicability of candidate measures in detail and include:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• Car-Share: Provision of car-share parking spaces and subsidized memberships for project occupants;</li> <li>• Delivery: Provision of amenities and services to support delivery of goods to project occupants;</li> <li>• Family-Oriented Measures: Provision of on-site childcare and other amenities to support the use of sustainable transportation modes by families;</li> <li>• High-Occupancy Vehicles: Provision of carpooling/vanpooling incentives and shuttle bus service;</li> <li>• Information and Communications: Provision of multimodal</li> </ul>	<p>be binding on all development parcels.</p>		<p>Association to submit monitoring report annually to Planning Staff and implement TDM Plan Adjustments (if required).</p>	<p>reports would be on-going during project-buildout, or until five consecutive reporting periods show that the project has met its reduction goals, at which point reports would be submitted every three years.</p>	

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>wayfinding signage, transportation information displays, and tailored transportation marketing services;</p> <ul style="list-style-type: none"> <li>Land Use: Provision of on-site affordable housing and healthy food retail services in underserved areas;</li> <li>Parking: Provision of unbundled parking, short term daily parking provision, parking cash out offers, and reduced off-street parking supply.</li> </ul> <p>The TDM Plan shall include specific descriptions of each measure, including the degree of implementation (e.g., for how long will it be in place), and the population that each measure is intended to serve (e.g. residential tenants, retail visitors, employees of tenants, visitors, etc.). It shall also include a commitment to monitoring of person and vehicle trips traveling to and from the project site to determine the TDM Plan's effectiveness, as outlined below.</p> <p>The TDM Plan shall be submitted to the City to ensure that components of the TDM Plan intended to meet the reduction target are shown on the plans and/or ready to be implemented upon the issuance of each certificate of occupancy.</p> <p><i>TDM Plan Monitoring and Reporting:</i> The Transportation Management Association, through an on-site Transportation Coordinator, shall collect data and make monitoring reports available for review and approval by the Planning Department staff.</p> <ul style="list-style-type: none"> <li><u>Timing:</u> 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</li> </ul>					

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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.</p> <ul style="list-style-type: none"> <li>• <u>Components:</u> The monitoring report, including trip counts and surveys, shall include the following components OR comparable alternative methodology and components as approved or provided by Planning Department staff.                             <ul style="list-style-type: none"> <li>o <u>Trip Count and Intercept Survey:</u> 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</li> </ul> </li> </ul>					

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>approved by the Planning Department prior to conducting the components of the trip count and intercept survey. It is anticipated that the Planning Department will have a standard trip count and intercept survey methodology developed and available to project sponsors at the time of data collection.</p> <ul style="list-style-type: none"> <li>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 <i>Transportation Impact Analysis Guidelines for Environmental Review</i>, October 2002, or subsequent updates in effect at the time of the survey.</li> <li>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.</li> <li>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.)</li> <li>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.</li> </ul> <p><i>TDM Plan Adjustments.</i> The TDM Plan shall be adjusted based on the</p>					

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>monitoring results if three consecutive reporting periods demonstrate that measures within the TDM Plan are not achieving the reduction goal. The TDM Plan adjustments shall be made in consultation with Planning Department staff and may require refinements to existing measures (e.g., change to subsidies, increased bicycle parking), inclusion of new measures (e.g., a new technology), or removal of existing measures (e.g., measures shown to be ineffective or induce vehicle trips). If three consecutive reporting periods' monitoring results demonstrate that measures within the TDM Plan are not achieving the reduction goal, the TDM Plan adjustments shall occur within 270 days following the last consecutive reporting period. The TDM Plan adjustments shall occur until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved. If the TDM Plan does not achieve the reduction goal then the City shall impose additional measures to reduce vehicle trips as prescribed under the development agreement, which may include restriction of additional off-street parking spaces beyond those previously established on the site, capital or operational improvements intended to reduce vehicle trips from the project, or other measures that support sustainable trip making, until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved.</p>					
<p><b>Mitigation Measure M-AQ-1g: Additional Mobile Source Control Measures</b></p> <p>The following Mobile Source Control Measures from the BAAQMD's 2010 Clean Air Plan shall be implemented:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Promote zero-emission vehicles by requesting that any car share program operator include electric vehicles within its car share</li> </ul>	Project sponsors and TMA.	On-going.	Project sponsors and TMA to implement measures	On-going.	Port or Planning Department/DBI

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
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.					
<p><b>Mitigation Measure M-AQ-1h: Offset of Operational Emissions</b></p> <p>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:</p> <p>(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</p> <p>(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</p>	Project sponsors.	<p><u>Offsets for Phase 3/build-out of 1.3 million square feet:</u></p> <p>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.</p>	Port Staff to approve the proposed offset project.	<p>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.</p> <p>If project sponsor pays a one-time mitigation offset fee, considered complete when documentation of payment is provided to Port Staff.</p>	Port



**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency<sup>1</sup></b>
<p>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.</p> <p>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.</p>		<p>or offset fee has been paid, in an amount sufficient to offset emissions above BAAQMD thresholds for build-out to date.</p> <p><u>Offsets for subsequent phases/build-out</u>                      1: 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</p>			

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
		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.			
<b>Wind and Shadow Mitigation Measures</b>					
<p><b>Mitigation Measure M-WS-1: Identification and Mitigation of Interim Hazardous Wind Impacts</b></p> <p>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:</p> <p><b>Table M.WS.1: Circumstances or Conditions during which Mitigation Measure M-WS-1 Applies</b></p>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>							
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>			<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<b>Subject Parcel Proposed for Construction</b>	<b>Circumstance or Condition</b>	<b>Related Upwind Parcels</b>					
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					

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
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			

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p><i>Source:</i> SWCA.</p> <p><b>Requirements</b></p> <p>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.</p> <p>1. <b>Screening-level analysis.</b> 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</p>					

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>approved but yet unbuilt structures that would be completed by the time of occupancy of the subject building.</p> <p>(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.</p> <p>(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</p>					

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>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.</p> <p>(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</p>					

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>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 tunnel 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.</p> <p>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.</p>					



PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<p><b>Mitigation Measure M-WS-2: Wind Reduction for Rooftop Winds</b>                      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.</p>	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
<b>Biological Resources Mitigation Measures</b>					
<p><b>Mitigation Measure M-BI-1a: Worker Environmental Awareness Program Training</b>                      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</p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>each construction phase. The WEAP training shall include, but not be limited to, education about the following:</p> <ul style="list-style-type: none"> <li>a. Applicable State and Federal laws, environmental regulations, project permit conditions, and penalties for non-compliance.</li> <li>b. Special-status plant and animal species with the potential to be encountered on or in the vicinity of the project site during construction.</li> <li>c. Avoidance measures and a protocol for encountering special-status species including a communication chain.</li> <li>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.</li> <li>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.</li> </ul> <p>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.</p> <p>* 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.</p>			<p>training and provide documentation during annual mitigation report to the Port.</p>	<p>compliance in annual mitigation report.</p>	
<p><b>Mitigation Measure M-BI-1b: Nesting Bird Protection Measures</b></p> <p>The project site's proximity to San Francisco Bay and its current lack of</p>	<p>Project sponsors, qualified biological consultant.</p>	<p>Prior to issuance of demolition or building</p>	<p>If construction will occur during nesting season, qualified biological consultant to</p>	<p>Considered complete upon issuance of demolition or</p>	<p>Port or Planning Department</p>

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<p>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:</p> <ul style="list-style-type: none"> <li>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).</li> <li>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.</li> <li>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:                         <ul style="list-style-type: none"> <li>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</li> </ul> </li> </ul>		<p>permits for construction during the nesting season                      (January 15 to August 15)                      (<del>August 16 – January 14</del>)</p>	<p>conduct bat surveys and present results to Port Staff</p>	<p>building permits for construction</p>	

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>					

PARCEL LEASE EXHIBIT J

File No: 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>observed and could compromise the nest, work within the no-disturbance buffer(s) shall halt until the nest occupants have fledged.</p> <p>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.</p> <p>* 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.</p>					
<p><b>Mitigation Measure M-BI-2: Avoidance and Minimization Measures for Bats</b></p> <p>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.).</p>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency<sup>1</sup></b>
<p>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:</p> <ul style="list-style-type: none"> <li>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.]</li> <li>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.</li> <li>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.</li> <li>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</li> </ul>					

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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.</p> <p>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.</p> <p>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.</p> <p>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).</p> <p>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.</p>					

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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).</p> <p>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.</p> <p>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.</p>					
<p><b>Mitigation Measure M-B1-3: Pile Driving Noise Reduction for Protection of Fish and Marine Mammals</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>• The type of piling to be used (whether sheet pile or H-pile);</li> <li>• The piling size to be used;</li> <li>• The method of pile installation to be used;</li> <li>• Noise levels for the type of piling to be used and the method of pile driving;</li> <li>• Recalculation of potential underwater noise levels that could be generated during pile driving using methodologies outlined in</li> </ul>	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



**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>CalTrans 2009 [Caltrans: Technical Guidance for Assessment and Mitigation]; and</p> <ul style="list-style-type: none"> <li>When pile driving is to occur.</li> </ul> <p>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.</p> <p>The plan shall incorporate as appropriate, but not be limited to, the following BMPs:</p> <ul style="list-style-type: none"> <li>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</li> </ul>			<p>attenuation and monitoring plan is to consult with NOAA and provide evidence to the satisfaction of Port Staff.</p>	NOAA.	

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>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.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• A "soft start" technique shall be used in all pile driving, giving marine mammals an opportunity to vacate the area.</li> <li>• 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.</li> </ul>					

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency<sup>1</sup></b>
<ul style="list-style-type: none"> <li>Other BMPs shall be implemented as necessary, such as using bubble curtains or an air barrier, to reduce underwater noise levels to acceptable levels.</li> </ul> <p>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.</p> <p>* 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.</p>					
<p><b>Mitigation Measure M-BI-4: Compensation for Fill of Jurisdictional Waters</b></p> <p>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).</p> <p>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</p>	<p>Project sponsors.</p> <p>In accordance with regulatory permits and coordination with NMFS, compensatory mitigation, if required, shall be provided at a minimum ratio of 1:1.</p>	<p>Prior to any construction at the Reach II bulkhead or in accordance with regulatory permits.</p>	<p>Project sponsors to comply with regulatory permits</p>	<p>Considered complete after issuance of regulatory permits for the fill of jurisdictional waters.</p>	<p>Port</p>

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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.					
<b>Geology and Soils Mitigation Measures</b>					
<p><b>Mitigation Measure M-GE-3a: Reduction of Rock Fall Hazards</b></p> <p>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 21<sup>st</sup> 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:</p> <ul style="list-style-type: none"> <li>• Limited regrading to adjust slopes to stable gradient;</li> <li>• Rock fall containment measures such as installation of drape nets, rock fall catchment fences, or diversion dams; and</li> <li>• 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.</li> </ul>	Project sponsors.	Prior to the start of construction activities at Parcels PKS, C-1, C-2, the Irish Hill playground, and 21 <sup>st</sup> 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
<p><b>Mitigation Measure M-GE-3b: Signage and Restricted Access to Pier 70</b></p> <p>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.</p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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.	
<p><b>Mitigation Measure M-GE-6; Paleontological Resources Monitoring and Mitigation Program</b></p> <p>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.</p> <p>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.</p> <p>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</p>	Project sponsors and qualified paleontological consultant.	<p>Prior to issuance of a building permit where construction activities would disturb sedimentary rocks of the Franciscan complex.</p> <p>If earth-moving activities have the potential to disturb previously undisturbed native sediment, a qualified paleontological consultant would monitor the activities.</p>	<p>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.</p> <p>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.</p>	<p>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.</p>	Port and Planning Department

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>(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.</p> <p>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.</p>					
<b><i>Hydrology and Water Resources Mitigation Measures</i></b>					
<p><b>Mitigation Measure M-HY-2a: Design and Construction of Proposed Pump Station for Options 1 and 3</b></p> <p>The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria.</p> <ul style="list-style-type: none"> <li>• The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20<sup>th</sup> Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions; and</li> <li>• The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20<sup>th</sup> 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.</li> </ul> <p>The project sponsors shall coordinate with the SFPUC regarding the design and construction of the pump station. The final design shall be subject to</p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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.					
<p><b>Mitigation Measure M-HY-2h: Design and Construction of Proposed Pump Station for Option 2</b></p> <p>The project sponsors shall design the new pump station proposed as part of the Proposed Project to achieve the following performance criteria.</p> <ul style="list-style-type: none"> <li>The dry-weather capacity of the new pump station and associated force main shall be sufficient to convey dry-weather wastewater flows within the 20<sup>th</sup> Street sub-basin, including flows from the existing baseline, the Proposed Project at full build-out, and cumulative project contributions;</li> <li>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 20<sup>th</sup> Street sub-basin; and</li> <li>The wet-weather capacity of the new pump station shall be sufficient to ensure that potential wet-weather combined sewer discharges from the 20<sup>th</sup> 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.</li> </ul> <p>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.</p>	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
<b><i>Hazards and Hazardous Materials Mitigation Measures</i></b>					
<p><b>Mitigation Measure M-HZ-2a: Conduct Transformer Survey and Remove PCB Transformers</b></p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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.</p>		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.	
<p><b>Mitigation Measure M-HZ-2b: Conduct Sampling and Cleanup if Stained Building Materials Are Observed</b></p> <p>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.</p>	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



PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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.			
<p><b>Mitigation Measure M-HZ-2c: Conduct Soil Sampling if Stained Soil is Observed</b></p> <p>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.</p>	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 manifests and in the annual mitigation and monitoring report.	Port
<p><b>Mitigation Measure M-HZ-3a: Implement Construction and Maintenance-Related Measures of the Pier 70 Risk Management Plan</b></p> <p>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</p>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>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).</p> <p>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:</p> <ul style="list-style-type: none"> <li>• A project-specific health and safety plan (Pier 70 RMP Section 6.4);</li> <li>• Access controls (Pier 70 RMP Section 6.1);</li> <li>• Soil management protocols, including those for:                         <ul style="list-style-type: none"> <li>○ soil movement (Pier 70 RMP Section 6.5.1),</li> <li>○ soil stockpile management (Pier 70 RMP Section 6.5.2), and</li> <li>○ import of clean soil (including preparation of a project-specific Soil Import Plan) (Pier 70 RMP Section 6.5.3);</li> </ul> </li> <li>• 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);</li> <li>• A project-specific stormwater pollution prevention control plan (Pier 70 RMP Section 6.7);</li> <li>• Off-site soil disposal (Pier 70 RMP Section 6.8);</li> </ul>		<p>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.</p>	<p>DPH, and Port for review and approval in accordance with the notification requirements of the RMP.</p>		

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
<ul style="list-style-type: none"> <li>• A project-specific groundwater management plan for temporary dewatering (Pier 70 RMP Section 6.10.1);</li> <li>• 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);</li> <li>• 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</li> <li>• Protocols for unforeseen conditions (Pier 70 RMP Section 6.9).</li> </ul> <p>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.</p> <p>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).</p>					
<p><b>Mitigation Measure M-HZ-3b: Implement Well Protection Requirements of the Pier 70 Risk Management Plan</b></p> <p>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&amp;E in support of investigation and remediation of the PG&amp;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</p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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.	
<p><b>Mitigation Measure M-HZ-4: Implement Construction-Related Measures of the Hoedown Yard Site Management Plan</b></p> <p>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.</p> <ul style="list-style-type: none"> <li>• A project-specific Health and Safety Plan (Hoedown Yard SMP Section 5):                             <ul style="list-style-type: none"> <li>○ 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</li> </ul> </li> </ul>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
dust control (SMP Section 6.1) and dust monitoring (SMP Section 6.2).  • Soil and water management measures, including: ○ soil handling (Hoedown Yard SMP Section 7.1.1), ○ stockpile management (Hoedown Yard SMP Section 7.1.2), ○ on-site reuse of soil (Hoedown Yard SMP Section 7.1.3), ○ off-site soil disposal (Hoedown Yard SMP Section 7.1.4), ○ excavation dewatering (Hoedown Yard SMP Section 7.1.5), ○ stormwater management (Hoedown Yard SMP Section 7.1.6), ○ site access and security (Hoedown Yard SMP Section 7.1.7), and ○ unanticipated subsurface conditions (Hoedown Yard SMP Section 7.2).					
<b>Mitigation Measure M-HZ-5: Delay Development on Proposed Parcels H1, H2, and E3 Until Remediation of the PG&amp;E Responsibility Area is Complete</b>  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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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
			restriction.		
<p><b>Mitigation Measure M-HZ-6: Additional Risk Evaluations and Vapor Control Measures for Residential Land Uses</b></p> <p>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.</p> <p>If the risk evaluation demonstrates that there would be unacceptable health risks to residential users (i.e., greater than <math>1 \times 10^{-6}</math> 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.</p> <p>If the risk evaluation demonstrates that vapor intrusion risks would be within acceptable levels (less than <math>1 \times 10^{-6}</math> 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</p>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
vapors.)					
<p><b>Mitigation Measure M-HZ-7: Modify Hoedown Yard Site Mitigation Plan</b></p> <p>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.</p> <p>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 <math>1 \times 10^{-6}</math> 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:</p> <ul style="list-style-type: none"> <li>• Regulatory-approved cleanup levels for the proposed land uses;</li> <li>• A description of existing conditions, including a comparison of site data to regulatory-approved cleanup levels;</li> <li>• Regulatory oversight responsibilities and notification requirements;</li> <li>• 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;</li> <li>• Monitoring and reporting requirements; and</li> <li>• An operations and maintenance plan, including annual inspection requirements.</li> </ul>	<p>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.</p>	<p>Prior to ground-disturbing activities at the Hoedown Yard.</p>	<p>Project sponsors shall submit the risk evaluation and proposed risk management plan to the RWQCB, DPH, and Port for review and approval.</p>	<p>Considered complete upon review and approval of the risk evaluation and proposed risk management plan by the RWQCB, DPH, and Port.</p>	<p>Port, DPH</p>

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
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.					
<p><b>Mitigation Measure M-HZ-8a: Prevent Contact with Serpentine Bedrock and Fill Materials in Irish Hill Playground</b></p> <p>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 serpentine 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.</p>	Project sponsors to design and install a 2-foot-thick durable cover over serpentine 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
<p><b>Mitigation Measure M-HZ-8b: Restrictions on the Use of Irish Hill Playground</b></p> <p>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 21<sup>st</sup> Street and on the adjacent parcels (PKN, PKS, HDY-1, HDY-2, C1, and C2) is completed. If this is not feasible, and Irish Hill Playground is operational prior to construction of the new 21<sup>st</sup> 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 21<sup>st</sup> Street and on any of the adjacent parcels.</p>	Project sponsors.	Prior to and during construction of the new 21 <sup>st</sup> 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 21 <sup>st</sup> 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



PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<b>IMPROVEMENT MEASURES FOR THE PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<p><b>Improvement Measure I-CR-4a: Documentation</b></p> <p>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.</p> <p>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.</p> <p>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)</p>	<p>Project sponsors and qualified preservation architect, historic preservation expert, or other qualified individual.</p>	<p><u>Project Sponsor Documentation</u>                      Before any demolition, rehabilitation, or relocation activities within the UIW Historic District.</p>	<p>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.</p>	<p>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.</p>	<p>Port</p>

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency<sup>1</sup></b>
<p>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.</p> <p>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.</p>					
<p><b>Improvement Measure I-CR-4b: Public Interpretation</b></p> <p>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.</p>	<p>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.</p>	<p><u>Project sponsors provide permanent display:</u> Following any demolition, rehabilitation, or relocation activities within the project site.</p>	<p>Project sponsors submit documentation of permanent display(s) of interpretive materials.</p>	<p>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.</p>	<p>Port</p>
<p><b>Improvement Measure I-TR-A: Construction Management Plan</b>  <b>Traffic Control Plan for Construction</b> – To reduce potential conflicts between</p>	<p>Project sponsors, TMA, and</p>	<p>Prior to issuance of a</p>	<p>Construction contractor(s) to</p>	<p>Considered complete upon</p>	<p>Port, Planning Department,</p>

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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)).</p> <p>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.</p> <p><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</p>	<p>construction contractor(s).</p>	<p>building permit. Project construction updates for adjacent residents and businesses within 150 feet would occur throughout the construction phase.</p>	<p>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.</p> <p>A single traffic control plan or multiple traffic control plans may be produced to address project phasing.</p>	<p>submission 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.</p>	<p>SFMTA as appropriate</p>

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

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 <sup>1</sup>
<p>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.</p> <p><u>Project Construction Updates for Adjacent Residents and Businesses</u> – 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.</p>					
<p><b>Improvement Measure I-TR-B: Queue Abatement</b></p> <p>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.</p> <p>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).</p> <p>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</p>	<p>Project sponsors, owner/operator of any off-street parking facility, and transportation consultant.</p>	<p>On-going during operations of any off-street parking facilities.</p>	<p>The owner/operator of the parking facility should monitor vehicle queues in the public right-of-way, and would employ abatement measures as needed.</p> <p>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</p>	<p>Monitoring of the public right-of-way would be on-going by the owner/operator of off-street parking operations.</p>	<p>Port, Planning Department</p>

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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.</p> <p>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.</p>			prepare a monitoring report and if a recurring queue does exist, the owner/operator would abate the queue.		
<p><b>Improvement Measure I-TR-C: Strategies to Enhance Transportation Conditions During Events.</b></p> <p>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&amp;T Park. The City and the project sponsors should meet to discuss transportation and scheduling logistics for occasions with multiple events in the area.</p>	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
<p><b>Improvement Measure I-WS-3a: Wind Reduction for Public Open Spaces and Pedestrian and Bicycle Areas</b></p> <p>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,</p>	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

PARCEL LEASE EXHIBIT J

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p>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.</p> <p>Any proposed wind-related improvement measure should be consistent with the design standards and guidelines outlined in the <i>Pier 70 SUD Design for Development</i>.</p>				bicycle areas by the Port Staff.	
<p><b>Improvement Measure I-WS-3b: Wind Reduction for Waterfront Promenade and Waterfront Terrace</b></p> <p>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.</p>	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
<p><b>Improvement Measure I-WS-3c: Wind Reduction for Slipways Commons</b></p> <p>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</p>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
any wind screen or landscaping shall be compatible with the Historic District.					
<p><b>Improvement Measure I-WS-3d: Wind Reduction for Building 12, Market Plaza and Market Square</b></p> <p>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 22<sup>nd</sup> 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.</p>	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

**PARCEL LEASE EXHIBIT J**

File No. 2014-001272ENV  
 Pier 70 Mixed-Use District Project  
 Planning Commission Motion No. 19977

<b>MITIGATION MONITORING AND REPORTING PROGRAM FOR PIER 70 MIXED-USE DISTRICT PROJECT</b>					
<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p><b>Improvement Measure I-WS-3e: Wind Reduction for Irish Hill Playground</b></p> <p>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.</p>	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
<p><b>Improvement Measure I-WS-3f: Wind Reduction for 20<sup>th</sup> Street Plaza</b></p> <p>The 20<sup>th</sup> 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.</p>	Project sponsors and qualified wind consultant.	During the design of the 20 <sup>th</sup> 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 20 <sup>th</sup> 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.<sup>1</sup> 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.

<sup>1</sup> Project payment for Mitigation Measure M-TR-5 will not be requested by the SFMTA until after Project's contribution to the 10, 11, 12, and other Muni lines planned to serve the 28-Acre Site Project neighborhood are expended, provided relevant impacts still exist.

- Muni Metro East. Capital costs associated with an expanded facility for on-site rebuilds, capacity for expanded bus and LRV fleet, and tracks for storage.
- Mission Bay E-W Bike Connector. Implementation of a connection across tracks, likely between 17th Street and Owens Street, to connect the 4th Street bikeway on east side and the 17th Street bikeway on west side.
- Terry A. Francois Boulevard Cycletrack. Implementation of bicycle access on Terry A. Francois Boulevard, including multi-use (peds/bikes) access on the 3rd Street Bridge and associated signal modifications.
- North-south bike connection on Indiana Street. Implementation of bicycle connection along Indiana Street from Cesar Chavez Boulevard to Mariposa Street.
- Upgraded bicycle access on Cesar Chavez Boulevard. Implementation of a lane along Cesar Chavez Boulevard from US 1-280/Pennsylvania to Illinois Street, including elements such as bulbs, islands, and restriping.
- Pedestrian improvements. Implement improved sidewalks and crosswalks as needed at various gap locations throughout the adjacent Dogpatch neighborhood, as identified in partnership with community and City partners.

Nothing in this Transportation Program will prevent or limit the City's absolute discretion to: (i) conduct environmental review in connection with any future proposal for improvements; (ii) make any modifications or select feasible alternatives to future proposals that the City deems necessary to conform to any applicable laws, including CEQA; (iii) balance benefits against unavoidable significant impacts before taking final action; (iv) determine not to proceed with such future proposals; or (v) obtain any required approvals for the improvements.

## II. TDM Plan.

Developer shall implement the Transportation Demand Management ("TDM") Plan attached as **TP Schedule 1** and otherwise comply with EIR Mitigation Measure M-AQ-1f, attached as **TP Schedule 2**. Under Planning Code section 169.4(e), the Zoning Administrator shall approve and order the recordation of the TDM Plan against the 28-Acre Site, and it shall be enforceable through the Notice of Violation procedures in the Planning Code, or any other applicable provision of law. The Zoning Administrator shall retain the discretion to determine what constitutes a separate violation in this context. The Planning Code procedures shall apply, except that the Zoning Administrator shall have discretion to impose a penalty of up to \$250 per violation. Developer agrees to a TDM Plan that vehicle trips associated with the 28-Acre Site will not exceed 80% of the vehicle trips calculated for 28-Acre Site Project in the Transportation Impact Study. The TDM measures (the "**TDM Measures**") outlined in the TDM Plan, or made in consultation with the relevant agencies, must achieve the TDM Plan.

In accordance with the Pier 70 TDM Plan, Pier 70 shall operate a free public shuttle to riders, funded by the Pier 70 TMA, providing direct connections between Pier 70 and regional transit. The Pier 70 shuttle routes will be designed to provide an attractive alternative to using private vehicles to access Pier 70, and shall take into account area congestion and neighborhood input. In compliance with mitigation measure M-AQ-1f, Pier 70 will provide the SFMTA with shuttle ridership data. The SFMTA will use the resulting data to monitor on-going demand for new or modified MUNI service and to inform further MUNI service planning in the Pier 70 area.

Developer's TDM Plan and related obligations under this Transportation Program will begin when the Port or DBI issues a Temporary Certificate of Occupancy for the first building at the 28-Acre Site and remain in effect for the life of the 28-Acre Site Project.

## III. SFMTA Contact

SFMTA commits to designating a staff person to follow up on the transportation related components of the 28-Acre Site Project, including 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**

**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**

<b>Period</b>	<b>EIR Auto Trip Estimate at Project Build-Out</b>	<b>Auto Trips Reflecting 20% Reduction ("Reduction Target")</b>
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%<sup>1</sup>—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

---

<sup>1</sup>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 <sup>2</sup>	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		✓	

<sup>2</sup> Where applicable, measure names attempt to be consistent with names of measures in San Francisco’s TDM Program

Measure <sup>2</sup>	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.);

# AECOM

- Identifying offsite parking and using shuttles to transport visitors between the event venues, offsite parking, and transit hubs, as needed; and,
- Encouraging guests to arrive early and stay onsite longer by promoting local vendors, restaurants, etc., to spread and reduce pre- and post-event peaking effects.

Successful special event transportation management plans will minimize driving trips and promote sustainable modes of access to events. The TMA will monitor the effectiveness of these event management strategies, and at SFMTA's request, meet with SFMTA to consider revised approaches to event management.

## **1.7.1 Street Closures**

During larger events and temporary programming, Maryland Street between 21st and 22nd Streets is expected to seek permits to be closed to motor vehicle traffic through the City's Interdepartmental Staff Committee of Traffic and Transportation (ISCOTT) process. Street closures would be in effect anywhere from a few hours to an entire day. In advance and during any street closure, event organizers must provide sufficient street signage to discourage driving to the site during the event and to route motor vehicles through the site and minimize queuing and impacts to circulation in and around the Project site. The recommended vehicular loop will be through 22nd Street (west of Louisiana Street), Louisiana Street (south of 21st Street), and 21st Street (west of Louisiana Street), with drop-off zones located on Louisiana Street. 21st Street (east of Louisiana Street) would serve as a loading/service alley for events.

## **1.8 Monitoring, Evaluation, and Refinement**

The Pier 70 TMA, through an on-site Transportation Coordinator, shall collect data and make monitoring reports available for review and approval by the Planning Department staff. Monitoring data shall be collected and reports shall be submitted to Planning Department staff every year (referred to as "reporting periods"), until five consecutive reporting periods display the project has met the reduction goal, at which point monitoring data shall be submitted to Planning Department staff once every three years. The first monitoring report is required 18 months after issuance of the First Certificate of Occupancy for buildings that include off-street parking or the establishment of surface parking lots or garages that bring the project's total number of off-street parking spaces to greater than or equal to 500. Each trip count and survey (see below for description) shall be completed within 30 days following the end of the applicable reporting period. Each monitoring report shall be completed within 90 days following the applicable reporting period. The timing shall be modified such that a new monitoring report shall be required 12 months after adjustments are made to the TDM Plan in order to meet the reduction goal, as may be required in the "TDM Plan Adjustments" heading below. In addition, the timing may be modified by the Planning Department as needed to consolidate this requirement with other monitoring and/or reporting requirements for the project.

Table 3 below provides the EIR trip estimates for each phase identified in the EIR, as well as the number of trips for each phase reflecting a 20 percent reduction. Annual monitoring reports will compare progress against the trip estimates in Table 3 to assess progress, however the Project will not be considered out of compliance with either this Plan or Project mitigation measure M-AQ-1f unless the Reduction Target calculated for the fully built out project (see Table 1) has been exceeded.

The findings will be reported out to the Planning Department, as described in the Mitigation Monitoring and Reporting Program (MMRP). The monitoring reports are intended to satisfy the requirements of Project mitigation measure M-AQ-1f, M-TR-5, M-C-TR-4A, and M-C-TR-4B. If, however, separate reporting is preferred by the TMA, separate reports are acceptable.

Based on findings from the evaluation and with input from SFMTA and the Planning Department, the Project will refine the TDM Plan by improving existing measures (e.g., additional incentives, changes to shuttle schedule), including new measures (e.g., a new technology), or removing existing measures, in order to achieve the Project’s Reduction Target, as well as monitor progress against the trip estimates for each phase outlined below. It will be especially important to refine strategies as new transportation options are put into place in the area and as the TMA learns which strategies are most effective in shaping the transportation behaviors of the site users.

**Table 3: Auto Trip Estimates by Phase**

Phase	Residential			Commercial			Phase Trip Estimates	
	Units	Cum. Units	%	GSF	Cum. GSF	%	EIR Auto Trip Estimates (by phase)	Auto Trip Target <sup>1</sup>
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
<b>Air Quality Mitigation Measures</b>					
<p><b>Mitigation Measure M-AQ-1f: Transportation Demand Management.</b> The project sponsors shall prepare and implement a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20 percent compared to the total number of daily one-way vehicle trips identified in the project's Transportation Impact Study at project build-out. To ensure that this reduction goal could be reasonably achieved, the TDM Plan will have a monitoring goal of reducing by 20 percent the daily one-way vehicle trips calculated for each building that has received a Certificate of Occupancy and is at least 75% occupied compared to the daily one-way vehicle trips anticipated for that building based on anticipated development on that parcel, using the trip generation rates contained within the project's Transportation Impact Study. There shall be a Transportation Management Association that would be responsible for the administration, monitoring, and adjustment of the TDM Plan. The project sponsor is responsible for identifying the components of the TDM Plan that could reasonably be expected to achieve the reduction goal for each new building associated with the project, and for making good faith efforts to implement them. The TDM Plan may include, but is not limited to, the types of measures summarized below for explanatory example purposes. Actual TDM measures selected should include those from the TDM Program Standards, which describe the scope and applicability of candidate measures in detail and include:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• Car-Share: Provision of car-share parking spaces and subsidized</li> </ul>	Developer to prepare and implement the TDM Plan, which will be implemented by the Transportation Management Association and will be binding on all development parcels.	Developer to prepare TDM Plan and submit to <u>Planning Staff</u> prior to approval of the project	Project sponsors to submit the TDM Plan to <u>Planning Staff</u> for review.  Transportation Demand Management Association to submit monitoring report annually to <u>Planning Staff</u> and implement TDM Plan Adjustments (if required).	The TDM Plan is considered complete upon approval by the <u>Planning Staff</u> .  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

**MITIGATION MONITORING AND REPORTING PROGRAM FOR  
PIER 70 MIXED-USE DISTRICT PROJECT**

<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>memberships for project occupants;</p> <ul style="list-style-type: none"> <li>• Delivery: Provision of amenities and services to support delivery of goods to project occupants;</li> <li>• Family-Oriented Measures: Provision of on-site childcare and other amenities to support the use of sustainable transportation modes by families;</li> <li>• High-Occupancy Vehicles: Provision of carpooling/vanpooling incentives and shuttle bus service;</li> <li>• Information and Communications: Provision of multimodal wayfinding signage, transportation information displays, and tailored transportation marketing services;</li> <li>• Land Use: Provision of on-site affordable housing and healthy food retail services in underserved areas;</li> <li>• Parking: Provision of unbundled parking, short term daily parking provision, parking cash out offers, and reduced off-street parking supply.</li> </ul> <p>The TDM Plan shall include specific descriptions of each measure, including the degree of implementation (e.g., for how long will it be in place), and the population that each measure is intended to serve (e.g. residential tenants, retail visitors, employees of tenants, visitors, etc.). It shall also include a commitment to monitoring of person and vehicle trips traveling to and from the project site to determine the TDM Plan's effectiveness, as outlined below.</p> <p>The TDM Plan shall be submitted to the City to ensure that components of the TDM Plan intended to meet the reduction target are shown on the plans and/or ready to be implemented upon the issuance of each certificate of occupancy.</p>					

**MITIGATION MONITORING AND REPORTING PROGRAM FOR  
PIER 70 MIXED-USE DISTRICT PROJECT.**

MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Implementation Responsibility	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule	Monitoring Agency
<p><i>TDM Plan Monitoring and Reporting:</i> The Transportation Management Association, through an on-site Transportation Coordinator, shall collect data and make monitoring reports available for review and approval by the Planning Department staff.</p> <ul style="list-style-type: none"> <li>• <u>Timing:</u> 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.</li> <li>• <u>Components:</u> The monitoring report, including trip counts and surveys, shall include the following components OR comparable alternative methodology and components as approved or provided by Planning Department staff: <ul style="list-style-type: none"> <li>○ <u>Trip Count and Intercept Survey:</u> 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.</li> </ul> </li> </ul>					

**MITIGATION MONITORING AND REPORTING PROGRAM FOR  
PIER 70 MIXED-USE DISTRICT PROJECT**

<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>Wednesday, or Thursday during one week without federally recognized holidays, and another day shall be a Tuesday, Wednesday, or Thursday during another week without federally recognized holidays. The trip count and intercept survey shall be prepared by a qualified transportation or qualified survey consultant and the methodology shall be approved by the Planning Department prior to conducting the components of the trip count and intercept survey. It is anticipated that the Planning Department will have a standard trip count and intercept survey methodology developed and available to project sponsors at the time of data collection.</p> <ul style="list-style-type: none"> <li>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 <i>Transportation Impact Analysis Guidelines for Environmental Review</i>, October 2002, or subsequent updates in effect at the time of the survey.</li> <li>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.</li> <li>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.)</li> <li>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</li> </ul>					

**MITIGATION MONITORING AND REPORTING PROGRAM FOR  
PIER 70 MIXED-USE DISTRICT PROJECT**

<b>MEASURES ADOPTED AS CONDITIONS OF APPROVAL</b>	<b>Implementation Responsibility</b>	<b>Mitigation Schedule</b>	<b>Monitoring/ Reporting Responsibility</b>	<b>Monitoring Schedule</b>	<b>Monitoring Agency</b>
<p>identity of individual survey responders is protected.</p> <p><i>TDM Plan Adjustments.</i> The TDM Plan shall be adjusted based on the monitoring results if three consecutive reporting periods demonstrate that measures within the TDM Plan are not achieving the reduction goal. The TDM Plan adjustments shall be made in consultation with Planning Department staff and may require refinements to existing measures (e.g., change to subsidies, increased bicycle parking), inclusion of new measures (e.g., a new technology), or removal of existing measures (e.g., measures shown to be ineffective or induce vehicle trips). If three consecutive reporting periods' monitoring results demonstrate that measures within the TDM Plan are not achieving the reduction goal, the TDM Plan adjustments shall occur within 270 days following the last consecutive reporting period. The TDM Plan adjustments shall occur until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved. If the TDM Plan does not achieve the reduction goal then the City shall impose additional measures to reduce vehicle trips as prescribed under the development agreement, which may include restriction of additional off-street parking spaces beyond those previously established on the site, capital or operational improvements intended to reduce vehicle trips from the project, or other measures that support sustainable trip making, until three consecutive reporting periods' monitoring results demonstrate that the reduction goal is achieved.</p>					

**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").

<b><u>Building System or Component</u></b>	<b><u>Narrative Summary of Condition</u></b>	<b><u>Immediate Repair Recommended to Address any Code Violation Notice</u></b> (If none, write "None")	<b><u>Short Term Repair and Renewal Recommendations<sup>1</sup></u></b> (If none, write "None")	<b><u>Long Term Repair and Renewal Recommendations<sup>2</sup></u></b> (If none, write "None")	<b><u>Estimated Cost of Recommended Repair</u></b>	<b><u>Estimated Remaining Useful Life</u></b>
1. Building Site (Topography, drainage, retaining walls, paving, curbing, lighting)						

<sup>1</sup> Short term repairs will include any repair recommended to occur prior to the next regularly scheduled Facilities Condition Report.

<sup>2</sup> Long term repairs will include any repair recommended to occur following the next regularly scheduled Facilities Condition Report.

<u>Building System or Component</u>	<u>Narrative Summary of Condition</u>	<u>Immediate Repair Recommended to Address any Code Violation Notice</u> (If none, write "None")	<u>Short Term Repair and Renewal Recommendations<sup>1</sup></u> (If none, write "None")	<u>Long Term Repair and Renewal Recommendations<sup>2</sup></u> (If none, write "None")	<u>Estimated Cost of Recommended Repair</u>	<u>Estimated Remaining Useful Life</u>
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						

<u>Building System or Component</u>	<u>Narrative Summary of Condition</u>	<u>Immediate Repair Recommended to Address any Code Violation Notice</u> (If none, write "None")	<u>Short Term Repair and Renewal Recommendations<sup>1</sup></u> (If none, write "None")	<u>Long Term Repair and Renewal Recommendations<sup>2</sup></u> (If none, write "None")	<u>Estimated Cost of Recommended Repair</u>	<u>Estimated Remaining Useful Life</u>
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)**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>A. DEFINITIONS.....</b>	<b>3</b>
<b>B. WORKFORCE JOB READINESS AND TRAINING FUNDS.....</b>	<b>6</b>
1. Application.....	6
2. CityBuild Program.....	6
3. CityBuild Services.....	7
4. TechSF Bridge Training for BVHP/Dogpatch Communities & Targeted End Use Jobs.....	7
<b>C. CONSTRUCTION WORK.....</b>	<b>9</b>
1. Application.....	9
2. Local Hiring Requirements.....	9
3. First Source Hiring Program for Construction Work.....	9
4. Local Business Enterprise Requirements.....	9
5. Obligations; Limitations on Liability.....	9
6. Prevailing Wages.....	9
<b>D. PROJECT OPERATIONS.....</b>	<b>10</b>
1. Application.....	10
2. First Source Hiring Program for Operations.....	10
3. Local Diverse Small Business Retail Marketing Program.....	11
<b>E. GENERAL PROVISIONS.....</b>	<b>14</b>
1. Enforcement.....	14
2. Third Party Beneficiaries.....	14
3. Flexibility.....	14
4. Exclusivity.....	15
<b>F. DISPUTE RESOLUTION.....</b>	<b>15</b>

1.	Meet and Confer .....	15
2.	Arbitration .....	15

Attachment A-1	First Source Hiring Agreement for Operations
Attachment A-2	First Source Hiring Agreement for Tech Operations
Attachment A-3	First Source Hiring Agreement for Construction
Attachment B	Local Hiring Requirements
Attachment C	LBE Utilization Plan
Attachment D	Dispute Resolution

## 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.<sup>1</sup>

“**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-Appalable”** 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 I 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, 22<sup>nd</sup> 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 FSIIA 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 FSIIA 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**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Auto Repair         | <input type="checkbox"/> Entertainment                                   | <input type="checkbox"/> Personal Services |
| <input type="checkbox"/> Business Services   | <input type="checkbox"/> Elder Care                                      | <input type="checkbox"/> Professionals     |
| <input type="checkbox"/> Consulting          | <input type="checkbox"/> Financial Services                              | <input type="checkbox"/> Real Estate       |
| <input type="checkbox"/> Construction        | <input type="checkbox"/> Healthcare                                      | <input type="checkbox"/> Retail            |
| <input type="checkbox"/> Government Contract | <input type="checkbox"/> Insurance                                       | <input type="checkbox"/> Security          |
| <input type="checkbox"/> Education           | <input type="checkbox"/> Manufacturing                                   | <input type="checkbox"/> Wholesale         |
| <input type="checkbox"/> Food and Drink      | <input type="checkbox"/> 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, 5<sup>th</sup> Floor, San Francisco, CA 94103  
 Tel: 415-701-4848  
 Fax: 415-701-4897  
 mailto:Business.Services@sf.gov Website: [www.workforcedevelopmentsf.org](http://www.workforcedevelopmentsf.org)

**Attachment A-2**

**Form of First Source Hiring Agreement for Tech Operations**

[see attached]

# City and County of San Francisco First Source Hiring Program



Office of Economic and Workforce Development  
Workforce Development Division

## 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 OEWD, 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, 5<sup>th</sup> Floor, San Francisco, CA 94103  
Email: [Business.Services@sfgov.org](mailto: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 5<sup>th</sup> Fl. San Francisco, CA 94103  
Attn: Ken Nim, Compliance Manager, [ken.nim@sfgov.org](mailto: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 5<sup>th</sup> Fl.  
San Francisco, CA 94103  
Attn: Ken Nim, Compliance Manager,  
[ken.nim@sfgov.org](mailto:ken.nim@sfgov.org)

If to CityBuild:

CityBuild Compliance Manager  
OEWD, 1 South Van Ness 5<sup>th</sup> Fl.  
San Francisco, CA 94103  
Attn: Ken Nim, Compliance Manager,  
[ken.nim@sfgov.org](mailto: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: \_\_\_\_\_



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 <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			

**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 <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
<b>FOR CITY USE ONLY: CityBuild Staff:</b>		Approved: Yes <input type="checkbox"/> No <input type="checkbox"/>		Date:
Reason:				
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		

## 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](mailto:workforce.development@sfgov.org)
2. Contact Workforce Development at 415-701-4848 or by email: [local.hirc.ordinance@sfgov.org](mailto: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



## 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](http://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 Program, 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





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](http://www.workforcedevelopsf.org). For assistance or questions in completing this form, contact (415) 701-4894 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**TABLE 1: WORKFORCE PROJECTION**

Trade Craft	Contractor <i>List contractors by Trade Craft</i>		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
<i>Example:</i> Laborer	Contractor X	Journey	800	250	31%
		Apprentice	200	100	50%
<i>Example:</i> Laborer	Contractor Y	Journey	500	100	20%
		Apprentice	0	0	0
<i>Example:</i>	TOTAL LABORER	Journey	1300	350	27%
		Apprentice	200	100	50%
<i>Example:</i>	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 \_\_\_\_\_



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](http://www.workforcedevelopsf.org). For assistance or questions in completing this form, contact (415) 701-4894 or Email @ [Local.hire.ordinance@sfgov.org](mailto: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 %
<i>Example: Laborer</i>	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	<input type="checkbox"/> Yes <input type="checkbox"/> No
Signature and Date:	_____



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 WAIVERS**

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:					
1.	2.	3.	4.	5.	6.
Est. Total Work Hours	Projected Deficient Local Work Hours	Est. Total Work Hours	Projected Deficient Local Work Hours	Est. Total Work Hours	Projected Deficient Local Work Hours

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:	Est. # of Sponsor Positions	Union (Yes / No)	If Yes, Local #	Est. Start Date	Est Duration of Working Days	Est Total Work Hours Performed
Construction Trade		Y <input type="checkbox"/> N <input type="checkbox"/>				
		Y <input type="checkbox"/> N <input type="checkbox"/>				

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:	Est. # of Off-site Hires	Est Total Work Hours Performed	Offsite Project Name	Project Address
Labor Trade, Position, or Title				
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.<sup>4</sup>

- 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 20<sup>th</sup> 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

EXHIBIT N

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:

**EXHIBIT N**

[ ]  
[ ]  
[ ]  
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.

**EXHIBIT N**

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]

**EXHIBIT N**

**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 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.]**

Furthermore, Tenant hereby reaffirms that it will continue to be obligated under all the terms and conditions of the Parcel Lease and Tenant will be, if not already, a Qualified Transferee immediately following the Significant Change. As the chief financial officer of Tenant, the undersigned certifies that this Certificate is true, accurate and complete.

This Certificate is made as of \_\_\_\_\_, 20 [ ] and 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 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. ATTORNTMENT.**

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 Sublandlord'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):

<i>To Subtenant:</i>	
<i>With a copy to:</i>	

**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 the 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.

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 carriers 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 INSURED;

(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](http://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 Gov't 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 Gov't 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.

1 [Development Agreement - FC Pier 70, LLC - Pier 70 Development Project]

2  
3 **Ordinance approving a Development Agreement between the City and County of San**  
4 **Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast**  
5 **portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally**  
6 **by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the**  
7 **north and east; waiving certain provisions of the Administrative Code, Planning Code,**  
8 **and Subdivision Code; and adopting findings under the California Environmental**  
9 **Quality Act, public trust findings, and findings of consistency with the General Plan,**  
10 **and the eight priority policies of Planning Code, Section 101.1(b).**

11 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.  
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
14 **Board amendment additions** are in double-underlined Arial font.  
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
16 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
17 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. Background and Findings.

20 (a) California Government Code Sections 65864 et seq. ("Development Agreement  
21 Law") authorize any city, county, or city and county to enter into an agreement for the  
22 development of real property within its jurisdiction.

23 (b) Chapter 56 of the Administrative Code sets forth certain procedures for  
24 processing and approving development agreements in the City and County of San Francisco  
25 (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

1 negotiate exclusively for the mixed-use development (the "Project") of approximately 28 acres  
2 (the "28-Acre Site") of Seawall Lot 349, a land parcel under Port jurisdiction that is bounded  
3 generally by Illinois Street on the west, 22<sup>nd</sup> Street on the south, and San Francisco Bay on  
4 the north and east commonly known as Pier 70. Forest City Development California, Inc. is  
5 now wholly owned by Forest City Realty Trust, Inc., a New York Stock Exchange-listed real  
6 estate company. FC Pier 70, LLC ("Developer"), a wholly-owned an affiliate of Forest City  
7 Realty Trust, Inc., Development California, Inc., will act as the master developer for the  
8 Project. ("Developer").

9 (d) In conjunction with this ordinance, the Board of Supervisors has taken or intends  
10 to take a number of other actions in furtherance of the Project, including approval of: (1) a  
11 trust exchange agreement between the Port and the California State Lands Commission; (2) a  
12 disposition and development agreement ("DDA") between Developer and the Port;  
13 (3) amendments to the General Plan; (4) amendments to the Planning Code that create the  
14 Pier 70 Special Use District (the "SUD amendments") over the 28-Acre Site and two adjacent  
15 parcels known as the "Illinois Street Parcels" and incorporate more detailed land use controls  
16 of the Pier 70 SUD Design for Development; (5) amendments to the Zoning Maps;  
17 (6) approval of a development plan for the 28-Acre Site in accordance with Charter  
18 Section B7.310 (adopted as part of Proposition D, November 2008) and Section 4 of the  
19 Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative  
20 (Proposition F, November 2014); (7) a memorandum of understanding for interagency  
21 cooperation among the Port, the City, and other City agencies (the "ICA") with respect to the  
22 subdivision of the 28-Acre Site and construction of infrastructure and other public facilities;  
23 (8) formation proceedings for financing districts and a memorandum of understanding  
24 between the Port and the Assessor, the Treasurer-Tax Collector, and the Controller regarding  
25 the assessment, collection, and allocation of ad valorem and special taxes to the financing



1 districts; and (9) a number of related transaction documents and entitlements to govern the  
2 Project.

3 (e) At full build-out, the Project will include: (1) 1,100 to 2,150 new residential units,  
4 at least 30% of which, in the Affordable Housing Area that includes the 28-Acre Site and a  
5 portion of the 20th/Illinois Parcel, will be on-site housing affordable to a range of low- to  
6 moderate-income households as described in the Affordable Housing Plan in the DDA;  
7 (2) between 1 million and 2 million gross square feet of new commercial and office space;  
8 (3) rehabilitation of three significant contributing resources to the historic district; (4) space for  
9 small-scale manufacturing, retail, and neighborhood services; (5) transportation demand  
10 management on-site, a shuttle service, and payment of impact fees to the Municipal  
11 Transportation Agency that it will use to improve transportation connections through the  
12 neighborhood; (6) 9 acres of new open space, potentially including active recreation on  
13 rooftops, a playground, a market square, a central commons, and waterfront parks along the  
14 shoreline; (7) on-site strategies to protect against sea level rise; and (8) replacement studio  
15 space for artists leasing space in Building 11 in Pier 70 and a new arts space.

16 (f) While the DDA binds the Port and Developer, other City agencies retain a role in  
17 reviewing and issuing certain later approvals for the Project. Later approvals include approval  
18 of subdivision maps and plans for horizontal improvements and public facilities, design review  
19 and approval of new buildings under the SUD amendments, and acceptance of Developer's  
20 dedications of horizontal improvements and public facilities for maintenance and liability under  
21 the Subdivision Code. Accordingly, the City and Developer negotiated a development  
22 agreement for the Project (the "Development Agreement"), a copy of which is in Board File  
23 No. 170863 and incorporated in this ordinance by reference. The DDA, the Development  
24 Agreement, the ICA, the Tax MOU, and all leases and vertical disposition development  
25

1 agreements that the Port enters into in accordance with the DDA are referred to collectively as  
2 the "Transaction Documents."

3 (g) Development of the 28-Acre Site in accordance with the DDA and the  
4 Development Agreement will help realize and further the City's goals to restore and revitalize  
5 the Union Iron Works Historic District, increase public access to the waterfront, increase  
6 public open space and community facilities within the neighborhood, increase affordable and  
7 market-rate housing, and create a significant number of construction and permanent jobs  
8 along the southeastern waterfront. In addition, the Project will provide additional benefits to  
9 the public that could not be obtained through application of existing City ordinances,  
10 regulations, and policies.

11 Section 2. Environmental Findings.

12 (a) The Planning Department has determined that the actions contemplated in this  
13 ordinance comply with the California Environmental Quality Act (Cal. Public Resources Code  
14 §§ 21000 et seq.) ("CEQA"). A copy of this determination is in Board File No. 170863 and  
15 incorporated in this ordinance by reference.

16 (b) The Board of Supervisors previously adopted Resolution No. 402-17, a  
17 copy of which is in Board File No. 170987, making CEQA findings for the Project. The Board  
18 of Supervisors adopts and incorporates in this ordinance by reference the Planning  
19 Commission's findings under CEQA.

20 Section 3. Consistency Findings.

21 The Planning Commission recommended that the Board of Supervisors approve the  
22 Development Agreement and amendments to the General Plan, the Planning Code, and the  
23 Zoning Maps at a public hearing on August 24, 2017, by Resolution Nos. 19978 and 19979, a  
24 copy/copies of which is/are in Board File No. 170863. The Board of Supervisors adopts and  
25 incorporates by reference in this ordinance the Planning Commission's findings of consistency

1 with the General Plan, as amended, and the eight priority policies of Planning Code  
2 Section 101.1.

3 Section 4. Public Trust Findings.

4 At a public hearing on September 4226, 2017, the Port Commission consented to the  
5 Development Agreement and approved the trust exchange agreement and the DDA, subject  
6 to Board of Supervisors' approval, finding that the Project would be consistent with and further  
7 the purposes of the common law public trust and statutory trust under the Burton Act (Stats.  
8 1968, ch. 1333) by Resolution Nos. 17-44 and 17-47, ~~a copy~~ copies of which ~~is~~ are in Board  
9 File No. 170863. The Board of Supervisors adopts and incorporates in this ordinance by  
10 reference the Port Commission's public trust findings.

11 Section 5. Approval of Development Agreement.

12 The Board of Supervisors:

13 (a) approves all of the terms and conditions of the Development Agreement in  
14 substantially the form in Board File No. 170863;

15 (b) finds that the Development Agreement substantially complies with the  
16 requirements of Administrative Code Chapter 56;

17 (c) finds that the Project is a large multi-phase and mixed-use development that  
18 satisfies Administrative Code Section 56.3(g); and

19 (d) approves the Workforce Development Plan attached to the DDA in lieu of  
20 requirements under Administrative Code Chapter 14B, Article VII of Chapter 23,  
21 and Section 56.7(c), and Chapter 83 to the extent that Chapter 83 applies to construction work  
22 that is subject to the Local Hiring Requirements of the Workforce Development Plan.

1           Section 6. Administrative Code Chapter 56 Waivers.

2           The Board of Supervisors waives the application to the Project of the following  
3 provisions of Administrative Code Chapter 56 to the extent inconsistent with the Development  
4 Agreement, the DDA, or the ICA, specifically:

5           (a)    Section 56.4 (Application, Forms, Initial Notice, Hearing); Section 56.7(c)  
6 (Nondiscrimination/Affirmative Action Requirements); Section 56.8 (Notice); Section 56.10  
7 (Negotiation Report and Documents); Section 56.15 (Amendment and Termination);  
8 Section 56.17(a) (Annual Review); Section 56.18 (Modification or Termination); and  
9 Section 56.20 (Fee); and

10          (b)    any other procedural or other requirements if and to the extent that they are not  
11 strictly followed.

12           Section 7. Other Administrative Code Waivers.

13           The Board of Supervisors waives the application to the Project of these provisions of  
14 the Administrative Code: (a) Chapter 6 (Public Works Contracting Policies and Procedures)  
15 other than the payment of prevailing wages as required in Chapter 6; (b) Chapter 14B (Local  
16 Business Enterprise Utilization and Non-Discrimination in Contracting); (c) Competitive  
17 Bidding Procedures appraisal effective date, and Additional Appraisal Review as defined in  
18 Section 23.3 (Chapter Definitions) and required by Section 23.3 (Conveyance and Acquisition  
19 of Real Property); (d) ~~Section 23.26~~23.31 (Year-to-Year and Shorter  
20 Leases); (e) ~~Section 23.30-23.42~~ (Lease of Real Propertys When City is Landlord);  
21 (f) Sections 23.33 (Competitive Bidding Procedures); ~~(fg)~~ Section 23A.7 (Transfer of  
22 Jurisdiction Over Surplus Properties to the Mayor's Office of Housing and Community  
23 Development); and ~~(gh)~~ Subsection (c)(2) of Section 61.5(e)(2) (Listing of Unacceptable Non-  
24 Maritime Land Uses); and (i) remedies and penalties for noncompliance with Section 4.9-1(c)  
25 (Nutritional Standards and Guidelines), Section 12Q.5(f) (Health Care Accountability), or

1 Section 12T (Criminal History in Hiring and Employment) that would result in termination of  
2 any Transaction Document, impairment of Developer's or any vertical developer's  
3 development rights at the 28-Acre Site, or debarment of Developer or any vertical developer  
4 from future contract opportunities with the City.

5 Section 8. Planning Code Waivers.

6 The Board of Supervisors:

7 (a) finds that the impact fees and exactions payable under the Development  
8 Agreement will provide greater benefits to the City than the impact fees and exactions under  
9 Planning Code Article 4 and waives the application of, and to the extent applicable exempts  
10 the Project from, impact fees and exactions under Planning Code Article 4 on the condition  
11 that Developer and all building developers comply with impact fees and exactions established  
12 in the Development Agreement; and

13 (b) finds that the Transportation Plan attached to the Development  
14 Agreement includes a Transportation Demand Management Plan ("TDM Plan") and other  
15 provisions that meet the goals of the City's Transportation Demand Management Program in  
16 Planning Code Section 169 and waives the application of Section 169 to the Project on the  
17 condition that Developer implements and complies with the TDM Plan for the required  
18 compliance period.

19 Section 9. Subdivision Code Waivers.

20 (a) The Board of Supervisors waives the application to the Project of time  
21 limits under Subdivision Code Section 1333.3(b) (Rights Conveyed), Section 1346(e)  
22 (Improvement Plans) and Section 1355 (Time Limit for Submittal) to the extent that they  
23 conflict with the ICA or the Development Agreement.

24 (b) The Board of Supervisors also waives the application to the Project of  
25 Subdivision Code Section 1348 (Failure To Complete Improvements Within Agreed Time).

1 and the following terms shall apply in lieu thereof: The Public Improvement Agreement, as  
2 defined in the ICA, shall include provisions consistent with the Transaction Documents and  
3 the applicable requirements of the Municipal Code and the Subdivision Regulations regarding  
4 extensions of time and remedies that apply when improvements are not completed within the  
5 agreed time.

6 Section 10. Authorization.

7 (a) The Board of Supervisors affirms that the waivers in this ordinance do not waive  
8 requirements under the Development Agreement Law and authorizes the City to execute,  
9 deliver, and perform the Development Agreement as follows:

10 (1) the Director of Planning, the City Administrator, and the Director of Public  
11 Works are authorized to execute and deliver the Development Agreement with signed  
12 consents of the Port Commission, the Municipal Transportation Agency, and the San  
13 Francisco Public Utilities Commission; and

14 (2) the Director of Planning and other appropriate City officials are authorized  
15 to take all actions reasonably necessary or prudent to perform the City's obligations under the  
16 Development Agreement in accordance with its terms.

17 (b) The Director of Planning is authorized to exercise discretion, in consultation with  
18 the City Attorney, to enter into any additions, amendments, or other modifications to the  
19 Development Agreement that the Director of Planning determines are in the best interests of  
20 the City and that do not materially increase the obligations or liabilities of the City or materially  
21 decrease the benefits to the City as provided in the Development Agreement. Final versions  
22 of any additions, amendments, or other modifications to the Development Agreement shall be  
23 provided to the Clerk of the Board of Supervisors for inclusion in Board File No. 170863 within  
24 30 days after execution by all parties.

1           Section 11. Ratification of Past Actions; Authorization of Future Actions.

2           All actions taken by City officials in preparing and submitting the Development  
3 Agreement to the Board of Supervisors for review and consideration are hereby ratified and  
4 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken  
5 by City officials consistent with this ordinance.

6           Section 12. Effective and Operative Dates.

7           (a) This ordinance shall become effective 30 days after enactment. Enactment  
8 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned, or the  
9 Mayor does not sign the ordinance within ten days after receiving it, or the Board of  
10 Supervisors overrides the Mayor's veto of the ordinance.

11           (b) This ordinance shall become operative only on the effective date of the DDA. No  
12 rights or duties are created under the Development Agreement until the operative date of this  
13 ordinance.

14  
15 APPROVED AS TO FORM:  
16 DENNIS J. HERRERA, City Attorney

17  
18 By:



19           JOANNE SAKAI  
20           Deputy City Attorney

21 n:\legana\as2017\1800030\01227527.docx



**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

  
\_\_\_\_\_

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**

<p>This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383</p> <p>RECORDING REQUESTED BY, AND WHEN RECORDED, MAIL TO:</p>	<p>FOR RECORDER'S USE ONLY</p>
--	--------------------------------

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 less value and/or encumbrances remaining at time of sale,  
[ ] 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.

\_\_\_\_\_  
Signature

(Seal)

**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.

\_\_\_\_\_  
Signature (Seal)



**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:

$$\frac{\text{Current Index}}{\text{Prior Index}} \times \text{Capital Reserve Deposit} = \text{Adjusted Capital Reserve Deposit}$$

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 (10<sup>th</sup>) 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.

PL Hist.  
Bldg. App.

### **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 be 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 (5<sup>th</sup>) 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.

**“Réhabilitation”** 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 31<sup>st</sup> 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 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 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

PL Hist.  
Bldg. App.



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 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

PL Hist.  
Bldg. App.

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 EC 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<sup>1</sup> 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

---

<sup>1</sup> 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.

**EXHIBIT D5**

*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

**DDA EXHIBIT D8**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

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;

**DDA EXHIBIT D8**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

- 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 I 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

**DDA EXHIBIT D8**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

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

**DDA EXHIBIT D8**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

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 meet 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.



**DDA EXHIBIT D8**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

- 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

**DDA EXHIBIT D8  
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

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.

**DDA EXHIBIT D8**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

- 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: \_\_\_\_\_